



City of Pleasant Hill

CITY COUNCIL STAFF REPORT

Meeting Date: December 20, 2021

TO: THE HONORABLE MAYOR AND CITY COUNCILMEMBERS

SUBJECT: INTRODUCE ORDINANCE NO. ___ AMENDING CHAPTER 9.45 (“TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES”) OF THE PLEASANT HILL MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES

SYNOPSIS

At the City Council meeting on November 15, 2021, the Council reviewed several policy options and directed staff to draft an ordinance to ban the sale of flavored tobacco products and electronic smoking devices. Staff and the City Attorney’s office have prepared a draft ordinance amending Pleasant Hill Municipal Code Chapter 9.45 (“Tobacco Products and Electronic Smoking Devices”) to prohibit the sale of flavored tobacco products and electronic smoking devices. The proposed ordinance is presented for City Council introduction or direction to staff regarding outreach to local retailers.

DISCUSSION

Background

Pleasant Hill Municipal Code Chapter 9.45 (“Tobacco Products and Electronic Smoking Devices”) currently requires tobacco and electronic smoking device retailers to obtain a retailer’s license from the City¹ and prohibits smoking in most public places, places of employment and multi-unit residential building common areas.² This chapter also contains regulations restricting the advertising and promotion of tobacco products and electronic smoking devices to minors, including prohibiting any advertising or promotion of tobacco products or electronic smoking devices within 1,600 feet of a school, park, or playground.³

On November 15, 2021, the City Council considered and discussed policy options to regulate the sale of flavored tobacco products and electronic smoking devices in the City. The Council reviewed flavored tobacco and electronic smoking device bans recently enacted by other jurisdictions, including Contra Costa County, Danville, South San Francisco, and Walnut Creek.

¹ PHMC, § 9.45.300.

² PHMC, § 9.45.050.

³ PHMC, § 9.45.230.

Following a discussion on current enforcement and penalties for selling flavored tobacco products to underage buyers, federal and state regulation of flavored tobacco products and electronic smoking devices, potential exemptions to flavored tobacco and electronic smoking device regulations (e.g., tobacco products approved by the FDA as a tobacco cessation product or for other therapeutic purposes; an exemption to accommodate hookah bars and smoking lounges if they are an “adult only business”), and outreach to local retailers, the Council directed staff to draft an ordinance modeled after the City of Walnut Creek’s ordinance prohibiting the sale of flavored tobacco products and electronic smoking devices.

Analysis

The proposed ordinance, which amends Chapter 9.45 of the Pleasant Hill Municipal Code, would make the following changes:

- **Amend Sections 9.45.030 (“Definitions”), 9.45.050 (“Smoking prohibition”), 9.45.100 (“Vending machines”), Section 9.45.110 (“Distribution of free samples and coupons), and Section 9.45.120 (“Out-of-package sales”) of Article I (“Regulation of Smoking”)**
 - Amendments to these sections are intended to provide internally consistent definitions between the City’s general smoking regulations and the proposed flavored tobacco and electronic smoking device regulations. These amendments include the deletion of the term “electronic smoking device retailer” as well as references to “electronic smoking device retailer” and “electronic smoking device paraphernalia,” which would no longer be applicable in light of the proposed provisions prohibiting the sale of flavored tobacco products and electronic smoking devices in the City.
- **Amend Article II (“Restricting the Advertising and Promotion of Tobacco Products, Electronic Smoking Devices and Electronic Smoking Device Paraphernalia to Minors”)**
 - Modifies and adds definitions to this article and removes references to “electronic smoking devices” and “electronic smoking device paraphernalia” to provide consistency between the City’s restrictions on advertising and promotion of tobacco products and the proposed provisions prohibiting the sale of flavored tobacco products and electronic smoking devices in the City.
- **Amend Sections 9.45.300 (“Retailer license requirement – Generally”), 9.45.310 (“Retailer license – Application procedure”), 9.45.340 (“Retailer license – Display”), and Section 9.45.360 (“Retailer license – Suspension”) of Article III (“Retail Licenses”)**
 - Amendments to these sections would limit current retail license requirements to the sale or offer for sale of tobacco products. Clarifies that a retailer’s license may be suspended if the chief of police finds that the licensee or his or her employee

has violated any law regulating the sale or distribution of tobacco products, electronic smoking devices or electronic smoking paraphernalia.

- **Add Article IV “Sales of Flavored Tobacco Products and Sales of Electronic Smoking Devices Prohibited”**

- This new article to Chapter 9.45 of the Pleasant Hill Municipal Code would:
 - Ban the sale of all flavored tobacco products, including those not currently covered under federal regulations (e.g., menthol generally and flavors connected with non-cigarette tobacco products such as cigars, smokeless tobacco, and e-cigarettes). The proposed ordinance is more restrictive than current state law insofar as it includes all flavored cigars and pipe tobacco.
 - Ban the sale of all electronic smoking devices and electronic smoking device paraphernalia (“electronic smoking device paraphernalia” is currently defined in Pleasant Hill Municipal Code section 9.45.030 as “cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices”), including those not covered under current federal law (e.g., not just cartridges and pre-filled pods, but also disposable vaping devices and e-liquids designed for “tank systems” or “mod systems”).
 - Exempt tobacco products approved by the FDA as a tobacco cessation product or for other therapeutic purposes.
 - Provide an exception for “adult-only” hookah tobacco businesses with valid retailer’s licenses obtained from the City.

As directed by the Council, the proposed ordinance also contains a 5-month enforcement delay in order to provide adequate time to encourage retailers to voluntarily comply with the new restrictions.

FISCAL IMPACT

Negligible. There may be some additional costs associated with enforcement of the new provisions. However, it is anticipated that existing police and/or code enforcement staff could absorb the additional work.

PUBLIC CONTACT

Public contact was made through posting of the City Council agenda on the City’s official notice bulletin board, in the City Clerk’s office, at the Pleasant Hill Library, and at the Pleasant Hill Police Department. The agenda and staff report are posted on the City’s web page and are available in the City Clerk’s office.

At the Council's direction, should the Ordinance be introduced, staff will begin an outreach process to local retailers and the community on potential flavored tobacco and electronic smoking device regulations.

RECOMMENDED CITY COUNCIL ACTION

Introduce by title only, waive further reading, and approve first reading of proposed ordinance amending Pleasant Hill Municipal Code Chapter 9.45 ("Tobacco Products and Electronic Smoking Devices") to prohibit the sale of flavored tobacco products and electronic smoking devices.

ALTERNATIVES TO RECOMMENDED ACTION

1. Introduce the proposed ordinance with modifications.
2. Provide further direction to staff regarding the proposed ordinance and community outreach and continue consideration to a subsequent City Council meeting.
3. Do not introduce the proposed ordinance.

ATTACHMENT(S):

Proposed Ordinance – Redline

Prepared by: Janet E. Coleson, City Attorney

Approved by: June Catalano, City Manager