

CITY OF SAN MATEO
City Council Regular Meeting
September 21, 2020
7:00 PM



City Hall Council Chamber
330 W. 20th Avenue
San Mateo CA 94403

COUNCIL MEMBERS
Joe Goethals, Mayor
Eric Rodriguez, Deputy Mayor
Rick Bonilla
Amourance Lee
Diane Papan

AGENDA ITEM

18. Regulations on the Sale of Electronic Cigarettes, Flavored Tobacco and the Sale of Tobacco Products in Pharmacies – Ordinance Introduction

Introduce an Ordinance to prohibit the sale of e-cigarettes and flavored tobacco products, and to prohibit the sale of tobacco products in pharmacies.

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Agenda Report

Agenda Number: 17

Section Name: {{section.name}}

File ID: {{item.tracking_number}}

TO: City Council
FROM: Drew Corbett, City Manager
PREPARED BY: City Attorney Department
MEETING DATE: September 21, 2020

SUBJECT:

Regulations on the Sale of Electronic Cigarettes, Flavored Tobacco and the Sale of Tobacco Products in Pharmacies – Ordinance Introduction

RECOMMENDATION:

Introduce an Ordinance to prohibit the sale of e-cigarettes and flavored tobacco products, and to prohibit the sale of tobacco products in pharmacies.

BACKGROUND:

In 2019, a group of San Mateo residents requested that the City Council consider the adoption of restrictions on the sale of flavored tobacco and electronic cigarettes (“e-cigarettes.”) The group included Dr. Bonnie Halpern-Felsher, a Stanford Pediatrics Professor and expert in the public health effects of children’s use of e-cigarettes, or vaping. On September 8, 2020, Dr. Halpern-Felsher and other interested persons informed the Council of the significant adverse health impacts of the use of these products by the community’s teens and young adults. The speakers requested that the City Council adopt regulations to prohibit the sale of e-cigarettes and flavored tobacco products. In response to this testimony, the City Council directed staff to prepare an ordinance to enact regulations that have been enacted by the County of San Mateo.

Submitted with this report is an ordinance that incorporates the substance of the County’s regulations within the existing municipal code provisions regulating the use of tobacco. The ordinance contains the following key provisions:

- [1] the ordinance prohibits the sale of *all* flavored tobacco products, including those are allowed to be sold by SB 793, which was recently passed by the California Legislature;
- [2] the ordinance prohibits the sale of e-cigarettes within the City; and
- [3] the ordinance prohibits the sale of all tobacco products in pharmacies.

Most ordinances enacted by the Council go into effect 30 days after they are adopted. This ordinance has been drafted to mirror the provisions of the county ordinances that banned flavored tobacco and e-cigarettes. Both of these ordinances delayed enforcement for 6 months after their enactment. The length of the delay in enforcement is a policy decision for the Council to consider. Staff would suggest that the Council consider some delay to enable time for staff to conduct outreach and education on the new requirements to tobacco product sellers and pharmacies.

BUDGET IMPACT:

This item will have no material impact on the City’s budget.

ENVIRONMENTAL DETERMINATION:

This item is not a project subject to CEQA, because it can be seen with certainty that it will not cause a physical change in the environment. (Public Resources Code Section 21065.)

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

Att 1 – Proposed Ordinance

STAFF CONTACT

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**CITY OF SAN MATEO
DRAFT ORDINANCE**

Add Sections 7.40.120, 7.40.130 and 7.40.140 to Chapter 7.40 of the San Mateo Municipal Code and amend Section 7.41.070 of the San Mateo Municipal Code to prohibit the sale of electronic cigarettes and flavored tobacco products and to prohibit the sale of tobacco products in pharmacies

WHEREAS, the San Mateo City Council has received expert testimony and finds that the use of electronic cigarettes by teens and young adults has increased significantly over the last few years and is now the tobacco product most often used by teens and young adults; and

