



## Agenda Report

21-675

Agenda Date: 5/19/2021

### REPORT TO ECONOMIC DEVELOPMENT, COMMUNICATIONS, AND MARKETING COMMITTEE

#### SUBJECT

Report and Direction on Tobacco Policies Reducing Youth Access to Tobacco Products

#### BACKGROUND

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.

Data from the 2017-18 California Youth Tobacco Survey shows that almost one in three students in Santa Clara County have tried vaping. 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. Data from the 2019 National Youth Tobacco Survey shows that e-cigarette use in the U.S. 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. The widespread use of e-cigarettes by youth has significant long-term public health consequences. Most e-cigarettes contain nicotine, which, according to the Centers for Disease Control and Prevention (CDC), is highly addictive, can harm adolescent brain development, and can interfere with memory and attention processing. The CDC warns that young people who vape may be more likely to start smoking traditional cigarettes.

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).

Santa Clara County's Public Health Department has provided funding to cities to support tobacco prevention strategies known to have the highest impact on reducing tobacco-related disparities and inequities.

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.

On November 18, 2020, the Economic Development, Marketing and Communications Committee

(Committee) directed staff to proceed with grant implementation through a community outreach process, research, and policy recommendations for future Council consideration.

Staff embarked on a community outreach process in February 2021 to seek input on proposed tobacco policies which include:

- Prohibiting the sale of flavored tobacco products, including menthol cigarettes;
- Prohibiting the sale of all electronic smoking devices (e-cigarettes) and vaping products;
- Requiring a local license to sell tobacco products;
- Requiring that new tobacco retailers are located a minimum distance from schools (e.g., 1,000 feet) and from existing tobacco retailers (e.g., 500 feet); and
- Prohibiting tobacco sales in pharmacies.

The tobacco policies outlined above are modeled after PHD policies and would 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 shisha products, 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 tobacco products are safer and less addictive than non-flavored varieties.

The purpose of this memo is to provide the Committee with a report on the findings from the community outreach process and seek direction to proceed with drafting an ordinance for Council consideration.

## **DISCUSSION**

### **State and Federal Policies**

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 was scheduled to take effect on January 1, 2021. However, opponents of the law submitted a proposed referendum to overturn the law. The State law is currently suspended until the referendum vote in November 2022. If California holds a gubernatorial recall election in fall 2021, it will include the SB 793 referendum. If voters vote to uphold SB 793, the law will become effective immediately as the law is currently suspended, and the law’s effective date was January 1, 2021. 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.

### Local Policies

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. Some cities adopted ordinances providing exemptions for menthol cigarettes or loose-leaf tobacco products. Other cities such as Gilroy have incorporated some of the proposed policies such as the Tobacco Retailer License (TRL) program and minimum distance from schools. Campbell and San Jose both have established local TRL programs. Currently, the cities of Milpitas, San Jose, Saratoga, and Sunnyvale are working with the County to consider tobacco policies (Attachment 2).

The City of Palo Alto, City of Cupertino and Town of Los Gatos have outsourced the management and enforcement of their TRL program to the County of Santa Clara, adopting an ordinance identical to the County's in exchange for the revenue collected from the TRL permits. The cities of Campbell, Gilroy, Los Altos, Morgan Hill, San Jose, and Saratoga administer and enforce a TRL in-house.

### Community Outreach

To gather feedback on proposed tobacco policies, community input was solicited through Open City Hall online surveys (February 17 through April 7, 2021); virtual community meetings (March 17, 2021 - day and evening, March 24, 2021); and virtual business forum (March 25, 2021). At the conclusion of the outreach meetings, at the invitation of several businesses who attended the meetings, staff conducted business visits to some of the tobacco retailers.

**Open City Hall** - An online survey was launched on February 17, 2021, to gauge the community's perspective on establishing tobacco policies. The survey was promoted through the City website, biweekly City Hall News, social media, NextDoor, Mission Cities utility bill insert, and a direct mailer to tobacco retailers in the City.

The online survey closed on April 7, 2021 with 683 responses. 89.5% of survey respondents live in Santa Clara, 25.5% work in Santa Clara, 3.8% go to school in Santa Clara, and 1.8% manage and/or own a tobacco retailer facility in Santa Clara. For a full summary of responses please see Attachment 3. Below are the responses to questions related to the proposed policies:

- 64.4% of survey respondents support prohibiting the sale of flavored tobacco products, including menthol cigarettes;
- 59.1% of survey respondents support prohibiting the sale of all electronic smoking devices (e-cigarettes) and vaping products;
- 72.1% of survey respondents support requiring a local license to sell tobacco products;
- 73.9% support requiring that new tobacco retailers are located a minimum distance from schools (e.g., 1,000 feet);
- 62.2% of survey respondents support requiring that new tobacco retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet); and
- 61.1% of survey respondents support prohibiting tobacco sales in pharmacies.

Comments from survey respondents fall under three general categories: 1) in favor of policies to reduce youth access and exposure; 2) oppose local bans on tobacco products for adult use; 3) concerns regarding negative impacts to businesses and local tax revenue.

