



STAFF REPORT

To the Honorable Mayor and City Council
From the City Manager

DATE: November 22, 2021

SUBJECT

Waive first reading and introduce an ordinance prohibiting the sale or distribution of flavored tobacco products, the sale or distribution of electronic cigarettes and smoking devices, and prohibiting the sale of all tobacco products by pharmacies

RECOMMENDATION

Waive the first reading and introduce Ordinance of the City of Redwood City Adding Article VI to Chapter 15 (Smoking Regulations) of the City Code of the City of Redwood City Prohibiting the Sale of Flavored Tobacco and Electronic Cigarettes and the Sale of Tobacco Product in Pharmacies, and Amending Article III (Tobacco Retail Permit) of Chapter 15 (Smoking Regulations) to Clarify that Pharmacies cannot Obtain Tobacco Retailer's Licenses.

STRATEGIC PLAN GUIDING PRINCIPLE

Healthy Community for All

BACKGROUND

Tobacco has a well-documented history of negative health and social impacts on individuals and communities. According to the [U.S. Food and Drug Administration](#), all nicotine products are addictive and increase the risk of developing serious health problems such as cancer, heart disease, and emphysema. [Research consistently](#) illustrates the inequitable marketing strategies employed by tobacco companies and the negative health outcomes related to tobacco use for low-income communities, communities of color, and youth.

Flavored tobacco

Flavored tobacco products have been shown to be especially harmful and are often marketed to new tobacco users, particularly youth and young adults. Flavored tobacco products are frequently viewed as “[starter](#)” products that create habitual use patterns and promote addiction to other tobacco products, making it harder to quit and may lead to increased tobacco consumption. According to a [2015 study](#), more than 80% of youth who reported using tobacco products began by using a flavored tobacco product. The [CDC estimates](#) that if smoking continues at the current rate in the United States, approximately 5.6 million of today’s youth under the age of 18 will die early from smoking-related illnesses.

A flavored tobacco product is generally considered to be a nicotine or tobacco product, including but not limited to smokeless/chew, cigarettes, cigars, cigarillos, vape liquid (used in electronic cigarettes), and hookah tobacco, that contains an aroma and/or flavor, such as menthol, mint, fruit, spice, sweet, or a food or drink product.

In 2009, prompted by the advocacy of the Campaign for Tobacco-Free Kids, the Federal Government passed the [Family Smoking Prevention and Tobacco Control Act](#) that prohibited the manufacture of cigarettes containing any “characterizing flavor”, with the exception of menthol and tobacco flavor. While the federal law may contribute to an overall decrease in the number of youth and young adults smoking cigarettes, a recent publication by the [California Department of Public Health](#) suggests these changes may lead to an increase in the use of menthol and other flavored tobacco products and devices by youth.

In August 2020 the California legislature passed [SB-793](#), a statewide prohibition on the sale and distribution of flavored tobacco products, with exceptions for flavored shisha tobacco products smoked or intended to be smoked in a hookah, flavored premium cigars, and flavored loose leaf tobacco. The legislation subjects retailers who violate the prohibition to an infraction punishable by a fine of \$250 for each violation. Governor Gavin Newsom signed SB-793 into law on August 28, 2020. Shortly after the bill was signed into law, proponents of a veto referendum filed with the California Secretary of State seeking to repeal the law. The referendum effort successfully gathered enough signatures from California voters to place a referendum on the ballot at the next statewide election, which will be held November 8, 2022. Pending the outcome of the election, implementation of SB-793 is currently on hold.

In the absence of an enforceable statewide ban, many cities and counties throughout California have exercised the right to impose local restrictions on the sale of flavored tobacco products. In San Mateo County, flavored tobacco ordinances have been adopted in eight cities - Burlingame, East Palo Alto, Half Moon Bay, Menlo Park, Portola Valley, San Carlos, San Mateo, and South San Francisco - in addition to the County’s ordinance prohibiting sales in unincorporated San Mateo County. The City of Pacifica is also considering a local ordinance at this time.

