



## Legislation Text

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**File #:** 19-0465, **Version:** 1

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**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 Introducing an Ordinance to Prohibit the Sale of Tobacco Products in the City and Discuss and Provide Direction Relating to Incentives for Tobacco Retailers (City Manager Moe and City Attorney Barrow).

a) **INTRODUCE ORDINANCE NO. 19-0016**

b) **DISCUSS AND PROVIDE DIRECTION**

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**RECOMMENDATION:**

Staff recommends that the City Council introduce Ordinance No. 19-0016 prohibiting the sale of tobacco products.

**FISCAL IMPLICATIONS:**

There are fiscal implications as the City would no longer receive sales tax revenue from the 17 tobacco retailers. 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. Revenue from issuing the Tobacco Retail permits, which totals approximately \$3,100 annually, would be eliminated. The Fiscal Year 2019-2020 fee for these permits is \$183 for a renewal application, paid on an annual basis by each retailer and \$242 for an initial application.

**BACKGROUND:**

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

Manhattan Beach currently requires businesses to obtain a tobacco retail license prior to selling any tobacco products. At the November 5, 2019, meeting, the City Council adopted Urgency Ordinance No. 19-0016-U prohibiting the sale of all flavored tobacco and electronic smoking devices. Many jurisdictions have prohibited the sale of flavored tobacco products; to date, Beverly Hills is the only jurisdiction in the United States that has prohibited the sale of all tobacco products; however, they exempted several cigar lounges.

**DISCUSSION:**

The proposed ordinance prohibits the sale of all tobacco products in Manhattan Beach and provides

for a hardship exemption for retailers that demonstrate the ban would cause an undue hardship. The Council would consider hardship exemptions on a case-by-case basis by City Council. Retailers seeking a hardship exemption can submit an application to staff who would make a recommendation before City Council based on the materials submitted by the applicant. Due to the relative impacts to a business ensuing from a prohibition of all tobacco products (as opposed to a ban on vaping products, or Mylar balloons), the Ordinance's hardship exemption process is more detailed than the hardship exemption in prior ordinances and provides guidance to retailers. In addition, at the time the Council will consider the application the Council has the discretion to extend the period in which the tobacco retailer must comply with the prohibition or could grant an exemption allowing the retailer to continue selling tobacco products.

Staff reached out to the Business Development Program Manager at the Los Angeles County Department of Consumer and Business Affairs who provided resources in the form of mentorship referrals and business education, which may be useful to the small businesses in our community who are impacted by this potential ordinance change.

City Council has consistently sought to protect the health and well-being of residents. Tobacco is the single deadliest consumer product in history, causing millions of premature, preventable deaths, but is specifically exempted from the Consumer Products Safety Act of 1972. Tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. In the United States, smoking is responsible for about one in every five deaths, more deaths each year than human immunodeficiency virus (HIV), illegal drug use, alcohol use, motor vehicle injuries, microbial agents, and toxic agents combined.

The 2009 US Family Smoking Prevention and Tobacco Control Act (FSPTCA) specifically permits state or local jurisdictions to adopt more stringent standards "relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age." Additionally, the U.S. Surgeon General's Report on the Health Consequences of Smoking encourages policies to end the tobacco epidemic including, "greater restrictions on sales, particularly at the local level, including bans on entire categories of products."

Consumers assume that products available for purchase are reasonably safe. The United Nations adopted Guidelines on Consumer Protection, first in 1985, and then revised them in 2015. The guideline calls upon governments to "adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use."

Experts in this field have been invited to the City Council meeting provide public testimony: Ruth Malone, RN, PhD, from the Department of Social and Behavioral Sciences of the School of Nursing from the University of California, San Francisco; and staff from the Los Angeles County Department of Public Health.

#### Enforcement Dates

At the October 1, 2019, meeting, City Council directed staff to draft an ordinance prohibiting the sale of tobacco products in the City with options on when the ordinance would be enforced. The following three options are listed below for Council consideration:

*Option No. 1: July 1, 2020*

Under this option, current tobacco retailers would have six months to deplete current inventories. This option takes into consideration the harmfulness of tobacco consumption, but still provides ample time for retailers to deplete current inventories. It does not take into consideration that the City's only exclusive tobacco retailer, Manhattan Beach Smoke Shop, has a lease which does not expire until December 31, 2022.

