



OROVILLE CITY COUNCIL

Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

January 07, 2020
REGULAR MEETING
CLOSED SESSION 4:30 PM
OPEN SESSION 5:00 PM
AGENDA

REQUESTS TO ADDRESS COUNCIL

If you would like to address the Council at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the City Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Mayor or presiding chair in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, **please submit the form prior to the conclusion of the staff presentation for that item.** Council has established time limitations of two (2) minutes per speaker on all items and an overall time limit of thirty minutes for non-agenda items. If more than 10 speaker cards are submitted for non-agenda items, the time limitation would be reduced to one and a half minutes per speaker. If more than 15 speaker cards are submitted for non-agenda items, the first 15 speakers will be randomly selected to speak at the beginning of the meeting, with the remaining speakers given an opportunity at the end. **(California Government Code §54954.3(b)).** Pursuant to Government Code Section 54954.2, the Council is prohibited from taking action except for a brief response from the Council or staff to statements or questions relating to a non-agenda item.

CALL TO ORDER / ROLL CALL

Council Members: David Pittman, Eric Smith, Linda Draper, Art Hatley, Janet Goodson, Vice Mayor Scott Thomson, Mayor Chuck Reynolds

CLOSED SESSION

The Council will hold a Closed Session on the following:

1. Pursuant to Government Code section 54956.9(d)(2), the Council will meet with the City Administrator and City Attorney regarding potential exposure to litigation – two cases.
2. Pursuant to Government Code section 54957.6, the Council will meet with Labor Negotiators and City Attorney to discuss labor negotiations for the following represented groups: Oroville Firefighters' Association, Oroville Police Officers Association (Sworn and Non-Sworn), Oroville Public Safety Mid-Managers Association, Oroville Management and Confidential Association, and Oroville City Employees Association.

OPEN SESSION

1. Announcement from Closed Session
2. Pledge of Allegiance
3. Adoption of Agenda

PRESENTATIONS AND PROCLAMATIONS

1. Presentation from AMG & Associates - Riverbend Family Apartments

PUBLIC COMMUNICATION - HEARING OF NON-AGENDA ITEMS

This is the time to address the Council about any item not listed on the agenda. If you wish to address the Council on an item listed on the agenda, please follow the directions listed above.

CONSENT CALENDAR

Consent calendar **items 1 - 4** are adopted in one action by the Council. Items that are removed will be discussed and voted on immediately after adoption of consent calendar items.

1. **APPROVAL OF THE MINUTES**

The Council may approve the minutes of December 3, 2019 and December 17, 2019.

RECOMMENDATION

Approve the City Council Minutes of December 3, 2019 and December 17, 2019

2. **AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES GRANT APPLICATION**

The Council may consider the submittal of an Application for the Affordable Housing and Sustainable Communities "AHSC" Program.

RECOMMENDATION

Adopt Resolution No. 8827- A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR THE AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES (AHSC) PROGRAM

3. **CONSIDER AND APPROVE A JOB DESCRIPTIONS FOR COLLECTION SYSTEM OPERATORS I, II AND LEAD FOR THE SEWER DIVISION**

The City Council will consider and adopt job descriptions for Collection System Operator I, II and Lead for the Sewer Division.

RECOMMENDATION

Approve the attached job descriptions for Collection System Operator I, II and Lead.

4. CONSIDER AND ADOPT THE AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OROVILLE AND THE OROVILLE CITY EMPLOYEE'S ASSOCIATION AND AUTHORIZATION TO GRANT STEP H TO ONE EMPLOYEE

The City Council will consider and adopt the new amended and restated Memorandum of Understanding between the City of Oroville and the Oroville City Employee's Association (OCEA) and to authorize Step H for one employee.

RECOMMENDATION

Adopt Resolution No. 8829 - A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OROVILLE AND THE OROVILLE CITY EMPLOYEE'S ASSOCIATION – (Agreement No. 1432-15).

Approve and authorize staff to move one employee to Step H of the current salary range.

