



Staff Report

File #: REPORT 20-0045, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of January 28, 2020

**TEXT AMENDMENT 20-1 TO AMEND CHAPTER 5.78 "TOBACCO
RETAILERS" OF TITLE 5 OF THE HERMOSA BEACH MUNICIPAL
CODE TO PROHIBIT THE ISSUANCE OF NEW TOBACCO
RETAILER LICENSES, THE SALE OF ELECTRONIC SMOKING
DEVICES AND PRODUCTS FOR ELECTRONIC SMOKING DEVICES
AND DETERMINE THAT THE AMENDMENT IS EXEMPT FROM THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

(Continued from meeting of January 14, 2020)

(Community Development Director Ken Robertson)

Recommended Action:

Staff recommends that the City Council:

1. Introduce the attached Ordinance to amend Chapter 5.78 of Title 5 of the Hermosa Beach Municipal Code to prohibit the issuance of new Tobacco Retailer Licenses and to prohibit the sale of electronic smoking devices and products for the electronic smoking devices, and determination that the amendment is exempt from the California Environmental Quality Act (CEQA); and
2. Discuss and provide direction to staff regarding process and timing of a potential future ban of all tobacco sales in Hermosa Beach.

Background:

The City of Hermosa Beach has been addressing public health policies related to smoking and tobacco for several years.

Past Council Actions

Meeting Date	Description
2012	The City launched the Healthy Air Hermosa initiative creating a smoke-free environment at public outdoor gathering spaces such as P and the Hermosa Beach Pier.

2016	The City of Hermosa Beach adopted an ordinance prohibiting sales of tobacco products in all public places, including the beach, parks, parking lots, and sidewalks.
January 8, 2019	The City of Hermosa Beach adopted an ordinance, effective June 1, 2019, prohibiting sales of flavored tobacco products and establishing an annual Tobacco Retailer License for any retailer who sells tobacco products.
October 10, 2019	Councilmembers Armato and Duclos requested that the City Council discuss and consider prohibition of retail sales of all tobacco products in Hermosa Beach.
November 12, 2019	The City Council discussed and provided direction on whether to prohibit the retail sale of tobacco products in Hermosa Beach. At that meeting, the City Council directed staff to introduce an ordinance for consideration that would prohibit the issuance of any new Tobacco Retailer Licenses, prohibit the sale of electronic smoking devices and vaping products, and to facilitate discussions with tobacco retailers. The City Council also directed staff to work with the Beach Cities Health District to develop a process and timeframe for a future ban of all tobacco sales in Hermosa Beach.

Analysis:

The proposed ordinance includes the following components:

1. Prohibit New Tobacco Retailer Licenses

No new Tobacco Retailer License would be permitted. Existing businesses with Tobacco Retailer Licenses would be able to renew the annual licenses under the proposed ordinance. Tobacco Retailer Licenses have been required since June 1, 2019. There are currently 16 businesses with Tobacco Retailer Licenses in Hermosa Beach.

2. Prohibit Sales of Electronic Smoking Devices and Vaping Products

Electronic smoking devices and vaping product sales would be prohibited upon the effective date of the ordinance. Flavored tobacco and flavored vaping products have been prohibited since June 1, 2019.

In addition to the prohibition on issuance of new Tobacco Retail Licenses and prohibition of retail sales of vaping devices and products, the City Council directed staff to provide options on the next phase and timing for a complete tobacco ban.

Potential Tobacco Sales Ban

The City Council directed staff to work with Beach Cities Health District on recommended timing for a complete tobacco sales ban. Staff met with experts from Beach Cities Health District, who

introduced Tobacco Policy expert Ruth Malone, R.N., Ph.D. Staff also reviewed examples of proposed bans nearby. The effective date for tobacco sales ban in Beverly Hills is January 1, 2021. A Manhattan Beach tobacco sales ban is under consideration and the effective date is not yet determined. It is expected Manhattan Beach will consider its tobacco sales ban at a City Council meeting in February. Ruth Malone is also assisting the City of Manhattan Beach with its tobacco sales ban ordinance consideration.

The City and Beach Cities Health District have invited Dr. Malone to attend the City Council meeting to discuss public health benefits from tobacco ban policies. A copy of her report, "Considerations: Tobacco Sales Restrictions" is attached.

Tobacco retailer reduction is associated with a decline in cigarette purchases. A 2017 CVS Health Research Institute study found that the 2014 corporate decision to remove tobacco from its retail stores has resulted in a reduction of tobacco use nationwide. Study findings showed that those who had purchased cigarettes exclusively at CVS Pharmacy were 38% more likely to stop buying cigarettes altogether after tobacco products were no longer sold in stores.

If a tobacco sales ban is enacted in Hermosa Beach, it is expected that reduced access to tobacco products would lead to less people smoking these products and increased compliance with the City's smoking regulations. Despite the City's ban on smoking tobacco products in certain designated areas of the City, Code Enforcement and the Police Department regularly issue warnings and citations due to incidents of individuals smoking in prohibited areas in violation of local law.

Effective Date of Tobacco Sales Ban

Timing is a key component of a potential tobacco sales ban. Timing considerations include impacts to businesses phasing out tobacco products, such as sale of existing inventory and allowing time to transition to other products.

At the November 12, 2019 meeting, the City Council directed staff to recommend options for its effective date. Should the City Council decide to consider a tobacco sales ban ordinance, the following effective date options are listed below for City Council consideration:

1. January 1, 2021

The City of Beverly Hills tobacco retail sales ban will be in effect January 1, 2021. Some advocates suggest it would be beneficial to have the same effective date as Beverly Hills and other cities considering bans. However, Beverly Hills approved its ordinance July 5, 2019, which allows retailers 18 months to transition before the effective date. This option may not allow enough time for retailers in Hermosa Beach to transition away from tobacco sales.

