



AGENDA 8
ITEM NO. _____

CITY COUNCIL STAFF REPORT

DATE: AUGUST 12, 2020

TO: HONORABLE MAYOR, AND MEMBERS OF THE CITY COUNCIL

FROM: JENNIFER E. VASQUEZ, CITY MANAGER *JEV*

BY: EDITH CARRILLO, ADMINISTRATIVE ANALYST

RE: SECOND READING AND ADOPTION OF AN ORDINANCE
PROHIBITING THE SALE OF FLAVORED ELECTRONIC CIGARETTES
AND FLAVORED TOBACCO BY TOBACCO RETAILERS IN THE CITY
AND MAKING A FINDING EXEMPTION UNDER CALIFORNIA
EENVIRONMENTAL QUALITY ACT

RECOMMENDATION

Staff recommends that the City Council adopt Ordinance No. 20-06 "An Ordinance of the City of the City of Maywood Amending Chapter 10 of Title 4 of the Maywood Municipal Code related to Tobacco Regulations to Prohibit the sale of flavored electronic cigarettes and flavored tobacco products and making a finding of exemption under the California Environmental Quality Act."

BACKGROUND

On July 22, 2020 the City Council held a public hearing and received public comments on the ordinance which will prohibit the sale of flavored tobacco products including flavored electronic smoking devices. The City Council introduced the ordinance for first reading.

DISCUSSION

The proposed ordinance updates the City's current tobacco regulations to prohibit tobacco retailers in the City from selling flavored tobacco products and electronic cigarettes as well as amends the definition of tobacco products and adds definitions related to electronic cigarettes and related products.

The prohibition will not go into effect until after December 31, 2020 to allow tobacco retailers time to return and/or sell their product on hand and make the necessary business adjustments.

After December 31, 2020, Code Enforcement will conduct inspections of those businesses that have valid tobacco licenses to ensure compliance with the Ordinance. The Tobacco Free-Partnership Maywood/Montebello (a program of Social Model Recovery Systems, Inc.) will also reach out to tobacco retailers in the City to educate them on this Ordinance. Additionally, to assist with enforcement the Tobacco Free-Partnership and the City has submitted a grant application to the Office of the Attorney General who makes funds available for enforcement of tobacco related state laws and local ordinances. The Tobacco Grant Program is offered through the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (Proposition 56).

LEGAL REVIEW

The City Attorney has reviewed this report.

FISCAL IMPACT

Prohibiting the sale of flavored tobacco and electronic cigarettes will not have a substantial impact on the City's overall sales-tax revenue.

ATTACHMENT

Attachment No. 1 – Ordinance No. 20-06

ATTACHMENT NO. 1

ORDINANCE NO. 20-06

AN ORDINANCE OF THE CITY OF MAYWOOD AMENDING CHAPTER 10 OF TITLE 4 OF THE MAYWOOD MUNICIPAL CODE RELATED TO TOBACCO REGULATIONS TO PROHIBIT THE SALE OF FLAVORED ELECTRONIC CIGARETTES AND FLAVORED TOBACCO PRODUCTS AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF MAYWOOD DOES ORDAIN AS FOLLOWS:

Section 1. Purpose and Findings.

A. The City of Maywood has an interest in protecting the health and safety of its residents, including the youth of the community, from potentially dangerous products. The City Council has become aware of the growing epidemic of flavored electronic cigarette ("e-cigarette") use as well as flavored tobacco, including their use by youth, and the accompanying health risks posed by these products. The City Council acknowledges that limited federal and state regulation intended to prevent youth access to these products exist, but those regulations have proven ineffective in preventing youth access to these addictive and harmful products. The City Council desires to prohibit the sale of flavored e-cigarettes and flavored tobacco in the community in order to protect youth, as well as all residents, from what has increasingly become a substantial public health risk. The facts and evidence to support the City Council's findings, determinations, and regulatory actions with respect to flavored e-cigarettes are provided in the following paragraphs of findings.

B. The City Council is informed that e-cigarettes entered the marketplace around 2007, and since 2014, have been the most commonly used tobacco product among youth in the United States.¹ The dramatic surge in youth e-cigarette use ("vaping") is no accident. Electronic smoking devices are frequently marketed in a variety of flavors with obvious appeal to youth, such as gummy bear, cotton candy, and fruit punch. As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.² In addition, e-cigarette companies have effectively used marketing strategies, including celebrity endorsements, magazine advertisements, social media campaigns, paid influencers, and music sponsorships, to reach youth and young adults. A 2016 study found that 78.2% of middle and high school students -- 20.5 million youth -- had been

¹ [*E-cigarette Use Among Youth and Young Adults: A Report of the U.S. Surgeon General*](#), U.S. Department of Health and Human Services (2016)

² [*California Tobacco Facts & Figures 2018*](#), California Department of Public Health, citing Zhu, S-H, et al., "[Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites](#)," J Med Internet Res 2018;20(3):e80

exposed to e-cigarette advertisements from at least one source, an increase from 68.9% only two years before, in 2014.³

