



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: July 11, 2017

Subject: Adoption of Proposed Zoning Text Amendment for Tobacco Retailing Ordinance

RECOMMENDATION(S):

1. FIND that the adoption of the Tobacco Retailing Ordinance (Ordinance No. 2017-10) is exempt from environmental review under Section 15061(b)(3) of the California Environmental Quality Act;

2. ADOPT Ordinance 2017-10, to regulate the location of tobacco retailing businesses and prohibiting the establishment of hookah lounges, vapor lounges and significant tobacco retailing businesses;

3. DIRECT the Department of Conservation and Development Director, or his designee, to file a Notice of Exemption with the County Clerk Recorder.

FISCAL IMPACT:

There are no fiscal impacts associated with the adoption of the Tobacco Retailing Ordinance, except for the costs associated with preparing this ordinance. The ordinance would only prevent the establishment of new tobacco retailers and would not impact existing tobacco retailers.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **07/11/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

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: July 11, 2017

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

By: June McHuen, Deputy

Contact: Ruben Hernandez
(925) 674-7785

cc:

BACKGROUND:

I. Introduction

At the direction of the Board of Supervisors, and in conjunction with the County Health Services Department, and County Counsel, the Department of Conservation and Development has prepared a zoning text amendment, Ordinance 2017-10, to regulate the location of tobacco retailing businesses and prohibiting the establishment of hookah lounges, vapor lounges and significant tobacco retailing businesses. The proposed ordinance would restrict the concentration of tobacco retailing businesses, 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 Ordinance 2017-10 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 accepted by the Board of Supervisors on May 24, 2016. The ordinance would include definitions, distance restrictions for the establishment of tobacco retailing businesses, and prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailers as defined in the attached ordinance.

II. Public Hearings

The proposed zoning text amendment was initially heard by the County Planning Commission on December 6, 2016. At the hearing, public testimony in support and in opposition to the proposed ordinance was provided. After accepting testimony, the Planning Commission continued the hearing to the February 8, 2017 hearing date in order to provide tobacco business owners an opportunity to meet with the Health Department in order to better understand the proposed tobacco ordinances under consideration.

On February 8, 2017, the Planning Commission voted 3-1 to recommend denial of Ordinance 2017-10. A copy of the Planning Commission Resolution (CPC Reso. No. 07-2017) is attached.

After being recommended for denial by the Planning Commission, Ordinance 2017-10 as well as the Tobacco Product and Retail Sales Control Ordinance (which is not a zoning ordinance) were presented to the Board of Supervisors' Family and Human Services Committee on April 24, 2017 who directed both matters to the full Board. Both items were considered by the Board on June 13, 2017. At the hearing before the Board, significant public testimony was received in support of and in opposition to the proposed tobacco regulation ordinances. After receiving the public testimony and closing the public hearing, the Board began deliberating on the proposed ordinances. After discussion, the Board directed changes to both ordinances.

With regard to the Zoning Ordinance, (Ordinance 2017-10) the Board directed staff to remove the provision of the ordinance placing a 10-year limit on the legal non-conforming status of existing, non-conforming, tobacco retailers. Per the Board's direction, the ordinance has been amended and the 10-year non-conforming restriction has been eliminated.

Additionally, in order to simplify adoption of both the zoning text amendment and the amendments to the County Health and Safety Code, the proposed amendments have been separated into individual Board agenda items. This allows the Board to adopt the ordinance amendments independently.

III. Summary of Ordinance 2017-10

- Location Restrictions for New Tobacco Retailing Businesses. The ordinance prohibits new tobacco retailing businesses from being located within 500 feet of any other existing tobacco retailing business, and prohibits new tobacco retailing businesses from being located within 1,000 feet of a public or private school, playground, park, or library. (Sec. 88-26.402.)
- Existing Tobacco Retailing Businesses. If an existing tobacco retailing business is within 500 feet of any other existing tobacco retailing business, or within 1,000 feet of a public or private school, playground, park, or library, the existing business may remain at its location following adoption of Ordinance No. 2017-10 and continue its tobacco retailing use. The existing business will be considered a nonconforming tobacco retailing use. The existing business will not be allowed to increase, enlarge, or expand its tobacco retailing use. (Sec. 88-26.406.)

The version of Ordinance No. 2017-10 that the Board considered on June 13 required a nonconforming tobacco retailing use to be discontinued if a change in business ownership occurred 10 years or more after the adoption of the ordinance, or to be discontinued 10 years or more after the use became nonconforming, whichever date was later. Based on Board direction, this 10-year provision has been deleted from Ordinance No. 2017-10. This deletion does not require further review by the Planning Commission.

- Hookah Lounges. The ordinance prohibits hookah lounges from being established in the unincorporated area of the County. (Sec. 88-26.602.) A hookah lounge is where customers smoke tobacco through one or more hookahs or waterpipes. (Sec. 88-26.204(a).)
- Vapor Lounges. The ordinance prohibits vapor lounges from being established in the unincorporated area of the County. (Sec. 88-26.604.) A vapor lounge is where customers use one or more electronic smoking devices to deliver an inhaled dose of nicotine. (Sec. 88-26.204(e).)
- Significant Tobacco Retailing Businesses. The ordinance prohibits significant

tobacco retailing businesses from being established in the unincorporated area of the County. (Sec. 88-26.606.) A “significant tobacco retailing business” is a business where 20% or more of the floor or display area is devoted to tobacco products or tobacco paraphernalia. (Sec. 88-26.204(b).)

IV. Conclusion

Staff is recommending that the Board adopt the attached revised Ordinance 2017-10.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board denies the zoning text amendment, then tobacco retailing business will be allowed to be established within 1,000 feet of schools, parks, playgrounds and libraries and within 500 feet of each other, increasing tobacco influence on youth.

CHILDREN'S IMPACT STATEMENT:

The proposed tobacco retailing ordinance would prohibit the establishment of new tobacco retailers within 1,000 feet of schools, parks, playgrounds and libraries and within 500 feet of existing tobacco retailers. The ordinance would also prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailing businesses. The intent of the proposed ordinance is to reduce tobacco influence on youth in order to reduce tobacco use, addiction and associated health impacts.

CLERK'S ADDENDUM

Speakers: Amarjit Sekhom, resident of San Leandro; Mary Jaccodine, CC Tobacco Prevention Coalition; Liz Williams, Americans for Nonsmokers' Rights; Alexandra Winston, resident of Vallejo.

ATTACHMENTS

Ordinance No. 2017-10

Tobacco Map

CPC Reso. 07-2017

CPC Staff Report