



Contra
Costa
County

To: Board of Supervisors

From: William Walker, M.D., Health Services Director, John Kopchik,
Conservation & Development Director

Date: July 18, 2017

Subject: Adopt Ordinance No. 2017-01 Establishing Tobacco Sales Restrictions and a Cap on Tobacco Retail Licenses

RECOMMENDATION(S):

1. ADOPT Ordinance No. 2017-01 to establish restrictions on the retail sales of emerging tobacco products such as electronic smoking devices, regulate the sale of flavored tobacco products and menthol cigarettes, prohibit tobacco retailing in pharmacies, and establish a cap on the number of tobacco retailer's licenses issued by the County.

2. ADOPT findings in support of Ordinance No. 2017-01.

3. DIRECT the Health Services Department to report to the Board, by March 31, 2018, on the implementation of the ordinance.

3. DIRECT the Health Services Department to report annually to the Family and Human Services Committee on the implementation of the ordinance.

FISCAL IMPACT:

A portion of the Prop 99 and Prop 56 funding Contra Costa Health Services

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **07/18/2017** ☒ 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 18, 2017

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

By: Stephanie Mello, Deputy

Contact: Dan Peddycord, (925)
313-6712

cc:

FISCAL IMPACT: (CONT'D)

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:

On June 13, 2017, the Board of Supervisors considered two tobacco control ordinances, Ordinance No. 2017-01 and Ordinance No. 2017-10.

Ordinance No. 2017-01, entitled “Tobacco Product and Retail Sales Control,” establishes restrictions on the retail sales of “emerging tobacco products,” such as electronic smoking devices and flavored tobacco products. Ordinance No. 2017-01 also prohibits pharmacies from selling tobacco and tobacco products, and limits the number of licensed tobacco retailers in the unincorporated area of the County to 90 retailers.

Ordinance No. 2017-10, a zoning ordinance entitled “Tobacco Retailing Businesses,” regulates the location of tobacco retailing businesses and prohibits the establishment of hookah lounges, vapor lounges, and significant tobacco retailing businesses. The Board held a public hearing on Ordinance No. 2017-10 on June 13, 2017.

On June 13, at the conclusion of the public hearing on Ordinance No. 2017-10 and following the Board’s discussion of both tobacco ordinances, the Board directed staff to revise the two ordinances and return to the Board on July 11, 2017, for further consideration of the ordinances.

On June 13, the Board also directed staff to do the following:

1. Provide maps showing the number of retailers that are located within both a 500-foot and 1000-foot “buffer zone” around schools, parks, playgrounds, and libraries, in order to assist in evaluating options for prohibiting the sale of flavored tobacco products and menthol cigarettes in the unincorporated County. A table of stores selling tobacco in Contra Costa County in each unincorporated community, and maps for each supervisorial district, are attached.
2. Provide an updated table summarizing the proposed ordinance regulations and listing other California jurisdictions with similar regulations. The updated table is attached.
3. Notify pharmacies of the proposed ordinance restriction prohibiting them from selling tobacco products. Staff mailed notice of this proposed restriction to all pharmacies located in the unincorporated area of the County.

On July 11, 2017, the Board introduced Ordinance No. 2017-01, waived its reading, and fixed July 18, 2017, for its adoption. The Board also declared its intent to adopt findings in support of the ordinance.

Ordinance No. 2017-01, as introduced on July 11, is attached. Findings in support of the ordinance also are attached. Here is a summary of the ordinance:

- Electronic Smoking Devices. Division 445, the County's Secondhand Smoke and Tobacco Product Control ordinance, currently prohibits retailers from selling tobacco products without a County tobacco retailer's license. Ordinance No. 2017-01 adds "electronic smoking devices" to the definition of "tobacco product" in Division 445. A tobacco retailer's license will be required to sell electronic smoking devices at locations where the sale of tobacco products is authorized. (Sec. 445-2.006(t).)
- Flavored Tobacco Products and Menthol Cigarettes. The ordinance prohibits the sale of flavored tobacco products within 1,000 feet of a public or private school, playground, park, or library. The ordinance also prohibits the sale of menthol cigarettes within 1,000 feet of a public or private school, playground, park, or library. (Sec. 445-6.006.)
- Packaging and Labeling. The ordinance prohibits the sale of a tobacco product unless the product is in the original manufacturer's packaging and conforms to all applicable federal labeling requirements. (Sec. 445-6.008.)
- Cigars. The ordinance requires all cigars, including little cigars, to be sold in a package of at least 10 cigars. This requirement does not apply to cigars that have a sale price of at least \$5. (Sec. 445-6.010.)
- Identification. The ordinance requires a tobacco retailer to examine the identification of a person who reasonably appears to be under the age of 27 years before the tobacco retailer sells tobacco products or paraphernalia to the person. (Sec. 445-6.012.)
- Pharmacies. The ordinance prohibits pharmacies from selling tobacco products. (Sec. 445-10.002(b)(2).) "Pharmacy" means any retail establishment where a state licensed pharmacist practices and where prescription pharmaceuticals are offered for sale. (Sec. 448-10.006(d).)
- Limit on Licensed Tobacco Retailers. The ordinance limits the number of licensed tobacco retailers in the unincorporated area of the County to 90 retailers. (Sec. 445-10.002(b)(3).)
- License Suspensions. Division 445 currently authorizes the County to suspend a tobacco retailer's license for any violation of a tobacco law. Ordinance No. 2017-01 authorizes additional grounds for suspending a tobacco retailer's license. The ordinance allows the County to suspend a tobacco retailer's license for the violation of any law regulating controlled substances or drug paraphernalia, or for the