Electronic cigarettes and smoking devices

Many cities and counties throughout California, including San Mateo County, have taken action to prohibit the sale of electronic cigarettes and smoking devices. In San Mateo County the cities of East Palo Alto, Menlo Park, San Mateo, and South San Francisco all restrict the sale of electronic cigarettes in addition to the sale of flavored tobacco. San Mateo County has also restricted electronic cigarette sales in unincorporated areas.

Commonly used among youth and young adults, electronic cigarettes deliver flavorings, nicotine and other additives via an inhaled aerosol. Young adults are [three times more likely](#) to use electronic cigarettes than adults ages 30 and older. Marketing tactics targeting youth and young adults have [accelerated electronic cigarette use](#) among this demographic. According to the [American Cancer Society](#), while electronic cigarettes are often marketed as safer smoking alternatives to regular cigarettes, more research is still needed over a longer period of time to fully understand the long-term health effects resulting from the use of electronic cigarettes.

According to a [publication by the California Department of Public Health](#), in 2019, more than 5 million high school and middle school students used electronic cigarettes. Electronic cigarette use increased 135 percent in high schools and 218 percent in middle schools from [2017-2019](#).

In early 2020, the Food and Drug Administration (FDA) responded to the risk posed by flavored tobacco products and electronic cigarettes by issuing nonbinding guidance on its enforcement priorities regarding the premarket review requirements (the federal Tobacco Control Act's requirements for new tobacco products prior to legal marketing for sale) for various types of such products. The FDA specified that it would be prioritizing enforcement against:

- flavored, cartridge-based electronic cigarette products (except for tobacco- or menthol-flavored products);
- all other electronic cigarette or products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and
- any electronic cigarette products targeted to, or whose marketing is likely to promote use by, minors.

The FDA specified that this enforcement guidance applies to retailers selling such products.

Previous City Council Consideration

At the [October 28, 2019 City Council meeting](#), the Council considered a referral from former Councilmember Shelly Masur and asked staff to return with more information to consider prohibiting the sale of flavored tobacco and electronic cigarettes within Redwood City. Staff returned to the City Council with a [Study Session on March 9, 2020](#) to present data and examples of local flavored tobacco and electronic cigarette ordinances from the County of San Mateo and the City of South San Francisco for City Council consideration. During the Study Session, several Councilmembers expressed interest in pursuing a local prohibition on flavored tobacco and electronic cigarettes and provided initial feedback for staff to consider when preparing to return to the Council with a draft ordinance. City Council direction included the following:

- Prohibit the sale of tobacco products in pharmacies
- Prohibit the sale of electronic cigarettes
- Consider an exception for businesses that offer hookah for on-site consumption, with restrictions such as requiring smoking areas to be restricted to patrons 21+, prohibiting sales for off-site consumption, restricting smoking hours, and prohibiting flavored hookah
- Consider shortening the six-month grace period staff recommended for beginning enforcement

- Consider legal possibility of prohibiting retail tobacco businesses from operating in close proximity to sensitive receptors
- Clarity how the City will enforce the ordinance

ANALYSIS

Since the March 9, 2020 Study Session, City staff have considered a variety of factors when preparing to return to the City Council with a draft ordinance, including review of similar legislation enacted within the county, consideration of newly available data, and consideration of public sentiment around flavored tobacco and the threat posed to youth and young adults in our community. As a result, staff present a draft ordinance (Attachment A) for City Council review and consideration.

Sale or distribution of flavored tobacco products prohibited

Following the example set by many other cities and counties, the draft ordinance calls for a ban on the sale and distribution of flavored tobacco products in Redwood City. Based on feedback received from Councilmembers during the Study Session, the draft ordinance extends to the sale of menthol and mint-flavored tobacco products. It should be noted that three current Councilmembers were not serving on the City Council at the time of the Study Session in 2020.

