

City of Sacramento

Legislation Text

File #: 2019-00385, **Version:** 1

Title:

Ordinance Revisions to Chapter 5.138 of Sacramento City Code Relating to Tobacco Retailers (Passed for Publication 03/12/2019; Published 03/15/2019) [Continued from 03/26/2019]

File ID: 2019-00385

Location: Citywide

Recommendation:

Adopt an ordinance revising Chapter 5.138 of the Sacramento City Code relating to Tobacco Retailers.

Contact: Jose Mendez, Code Enforcement Manager, (916) 808-5947, Community Development Department

Presenter: Jose Mendez, Code Enforcement Manager, (916) 808-5947, Community Development Department

Attachments:

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)

Description/Analysis

Issue Detail: At the July 24, 2018 Law and Legislation Committee session, the Committee instructed staff to prepare an ordinance that will: 1) update Chapter 5.138; 2) adopt a distance requirement between new tobacco retailers; and 3) adopt a prohibition of flavored tobacco products.

The use of tobacco has been a health and safety issue addressed by the City over the past several years. In 2003, the Sacramento County Department of Health and Human Services Tobacco Education Program found that 24.4 percent of tobacco retailers sampled in the City of Sacramento unlawfully sold tobacco products to minors. In 2004, the City adopted Sacramento City Code Chapter

5.138 to regulate tobacco retailers by requiring yearly non-transferrable licenses and conducting regular business compliance inspections, under-age sales sting operations, and license suspension and revocation proceedings. The program is designed to promote compliance with federal, state and local laws regulating tobacco sales and discourage the illegal sale and distribution of tobacco to minors. In 2009, the Family Smoking Prevention and Tobacco Control Act was enacted which prohibits candy and fruit flavored cigarettes, however, a recent study by the California Department of Public Health estimates that 82 percent of tobacco retailers in California sold flavored non-cigarette tobacco products. Over 90 percent of tobacco retailers sell menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products.

There are more than 15,000 tobacco flavors on the market, many of which have names that are enticing to youth including “Gummy Bear”, “Bubblegum” and “Unicorn Pop!”. Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco. These products are proven to help establish tobacco habits that can lead to long-term addiction. Flavored tobacco has significant public health implications for youth and people of color because of targeted industry marketing strategies and product manipulation.

In 2016, state law was changed to raise the legal age to buy tobacco products from 18 to 21, tightening restrictions on e-cigarettes and expanding the definition of smoke-free workplaces. Unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and, in some cases, increased among youth. From 2013 to 2015, an estimated 15 percent of ninth and eleventh grade students in California reported using electronic smoking devices. Nine and three-tenths percent of high school students in California reported buying their own electronic cigarettes from a store.

The density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day. Adults who smoke have a harder time quitting when density is higher. There are currently 386 tobacco retailers operating within the City of Sacramento. Currently, 79 percent of tobacco retailers are located within 1,000 feet of other retailers. 26 percent of retailers are located within 1,000 feet from a public or private school (K - 12). Policies to reduce tobacco retailer density have been shown to be effective and may reduce or eliminate inequities in the location and distribution of tobacco retailers.

Staff met with representatives of the Sacramento County Tobacco Control Coalition and representatives with the Saving Our Legacy Project. Both organizations shared concerns with:

- Flavored tobacco products and the apparent advertisement to persons under 21 years of age;
- The absence of a distance requirement between tobacco retailers; and
- E-cigarettes and the availability of these products to youth.

At the request of the Law and Legislation Committee, staff met with stakeholders representing the

tobacco industry on February 8, 2019. The intent of the meeting was to gather solutions that would help reduce access of tobacco to persons under the age of 21 in lieu of the proposed amendments. Staff met with representatives from JUUL (the electronic cigarette manufacturer), the American Petroleum and Convenience Store Association, and the California Fuels and Convenience Alliance. In summary, the group proposed that the City adopt five alternatives in lieu of the proposed amendment including:

