DATE: March 9, 2020

SUBJECT

Study session regarding the adoption of a future ordinance to prohibit the retail sale of flavored tobacco products and e-cigarettes

RECOMMENDATION

Provide direction on a proposed future ordinance banning the sale of flavored tobacco and electronic cigarette devices.

STRATEGIC PLAN GUIDING PRINCIPLES

Healthy Community for All

BACKGROUND

At the October 28, 2019 City Council Meeting, the City Council directed staff to hold a future study session on a proposed ordinance banning the sale of flavored tobacco products and e-cigarette products. The purpose of the proposed ordinance is to address the recent increase in use of flavored tobacco products (i.e. e-cigarettes, vapes, etc.) among youth and young adults. City staff has connected with the San Mateo County Tobacco Prevention Program and the San Mateo County Tobacco Education Coalition, to better understand the health implications from the use of flavored tobacco products. Additionally, staff has reached out to several cities in San Mateo County that have recently approved and/or implemented a flavored tobacco ban to gather additional information. For your consideration, the ordinances for the County of San Mateo and the City of South San Francisco are attached for your review (Attachment A).
Health impacts of smoking

Tobacco use remains the leading cause of preventable death in the United States. It causes and contributes to many forms of cancer, as well as heart and respiratory diseases among other health disorders. The financial cost of tobacco uses in San Mateo County alone amounted to over $575 million in direct health care expense over the five year period from 2006-2010.

Flavored tobacco products are commonly sold by California tobacco retailers and promote youth initiation of tobacco use. The flavored products help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products.

In December 2018, the surgeon general declared the use of e-cigarettes among youth an “epidemic.” According to data from the Centers for Disease Control and Prevention and the Food and Drug Administration’s national youth tobacco survey, the percentage of high school-age children reporting past 30-day use of e-cigarettes rose by more than 75 percent between 2017 and 2018. Use among middle school-age children also increased nearly 50 percent (Attachment B). As this situation is of national concern, numerous States and Cities around the country have adopted policies and regulations in response to the surgeon general’s epidemic declaration (Attachment C).

Redwood City’s Current Smoking Regulations

City and state laws currently regulate the sale and use of tobacco products in Redwood City. California prohibits the sale of tobacco products to anyone under the age of 21, requires that retailers check photo IDs of purchasers, requires that online retailers obtain and verify photo IDs and requires that tobacco products be stored behind the counter or in lockboxes. In addition to these state regulations, Chapter 15 – Smoking Regulations of the Redwood City Municipal Code requires brick-and-mortar retailers to obtain retail sales permits from the County.

Currently, the City has twelve tobacco/vaping businesses, three hookah lounges, one smoking lounge and numerous businesses with retail tobacco permits (liquor stores, convenience stores, gas stations) with City business licenses on file.

In accordance with Section 15.3 of the City of Redwood City Municipal Code, smoking is prohibited in enclosed public places and businesses. Additionally, in November 2017, the City Council passed an ordinance to ban smoking of all kinds in multi-family housing units as a result of community concerns and the hazards of secondhand smoke. This law affects all multi-family buildings with two or more attached units including duplexes, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities.

What is considered a flavored tobacco product?

A flavored tobacco product is any nicotine or tobacco product, including but not limited to smokeless/chew, cigarettes, cigars, cigarillos, vape liquid (used in e-cigarettes), and hookah tobacco, that contains an aroma and/or flavor, such as menthol, mint, fruit, spice, sweet, or a food or drink product (i.e. Pancake or Cherry Slush).
**Flavored e-cigarettes**

Most commonly used among youth and young adults, e-cigarettes deliver flavorings, nicotine and other additives via an inhaled aerosol. E-cigarettes entered the marketplace in 2007, and since 2014 have been the most commonly used tobacco product among youth. E-cigarette use among U.S. middle and high school students has increased 900% between 2011 and 2015. During the past year, e-cigarette use has increased 78% among high school students. In 2019, more than 5 million high school and middle school students used e-cigarettes. Per the Center for Disease Control, the chemical Diacetyl is found in 75% of flavored e-liquids and is linked to “popcorn lung” which causes irreversible lung damage.

**Flavored tobacco bans**

On June 19, 2018, the San Mateo Board of Supervisors passed an ordinance prohibiting the sale of flavored tobacco products (including menthol) and prohibiting pharmacies from selling any tobacco product. On December 12, 2019, the Board of Supervisors expanded their previous ban to also include e-cigarettes and other vaping devices. San Mateo County’s flavored tobacco ordinance affects tobacco retailers operating in unincorporated areas.

The following San Mateo County cities have also adopted a flavored tobacco and e-cigarette ban ordinance: Burlingame, Half Moon Bay, Menlo Park, Portola Valley, San Carlos, and South San Francisco. The City of South San Francisco included an exemption in their ordinance to accommodate hookah bars and smoking lounges if they are an “adult-only retailer” (only allowing adults on the business premises).