Based on individual Councilmember feedback received during the March 2020 Study Session, the draft ordinance includes an exception for businesses which sell flavored tobacco for on-site hookah consumption pursuant to a properly issued tobacco retailer's permit as of November 22, 2021. At this time, three restaurants in Redwood City could qualify for this exception and be allowed to continue selling flavored tobacco for on-site hookah consumption: Pasha, Rockn' Wraps, and The Sandwich Spot. . Per the draft ordinance, these establishments will be required to maintain valid tobacco retailer's permits issued by San Mateo County Environmental Health Services in order to continue their current business practices. Redwood City does not issue tobacco-related permits. As written, the draft ordinance would prohibit new tobacco retail license holders who obtain their permits after November 22, 2021 from offering flavored tobacco for on-site hookah consumption.

Sale or distribution of electronic cigarettes and electronic smoking devices prohibited (except for electronic smoking devices used for cannabis consumption)

In alignment with some other neighboring cities and counties, the ordinance prohibits the sale or distribution of electronic cigarettes and electronic smoking devices. It should be noted that electronic smoking devices used for cannabis consumption are not subject to staff's proposed prohibition on the sale and distribution of electronic smoking devices in Redwood City.

Sale or distribution of tobacco products by a pharmacy prohibited

In alignment with some other neighboring cities and counties, the proposed ordinance prohibits the sale or distribution of all tobacco products by a business that contains a pharmacy.

Proposed implementation and timeline

If no changes are proposed during the first reading, staff plans to return the City Council on December 20, 2021 for the second reading and adoption of the ordinance. As written, the ordinance will take effect on April 1, 2022 in order to provide time to adequately inform affected retailers about the steps they can take to comply with the new prohibitions. Delayed implementation has been common among neighboring cities who have adopted similar ordinances.

Building upon existing outreach, as discussed below, following ordinance adoption staff will send correspondence to all tobacco license holders in Redwood City informing them of the change in local regulation and letting them know how they can comply. Outreach to businesses will be bolstered by the expertise of staff from the San Mateo County Tobacco Prevention Program, who will conduct direct outreach to businesses and provide further education about the changes they can expect. Other neighboring cities have also successfully leveraged the County's expertise in conducting outreach to businesses during their implementation phase.

Enforcement

Once the ordinance takes effect, tobacco retailers who continue to sell flavored tobacco products place themselves at risk of receiving a fine and/or having their tobacco retailer license suspended for non-compliance. Redwood City Code Enforcement Division staff will work with the Environmental Health Department of San Mateo County to administer complaint driven enforcement beginning with investigation by the Redwood City Code Enforcement Division and referral of any violations to the County. The Redwood City Police Department will continue to enforce against the sale of all tobacco products to minors.

San Mateo County Tobacco Retail License Holders

According to the San Mateo County Environmental Health Department, which administers the tobacco retail licensing program locally, there are 58 tobacco retail license holders in Redwood City. Staff have categorized the permit holders based on business type to illustrate which businesses may be impacted most by the proposed ordinance.

Business Category	Number of License Holders*
Pharmacy	2
Tobacco Retail	3
Restaurant/Hookah Lounge	3 [®]
Grocery Store	9
Gas Station	19
Liquor Store/Convenience Store	22
Total	58

*San Mateo County Environmental Health Services list of Tobacco Retailers licensed to sell tobacco products in Redwood City

[®]Restaurants are the three establishments currently offering flavored tobacco for on-site hookah consumption and who would be granted the exception under the draft ordinance

Based on analysis of the types of businesses with tobacco retail licenses issued by the County, staff anticipate the most significant impacts will likely be experienced by those retailers who derive the majority of their revenue from the sale of tobacco-related products. Three businesses fall into this category.

Outreach to stakeholders

Prior to the March 9, 2020 City Council Study Session, staff met personally with over a dozen tobacco retailers to discuss how a future ordinance may impact their business. Business owners were encouraged to attend the Study Session and share their feedback with the City Council. During the Study Session, staff proposed a robust outreach campaign to engage stakeholders before planning to return to the City Council with a draft ordinance in September 2020. In the days following the March 9, 2020 City Council meeting, the San Mateo County Chief Health Officer declared a County-wide state of emergency due to the growing concerns around the Covid-19 virus. Due to restrictions imposed, the City was unable to conduct the planned outreach activities.

