



Legislation Text

File #: 20-0055, **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 Introducing an Ordinance to Prohibit the Sale of Tobacco Products in the City (City Manager Moe and City Attorney Barrow).

INTRODUCE ORDINANCE NO. 20-0007

RECOMMENDATION:

Staff recommends that the City Council introduce Ordinance No. 20-0007 prohibiting the sale of all tobacco products in Manhattan Beach.

FISCAL IMPLICATIONS:

There are fiscal implications as the City would no longer receive sales tax revenue from 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:

The Manhattan Beach 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.”

On November 5, 2019, the City Council adopted Ordinance No. 19-0016-U prohibiting the sale of flavored tobacco and electronic smoking devices.

On December 17, 2019, City Council considered introducing an ordinance prohibiting the sale of tobacco products in the City. Health care experts who specialize in the field of the effects of the use of tobacco provided public testimony at the meeting. After additional public input and considerable discussion and deliberation, the Council voted 4-1 to proceed with the prohibition, subject to the following: (1) the City will allow existing retailers to continue selling tobacco products (except products previously prohibited) until January 1, 2021; (2) the Council directed staff to explore services to help mitigate potential economic impacts on such retailers; (3) the Council authorized a hardship exemption process to further assist such retailers who can demonstrate that they need additional time to exhaust stock after December 31, 2020; and (4) the Council waived 2020 business license fees for the existing retailers. Pursuant to such direction, staff has reached out to: (1) 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 any small business in our community which might be impacted by the proposed ordinance; and (2) El Camino College, which sent materials regarding the services it provides as a Small Business Development Center, with certain services provided at no cost to small businesses. Staff is attempting to schedule a meeting with El Camino to talk about logistics and outreach. Further, staff has revised the draft ordinance.

DISCUSSION:

The proposed ordinance prohibits the sale of all tobacco products in Manhattan Beach after January 1, 2021. The existing Municipal Code provisions and the provisions in Urgency Ordinance No. 19-0016-U prohibiting the sale of flavored tobacco and electronic smoking devices will remain intact until December 31, 2020, when such ordinance is replaced by this broader prohibition. The ordinance provides for a hardship exemption for retailers that demonstrate the prohibition would cause an undue hardship. An application for a hardship exemption to be excluded from the Ordinance or extend the time to comply with this Ordinance may be filed in the two-month period of September 1, 2020, through October 31, 2020.

There are 17 existing retailers in the City, as follows:

BevMo!
Aviation Liquor
Chevron # 1959
Chevron # 2016
Current Events
Moon’s Market

Manhattan Gas & Market Inc.
Player's Liquor
Manhattan Beach Smoke Shop
Ralphs # 166
7-11 Store 24549D
Manhattan Beach Market
Vons # 2275
Red Carpet Car Wash
Circle K # 2709422
Walgreens # 09685
GSE 76

The hardship exemption will give retailers the opportunity to demonstrate that they need more time in complying with the ordinance beyond 2020. The Council would have the discretion, based upon the evidence presented, to grant additional time to any of the 17 retailers or exempt one or more from the ordinance. As drafted, the ordinance allows current tobacco retailers to sell tobacco products, with the exception of flavored tobacco and electronic smoking devices, until December 31, 2020. The City will not issue tobacco permits to new retailers.

Staff recommends that the City Council introduce Ordinance No. 20-0007, prohibiting the sale of all tobacco products in Manhattan Beach after January 1, 2021.

PUBLIC OUTREACH:

Staff has been in contact with the tobacco retailers in the City throughout the entire process, including notifying them of the City Council meeting tonight.

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 Ordinance No. 20-0007 as to form.

ATTACHMENT:

1. Ordinance No. 20-0007