**Enforcement**

Once a flavored tobacco ban goes into effect, tobacco retailers who continue to sell flavored tobacco products place themselves at risk of receiving a fine and/or having their tobacco retailer license suspended. It is envisioned that the Redwood City Code Enforcement Division and Environmental Health Department of San Mateo County will work together collaboratively to administer complaint driven enforcement. The Redwood City Code Enforcement Division would be responsible for following up on public complaints and identifying those businesses or individuals in violation of the ordinance and report those violations to the Environmental Health Department of San Mateo County who will then handle the administrative enforcement. Additionally, at the discretion of the City Manager, the City of Redwood City may also administer a fine to the non-compliant tobacco retailer. The Redwood City Police Department will continue to enforce against the sale of tobacco products to minors.

**Federal Guidance and Regulations**

In 2009, prompted by the advocacy of the Campaign for Tobacco-Free Kids, the Federal Government passed the Family Smoking Prevention and Tobacco Control Act that banned the manufacture of flavored cigarettes. Menthol cigarettes were exempt from this ban. The ban also does not restrict non-cigarette tobacco products such as smokeless tobacco.

On December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act, and raised the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21.
State Guidance and Regulations

During the last state legislative session, the State Senate introduced two bills that would ban the sale of flavored tobacco and related e-cigarette products statewide. This legislation however did not pass. On January 6, 2020, a coalition of State Senators (including State Senator Jerry Hill) re-introduced legislation, Senate Bill 793, that would ban the sale of flavored tobacco products in brick-and-mortar stores or vending machines, including menthol cigarettes and the flavored e-cigarettes that experts say are to blame for the rise in youth vaping. This bill is currently under review by the Senate Committee on Health. In the coming months, the City Council’s Governance Committee will discuss whether to submit a letter of support for this bill.

Additionally, Governor Newsom has pledged $20 million for a public awareness campaign about the dangers of vaping nicotine and cannabis products. The state has also pledged to step up efforts to prohibit the sale of illicit products and is exploring additional warning signs at retailers and in advertisements.

ANALYSIS

If the City Council would like to ban flavored tobacco and e-cigarettes, you may direct the City Attorney to prepare a draft ordinance for the City Council to consider. The ordinance can be largely modeled after the San Mateo County ordinance. While consistency with the County ordinance will help with enforcement, the City Council may still want to consider the following policy issues:

- Should the flavored tobacco ban extend to menthol and mint-flavored tobacco products?
- Should hookah bars and smoking lounges be exempt?
- Should the sale of tobacco products be prohibited in pharmacies? (The San Mateo County ordinance prohibits sale of all tobacco products on the rationale that pharmacies are places of wellness.)

NEXT STEPS

Should the Council wish to proceed with an ordinance, City staff plans to collaborate with the San Mateo County Tobacco Prevention Program, and the San Mateo County Tobacco Education Coalition, to host a community outreach meeting to solicit input from the greater Redwood City community. Additionally, staff will seek input from community stakeholders such as Redwood City 2020, the Redwood City San Mateo County Chamber of Commerce, Redwood City School District, Sequoia Union High School District, Belmont Redwood Shores School District, Downtown Business Group, Redwood City Improvement Association as well as the City’s Neighborhood Associations. Furthermore, the City’s economic development team will conduct business outreach to all 16 tobacco and vaping businesses within the City, and mail a letter to all tobacco sales permittees (liquor stores, convenience stores, gas stations).

The following timeline illustrates the proposed actions to facilitate the development and adoption of an amendment to Redwood City’s Local Smoking regulations to prohibit the sale of flavored tobacco and e-cigarette products.
<table>
<thead>
<tr>
<th>ACTION</th>
<th>DATE</th>
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<tbody>
<tr>
<td>Business Outreach Visits</td>
<td>March 10th –13th</td>
</tr>
<tr>
<td>Community Outreach Meeting</td>
<td>April 8th</td>
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<tr>
<td>1st Reading of Ordinance</td>
<td>April 27th City Council Meeting</td>
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<tr>
<td>Ordinance Adoption</td>
<td>May 4th City Council Meeting</td>
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<tr>
<td>Ordinance Effective Date</td>
<td>June 3, 2020</td>
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<tr>
<td>Grace Period</td>
<td>June 3, 2020- December 31, 2020</td>
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<tr>
<td>Ordinance Enforcement</td>
<td>January 1, 2021</td>
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**FISCAL IMPACT**

In preliminary discussions with the County of San Mateo, the tobacco prevention program associated with the County’s health department expressed a willingness to assist in outreach and education on implementing a proposed flavored tobacco and e-cigarette ban. Staff anticipates that local resources would be needed to enforce the ordinance. Funding for enforcement, and a request for appropriations, will be determined once the ordinance is adopted.

**ENVIRONMENTAL REVIEW**

This activity is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

**PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

**ALTERNATIVES**

The City Council can choose not to move forward with an ordinance banning the sale of flavored tobacco and electronic cigarette (e-cigarette) devices.
ATTACHMENTS

Attachments A – San Mateo County Flavored Tobacco Ordinance
Attachment B – San Mateo County E-Cigs Ordinance
Attachment C – South San Francisco Flavored Tobacco Ordinance

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