REGULAR BUSINESS

5. FIRST READING OF A DRAFT ORDINANCE OF THE CITY OF OROVILLE AMENDING SECTIONS 17.04.060 AND 5.28.010 AND ADDING SECTIONS 5.28.095, 5.28.130 AND 5.28.140 OF THE OROVILLE MUNICIPAL CODE REGARDING PROHIBITING THE SALE OF FLAVORED TOBACCO

The Council will hold a public hearing to consider approving the first reading of an ordinance to prohibit the sale of flavored tobacco within the City limits. Input will be considered from the Planning Commission and the public on both sides of the issue.

RECOMMENDATION

Provide direction to staff on these options:

Approve first reading of ordinance as is, which prohibits the sale of all flavored tobacco products within the City limits;

Modify the ordinance to allow sale of flavored tobacco products at Oroville's five smoke shops only;

Adopt the Planning Commission's recommendation to take no action, but send a letter encouraging the State to prohibit flavored tobacco products statewide;

If adopting a ban, the Council may also consider whether to make the ban effective immediately or to wait a period of time to allow retailers to sell their existing inventory.

6. ADOPTION OF BUTTE COUNTY LOCAL HAZARD MITIGATION PLAN

The Council will consider adopting the Butte County Local Hazard Mitigation Plan.

RECOMMENDATION

Staff recommends the adoption of the Butte County Local Hazard Mitigation Plan

7. ADOPTION OF FORMAL MEETING SCHEDULE FOR 2020

The Council will consider the formal meeting schedule for 2020. The Council may adjust times of open session and closed session.

RECOMMENDATION

Provide Staff direction and **approve the City's formal meeting schedule for 2020**

REPORTS / DISCUSSIONS / CORRESPONDENCE

1. Council Announcements and Reports
2. Future Agenda Items
3. Administration Reports
4. Correspondence

i. Letter from Comcast regarding price changes

ADJOURN THE MEETING

The meeting will be adjourned. A regular meeting of the Oroville City Council will be held on January 21, 2020 at 5:30 p.m.

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the City Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

Recordings - All meetings are recorded and broadcast live on cityoforoville.org and YouTube.



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: FIRST READING OF A DRAFT ORDINANCE OF THE CITY OF OROVILLE AMENDING SECTIONS 17.04.060 AND 5.28.010 AND ADDING SECTIONS 5.28.095, 5.28.130 AND 5.28.140 OF THE OROVILLE MUNICIPAL CODE REGARDING PROHIBITING THE SALE OF FLAVORED TOBACCO

DATE: JANUARY 7, 2020

SUMMARY

The Council will hold a public hearing to consider approving the first reading of an ordinance to prohibit the sale of flavored tobacco within the City limits. Input will be considered from the Planning Commission and the public on both sides of the issue.

DISCUSSION

In the interest of improved public health and especially for Oroville's youth, on October 1, 2019, the City Council heard for the second time testimony from many individuals and groups who pointed out the health effects and increasing use by youth of e-cigarettes and flavored tobacco liquids. The Council then directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits. Because some of the code changes would affect Title 17 (Zoning Code), the Council also directed the Planning Commission to hear the question¹.

The Planning Commission met twice on the issue and recommended that the City Council take no action at this time to ban or limit flavored tobacco products in Oroville. Instead the Commission recommends the City send a letter to the Governor and the State Legislature urging immediate action to ban flavored vaping products statewide, and/or take other appropriate measures to protect the health of our State's youth. The primary reason for this recommendation was to avoid creating a commercial advantage to tobacco retailers outside the city limits at the expense of our retailers. More background can be found in the Commission's October 29 and November 21 meeting agenda packets (attached).

There is almost universal acknowledgement that vaping by our youth has reached epidemic proportions across the nation, and the Federal government, the State

¹ The Planning Commission's charge in this case was to " evaluate information from staff and testimony for the purpose of making recommendations to guide legislative action" from The Job of the Planning Commissioner, by Albert Solnit, ©1987, 3rd edition revised, page 5.

government, and dozens of local jurisdictions are acting to restrict, educate, and/or study vaping and its health effects. On October 1, there were 29 California jurisdictions that had enacted some form of an ordinance. As of November 14 there are over 50 who had done so.

The attached draft ordinance prohibits the sale by any retailer of all flavored tobacco products including menthol, whether smoked, chewed or vaped. It is modeled after the enacted Sacramento City Ordinance.