C. According to a recent study, one in five young adults use e-cigarettes daily or recreationally, believe e-cigarettes are harmless and not addictive, and think flavored e-cigarettes are less damaging to a person's health than non-flavored ones.⁴

D. According to the Centers for Disease Control and Prevention ("CDC"), the number of middle and high school students who reported being current users of tobacco products increased 36% -- from 3.6 million to 4.9 million students -- between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is believed to be directly attributable to a nationwide surge in the use of electronic smoking devices by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than in 2017, and those who were using e-cigarettes were using them more often. Frequent use of e-cigarettes increased from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.⁵

E. In December of 2018, the Surgeon General officially declared e-cigarette use among youth in the United States an epidemic.⁶ The Surgeon General issued an advisory on e-cigarette use among youth, noting that action must be promptly taken to protect the health of young people. As stated by the Surgeon General, "Most e-cigarettes contain nicotine -- the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain -- which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs."⁷ During the same press conference on e-cigarette use that these statements were made, the Surgeon General was joined by the Secretary of the U.S. Department of Health and Human Services, Alex Azar, who called the historic increase in e-cigarette use by youth, which has outpaced any other substance, an "unprecedented challenge."⁸

F. This epidemic can therefore be attributed in large part to the appeal of flavored e-cigarette products to youth as well as the advertising and promotional activities by companies that glamorize use of e-cigarettes nationwide.

³ [*Exposure to Electronic Cigarette Advertising Among Middle and High School Students -- United States, 2014-2016*](#), Centers for Disease Control

⁴ [*"Know the Risks: E-cigarettes and Young People,"*](#) U.S. Department of Health and Human Services; *See also National Cancer Opinion Survey Summary*, American Society of Clinical Oncology

⁵ [*Progress Erased: Youth Tobacco Use Increased During 2017-2018*](#), Centers for Disease Control

⁶ [*Surgeon General's Advisory on E-cigarette Use Among Youth*](#), 2018

⁷ *Id.*

⁸ [*Remarks for E-Cigarette Press Conference, December 18, 2018, viewable at https://www.youtube.com/watch?v=y_Ou2gooyB0*](#)

G. In addition to long-term health consequences of using e-cigarettes, as of October 22, 2019, the CDC confirmed that e-cigarette products have resulted in at least 34 deaths and 1,604 cases of lung illnesses over the last several months.⁹

H. The City Council recognizes that tobacco product use starts and becomes established primarily during adolescence. Flavored e-cigarettes and flavored tobacco 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. Tobacco companies have used flavorings 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. Nicotine solutions, which are consumed via electronic smoking devices such as e-cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum.¹⁰

I. The City Council also recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health and economic consequences. Tobacco use causes death and disease and continues to be an urgent public health threat for families throughout California, as evidenced by the fact that nearly 40,000 Californians die from a tobacco-related disease each year.¹¹

J. The City Council finds that, given the surge in youth e-cigarette use and flavored tobacco, and ultimately, the rise in tobacco addiction, existing federal and state regulations have been insufficient and too slow in effectively battling the growing epidemic.

K. The federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibits cigarettes with characterizing flavors other than tobacco and menthol, largely because these flavored products are marketed to youth and young adults, and younger smokers are more likely than older smokers to try these products. When Congress enacted the Tobacco Control Act, it found that the use of tobacco products by the nation's children is a pediatric disease of "considerable proportions" that results in new generations of tobacco dependent children and adults. Congress further found that virtually all new users of tobacco products are under the minimum legal age to buy the products. The Tobacco Control Act does not, however, prohibit the sale of non-cigarette tobacco products with characterizing flavors, including e-cigarettes. Instead, the Tobacco Control Act allows state and local governments to adopt more stringent requirements relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising, and promotion of such products.

L. The California STAKE Act (California Business and Professions Code Section 22950 et seq.) prohibits the sale of tobacco products and paraphernalia, including

⁹ [Outbreak of Lung Injury Associated with E-Cigarette Use](#) (Latest Outbreak Information), Centers for Disease Control (updated every Thursday and last accessed October 24, 2019)

¹⁰ [E-cigarette Use Among Youth and Young Adults: A Report of the U.S. Surgeon General](#), U.S. Department of Health and Human Services (2016)

¹¹ [California Tobacco Control Program Overview](#), California Department of Public Health, June 2017

electronic devices that deliver tobacco and nicotine to individuals, other than active military personnel, under the age of 21. Similar to federal law, however, California does not prohibit the sale of flavored non-cigarette tobacco products such as e-cigarettes to persons over 21. The STAKE Act and California Penal Code Section 308 provide for civil and criminal penalties for selling, giving, or furnishing tobacco products or paraphernalia to persons under 21, however, the enforcement of these restrictions by the State has been insufficient to prevent the growing sale of these products to minors.

