

TOWN COUNCIL STAFF REPORT

To: Town Council

From: Andrew Morris, Town Attorney

Meeting Date: January 15, 2020

RE: Ordinance Banning Sale of Flavored Tobacco

BACKGROUND

At its November 6, 2019 meeting the Town Council discussed the idea of adopting an ordinance to ban the sale of flavored tobacco. If adopted, a ban would occur in the context of larger state and national discussions regarding the regulation of flavored tobacco. The Mammoth Unified School District and the Mono County Office of Education have both passed resolutions in support of banning the sale of these products. The Mono County Health Department strongly supports a ban. The Mammoth Lakes Police Department is in support of banning the sale of these products as well.

ANALYSIS

The draft ordinance would ban the sale of flavored tobacco products in Mammoth Lakes, including both smoking and vaping products that include flavored tobacco. The ordinance is identical in substance to Mono County's ordinance in its current form, including using the same definitions of "flavored tobacco product", "characterizing flavor", and "tobacco product". The County previously exempted from its ban menthol cigarettes, cigars and cigarillos, chewing tobacco and snuff with flavors, but that exemption has now expired and the draft Town ordinance prohibits the sale of all of those items. The draft's only exemption allows retailers to sell their existing inventories of flavored tobacco products, but not order new supplies of those products. There is no phase-in period in the draft ordinance, and no final cutoff date by which existing supplies must be sold, although both of those could be added.

Two bills are pending in the California Legislature that would ban the sale of flavored tobacco statewide. One of those (AB 739) has been dormant since April, and seems to have been reborn as SB 793, which was introduced on January 6th. The prospects for SB 793 passing are unknown since it is so new. However, the bill uses the same "flavored tobacco product" and "characterizing flavor" definitions as the draft ordinance, and the current language in the bill specifies that it will not preempt any local ordinances banning the sale of flavored tobacco.

OPTIONS

Option 1. Waive the first reading and read by title only the draft ordinance banning the sale of flavored tobacco products in Mammoth Lakes.

Option 2. Provide direction to staff to modify the draft ordinance in some way and return the modified version to the Council for discussion at a meeting in the near future.

Option 3. The Town Council may decide not to pursue a ban on flavored tobacco and vaping products.

RECOMMENDATION

Staff recommends that the Town Council select either Option 1 or Option 2.

Attachment: Draft ordinance