If approved, the second reading and adoption would be scheduled for Tuesday, January 20, 2020.

FISCAL IMPACT

Assuming a ban on all flavored tobacco products, the lost sales of e-cigarettes and other flavored tobacco products would mean minimal sales tax revenue losses to the City -- in the range of \$10,000 - \$20,000 per year. Total sales tax revenues in 2018 from those likely to be tobacco retailers were \$660,334 (service stations, food markets, and liquor stores combined). However, if Oakland's experience is repeated in Oroville and our stores are bypassed, lost City sales tax revenue could be up to \$90,000 per year.

RECOMMENDATION

Provide direction to staff on these options:

1. Approve first reading of ordinance as is, which prohibits the sale of all flavored tobacco products within the City limits;
2. Modify the ordinance to allow sale of flavored tobacco products at Oroville's five smoke shops only;
3. Adopt the Planning Commission's recommendation to take no action, but send a letter encouraging the State to prohibit flavored tobacco products statewide;
4. If adopting a ban, the Council may also consider whether to make the ban effective immediately or to wait a period of time to allow retailers to sell their existing inventory.

ATTACHMENTS

1. Draft ordinance assuming a full ban on flavored tobacco products.
2. Planning Commission and Council meeting staff reports and backup materials.

Oroville Municipal Code

Proposed changes to affect a prohibition on flavored tobacco products

These changes are intended to prohibit the sale of flavored tobacco products in the City of Oroville. The changes will:

1. Effectively remove flavored tobacco products from smoke shops and from stores that sell tobacco under a Tobacco Retailers License;
2. Continue to prohibit sale of tobacco products and/or paraphernalia to persons younger than the minimum age;
3. Will not eliminate the sale of electronic cigarettes, but will prohibit selling any product other than tobacco or nicotine for use with them;
4. "Smoking" as defined in OMC 9.04.170 includes ... "inhaling, exhaling burning or carrying any lightedcombustible substance in any manner and in any form." Smoking, including vaping, will thus continue to be prohibited in enclosed public places and other places as defined;

ORDINANCE OF THE CITY OF OROVILLE AMENDING SECTIONS 17.04.060 AND 5.28.010 AND ADDING SECTIONS 5.28.095, 5.28.130 AND 5.28.140 OF THE OROVILLE MUNICIPAL CODE REGARDING PROHIBITING THE SALE OF FLAVORED TOBACCO

WHEREAS, tobacco use remains the leading cause of preventable death in the United States, killing more than 480, 000 people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes. the financial costs it imposes on society, and the burdens it places on our health care system; and

WHEREAS, flavored tobacco products are commonly sold by California tobacco retailers. For example: 97.4% of stores that sell cigarettes sell menthol cigarettes; 94.5% of stores that sell little cigars sell them in flavored varieties; 84.2% of stores that sell electronic smoking devices sell flavored varieties; and 83.8% of stores that sell chew or snus sell flavored varieties; and

WHEREAS, each day, approximately 2,500 children in the United States try their first cigarette; and another 8,400 children under 18 years of age become new regular, daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored. Flavored tobacco products promote youth initiation of tobacco

use and 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. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely to use menthol-, candy and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah tobacco, than adults. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using flavored little cigars or flavored cigarettes. Further, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015. Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum; and

WHEREAS, much as young people disproportionately use flavored tobacco products including menthol cigarettes, the same can be said of certain minority groups. In one survey, the percentage of people who smoke cigarettes that reported smoking menthol cigarettes in the prior month included, most dramatically, 82.6% of Blacks or African-Americans who smoke cigarettes. The statistics for other groups were: 53.2% of Native Hawaiians or other Pacific Islanders who smoke cigarettes; 36.9% of individuals with multiracial backgrounds who smoke cigarettes; 32.3% of Hispanics or Latinos who smoke cigarettes; 31.2% of Asians who smoke cigarettes; 24.8% of American Indians or Alaska Natives who smoke cigarettes; and 23.8% of Whites or Caucasians who smoke cigarettes. People who identify as LGBT and young adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use. The disproportionate use of menthol cigarettes among targeted groups, especially the extremely high use among African-Americans, is troubling because of the long-term adverse health impacts on those groups; and

WHEREAS, between 2004 and 2014, overall smoking prevalence decreased, but use of menthol cigarettes increased among both young adults (ages 18-25) and other adults (ages 26+). These statistics are consistent with the finding that smoking menthol cigarettes reduces the likelihood of successfully quitting smoking. Scientific modeling has projected that a national ban on menthol cigarettes could save between 300,000 and 600,000 lives by 2050.