M. Given the prevalence of flavored e-cigarettes and flavored tobacco designed to appeal to young people in the market, as well as the rising rate of flavored e-cigarette use amongst middle school and high school age students, the City Council believes that existing federal and state regulations are insufficient to prevent youth from accessing these products, exposing them to significant health risks associated with vaping harmful chemicals and from the long-term effects of tobacco use.

N. Based upon the preceding findings, the City Council finds that protecting the citizens, especially minors, of Maywood against exposure to flavored e-cigarettes and flavored tobacco represents sound public health and fiscal policy and is consistent with the City's previous efforts to protect children from exposure to smoking.

O. Based upon these findings, the City Council determines that a prohibition on the sale of flavored e-cigarettes and flavored tobacco is necessary to protect the health and safety of the community.

Section 2. Section 4-10.101 (Definitions) of Chapter 10 (Tobacco Regulations) of Title 4 (Public Safety) of the Maywood Municipal Code is hereby amended to: (1) amend the definition of "Tobacco product"; and (2) add the following new definitions to the Section in alphabetical order, to read as follows. All other definitions shall remain the same, except that the definitions shall be re-lettered to maintain alphabetical order:

"Associated Product means a product intended for use with an electronic cigarette, including but not limited to flavor refills, cartridges, and component parts, whether or not the product contains nicotine.

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, alcoholic beverage, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or the provision of ingredient information.

Electronic cigarette means any electronic and/or battery-operated device or delivery system sold in combination with nicotine or other substances, in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic cigarettes include any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine. Electronic cigarettes also include any liquid or

substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form. Electronic cigarettes do not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic cigarettes shall not include any drug, device, or combination product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use.

Electronic cigarette paraphernalia means any item designed or marketed for the consumption, use, or preparation of electronic cigarette products.

Electronic cigarette product includes: (1) any electronic cigarette; and (2) any Associated Product, component, part, or accessory intended or reasonably expected to be used with an electronic cigarette, whether or not sold separately.

Flavored electronic cigarette product means any electronic cigarette product that imparts a characterizing flavor. There shall be a rebuttable presumption that an electronic cigarette product is a flavored electronic cigarette product if an electronic cigarette retailer, manufacturer, or any employee or agent of an electronic cigarette retailer or manufacturer has made a statement or claim directed to consumers or to the public that the electronic cigarette product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labelling or packaging that are used to explicitly or implicitly communicate that the electronic cigarette product has a characterizing flavor.

Flavored Tobacco Product means any tobacco product that contains a constituent that imparts a characterizing flavor to the tobacco product or smoke produced by the tobacco product, either by the addition of artificial or natural flavors or an herb or spice, including menthol, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer 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 labelling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

Labelling means written, printed, or graphic matter upon any electronic cigarette product or any of its packaging, or accompanying such electronic cigarette product.

Manufacturer means any person, including but not limited to any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels an electronic cigarette product; or imports a finished electronic cigarette product for sale or distribution into the United States.

Nicotine means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine, whether derived from tobacco, or from any other source.

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

Tobacco product means: (1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; (2) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah; and (3) notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately, including electronic cigarette paraphernalia and electronic cigarette products. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose."

Section 3. New paragraphs (g), (h) and (i) are hereby added to Section 4-10.109 (Other Requirements and Prohibitions) of Chapter 10 (Tobacco Regulations) of Title 4 (Public Safety) of the Maywood Municipal Code to read as follows:

"(g) *Sale of Flavored Electronic Cigarette Products Prohibited.* It shall be a violation of this section for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, any flavored electronic cigarette product after December 31, 2020.

(h) *Sale of Flavored Tobacco Products Prohibited.* It shall be a violation of this section for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, any flavored tobacco products after December 31, 2020."

(i) It shall be a violation of this section for any tobacco retailer to possess with intent to sell or offer for sale, any flavored electronic cigarette product and/or flavored tobacco product. There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored electronic cigarette products and/or flavored tobacco products, including but not limited to individual flavored electronic cigarette products or flavored tobacco products, packages of flavored electronic cigarette products or flavored tobacco products, or any combination thereof, possesses such flavored electronic cigarette products and/or flavored tobacco products with intent to sell or offer for sale."

Section 4. **Exemption from CEQA.** The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only prohibits the

sale of flavored electronic cigarettes. The adoption of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations. because the Ordinance is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. Effective Date of Ordinance. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

Section 7. Certification and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED this 12th day of August, 2020.

Eduardo De La Riva, Mayor

ATTEST:

Gerardo Mayagoitia, City Clerk

APPROVED AS TO FORM:

Roxanne Diaz, City Attorney

I, Gerardo Mayagoitia, City Clerk of the City of Maywood, do hereby certify that the foregoing Ordinance No. 20-06 was adopted at a regular meeting of the City Council of the City of Maywood held on the 12th day of August, 2020 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Gerardo Mayagoitia, City Clerk