

# Department of Conservation and Development

## County Planning Commission

Wednesday, February 8, 2017 – 7:00 P.M.

### STAFF REPORT

Agenda Item # \_\_\_\_\_

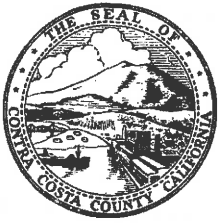
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<b>Project Title:</b>	Adoption of Zoning Text Amendment for Tobacco Retailing Businesses Ordinance
<b>County File:</b>	#ZT16-0003
<b>Applicant/Owner:</b>	County Initiated
<b>Project Location:</b>	Countywide
<b>California Environmental Quality Act (CEQA) Status:</b>	The proposed zoning text amendment is exempt from CEQA per Section 15061(b)(3)
<b>Project Planner:</b>	Ruben Hernandez, Principal Planner (925) 674-7785
<b>Staff Recommendation:</b>	Recommend Approval to the Board of Supervisors (See Section II of December 6, 2016 Staff Report for Complete Recommendation)

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### **I. CONTINUED PUBLIC HEARING**

This item was continued from the December 6, 2016 hearing date. At that hearing the Planning Commission continued the public hearing in order to provide staff with additional time to conduct outreach to existing tobacco retailers in the County.



# Department of Conservation and Development

## County Planning Commission

Tuesday, December 6, 2016 – 7:00 .P.M.

### STAFF REPORT

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### **I. INTRODUCTION**

This is a hearing on a County initiated zoning text amendment for the adoption of a *Tobacco Retailing Businesses Ordinance* that would restrict the concentration of tobacco retailing businesses in any one area, minimize the availability of tobacco products to minors by prohibiting tobacco retailing businesses from location near schools and other youth-sensitive areas, and prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailing businesses. The proposed zoning text amendment is part of a larger Tobacco prevention program approved by the County Board of Supervisors and developed by the Public Health Department of Contra Costa County addressing youth tobacco influences in the retail environment.

### **II. RECOMMENDATION**

Staff recommends that the County Planning Commission adopt a motion recommending that the Board of Supervisors:

- A. FIND, for the purposes of compliance with the California Environmental Act (CEQA) and State and County CEQA Guidelines that the proposed zoning text amendment is exempt from CEQA per Section 15061(b)(3);
- B. FIND that the proposed zoning text amendment does not conflict with the County 2005-2020 General Plan;
- C. ADOPT the Tobacco Retailing Businesses Ordinance; and
- D. DIRECT the Department of Conservation and Development to file a Notice of Exemption with the County Clerk.

### **III. EXECUTIVE SUMMARY**

At the direction of the Board of Supervisors and in conjunction with the County Health Services Department, the Department of Conservation and Development has prepared a zoning text amendment for establishment of a *Tobacco Retailing Businesses* ordinance. Because the proposed ordinance involves new land use regulations, the Department of Conservation and Development would be responsible for implementation of the ordinance through the County Zoning Code (Title 8).

The proposed ordinance would restrict the concentration of tobacco retailing businesses in any one area, minimize the availability and influence of tobacco products to minors by prohibiting tobacco retailing businesses from locating near schools and other youth-sensitive areas, as well as prohibit hookah lounges, vapor lounges and significant tobacco retailers within the unincorporated areas of the County.

Adoption of the Tobacco Retailing Businesses ordinance is one of a number of policy options being pursued by Health Services Department in accordance with the "*...policy options for protecting youth from tobacco influence in the retail environment*" as accepted by the Board of Supervisors on May 24, 2016. The ordinance would include definitions, distance restrictions for the establishment of tobacco retailing businesses, define nonconforming tobacco retailing uses and prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailers as defined in the attached ordinance.

#### **IV. TOBACCO RETAILING ORDINANCE**

In order to implement specific land use policy options meant to protect youth from tobacco influences in the retail environment, as adopted by the Board of Supervisors on May 24, 2016, the County Zoning Code (Title 8) will be modified to incorporate the attached Tobacco Retailing Businesses ordinance. The pertinent sections of the proposed ordinance are summarized below:

**Definitions:** The attached Tobacco Retailing Businesses ordinance provides definitions for the following tobacco related terms:

- *“Hookah lounge”;*
- *“Significant tobacco retailing business”;*
- *“Tobacco paraphernalia”;*
- *“Tobacco retailing”;* “
- *Tobacco retailing business”;*
- *“Tobacco retailers license”;* and
- *“Vapor lounge”*

**Location Restrictions:** The tobacco retailing businesses ordinance will prohibit the establishment of new tobacco retailing businesses in the following locations:

Within 500 feet of any parcel occupied by any other tobacco retailing business;

Within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.