1. Require tobacco retailers to utilize Age Verification Technology (AVT) that can scan identification
2. Regulate packaging of flavored tobacco products that is “knowingly attractive to minors” prohibiting the use of cartoon-like characters, symbols and celebrity images
3. Require child-resistant caps and tamper evident packaging on all electronic cigarettes
4. Regulate density of tobacco retailers by requiring a Conditional Use Permit from the Planning Department for new tobacco retailers
5. Impose penalties in lieu of suspension periods after a tobacco retailer is caught selling tobacco to minors

The following findings support the proposed amendments:

- From 2013 to 2015, an estimated 15% of ninth and eleventh grade students in California reported using electronic smoking devices. (California Department of Public Health California Tobacco Control Program. California Tobacco Facts and Figures 2016. Sacramento, CA: California Department of Public Health. 2016.)
- Nine and three-tenths percent of high school students in California reported buying their own electronic cigarette from a store. (Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017; Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance - United States, 2017. Supplementary Tables 52-93.)
- In 2016, an estimated 82 percent of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90 percent of tobacco retailers sold menthol cigarettes, and eight out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products. (California Department of Public Health California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties*. 2016.)
- Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term addiction. (U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and

Health. 2012; Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006; Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007; Oliver AJ, Jensen JA, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res.* 2013.)

- Between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (18 to 25 years of age) and adults (over 26 years of age). (Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control.* 2016.)
- Unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and, in some cases, increased among youth. (U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012; Johnston LD, O'Malley PM, Bachman JG, Schulenberg JE, Miech RA. *Monitoring the Future national survey results on drug use, 1975-2013: Volume I, Secondary school students.* Ann Arbor, MI: Institute for Social Research, The University of Michigan. 2014; Harrell PT, Naqvi SMH, Plunk AD, Ji M, Martins SS. Patterns of youth tobacco and polytobacco usage: The shift to alternative tobacco products. *Am J Drug Alcohol Abuse.* 2017; Substance Abuse and Mental Health Services Administration. *Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings.* Rockville, MD: Substance Abuse and Mental Health Services Administration. 2011; Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. Tobacco Product Use Among Middle and High School Students - United States, 2011-2017; Cobb C, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior.* 2010.)
- Flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation. (United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006); U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012; Yerger VB, Przewoznik J, Malone RE. Racialized geography, corporate activity, and health disparities: tobacco industry targeting of inner cities. *J Health Care Poor Underserved.* 2007; Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of

adolescents and young adults. *Am J Public Health*. 2008.)

- The density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day. (Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005.)
- Adults who smoke have a harder time quitting when density is higher. (Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011; Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015.)
- Policies to reduce tobacco retailer density have been shown to be effective and may reduce or eliminate inequities in the location and distribution of tobacco retailers. (Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res*. 2017; Myers AE, Hall MG, Isgett LF, Ribisl KM. A comparison of three policy approaches for tobacco retailer reduction. *Prev Med*. 2015; Luke DA, Hammond RA, Combs T, et al. Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *Am J Public Health*. 2017.)

Policy Considerations: The City of Sacramento's 2035 General Plan encourages a healthy lifestyle for Sacramento residents to improve overall public health. The Public Health and Safety Goal 5.1 states that a goal of the General Plan is to: "Improve the provision of human services and promote public health and safety."

Economic Impacts: None

Environmental Considerations: None

Sustainability: None

Commission/Committee Action: On October 23, 2018, staff presented recommendations to the Law and Legislation Committee adopting revisions to amending section 5.138 of the City Code relating to Tobacco Retailers. The Law and Legislation Committee forwarded a recommendation to the City Council to adopt the revisions. On March 19, 2019, the Law and Legislation Committee heard alternate ordinance language with amendments provided by the tobacco coalition. The Committee directed staff to move forward with the original revisions approved on October 23, 2018.

Rationale for Recommendation: The proposed ordinance is consistent with General Plan policies

to promote a safe and healthy lifestyle for residents of the City of Sacramento.

Financial Considerations: The Tobacco Retailers Licensing program recovers costs through the collection of program fees. For FY 2018/19, the revenue budget for the program is approximately \$148,869.

Local Business Enterprise (LBE): Not applicable.