

Legislation Text

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DATE OF MEETING: 08/06/18

SUBJECT:

PRESENTATION TO THE CITY COUNCIL TO PROVIDE POLICY DIRECTION ON PROPOSED REGULATION OF SALE OF FLAVORED TOBACCO PRODUCTS

CITY MANAGER RECOMMENDATION

Receive presentation, provide input and direction to staff

COMPLIANCE STATEMENTS

FY 2018-21 Council Priority Workplan Compliance Statement

Reduce promotion of unhealthy tobacco products to youth, such as prohibiting the sale of flavored tobacco products, and the number of stores that seek these products near San Pablo schools is an adopted policy or program under the FY 2018-21 Council Priority Workplan, effective November 1, 2017, and as adopted by the City Council by Resolution 2018-024 on February 20, 2018.

CEQA Compliance Statement

As the purpose of this meeting is to obtain direction from the City Council about the options to pursue regarding flavored tobacco, this is not a project as defined by CEQA.

BACKGROUND

At its February 20, 2018 regular City Council meeting, the San Pablo City Council adopted Resolution 2018-024 which added the following policy to the FY 2018-21 Council Priority Workplan:

POLICY AREA: SERVICES FOR FAMILIES, SENIORS AND YOUTH

Policy to reduce promotion of unhealthy tobacco products to youth, such as prohibiting the sale of flavored tobacco products, and the number of stores that seek these products near San Pablo schools.

At its March 19, 2018 meeting, the City Council heard a presentation by Bay Area Community Resources (BACR) which provided an overview of the health and safety dangers of flavored tobacco products being sold to youth at retail establishments in close proximity to San Pablo schools. Several speakers also addressed the Council endorsing a ban on the sale of flavored tobacco within the City of San Pablo. One speaker spoke against this issue. One advocacy group, the American Petroleum and Convenience Store Association (APCA), submitted a letter discussing the financial impact to a local gas station in El Sobrante with the passage of a flavored tobacco ban in unincorporated Contra Costa County. This advocacy group suggested working with local retailers prior to the introduction of any flavored tobacco ban in San Pablo.

The City Council unanimously authorized and directed staff to explore further policies to protect local youth from unhealthy flavored tobacco products such as prohibiting the sale of flavored tobacco

products, and the number of stores that seek these products near San Pablo Schools.

Staff from the Planning Division of the Community & Economic Development Department ("Planning staff") researched the issue of how other local municipalities - the cities of San Francisco, Oakland, Berkeley, Richmond, Hayward, El Cerrito, Sonoma, and the County of Contra Costa - are addressing the sales of flavored tobacco. All of the municipalities have prohibitions on the sale of flavored tobacco, with several establishing location specific regulations addressing the sale of flavored tobacco adjacent to schools or other youth-sensitive locations (the cities of Berkeley, Hayward, and Richmond). The County of Contra Costa also is limiting the number of tobacco retailer's license to a maximum of 90 within unincorporated Contra Costa County.

Based on the research it performed, the Planning staff has prepared three options for consideration of an Ordinance that prohibits the sale of flavored tobacco within the City of San Pablo:

1. Prohibit the sale of flavored tobacco city-wide

Every retailer not classified as a smoke shop and all smoke shops would be prohibited from selling any flavored tobacco citywide.

2. Prohibit the sale of flavored tobacco within 600 feet of any school, licensed day care, public park or playground

This approach would prohibit any retailer within 600 feet from any school, licensed day care, public park, or playground from selling flavored tobacco products. The Zoning Ordinance, Section 17.62.180, prohibits smoke shops from locating within 600 feet from any other smoke shop, or any school, licensed day care center, public park or playground, senior citizen facility, or licensed alcohol or drug treatment facility. The new amendment would include every retailer not classified as a smoke shop, as well.

3. Prohibit the sale of flavored tobacco throughout the city, except at legal smoke shops

With the amendment of the Marijuana Ordinance in September 2017, the Smoke Shop Ordinance was also amended to limit the number of smoke shops in the city to six (6) per Section 17.62.180 of the City of San Pablo Municipal Code ("Municipal Code"). The City only allows smoke shops in commercial areas, and smoke shops shall not be located within six hundred (600) feet of any school, licensed day care center, public park or playground, senior center facility, or licensed alcohol or drug treatment facility.

Smoke Shops are defined as: A use classification that consists of any establishment that either devotes twenty percent or more of sales floor area or product display area to, or derives twenty percent or more of gross sales receipts from, the sale or exchange of tobacco or marijuana paraphernalia and/or tobacco or marijuana products as defined in Division VI, Glossary, and Section [17.62.130](#)
<http://www.codepublishing.com/CA/SanPablo/html/SanPablo17/SanPablo1762.html>.

City staff met with different stakeholders, as well as the San Pablo Police Department, to understand the concerns related to this issue. Based on these discussions, staff recommends option #1, prohibiting the sale of flavored tobacco citywide. According to the State Board of Equalization, San

Pablo has between 30 and 50 tobacco retailers, and 28 tobacco retailers are within 1000 feet of a public school (see Attachment 1). The Health Element within the General Plan focuses on the relationship between community health and wellness outcomes and the built, natural, and social environments. Preventing San Pablo youth from being exposed and having access to tobacco products will reinforce the purpose of the City's Health Element, and work to benefit the lives of the youth of San Pablo by preventing access to flavored tobacco.

Additionally, staff's recommendation to prohibit the sale of flavored tobacco within the City of San Pablo is by amending Title 5, Business Taxes, Licenses and Regulations, of the Municipal Code. Language to Section 5.06, "Licensure of Tobacco Retailers", would be added to prohibit the sale of flavored tobacco products citywide.

Staff from the Community & Economic Development and Police Departments continue to collaborate on this issue. The Police Department would work with the existing businesses within the first six (6) months after the adoption of the ordinance amendment to educate these businesses about the City's ban on the sales of flavored tobacco products. After this six-month period, the City would formally enforce the ban on the sales of flavored tobacco products.

July 31, 2018 City Council Public Safety Standing Committee

City staff presented the policy options to prohibit the sale of flavored tobacco to the Public Safety Standing Committee on July 31, 2018. The Standing Committee endorsed the option to consider a citywide ban, and directed staff to bring this to the City Council for further input and discussion.

FISCAL IMPACT

None at this time.

ATTACHMENT - Map of Tobacco Retailers within 1,000 of schools within the City of San Pablo