Ahead of current City Council consideration, staff mailed letters to all tobacco retail license holders informing them of upcoming City Council consideration and again encouraging them to take part in the conversation. Staff have also continued to provide periodic updates in the City's Economic Development Newsletter.

Additionally, staff reached out to all three restaurant businesses that offer on-site hookah to inform them of the requirements to maintain an exemption under the proposed ordinance. In speaking with each business owner, staff learned that all three businesses currently restrict hookah service to patrons 21 years and older and do not offer hookah service until after 5 p.m. While these business practices are commendable, if SB 793 is upheld by the voters and takes effect, the legislation would require businesses offering hookah for on-site consumption to prohibit patrons below the age of 21 years at all times, not just during specified hours. Finally, all three business owners stated that if they were prohibited from offering hookah to their patrons they would most likely experience significant economic hardship due to the associated loss of revenue. It should be noted that if SB 793 passes, the possible economic hardship referenced by the business owners would be beyond the City's control.

In addition to engaging the business community, City staff have engaged organizations and community members who advocate for stronger legislation around flavored tobacco and electronic cigarettes. In December 2020, staff met with representatives from the County's Tobacco Prevention Program to discuss partnership opportunities to reduce the negative effects of flavored tobacco and e-cigarettes in our community and to educate local retailers about the dangers associated with the products they sell.

In late October 2021, staff attended a meeting of the Tobacco Retail Workgroup ("Workgroup") to receive an update on similar efforts to impose flavored tobacco and electronic cigarette prohibitions throughout the region. The Workgroup is hosted by the San Mateo County Tobacco Education Coalition (TEC) and meeting attendees included representatives from the American Heart Association, the Bay Area Community Health Advisory Council (BACHAC), San Mateo County's Tobacco Prevention Program and Stanford University. At the meeting, representatives from the various agencies shared their experience and encouraged Redwood City to take a strong stance against the sale of flavored tobacco and electronic

cigarettes through the proposed ordinance. The Workgroup strongly advocated against offering any exceptions, such as the one currently proposed for businesses that currently offer on-site hookah consumption. The Workgroup also shared that there is an ongoing effort to strengthen San Mateo County's flavored tobacco ban by encouraging the County to do more to actively enforce the ban and ensure compliance by retailers rather than relying on a complaint-driven approach. City staff will continue to monitor action taken by the County and keep the City Council apprised of changes that may impact local enforcement.

FISCAL IMPACT

Staff anticipates a minimal loss in sales tax revenues as a result of the prohibition on these products.

ENVIRONMENTAL REVIEW

This activity is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

PUBLIC NOTICE

The City sent a letter to all businesses in Redwood City with an active tobacco retail license on file with the County of San Mateo informing them of the proposed legislation and the meeting date at which the City Council would consider the proposal. Public notification was also achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

ALTERNATIVES

The City Council may direct staff to pursue one or more of the following alternatives.

General alternatives:

1. Do not prohibit the sale of flavored tobacco;
2. Do not prohibit the sale of electronic cigarettes;
3. Do not prohibit the sale of tobacco products in pharmacies;
4. Postpone City Council action pending the outcome of the referendum vote on SB 793;
5. Direct staff to return with a revised ordinance based on feedback provided by the City Council.

Hookah-related alternatives:

1. Direct staff to modify the ordinance to prohibit all flavored tobacco products with no exceptions for businesses that offer on-site hookah consumption pursuant to a tobacco retailer's permit at the time the ordinance goes into effect;

2. Direct staff to develop a new permit program for businesses that offer flavored tobacco for consumption at on-site at establishments serving hookah, which would require staff to return to the City Council with an updated proposal identifying the staff resources required to administer a new program.

ATTACHMENTS

Attachment A – Draft Ordinance

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