NOW THEREFORE, the City Council of the City of Oroville does ordain as follows:

SECTION 1. Oroville Municipal Code Section 17.04.060 is hereby amended as follows:

Characterizing Flavor. *A taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.*

"Flavored tobacco product" *means any tobacco product that contains a constituent that imparts a characterizing flavor.*

.....

Tobacco paraphernalia. Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this title, electronic cigarette supplies are considered tobacco paraphernalia.

Tobacco product. Any substance 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; and any product or formulation of matter containing biologically active amounts of nicotine 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, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this title, electronic cigarettes are considered a tobacco product. For the purposes of this title, tobacco products exclude products with a characterizing flavor.

SECTION 2. Oroville Municipal Code Section 5.28.010 is hereby amended to read as follows:

"5.28.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between 2 informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

“Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

“Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

“Self-service display” means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

“Smoking.” Refer to Section 9.04.170 for definition.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.

“Tobacco product” means any substance 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; and any product or formulation of matter containing biologically active amounts of nicotine 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, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this chapter, electronic cigarettes are considered a tobacco product. *For the purposes of this title, tobacco products exclude products with a characterizing flavor.*

“Tobacco retailer” means any person who sells, offers for sale, or exchanges for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco

products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ord. 1794 § 1)”

SECTION 3. Section 5.28.095 is hereby added to the Oroville Municipal Code to read as follows:

“5.28.095 Sale or offer for sale of flavored tobacco products prohibited.

(a)The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.

(b)There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.”

SECTION 4. Sections 5.28.130 and 5.28.140 are hereby added to the Oroville Municipal Code to read as follows:

“5.28.130 No conflict with federal or state law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

5.28.140 Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 5.28, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The City Council hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional.”



City of Oroville

Leonardo DePaola
Community Development Director

COMMUNITY DEVELOPMENT DEPARTMENT

1735 Montgomery Street
Oroville, CA 95965-4897
(530) 538-2436 FAX (530) 538-2426
www.cityoforoville.org

PLANNING COMMISSION STAFF REPORT

Thursday, November 21, 2019

RE: ORDINANCE TO LIMIT OR PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

SUMMARY: The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to limit or prohibit the sale of flavored tobacco products.

RECOMMENDATION: That the Planning Commission consider several options to regulate flavored tobacco, and after consideration recommend to the City Council whether they should adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010.

APPLICANTS: None

LOCATION: City wide

GENERAL PLAN: NA

ZONING: NA

FLOOD ZONE: NA

ENVIRONMENTAL DETERMINATION: Not a project under CEQA (para 21065 & CEQA Guidelines 15378(b)(5))

REPORT PREPARED BY:

REVIEWED BY:

Wes Ervin, Senior Planner
Community Development Department

Leonardo DePaola, Director
Community Development Director

DISCUSSION

In the interest of improved public health and especially for Oroville's youth, on October 1, 2019, the City Council heard testimony from many individuals and groups who pointed out the health effects and increasing use by youth of e-cigarettes and flavored tobacco liquids. All acknowledge that vaping has reached epidemic proportions across the nation. The Council then directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits. On October 1, there were 29 jurisdictions that had

enacted some form of an ordinance. As of November 14 there are 50 who have done so. Some of these changes involve amendments to Title 17, which is the purview of the Planning Commission. Accordingly, the Commission is asked to review at its earliest opportunity recommended changes to Title 17 and Title 5 of the Oroville Municipal Code, and to forward the Commission's recommendations to the City Council for action.

