



Contra
Costa
County

To: Board of Supervisors
From: FAMILY & HUMAN SERVICES COMMITTEE
Date: June 13, 2017
Subject: Tobacco Retailer Regulations

RECOMMENDATION(S):

1. OPEN the public hearing, RECEIVE testimony, and CLOSE the public hearing.
2. INTRODUCE Ordinance No. 2017-01 to establish restrictions on the retail sales of emerging tobacco products such as electronic smoking devices and flavored tobacco products, regulate the sale of menthol cigarettes, prohibit tobacco retailing in pharmacies, and establish a cap on the number of tobacco retailer licenses issued by the County; WAIVE reading; and FIX June 20, 2017 for adoption.
3. ADOPT Ordinance No. 2017-10 to regulate the location of tobacco retailing businesses and prohibit the establishment of hookah lounges, vapor lounges, and significant tobacco retailing businesses.
4. DIRECT the Health Services Department to report back to Family and Human Services Committee on the implementation of the ordinances on an annual basis.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **06/13/2017** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 13, 2017

Contact: Daniel
Peddycord, (925) 313-6700

David Twa, County Administrator and Clerk of the Board of
Supervisors

By: , Deputy

cc:

RECOMMENDATION(S): (CONT'D)

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FISCAL IMPACT:

A portion of the Prop 99 and Prop 56 funding Contra Costa Health Services Department receives for its Tobacco Prevention Program will be allocated to coordinating and implementing directions provided by the Board of Supervisors. Tobacco Retailer licensing fees, currently \$287 per retailer, can also be used to conduct outreach, education and compliance inspections to tobacco retailers on the ordinance amendments and new requirements. Implementation of these ordinances will have no impact on the General Fund.

BACKGROUND:

The review of policy options to protect youth from tobacco influences in the retail environment was first referred to the Family and Human Services Committee on May 5, 2015. At this meeting the Board of Supervisors accepted the Health Services Department's 2013 Health Stores for a Healthy Community Report and directed staff to develop and present a report on recommendations.

On May 24, 2016, the Board accepted the second report on Policy Options to Protect Youth from Tobacco Influences in the Retail Environment and directed staff to work with County Counsel to draft ordinances with policy provisions and report to the Planning Commission if applicable.

On April 24, 2017, the Family and Human Services Committee (F&HS) received a report from the Health Services Department, which included draft ordinances, information regarding the presentation to the Planning Commission, and education to tobacco retailers on the draft ordinance provisions. The Family and Human Services Committee accepted the Department's recommendations and directed staff to forward the report and draft ordinances to the full Board for further consideration. The Committee also directed the department to prepare additional information for Board discussion. The additional information requested for clarifications related to 1) the potential impact on cigars if prohibiting the sale of all flavored tobacco products, 2) the rationale behind the proposed packaging size minimums for cigars and cigarillos, and 3) the potential impact of the proposed 10-year sun-setting clause on current tobacco retailing businesses. Please see the attached Staff Report in response to the additional information requested by F&HS and prepared by the Department for Board discussion.

CONSEQUENCE OF NEGATIVE ACTION:

The County will not adopt ordinances restricting the retail sales and businesses of certain tobacco products.

CHILDREN'S IMPACT STATEMENT:

Tobacco products are still being promoted to children through availability of youth-friendly flavored tobacco products and inexpensive small packs of these products; exposure to tobacco marketing in the retail environment; and the sale and marketing of tobacco products near schools and other youth sensitive areas. Policy options exist to amend County Code to address these issues and will discourage youth from tobacco use and promote healthier communities, which addresses the following children's outcome: (5) Communities that are Safe and Provide a High Quality of Life for Children and Families.