*Option No. 2: January 1, 2021*

This option delays enforcement of the provision and aligns the effective date with the Beverly Hills tobacco ordinance, the only other local jurisdiction to prohibit the sale of tobacco products. This does give time to retailers to deplete current inventories, however, as noted above, does not take into consideration the lease that Manhattan Beach Smoke Shop currently holds.

*Option No. 3: January 1, 2022*

Under this option, current tobacco retailers would have two years to deplete current inventories, but is not so far into the future as to abate the efficacy of the provision. There would still be 12 months left on the current lease held by Manhattan Beach Smoke Shop.

*Option No. 4: January 1, 2023*

Under this option, current tobacco retailers would have three years to deplete current inventories. Most retailers stated that tobacco was less than 20% of their overall sales, so this option would provide time for the retailers to deplete inventories and change business models. This option would allow the operator of Manhattan Beach Smoke Shop to continue operating as a smoke shop until the lease expires.

If the Council opts to delay enforcement of a prohibition on retail sales for all tobacco products, the draft ordinance needs to be modified to keep intact the Council's ban on vaping products and flavored tobacco, and may need an interim retail permit program and additional regulations addressing the interim period between second reading and the date of enforcement. If so directed, staff would return for another first reading of the revised ordinance.

Staff recommends the Council provide an opportunity for retailers to submit an application for a hardship exemption in all three options. An application for a hardship exemption to be excluded from the Ordinance or extend the time to comply with this Ordinance may be filed. The retailer shall bear the burden of proof in establishing by a preponderance of the evidence, that the application of this Ordinance to the retailer's business is unreasonable, and will cause significant hardship to the retailer by not allowing the retailer to recover his or her investment backed expectations. The City Council may consider other factors in order to determine hardship and base its decision on such factors.

Incentives for Retailers

Staff is seeking direction from City Council regarding offering incentives and support to the tobacco retailers in the implementation of this ordinance. Los Angeles County hired a consultant to provide business coaching and services to flavored tobacco retailers subject to their recent prohibition on the sale of flavored tobacco in the unincorporated areas of Los Angeles County. A similar consultant, if supported by City Council, could be hired to support tobacco retailers in Manhattan Beach. Additionally, grants could be offered to retailers seeking to change their business model away from tobacco retailing.

Staff held a meeting, and invited all 17 licensed tobacco retailers in Manhattan Beach to participate, in an effort to provide existing retailers an opportunity to discuss the effects of a potential ban on the sale of tobacco products. Three businesses participated: Manhattan Beach Smoke Shop, Manhattan Beach Market, and Player's Liquor.

The retailers identified the following issues:

- Loss of revenue;
- Loss of the monetary value of their businesses, affecting the intrinsic value and resale value; and
- Loss of customers who buy multiple products in addition to tobacco products on their visit, who would shop elsewhere for all products since tobacco would no longer be available at their location.

All Manhattan Beach licensed tobacco retailers were notified of the City Council meeting tonight.

#### **CONCLUSION:**

Staff recommends that City Council introduce Ordinance No. 19-0016 prohibiting the sale of all tobacco products in Manhattan Beach and discuss and provide direction relating to incentives offered to tobacco retailers.

#### **PUBLIC OUTREACH:**

Staff met with tobacco retailers to discuss the ordinance and their businesses, as noted above. Additionally, staff met with experts from the University of San Francisco, City of Los Angeles, Beach Cities Health District, and the County of Los Angeles while researching this topic.

#### **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 tobacco) may have a significant effect on the environment.

#### **LEGAL REVIEW:**

The City Attorney has approved the Ordinance No. 19-0016 as to form.

#### **ATTACHMENTS:**

1. Ordinance No. 19-0016
2. *An Argument for Phasing Out Sales of Cigarettes* (September 2019)