

Agenda Date: 10/1/2019

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Bruce Moe, City Manager

Quinn Barrow, City Attorney

Alexandria Latragna, Management Analyst

SUBJECT:

Consider Prohibiting the Retail Sale of Tobacco Products and Electronic Smoking Devices and Paraphernalia (City Manager Moe and City Attorney Barrow).

DISCUSS AND PROVIDE DIRECTION

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction on whether to prohibit the retail sale of all tobacco products and electronic smoking devices and paraphernalia in Manhattan Beach.

FISCAL IMPLICATIONS:

There may be fiscal implications as the retail sales permit fees would no longer be a revenue source for the City.

BACKGROUND:

The City of Manhattan Beach has consistently recognized the concerns about public health, safety, and welfare related to tobacco use as well as cigarette litter, and has adopted several measures to address these concerns.

Smoking Activity

On July 28, 2014, the Smoke-Free Public Places ordinance became effective. Under the 2014 ordinance and a second ordinance which passed in 2015, smoking is only permitted in the following locations within the City:

1. Residential properties with two or fewer units, other than those used as a child-care

- or health-care facility subject to State licensing requirements.
- 2. In twenty percent of guest rooms in any hotel or motel that meet certain conditions.
- 3. Within a moving vehicle.

Manhattan Beach Municipal Code (MBMC) Section 4.117.030 prohibits smoking inside any unit or within any outdoor areas of a multi-unit housing property (defined as three or more units).

Tobacco Product Sales

In order to sell tobacco or electronic smoking devices in Manhattan Beach, retailers are required to obtain a valid retailer permit pursuant to Chapter 4.118 of the MBMC adopted in 2016. In addition to minimum age requirement of 21 for the sale of tobacco and electronic smoking devices, the MBMC has restrictions on advertisements related to tobacco products or electronic smoking devices and where tobacco products and electronic smoking devices are kept in a retail establishment. The MBMC has also placed a ban on selling flavored tobacco products, with the exception of mint, menthol, spearmint, or wintergreen.

At the request of Mayor Napolitano and Councilmember Montgomery at the May 21, 2019, City Council meeting, staff placed this item on the June 4, 2019, agenda for further discussion. City Council directed staff to bring the item back for discussion.

DISCUSSION:

According to a report from the California Department of Public Health, tobacco use and exposure to smoke area risk factors for numerous chronic diseases including cancer, cardiovascular disease, emphysema, chronic obstructive pulmonary disease, pneumonia, diabetes, and arthritis. According to the Center for Disease Control (CDC), over 16 million Americans have at least one disease caused by smoking. Every day, according to the CDC, approximately 2,000 people under age 18 smoke their first cigarette, and more than 300 become daily cigarette smokers.

According to the 2018-2019 California Healthy Kids Survey, 31% of Manhattan Beach Unified School District 11th grade students reported using electronic cigarettes or other vaping devices within the last 30 days, while only 7% of 11th grade students across Los Angeles County reported doing so.

According to the U.S. Census Bureau 2017 population estimates, children under age 18 account for approximately 25% of the population of Manhattan Beach, of which approximately 14% are middle school to high school age.

Most recently, the use of vaping paraphernalia has risen, and with it, lung damage and reported deaths from use. Ironically, out of concern for the health hazards from vaping, some youth are turning to cigarettes as a “less dangerous” form of ingesting nicotine.

As noted above, the City regulates tobacco products and activity through regulating smoking activity and through the sale of tobacco products. Smoking, including smoking an electronic cigarette, is prohibited throughout the City in the public right-of-way and on public property. The City prohibits the sale of flavored tobacco products (with the exception of mint, menthol, spearmint, or wintergreen), and requires a retail sales permit for any sale of tobacco products,

including electronic smoking devices.

The MBMC defines a “tobacco product” as any product “containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body.” The definition does not include any cessation product approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

The MBMC separately defines an “electronic smoking device” as “(1) an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user or (2) any product intended or sold for use with such a device.”

Staff recommends that the City Council direct staff to review the existing regulations to ensure that they are up-to-date.