CLERK'S ADDENDUM

Speakers: Phillip Gardiner, African American Tobacco Central Leadership Council; Mark Block, Electronic Vaping Coalition of America; Mark Keiman, Botech Analysis; Melvin Willis, resident of Richmond; Jaime Rojas, NATO (handout); Mike Easter, resident of Fairfield; Jas Singh, Greater Bay Franchisee Owners Association; Stefan Didak, Not Blowing Smoke; Sallie Goetsch, resident of Oakley; Dee Kalza, resident of Richmond; Rich Marianos, Law Enforcement, Gainesville Virginia; Paul Sekhon; Jade Greene, resident of Antioch; David Alga; Kayle Loftis; Manjit Puraeante, 7-Eleven Franchise Owners Association; James Jack, Cigar Association of America; Nilesh Patel, resident of Concord; Sheena Grewall, 7-Eleven; Jaspal Dadhwal, resident of Vacaville; Shashi Paul, resident of Vacaville; Dilaver Singh, Gas City Inc.; Aasin Ali, Fast & Easy APLA; Ryan Durkin, Core-Mark; Nancy Ybarra, resident of Richmond; Bob Gordon, Tobacco Prevention Coalition; Laura Nathan, resident of Lafayette; Cynthia LeBlanc, resident of Richmond; Margo Connolly, American Cancer Society Cancer Action Network; SanJin Patel, APCA; Liz Williams, Americans for Nonsmokers' Rights; Mary Jaccodiane, CCC Tobacco Prevention Coalition; Jaime Rich, Center for Human Development; Carol McGruder, African American Tobacco Control Leadership Council; Lori Bremner, American Cancer society Cancer Action Network; Guadalupe Alaniz, Monument Impact; Azucena Virgen, Monument Impact; Azucena Torrez, monument Impact; Blanca Colin, Monument Impact; Ryan Orihood; Lamont Hill, resident of Richmond; Alison Wohlgemuth, resident of Brentwood; Rosalyn Muge, Project Ride; Britni Boden, Project Ride; Nicole Reyes, Project Ride; Karina Avila, Project Ride; Nya Taylor, Contra Costa Youth Health Coalition Courage; Randy Uang, Breathe California-Golden Gate Public Health Partnership; Paul Escobar, Project Ride; Lanier Clarke, BACK; Alishba & Noi Mer; Karina Guadalupe, resident of Richmond; Nancy Sullivan; Nancy Newhart, resident of Walnut Creek; Genevieve Smith, MDUUC; Paul Cummings, Tobacco Control Coalition; Ratib Norzei, resident of Fremont.

Comments submitted in writing attached.

The Board discussed and voted upon the new provisions proposed for the tobacco product control ordinance and zoning ordinance.

a. Require a Tobacco Retailer License for all retailers selling traditional and/or

emerging tobacco products :

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

b. Prohibit the sale of flavored (non-cigarette) tobacco products (smokeless, little cigars, hookah tobacco and dissolvable tobacco products, vape pens, vapor solutions, e-cigarettes) within all of the unincorporated area

AYES: Gioia, Glover **NOES:** Andersen, Burgis, Mitchoff

c. Prohibit the sale of menthol flavored cigarettes within all the unincorporated area

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

d. Require minimum pack size of 10 for cigars, excluding premium cigars that cost \$5 or more

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

e. Prohibit sale of tobacco products in pharmacies in the unincorporated area

AYES: Gioia, Andersen, Burgis, Glover **NOES:** Mitchoff

f. Require tobacco retailers to comply with storefront signage laws

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

g. Require tobacco retailers to comply with drug paraphernalia sales laws

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

h. Require tobacco retailers to check ID of customer who appear younger than 27

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

i. Limit or “cap” the number of retailers that can sell tobacco products

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

j. Remove tobacco advertising during license suspension

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

k. Expand time period reviewed for prior violations of license from 2 years to 5 years

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

l. 1. Prohibit locations of a new tobacco retailer within 1000 feet of schools, parks, playgrounds and libraries

AYES: Gioia, Andersen, Burgis, Glover **NOES:** Mitchoff

2.Remove clause pertaining to declaring a non-conforming use for businesses

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

m. Prohibit new tobacco retailers from locating within 500 feet other tobacco retailers

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

n. Prohibit new “Significant Tobacco Retailers” (one who primarily sells tobacco products)

AYES: Gioia, Andersen, Burgis, Glover NOES: Mitchoff

The Supervisors expressed some concerns about the consistencies of prohibitions to be enacted at 500 feet, 1000 feet or unincorporated-area wide. Staff will provide the Board with map data of what these distances portray for clarity. Staff will contact by letter, pharmacies and the retailers that contain pharmacy space in their businesses, in the unincorporated area to notify them of the proposed ban on pharmacies selling tobacco products. The Board Closed the hearing. Staff will return to the Board on July 11, 2017 with the additional information and amended language for the ordinances.

ATTACHMENTS

Staff Report on Clarifications Requested by the Family and Human Services Committee

F&HS April 24, 2017 Report and Attachments

Ordinance No. 2017-01 Redline

Ordinance No. 2017-01 Tobacco Product & Retail Sales Control

Ordinance No. 2017-10 Tobacco Retailing Businesses