At its October 29, 2019 meeting the Planning Commission conducted a public hearing and considered the proposed changes, which included:

- Amending the definitions in OMC 17.04.060 (Zoning Code) to separate flavored tobacco from tobacco products so they can be separately regulated;
- Amending the definitions in OMC 5.28.010 (tobacco retailers), to separate flavored tobacco from tobacco products. Tobacco retailers will thus be prohibited from selling flavored tobacco products;
- No changes to OMC 17.16.190 (Smoke Shops). with the definition changes proposed above, Smoke shops will be prohibited from selling flavored tobacco products to minors or adults;
- No changes to OMC 9.04.170 (Regulation of Smoking). Smoking, including vaping and use of electronic cigarettes, will still be prohibited wherever already prohibited.

After discussion, rather than accept the recommended ordinance the Commission directed staff to develop information on three less restrictive options:

1. Take no action, assuming the State will soon take action that affects all jurisdictions;
2. Design a more nuanced ordinance that is less restrictive but still targets youth access to vaping and flavored products. May also include hiding flavored products on store shelves.
3. Design an ordinance that limits flavored tobacco products to smoke shops.

The Chairman also encouraged staff to meet with retailers to get more input prior to the November 21 meeting.

No Action Option

If the City takes no action, it would do so with the expectation that the State or Federal governments will ultimately take action against vaping and/or e-cigarettes.

Governor Newsom issued on September 16 an executive order directing a \$20 Million campaign to educate youth, young adults, and parents about the health risks of vaping and cannabis, and to post warning signs where these products are sold.

The State Assembly Committee on Health held an informational hearing on October 16, 2019¹. Assembly members Gray and McCarty are now expected to introduce legislation to regulate vaping, e-cigarettes and/or e-liquids.

The FDA is advancing a policy to address youth e-cigarette use, but has wavered on

¹ https://cheac.org/2019/10/18/assembly-holds-joint-informational-hearing-on-vaping-tobacco-and-cannabis-products/?utm_source=rss&utm_medium=rss&utm_campaign=assembly-holds-joint-informational-hearing-on-vaping-tobacco-and-cannabis-products

banning them until the policy is finalized².

Limiting sales to Smoke Shops Option

The rules for sale of tobacco products are the same at smoke shops and tobacco retailers, though our five smoke shops all have Use Permits and typically have more security and limit patronage to adults only. The City's smoke shops would certainly gain much of the sales lost by tobacco retailers, generating some but not all of the foregone tax revenues.

Nuanced and Less Restrictive Ban Options

Less restrictive bans that still try to limit youth access have included some of the approaches below.

1. Nine jurisdictions exempt menthol from their bans, which is a long-standing flavor in regular cigarettes, and the only flavor FDA allows in cigarettes;
2. Limit the ban to e-cigarettes and associated e-liquids;
3. Limit the ban to flavored e-liquids only, exempting pure liquid nicotine, and still allowing e-cigarettes;
4. Ban online sales by sellers located within the jurisdiction;
5. Prohibit new tobacco retailers within 500 feet of an existing one, or of a school;
6. Limit sales of flavored cigars and cigarillos to packs of 5 or 20;
7. Extend the smoking ban to more public places such as parks and public events;
8. Cap the number of tobacco retailers, much like smoke shops are now limited;
9. Enact a ban, but delay effective dates and enforcement to give retailers time to adjust, and/or give the State Legislature time to act.

Three examples of unique ordinances:

- Mono County -- April 17, 2018
 - Mono County prohibited the sale of flavored e-liquids for one year, excluding other flavored tobacco products. However, since October 2019 the County now has a complete ban on all flavored tobacco products;
 - The County also banned smoking in county vehicles, public parks, recreational areas, service areas, dining areas, and public places when used as a public event;
- Richmond -- July 17, 2018
 - Banned sale of all electronic smoking devices in stores or online;
 - Limits minimum pack size of 20 cigarettes or cigars/cigarillos, except those sold for over \$5 apiece;
 - Now prohibits new tobacco retailers from opening within 500 feet of another tobacco retailer, or within 1,000 feet of a school, park, playground or library;
 - Delayed enforcement until January 1, 2020;

² <https://www.cnn.com/2019/11/13/trump-administration-wavers-on-ban-of-flavored-e-cigarettes-no-final-answer.html>

- San Francisco -- June 27, 2017 (referendum vote June 5, 2018).
 - Banned sale of all electronic smoking devices in stores or online;
 - Bans new tobacco retailers after a maximum of 45 per supervisorial district;
 - Prohibits new tobacco retailers from opening within 500 feet of a school or another tobacco retailer;
 - Enforced beginning January 1, 2019

Since the options are many, staff will develop a specific draft ordinance after hearing direction from the Commission, and will prepare to present the draft to the Council.