Tobacco Retailers in Manhattan Beach

The initial application fee for a tobacco retail sales permit is \$242, and \$183 for each subsequent yearly renewal application. Currently there are 18 businesses in the City that sell tobacco products or electronic smoking devices. One such business almost exclusively sells tobacco products or electronic smoking devices. If further restrictions are placed on the sale of tobacco, retail businesses in Manhattan Beach that sell tobacco related products may be placed at a competitive disadvantage to those in other jurisdictions nearby that continue to offer such products for sale.

Other Jurisdictions' Recent Bans

The City of Beverly Hills recently adopted the attached ordinance prohibiting the sale of tobacco related products, which will go into effect January 1, 2021. The ordinance exempts existing cigar lounges and hotels selling tobacco products to guests. In addition, the ordinance contains a hardship exemption process for retailers. Beverly Hills will schedule a study session within three years to assess the impacts on local businesses and tourism.

The County of Los Angeles has recently introduced the attached ordinance prohibiting the sale of all flavored tobacco products, without exemption, in unincorporated areas of the County of Los Angeles. The second reading of the ordinance will be brought forward for Los Angeles Board of Supervisor's consideration in the coming weeks.

The City of Hermosa Beach recently adopted the attached ordinance prohibiting the sale of all electronic smoking devices, except for retailers who only allow patrons 21 years of age or older to enter. Additionally, Hermosa Beach prohibited the sale of all flavored tobacco.

POLICY ALTERNATIVES:

The City Council has several alternatives to consider for restricting the sale of tobacco products or electronic smoking devices and paraphernalia:

ALTERNATIVE # 1:

Prohibit the retail sale of all tobacco products (whether flavored or unflavored), electronic smoking devices and paraphernalia, but allow a hardship exemption.

PROS:

This would support the City's commitment to public health, including helping to prevent youth in Manhattan Beach from having access to dangerous products and devices.

CONS:

Businesses relying on the sale of such products may lose revenue streams from the sale of tobacco products, electronic smoking devices and paraphernalia.

ALTERNATIVE # 2:

Prohibit the sale of electronic smoking devices and all flavored tobacco products in the City of Manhattan Beach, but allow the sale of non-flavored tobacco products. Currently, the City of Manhattan Beach prohibits the sale of flavored tobacco, with the exception of mint, menthol, spearmint, or wintergreen.

PROS:

Flavored tobacco products are appealing to children and electronic smoking devices can be used with cannabis or other potentially harmful products to children. This option allows for a targeted prohibition and may avoid some potential revenue loss for local businesses.

CONS:

Other harmful tobacco products will still be available to residents in the City of Manhattan Beach.

ALTERNATIVE # 3:

Prohibit the sale of all flavors of tobacco products in the City of Manhattan Beach, but allow non-flavored tobacco products and electronic smoking devices and paraphernalia. Currently, the City of Manhattan Beach prohibits the sale of flavored tobacco, with the exception of mint, menthol, spearmint, or wintergreen.

PROS:

Flavored tobacco products are appealing to children, including mint, menthol, spearmint, or wintergreen. This option will reduce youth access to these products while reducing the burden on tobacco retailers that rely on revenue from the sale of other tobacco products and electronic smoking devices.

CONS:

Other harmful tobacco products will still be available to residents in the City of Manhattan Beach, including electronic smoking devices.

Based upon City Council's direction, staff will return with a draft ordinance for further Council consideration. Further outreach and engagement with the community, including those retail establishments affected, will be conducted in advance of further Council consideration.

PUBLIC OUTREACH:

Staff reached out to local businesses with that currently sell tobacco products or electronic smoking devices to notify them that this item is on the agenda. Upon further direction from City Council, staff will further engage the community, including businesses.

ENVIRONMENTAL REVIEW:

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary. In the event the City Council directs staff to prepare an ordinance, additional legal analysis may be necessary.

ATTACHMENTS:

1. Beverly Hills Tobacco Ordinance
2. Hermosa Beach Tobacco Ordinance
3. Los Angeles County Flavored Tobacco Ordinance
4. Los Angeles County Public Health Reference Documents