WHEREAS, the testimony indicates and the City Council finds that the amount of nicotine contained in these products far exceeds the amount contained in cigarettes and greatly increases the likelihood that teen and young adult users will become addicted to the products; and

WHEREAS, the testimony indicates and the City Council finds that the use of these products causes damage to the lungs and brains of teens and young adult users; and

WHEREAS, the testimony indicates and the City Council finds that flavored tobacco products have become prevalent and have the effect of increasing the use of tobacco products by teens and young adults; and

WHEREAS, the testimony indicates and the City Council finds that teens and young adults frequently purchase tobacco products from brick and mortar retail establishments (including pharmacies) and that age restrictions have not prevented the ready access to tobacco products, including electronic cigarettes and flavored tobacco; and

WHEREAS, the City Council is mindful of the provisions of state law restricting the sale of flavored tobacco products but finds that these restrictions do not sufficiently protect teens and young adults from the harmful effects of electronic cigarettes and flavored tobacco products.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN MATEO ORDAINS AS FOLLOWS:

Section 1. Section 7.40.120 "Sale of Electronic Cigarettes Prohibited" of the San Mateo Municipal Code is added to Chapter 7.40 "Smoking Control" as follows:

7.40.120 Sale of Electronic Cigarettes Prohibited

(a) No person or tobacco retailer shall sell or distribute any Electronic Cigarette.

(b) For the purposes of this section, the following definitions shall govern:

(1) "Distribute" or "Distribution" means the transfer by any person other than a common carrier, at any point from the place of manufacture or thereafter to a Person who sells the electronic cigarette or other electronic smoking device.

(2) "Electronic Cigarette" has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

(3) "Person" means any individual, partnership, cooperative association, private corporation, or any other legal entity.

(4) "Tobacco Retailer" means any person that engages in the retail sale or exchange of tobacco products (as defined in subsection (l) of section 7.40.020 of this Code).

(5) "Sell", "Sale" or "to Sell" mean any transaction where, for any consideration, ownership is transferred from one Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner or by any means.

7.40.130 Sale of Flavored Tobacco 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.

(c) For the purposes of this section, the following definitions shall govern:

(1) "Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, 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.

(2) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(3) "Distinguishable" means perceivable by either the sense of smell or taste.

(4) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

(5) "Labeling" means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.

(6) "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold, or offered for sale, to a consumer.

(7) "Tobacco product" is defined as set forth in subsection (l) of Section 7.40.020 of this Code.

(8) "Tobacco Retailer" means any person that engages in the retail sale or exchange of tobacco products.

7.40.140 Sale of Tobacco Products in Pharmacies Prohibited

(a) No pharmacy or pharmacy employee or agent shall sell or offer for sale any tobacco product.

(b) No new tobacco retailer permit may be issued to a pharmacy under Chapter 7.41 of this Code.

(c) No existing tobacco retailer permit issued under Chapter 7.41 of this Code may be renewed by a pharmacy.

(d) For the purposes of this section "pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

Section 2. Subsection (a) of Section 7.41.070 "Suspension of Permit" of the San Mateo Municipal Code is amended as follows

(a) Grounds for Suspension. A tobacco retailer's permit may be suspended, as set forth below in subdivision (b), by the Director upon a finding, after notice and opportunity to be heard, that either of the following occurred:

(1) After the permit was issued it was determined that the application for the permit is incomplete or inaccurate.

(2) The permittee or his or her agent has violated any provision of this chapter or any City, federal, or state tobacco-related law.

Section 3. Environmental Determination. In accordance with California Environmental Quality Act (CEQA) section 21065, this action is not a project because it can be seen with certainty that it will not cause a physical change in the environment.

Section 4. Severability. In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 5. Publication. This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

Section 6. Legislative History and Effective Date. This ordinance was introduced on Clerk to complete., and adopted on Clerk to complete., and shall be effective on April 5, 2021.