



Agenda Report

20-997

Agenda Date: 11/18/2020

REPORT TO ECONOMIC DEVELOPMENT, COMMUNICATIONS, AND MARKETING COMMITTEE

SUBJECT

Report and Direction on Grant from the County of Santa Clara's Healthy Cities Program - Tobacco Free Communities

BACKGROUND

On April 7, 2020, Council authorized the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department (PHD) to explore tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products. The City executed the grant agreement on July 20, 2020 in the amount of \$48,944 for FY 2020/21.

Staff is seeking feedback from the Economic Development, Communications and Marketing Committee on whether or not to proceed with grant implementation and/or forgo the use of grant funds.

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or disease, such as cancer, heart disease, and respiratory diseases. More than 1 in 10 youth in the County currently use tobacco products, including electronic smoking devices, and nearly 1 in 3 Santa Clara County teens report that they have used an e-cigarette at least once.

The Santa Clara County's Healthy Cities Program seeks to address these tobacco-related health concerns by promoting policies and practices to provide tobacco-free and smoke-free communities. Currently, the City has adopted 6 out of 12 recommended tobacco prevention strategies in the Healthy Cities Program (Attachment 1). Although the City prohibits smoking in multi-unit residences and many outdoor areas, it does not prohibit the sale of flavored tobacco products or require a local tobacco retailer permit (Attachment 2).

The PHD has provided funding to cities to support tobacco prevention strategies known to have the highest impact on reducing tobacco-related disparities and inequities.

DISCUSSION

As mentioned in the Background section, the City received a grant to explore an ordinance to prohibit the sale of flavored tobacco products in the City. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah, and menthol cigarettes. E-liquids are nicotine solutions that are used with e-cigarettes. These liquid solutions are available in thousands of flavors that are attractive to youth, such as gummy bear and cotton candy.

Flavored tobacco products are considered “starter” products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addiction. Youth believe that flavored products are safer and less addictive than non-flavored varieties. In Santa Clara County, 82.3% of teens currently using tobacco reported using a flavored product and 80% of youth who have ever used tobacco started with a flavored product.

Nationally, e-cigarette use more than doubled among high school students (from 11.7% to 27.5%) and tripled among middle school students (from 3.3% to 10.5%) from 2017 to 2019.

In Santa Clara County, 93% of tobacco retailers sell menthol cigarettes and nearly 80% of tobacco retailers (including those near schools) sell flavored, non-cigarette tobacco products. Almost half of Santa Clara County teens (45.5%) reported purchasing their own e-cigarettes, with over a quarter of this group saying they buy them directly from a local store.

As of May 2020, 54 communities in California have passed laws to restrict the sale of flavored tobacco products. In Santa Clara County, the cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, and County of Santa Clara prohibit the sale of flavored tobacco products.

Although federal law prohibits the sale of candy and fruit-flavored cigarettes, this law does not prohibit the sale of menthol cigarettes or flavored, non-cigarette tobacco products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, electronic smoking devices, and the e-liquid used in these devices.

On August 28, 2020, California passed a law prohibiting the sale of most flavored tobacco products (SB 793). The state law contains three exemptions:

1. Hookah and shisha products (if sold by an adult-only hookah tobacco retailer);
2. Premium cigars with a wholesale price of no less than \$12; and
3. Loose leaf tobacco (other than tobacco for roll-your-own-cigarettes).

The California law is scheduled to take effect on January 1, 2021. However, opponents of the law have submitted a proposed referendum to overturn the law. If the referendum qualifies for the ballot, the State law will be suspended until the referendum vote in November 2022.

The State law explicitly allows local governments to pass stricter local ordinances. Because of the uncertainty around implementation of the State law, the Santa County Public Health Department recommends that local governments continue to adopt laws to prohibit the sale of flavored tobacco products in order to remove the exemptions provided in State law.

Implementation and Enforcement

Most communities that have adopted a restriction on the sale of flavored tobacco products delay the effective date of the ordinance by approximately six months. This grace period gives the cities an opportunity to educate retailers and to allow retailers to sell their existing inventory of flavored tobacco products. As of the ordinance’s effective date, retailers would no longer be able to sell flavored tobacco products. Typically, communities adopt a restriction on the sale of flavored tobacco products and on the location and type of tobacco retailers as a condition of a local tobacco retailer license (TRL).

Although the State of California requires a license to sell tobacco products, more than 150 cities and

counties also require a local TRL. A local TRL is generally adopted to:

- Create more comprehensive restrictions than State law on the sale or marketing of tobacco products in the retail environment;
- Allow for meaningful penalties for violation of tobacco control laws such as license suspension; and
- Help fund local enforcement of tobacco control laws through the local licensing fee.