2. January 1, 2022

This option would allow retailers almost two years to deplete merchandise and transition away

from tobacco sales.

3. January 1, 2023

This option would allow retailers almost three years to deplete merchandise and transition away from tobacco sales. Tobacco retailers have requested additional time for implementation. It is expected that a longer time period before implementation would likely reduce the number of hardship exemption requests to the City Council.

Hardship Exemption

Some retailers would be more affected by a tobacco retail ban than others, depending on how much of their sales are tobacco products. For example, a tobacco ban would affect a smoke shop more than a grocery store that sells other merchandise. Staff recommends a hardship exemption be considered as part of any proposed ordinance to phase out tobacco sales in the City. A hardship exemption would be possible for retailers that demonstrate the ban would cause an undue hardship and would be considered by the City Council on a case-by-case basis. Hardship exemption applications would require substantiated facts to demonstrate the negative impacts of the loss of tobacco sales to the business and include a tobacco phase-out plan.

A hardship exemption was approved as part of the Beverly Hills tobacco ban. Manhattan Beach is also including a hardship exemption as part of its ordinance for a tobacco sales ban.

Community Outreach

There are currently 16 businesses with Tobacco Retailer Permits that sell tobacco products in Hermosa Beach, 3 of which sell tobacco products as their primary merchandise category.

Staff reached out to the City's affected retailers and property owners through an informational letter, calls, and visits to notify businesses of the proposed ordinance and discussion of a potential tobacco sales ban. Staff also held a meeting at City Hall to provide a summary of the proposed tobacco policies and to receive feedback from tobacco businesses. Two tobacco retailers and a Hermosa Beach resident attended the meeting. The participating retailers stated overall retail concerns about declining store sales due to increasing internet sales and delivery services, but noted the benefit that customer store visits allowed the retailer to verify age before selling tobacco products. It was stated that the lack of ability to sell tobacco products would reduce their total sales and would also reduce the value of their businesses, making it more difficult for them to sell. Retailers stated that tobacco sales restrictions are confusing to customers since the products are legally sold in California and throughout the country. It was reported that one retailer was concerned about paying for the annual Tobacco Retailer License and not receiving an entire year of tobacco sales. Retailers mentioned how difficult it is to operate a business with rising staff costs and high rents in the area. Both retailers agreed that if a tobacco sales ban was proposed, they would request that the City give them as much time as possible before it becomes effective.

Nearby Cities Tobacco Policy Updates

The City of Beverly Hills adopted a “Tobacco Ban” ordinance effective July 5, 2019, which is considered the first city in the nation to prohibit tobacco sales. The ordinance prohibited any new Tobacco Retailer Permits, and existing permitted retail sales can be in effect only until December 31, 2020, unless one hardship exemption is approved for a limited term with a plan to phase out tobacco. The ordinance goes into effect on January 1, 2021.

On October 8, 2019, the Redondo Beach City Council approved two new tobacco ordinances to ban smoking throughout the city limits, with exception of city-permitted designated smoking areas and to ban possession of tobacco products for individuals under the age of 21 on school property. The second ordinance established a Tobacco Retailer License requirement and prohibits sales of flavored tobacco products, electronic smoking devices, and vaping products.

The Manhattan Beach City Council considered an ordinance for a complete tobacco ban at its meeting held December 17, 2019. At that time, the Manhattan Beach City Council directed its staff to amend the ordinance to include prohibition of all flavored tobacco and vaping products, consideration of an interim process for Tobacco Retail Permit renewals, and denial of consideration of any new Permits in anticipation of a future tobacco sales ban. This item is expected to be considered by the Manhattan Beach City Council in February. Based on the December 17, 2019 discussion, a potential ban on tobacco sales may go in effect as soon as 2021 or 2022.

General Plan Consistency:

PLAN Hermosa, the City’s General Plan, was adopted by the City Council in August 2017. A limitation or prohibition of tobacco sales supports several PLAN Hermosa goals and policies that are listed below.

Governance

Goal 7. Community sustainability and health are a priority in policy and decision making.

Policies:

- **7.1 Integrate health.** Encourage public and private health partners as part of community engagement processes (including committees, stakeholders and workshops) in planning and development decisions.
- **7.2 Health conditions.** Support the work of Beach Cities Health District to monitor health and well-being monitoring and tracking of health outcomes.
- **7.3 Health in all policies.** 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.
- **7.5 Health-promoting uses.** Prioritize health-promoting uses in new development.
- **7.6 Livability principles.** Amend or update policies that may run counter to livability, sustainability, and health principles.

Fiscal Impact:

Upon implementation of the proposed ordinance, no new Tobacco Retailer Permits would be issued. The current 16 retailers, who sell tobacco products, would be able to renew their licenses. The annual renewal fee is \$354 ($\$354 \times 16 = \$5,664$).

Implementation of a tobacco ban would eliminate annual renewal fee revenue from Tobacco Retailer Permits and would result in reduced sales tax revenue from tobacco sales.

Attachments:

1. Ordinance
2. Link to November 12, 2019 City Council Meeting
3. Considerations: Tobacco Sales Restrictions by Ruth Malone, R.N., PhD
4. Letter to Tobacco Retailers
5. Letter and Attachments from Beach Cities Health District

Respectfully Submitted by: Christy Teague, Senior Planner

Concur: Ken Robertson, Community Development Director

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager