



Legislation Text

File #: 19-0424, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Quinn Barrow, City Attorney

Alexandria Latragna, Management Analyst

SUBJECT:

Consider Adopting an Urgency Ordinance to Prohibit the Sale of Vape Products and Flavored Tobacco in the City (City Manager Moe and City Attorney Barrow).

ADOPT URGENCY ORDINANCE NO. 19-0016-U

RECOMMENDATION:

Staff recommends that the City Council adopt Urgency Ordinance No. 19-0016-U to prohibit the sale of vape products and flavored tobacco in the City.

FISCAL IMPLICATIONS:

There are fiscal implications as the City would no longer receive sales tax revenue. The amount is unknown at this time because sales tax is not tracked at the product level, rather it is reported at the business entity level which may include other un-related products.

BACKGROUND:

On October 1, 2019, City Council directed staff to draft an urgency ordinance to prohibit the sale of vape products and flavored tobacco in the City.

The City of Manhattan Beach has consistently prioritized protecting the health and welfare of its residents and the environment, and has adopted several ordinances regulating the sale of tobacco and smoking in Manhattan Beach. Recognizing the dangers of tobacco and electronic smoking device use, in 2014, the City prohibited smoking in most public places and in all multi-unit residential buildings where there are three or more units, and required businesses selling tobacco or electronic smoking devices to obtain a valid retail sales permit, and prohibited the sale of most flavored tobacco outside of an adult-only establishment.

DISCUSSION:

Tobacco use and exposure to secondhand smoke cause death and disease, and have great social and economic costs. In addition, the United States Food and Drug Administration (FDA) conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed.

Recent Trends

The FDA has raised concerns that electronic cigarettes, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products. Youth use of tobacco products in any form is unsafe, irrespective of whether it is smoke, smokeless, or electronic. The Center for Disease Control (CDC) reports that if cigarette smoking continues at the current rate among youth in this country, 5.6 million of today's Americans younger than 18 will die early from a smoking-related illness. That is about one of every 13 Americans aged 17 years or younger alive today.

The CDC reported that as of October 22, 2019, 1,604 lung injury cases and 34 deaths associated with using e-cigarette or vaping products have been reported to the CDC. They recommend refraining from using e-cigarette, or vaping products while they are conducting their investigation.

The National Youth Tobacco Survey (NYTS) is a cross-sectional, voluntary, school-based, self-administered survey of the U.S. middle and high school students. The most recent survey data was collected from March to May 2018. The findings showed a dramatic increase in youth vaping over the prior year. Data further showed youth and young adults identify flavors as a primary reason for e-cigarette use. Research shows that youth who use e-cigarettes are more likely to transition to conventional cigarettes-risking a lifetime of addiction to smoking and smoking-attributable disease. Pre-teens and teens are becoming addicted to nicotine at an earlier age, some while in middle school. A recent FDA study showed that nearly 75 percent of young adults ages 18-25, who were current tobacco users, reported the first tobacco product ever used was flavored.

Many pro-vaping advocates have made the claim that electronic cigarettes help smokers successfully quit traditional cigarettes, however, there is no scientific evidence to support this claim. Electronic cigarette users are no more likely to quit than regular smokers, with one study finding 89 percent of electronic cigarette users still using them one year later. Another study found that electronic cigarette users are a third less likely to quite cigarettes.

The proposed urgency ordinance would prohibit the sale of all vaping products and all flavored tobacco in the City of Manhattan Beach.

Other Jurisdictions' Recent Bans

The City of Beverly Hills adopted an 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 adopted an ordinance in October prohibiting the sale of flavored tobacco products, without exemption, in unincorporated areas of the County of Los Angeles.

The City of Hermosa Beach recently adopted an 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.

In October, the City of Long Beach approved a temporary prohibition on the sale of all flavored tobacco products.

Also in October, the City of Burbank adopted an ordinance prohibiting the sale of flavored tobacco.

Urgency Ordinance

Pursuant to Council direction, staff has drafted an urgency ordinance that, if adopted by a 4/5th vote, will take effect immediately. The ordinance contains a declaration of facts constituting the urgency, and a hardship exemption discussed immediately below.

Hardship Extension

A hardship extension provision is necessary to offer businesses an opportunity to demonstrate the extent to which they are affected by the proposed urgency ordinance. Any tobacco retailer that wishes to continue to sell vaping products or flavored tobacco after the proposed urgency ordinance goes into effect, in order to phase out their current inventory, may apply for a hardship extension. The retailer may apply for such extension within 10-days after the urgency ordinance has been approved. The City Council shall grant a hardship extension upon making a finding that the denial of the extension would result in the applicant being deprived of all economically viable use of the property. The City Council may grant a hardship extension upon other findings. Applicants must submit documentation pursuant to regulations enacted by the City.

PUBLIC OUTREACH:

Staff reached out to local tobacco retailers to survey inventory of vape-related products and flavored tobacco. Data from the survey will be presented at the meeting.

ENVIRONMENTAL REVIEW:

This Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question (prohibiting the retail sale of flavored tobacco and electronic smoking devices) may have a significant effect on the environment.

LEGAL REVIEW:

The City Attorney has approved the Urgency Ordinance No. 19-0016-U as to form. A legislative digest is attached to show the Code amendments.

ATTACHMENTS:

1. Urgency Ordinance No. 19-0016-U
2. Staff report from October 1, 2019
3. Legislative Digest