Enforcement and Education Considerations

Staff consulted the Police Department for this item. Most tobacco related enforcement issues are about e-cigarettes, vaping, and youth use of tobacco. Menthol and other flavorings in cigarettes, cigars and smokeless tobacco are much more benign. Thus, from the enforcement standpoint the most effective ban would be e-cigarettes and e-liquids only.

There are laws that restrict placement of tobacco products in stores, but compliance is uncertain (e.g. behind the counter vs. on the counter). A code compliance effort may be indicated.

In addition, there is data to suggest that one third of smoke shops sell to minors statewide, and that 19% of all tobacco retailers do in fact frequently sell to minors despite the law. The Butte County Sheriff's Office has conducted several sting operations, including as recently as last month.

A ban limited to e-liquids and/or flavored tobacco will help but their effectiveness is limited, because online sales, buying at the two reservations, illicit sales, and adults supplying youth will all continue regardless. Education is thus a critical component of limiting access to youth. In addition to the many nonprofit organizations now educating our youth, the Oroville Police Department has received a 3-year Department of Justice grant for \$424,240 to help educate students at the Oroville City Elementary School District (OCESD), including hiring dedicated staff, installing cameras and smoke and vapor detectors, and increased monitoring of tobacco retailers near schools. OPD and OCESD are now actively engaged in tobacco prevention education for grades 4-8, and are actively supporting other anti-smoking programs.

Economic Loss to Retailers of a Flavored Tobacco Ban

The City has 40 licensed tobacco retailers, of which 16 appear to be C-stores (gas stations/mini-marts). Gas station/mini marts are typically among the highest sales tax generators in a community. Others are grocery markets of all sizes (13), liquor stores (3), smoke shops (5), and drug stores (3). Note that Raley's and CVS have corporate policies not to carry tobacco products.

Some national sales data are available for convenience stores from the National Association of Convenience Stores³. Using that data, staff estimates that the direct

³ 2018 NACS State of the Industry Summit, published by CSPdailynews.com, Volume 29, Issue 7
<http://cdn.coverstand.com/20858/497321/9ff769c3ec0939592ebae907b4ea96529ca9fc3a.5.pdf>

sales of e-cigarettes at the average C-store to be about \$12,000 per year, or less than 1% of total store sales. Average C-store tobacco sales including cigarettes, cigars, smokeless tobacco and paraphernalia total \$102,000 per year, or 43% of total sales. Cigarettes are the largest component of tobacco sales.

A ban on flavored tobacco products affects more than just that specific product. Patrons seeking e-cigarettes also purchase other goods at the same time. Those stores that do not carry flavored tobacco products would lose a greater percentage of sales due to customers bypassing that store, instead purchasing gasoline and other products elsewhere. The two Tribal casinos both have gas stations, mini marts and smoke shops, which would presumably gain from a ban, as would Billy Bob's Market and other stores in Thermalito.

For example, Oakland limited the sale of flavored tobacco products effective July 1, 2018. According to the APCA, the effect to C-store sales was lost revenue of 11% to fuel sales, 52% in cigarette and tobacco sales, and 20.47% overall. Similar data is not available for liquor stores and smoke shops, but the impact to sales at those stores would of course be much greater.

Input from Organizations Received to Date (in order received)

In addition to the many individuals who have testified, the following organizations have provided input to the City Council and/or Planning Commission. Some are attached:

1. The California Health Collaborative has presented, and has provided much information about the health effects of vaping, tobacco, and of youth access to those products. Data they provided is included in prior staff reports;
2. The County Department of Health has presented, and supports a ban on flavored tobacco products;
3. 92 individual form letters were received opposing a ban of flavored tobacco products;
4. The Cancer Action Network supports the ban – letter attached
5. The American Petroleum and Convenience Store Association opposes the ban and supports waiting until the State acts – letter and email attached

FISCAL IMPACT

Assuming a ban on all flavored tobacco products, the lost sales of e-cigarettes and other Tobacco (OTP) products would mean minimal sales tax revenue losses to the City -- in the range of \$10,000 - \$20,000 per year. Total sales tax revenues in 2018 from those likely to be tobacco retailers were \$660,334 (service stations, food markets, and liquor stores combined). However, if Oakland's experience is repeated in Oroville, lost sales tax revenue could be up to \$90,000 per year.