**Virtual Community Meetings** - A total of 54 individuals attended, including tobacco retail

owners/operators, representatives from the National Association of Tobacco Outlets, National Hookah Community Association, Santa Clara County Tobacco Free Coalition, and American Heart Association. Attendees expressed feedback on the various elements of the proposed policies. Majority of the attendees expressed support for a local tobacco retailer license program, density regulations for new retailers to be located a minimum distance from schools or other retailers, while opposing a ban on flavored tobacco, electronic cigarettes and vaping devices, stating that the ban would hurt small businesses, many of which are minority owned.

Attendees expressed particular concerns in banning hookah and shisha products, attributing its use to cultural traditions practiced by adults, sharing a desire for the City to mirror exemptions in the state law SB 793 or wait until there is a vote on SB 793. Those in support of the policies expressed support of a comprehensive policy to protect youth from tobacco products, stating that tobacco products are marketed to youth, and attributed tobacco use and addiction to long-term health effects. Various questions and comments were raised regarding youth education and prevention efforts, in addition to concerns that the proposed bans would create a black market for flavored tobacco, electronic cigarettes and vaping devices.

**Virtual Business Forum** - A total of 20 individuals attended, including local tobacco retail owners/operators, and representatives from the National Association of Tobacco Outlets. Attendees shared that the proposed policies would negatively impact small business revenues and cause business closures. Some expressed support of a local tobacco retailer license program and density regulations for new tobacco retailers, stating that their businesses comply with state and federal regulations. Attendees also expressed the need for more youth education and prevention in the community. Various questions and comments were raised regarding youth education and prevention efforts, in addition to concerns that proposed bans would create a black market for flavored tobacco, electronic cigarettes and vaping devices.

**Business Visits** - At the invitation of several businesses who attended the virtual meetings, staff conducted visits to some of the tobacco retailers. Retailers stated that flavored tobacco, electronic cigarettes, and vaping devices make up between 40-75% of their total revenues, thus expressing great concern for a local ban on these products and a desire for the City to align with state law. Many expressing that such prohibitions would lead to a black market in the City.

Some retailers expressed support of a local tobacco retailer program, stating that they are compliant with state and federal regulations. Shops visited have operated in Santa Clara for several years. Staff learned that owners laid off employees due to the economic impacts from the COVID-19 pandemic; however, as sales begin to stabilize, they have rehired employees, and some are hiring more employees.

Outreach on the survey and virtual meetings was coordinated with the County of Santa Clara Department of Public Health, Breathe California of the Bay Area, and Silicon Valley Central Chamber of Commerce, and distributed via the City's website, biweekly City Hall News, City's social media channels, NextDoor, Mission City News utility bill insert, and a direct mailer to tobacco retailers in the City. Outreach flyers were also disseminated via PeachJar (e-flyers to Santa Clara school community).

#### Policy Options

**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 without modification.** The County structure does not allow for exemptions to the policies, such as those included in State law SB 793, and as expressed in the community input sessions.

Policy elements of the County's ordinance:

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 such, staff recommends proceeding with three key elements of the proposed policies: 1) establish a local tobacco retailer license (TRL) program to be administered in-house, 2) require that new retailers are located a minimum distance from schools (e.g., 1,000 feet), and 3) require that new retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet). Staff is also recommending a pause on other policy elements until there is a statewide vote on SB 793.

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.

A TRL program would allow the City to establish a structure to monitor and enforce tobacco laws, encourage responsible tobacco retailing, and to discourage violation of laws related to tobacco products. Tobacco retailer license programs usually include additional requirements such as the density regulations, restricting retailers from being located within a certain distance from schools and another tobacco retailer.

Staff is seeking the Committee's direction to proceed in drafting an ordinance for Council consideration to: 1) establish a local tobacco retailer license (TRL) program to be administered in-house, 2) require that new retailers are located a minimum distance from schools (e.g., 1,000 feet),

and 3) require that new retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet).

As a first next step, staff would research other cities' TRL programs to design and create a program which would outline the management and operations, including staffing capacity needs and fees associated with such program.

#### Grant Agreement

Staff has executed a first amendment to the grant agreement with the County of Santa Clara to extend the term through September 2021. The grant covers staffing costs and efforts related to community outreach and implementation of tobacco policies.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

#### **FISCAL IMPACT**

There is no fiscal impact related to this action. The City has been awarded \$48,944 to cover staffing costs and efforts related to community outreach and implementation through September 30, 2021.

#### **COORDINATION**

This report has been coordinated with the City Attorney's Office.

#### **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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

#### **RECOMMENDATION**

Direct staff to proceed with the analysis and preparation of an ordinance for Council consideration to: 1) establish a local tobacco retailer license (TRL) program to be administered in-house, 2) require that new retailers are located a minimum distance from schools (e.g., 1,000 feet), and 3) require that new retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet).

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, October 2020
3. Survey Responses Summary