**Nonconforming Tobacco Use:** Included in the Tobacco Retailing Businesses ordinance are provisions for addressing existing tobacco retailing businesses which will not conform with the location restrictions of the ordinance. The tobacco retailing businesses in operation at the time the ordinance takes effect which do not meet the location requirements of the ordinance will be considered a “nonconforming tobacco retailing use”.

**Prohibited Uses:** The ordinance will prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailers within the unincorporated areas of the County.

## **V. IMPLEMENTATION**

In order to implement the Tobacco Retailing Businesses Ordinance the current licensing process for establishment of new tobacco retailers in the unincorporated areas of the County will have to be modified. The modified process will be created through coordination between the Public Health Division of the County Health Services Department and the Community Development Division of the Department of Conservation of Development.

Since the proposed Tobacco Retailing Businesses ordinance regulates land use, and will be part of the County Zoning Code, a process where the Department of Conservation and Development confirms compliance with the ordinance *prior* to issuance of a Tobacco Retailing License by the Public Health Division of the Health Services Department will need to be established. It is anticipated that business licenses applicants for new tobacco retailers will be required to obtain zoning verification from the Department of Conservation and Development prior to securing approval for a Tobacco Retailing License from the County Health Services Department. Conformance with the location restrictions for new tobacco retailers will be verified using County GIS data and mapping and may include a site analysis. A small fee may be required by the Department of Conservation and Development to cover the verification process.

## **VI. ENVIRONMENTAL REVIEW**

Staff has determined that there is no possibility that adoption of the proposed Tobacco Retailing Businesses Ordinance will have a significant impact on the environment and is therefore exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of CEQA.

## **VII. STAFF ANALYSIS**

The proposed Tobacco Retailing Business Ordinance has been prepared in cooperation with the County Health Services Department and was crafted in accordance with direction from the Board of Supervisors. On May 24, 2016 the Board of Supervisors accepted a report from the Health Services Department and approved a series of policy options meant to protect youth from tobacco influences in the retail environment. The policy options will be implemented by making changes to various portions of the County Code including changes to the County's Tobacco Retailer Licensing Ordinance Chapter 445, if needed, and the County Zoning Ordinance Code (Title 8).

Utilizing the County Zoning Code the attached Tobacco Retailing Businesses Ordinance will implement a number of land use policy options as directed by the Board including prohibiting the establishment of new tobacco retailing businesses near schools, playgrounds and other youth-sensitive areas as well as prohibiting the establishment of new retailers near existing tobacco retailers. The ordinance would also prohibit the establishment of "hookah lounges", "vapor lounges" and "significant tobacco retailing businesses". The restrictions and limitations on tobacco retailing provided in the ordinance will reduce exposure of tobacco retailing to County youth with the intent of reducing youth and teenage smoking.

### **VIII. CONCLUSION**

The attached Tobacco Retailing Businesses Ordinance will implement specific land use policy options which will *"...protect youth from tobacco influences in the retail environment"* as directed by the Board of Supervisors. Adoption of the Zoning Text amendment will place specific land use restrictions on the location and density of future tobacco retailing businesses and will prohibit the establishment of specific types of businesses such as hookah lounges, vapor lounges and significant tobacco retailing businesses, all with the intent of reducing youth exposure to tobacco retailing and use. By incorporating the tobacco retailing restrictions into the County Zoning Ordinance (Title 8) the specific land use restrictions for new tobacco retailing businesses will be enforced by the Community Development Division (CDD) of the Department of Conservation and Development and will require CDD verification prior to issuance of a tobacco retailers license from the Business License Office after Health Services Department application approval.

Therefore, staff is recommending that the County Planning Commission adopt a motion recommending that the Board of Supervisors adopt the attached Tobacco Retailing Businesses Ordinance.