ATTACHMENTS

1. City Council staff report of October 1, 2019
2. Planning Commission staff report of October 24/29, 2019
3. Assembly Informational Hearing background paper of October 16, 2019
4. Updated matrix of flavored tobacco ordinances as of 11-14-19
5. Selected correspondence supporting and opposing the ban
6. Changes to Oroville Municipal Code assuming a full ban



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: LIMITING OR PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

DATE: OCTOBER 1, 2019

SUMMARY

The Council may consider adopting an ordinance that either limits the sale of flavored tobacco products to smoke shops, or that prohibits the sale outright.

DISCUSSION

In 2017 the City Council considered but did not enact an ordinance restricting the sale of Menthol cigarettes and other flavored tobacco products. At its last meeting on September 17, 2019, the Council heard a presentation by the California Health Collaborative about the problems associated with menthol and other flavored tobacco products. They directed staff to bring an agenda item forward for consideration.

Now there are a plethora of well-documented health issues associated with the use of this type of product, there is a high percentage of use by youth, and policymakers everywhere are acting. For instance:

1. The California Department of Health and Governor Newsome are actively warning about the health issues of flavored tobacco use in the media, including that there have been 4 deaths and hundreds of illnesses in the State;
2. The Trump Administration announced on September 11 that it is moving to pull flavored e-cigarettes from the market until/unless they are approved by the FDA¹;
3. The makers and sellers of flavored cigarettes are under tremendous public pressure by public officials at all levels of government. On September 25 the CEO of Juul stepped down, the company announced it would stop saying their

¹ <https://www.npr.org/sections/health-shots/2019/09/11/759851853/fda-to-banish-flavored-e-cigarettes-to-combat-youth-vaping>

products are safer than traditional cigarettes, and would not oppose new regulations for their products.²

4. Local and state governments across the country have enacted laws prohibiting or restricting the sale of flavored tobacco, including 37 in California (e.g. San Francisco, Hermosa Beach, Cloverdale, and Sacramento). On 9/24/19, the LA County Board of Supervisors became the latest - voting unanimously to ban flavored tobacco products.

How many retailers in Oroville will be affected?

There are 40 tobacco retailers in Oroville that sell tobacco as part of their product lines, and 5 smoke shops whose main business is tobacco and tobacco products. Three smoke shops are on Oro Dam Blvd, one is on Lincoln Blvd, and the fifth is on Feather River Blvd @ Bird St. Prohibition would eliminate a significant line of business at the 5 smoke shops. The sale of unflavored tobacco and tobacco products would not be affected.

What is a flavored tobacco product?

The ordinances of Hermosa Beach and Sacramento both define a flavored tobacco product as any tobacco product that imparts a characterizing flavor regardless of the name of the product. For example: "Tropical Mist" may be characterized as smelling / tasting like coconut

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.

FISCAL IMPACT

Limiting sale to smoke shops would have an undetermined but limited effect on annual sales at 40 stores that sell tobacco products in Oroville.

A prohibition would have a significant effect on sales at the five smoke shops.

RECOMMENDATION

Direct staff to prepare an ordinance that distinguishes between tobacco products and flavored tobacco products, and that also:

1. Limits the sale of all flavored tobacco products to smoke shops
- or
2. Prohibits the sale of all flavored tobacco products within City limits.

and

² <https://www.nytimes.com/2019/09/25/health/juul-vaping.html>

Direct Staff to bring the matter before the Planning Commission on October 24, then to Council for a First reading on November 5 or 19, and a second reading as soon as possible after that.

ATTACHMENTS

1. California Medical Association White Paper on Flavored and Mentholated Tobacco Products;
2. California Matrix of Local Flavored Tobacco Product ordinances;
3. Model California Ordinance Restricting Sale
4. Hermosa Beach Ordinance
5. Sacramento City Ordinance