The City does not currently require a TRL. Although it is possible to adopt a prohibition on the sale of flavored tobacco products without a local TRL, the City would not have a dedicated source of funding to monitor compliance with the flavored tobacco restrictions. Currently, all but two of the California communities that restrict the sale of flavored tobacco also require a TRL.

Santa Clara County is willing to partner with the City to administer, implement and monitor its tobacco retailer license law if the City adopts a TRL that mirrors the County's requirements below. To cover the costs of the program, the County typically collects a \$425 license fee paid by tobacco retailers. To participate, the City's TRL ordinance must include the following:

1. Require retailers to obtain and annually renew a tobacco retailer license.
2. Require retailers to post a notice saying that the sale of tobacco products to anyone under 21 years of age is illegal and subject to penalties.
3. Require retailers to check the identification for any purchaser who appears to be under 30 years of age.
4. Prohibit the sale of tobacco products from a vending machine.
5. Prohibit retailers from covering more than 15% of windows and clear doors with any type of ads or signs.
6. Prohibit the sale of flavored tobacco products, including menthol cigarettes.
7. Prohibit the sale of all electronic smoking devices and vaping products.
8. Prohibit new tobacco retailers from locating within 1,000 feet of a school (existing retailers within this radius may continue to sell tobacco products assuming they are operating lawfully, renew their TRL on time, and do not transfer ownership).
9. Prohibit new tobacco retailers from locating within 500 feet of another tobacco retailer (existing retailers in these locations may continue to sell tobacco products assuming they are operating lawfully, renew their TRL on time, and do not transfer ownership).
10. Prohibit the sale of tobacco products from pharmacies.
11. Prohibit mobile tobacco retailing or tobacco retailing at a temporary event.

As of October 8, 2020, there are 69 state-licensed tobacco retailers in the City. Approximately six of those businesses are tobacco shops (e.g. hookah lounge, smoke shop), and are likely to experience the greatest impact if the City adopts its own TRL. Ten of the businesses are pharmacies (e.g. pharmacy chains), who would be required to stop selling tobacco products altogether, and the remaining 53 businesses are mostly gas stations and convenience stores.

Grant Implementation and Community Outreach

The grant implementation includes a community outreach process prior to bringing an ordinance forward for Council's consideration. This process is slated to begin in January 2021. Similar to the City's recent smoking ordinance efforts, outreach to the community and retailers would include:

Open City Hall - Launch an on-line survey to gauge the community's perspective on establishing a

tobacco retailer program and ban flavored tobacco products and e-cigarette sales.

Community Meetings - Host 2-3 community meetings.

Business Outreach - Conduct targeted outreach to the City's existing tobacco retailers.

Outreach on the survey and virtual meeting dates will be coordinated with the County of Santa Clara Department of Public Health, Breathe California of the Bay Area, Silicon Valley Central Chamber of Commerce and distributed via the City's social media channels, the City Manager's Blog, and on Nextdoor to neighborhood groups.

The project timeline (January - June 2021) for exploring an ordinance to prohibit the sale of flavored tobacco products, falls during what staff expects to be the continued COVID-19 Public Health Emergency. Recognizing that Social Distancing Protocols and Risk Reduction Health Orders are expected to remain in force for the foreseeable future; therefore, threatening increased economic impacts to businesses, staff is seeking the Committee's recommendation as to whether or not to proceed with the implementation of the grant in the current fiscal year. Staff has made inquiries regarding a possible extension of the grant and have been advised that the grant must be utilized by June 2021.

FISCAL IMPACT

The City has been awarded \$48,944 to cover staffing costs and efforts related to community outreach and implementation in FY 2020/21. The anticipated costs of associated operating expenses are \$2,520 while staffing costs are estimated at \$46,424. If the City were to expand the project timeline beyond June 30, 2021, the City would not be eligible to seek reimbursement for the grant and will need to absorb the associated costs incurred after June 30, 2021.

PUBLIC CONTACT

Public contact was made by posting the Economic Development, Communications, and Marketing Committee agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

- 1) Provide feedback to staff to proceed with grant implementation including outreach and the preparation of an ordinance to prohibit the sale of flavored tobacco products in the City including a tobacco retailer license program
- 2) Recommend that City forgo the grant and delay work on modifications to the City's tobacco ordinance

RECOMMENDATION

Alternative 1:

Provide feedback to staff to proceed with grant implementation including outreach and the preparation of an ordinance to prohibit the sale of flavored tobacco products in the City including a tobacco retailer license program.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Healthy Cities Program, 2019 Dashboard
2. Santa Clara County Tobacco Control Policy Grid, July 2020