violation of any local or state law regulating advertising and signage on a retailer's window space. (Sec. 445-10.018(d).)

- License Suspension Five-Year “Look-Back” Time Period. Division 445 currently authorizes the County to suspend a tobacco retailer's license for up to 30 days for a first violation of a tobacco law, up to 90 days for a second violation within two years after the first violation, and up to one year for a third and subsequent violations within two years after the first violation. Ordinance No. 2017-01 authorizes a longer “look-back” period for a second violation and subsequent violations. The ordinance allows the County to suspend a tobacco retailer's license for up to 90 days for a second violation that occurs within five years after the first violation, and up to one year for a third violation and for each subsequent violation that occurs within five years after the first violation. (Sec. 445-10.018(d).)
- Tobacco Displays. The ordinance prohibits a tobacco retailer from displaying tobacco products, tobacco paraphernalia, and tobacco advertisements while a tobacco retailer's license is suspended. (Sec. 445-10.024.)

On July 11, the Board directed staff to report to the Board, by March 31, 2018, on the implementation of the ordinance. The Board also adopted zoning Ordinance No. 2017-10 on July 11.

ADDITIONAL BACKGROUND

On May 5, 2015, the Health Services Department presented the results of a County-wide survey to the Board of Supervisors showing that youth are exposed to tobacco industry influences in their communities. The Board directed staff to develop policies to protect youth from tobacco influences in the retail environment and present those policy options to the Family and Human Services Committee for the committee's review and recommendations to the Board.

On July 21, 2015, the Board reviewed the report on policy options for protecting youth from tobacco influences in the retail environment and directed staff to evaluate the policies to address fiscal and implementation considerations.

On May 24, 2016, the Board considered fourteen policy options for protecting youth from tobacco influences and directed staff to develop comprehensive tobacco control ordinances that would include each of the fourteen policy options. Two ordinances—Ordinance No. 2017-01 and Ordinance No. 2017-10—were developed that together include each of the fourteen policy options. On December 6, 2016 and February 8, 2017, the Planning Commission considered Ordinance No. 2017-10, a zoning text amendment. The Planning Commission's resolution recommended that the Board not adopt Ordinance No. 2017-10.

Staff then conducted additional public outreach by holding two public input sessions with

tobacco retailers on February 2, 2017, and March 2, 2017. On April 24, 2017, the Family and Human Services Committee moved to recommend both ordinances to the Board for further discussion regarding impacts to existing retailers and for adoption of the ordinances.

On June 13, 2017 and July 11, 2017, the Health Services Department presented and introduced to the Board of Supervisors drafts of Ordinance No. 2017-01. The Board approved the draft ordinance as proposed at the July 11, 2017 meeting, waived the reading and fixed July 18, 2017 for adoption.

CONSEQUENCE OF NEGATIVE ACTION:

The County will not adopt ordinances to establish restrictions on the retail sales of emerging tobacco products such as electronic smoking devices, regulate the sale of flavored tobacco products and menthol cigarettes, prohibit tobacco retailing in pharmacies, and establish a cap on the number of tobacco retailer's licenses issued by the County.

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: Robin Lipetzky, Public Defender; Doug Sibley, resident of Martinez; Randy Uang, Breathe California; Blanca Collin, Monument Impact; Guadalupe Alaniz, Monument Impact; Azurena Virgen, Monument Impact; Azurena Torres, Monumnet Impact; Phillip Gardiner, African American Tobacco Control Leadership Council; Jaime Rojas, NATO.

ATTACHMENTS

Ordinance No. 2017-01

Findings in Support of Ordinance No. 2017-01

Ordinance No. 2017-01 Redline Version

Revised Summary Table of Tobacco Control Ordinances Provisions

Stores Selling Tobacco in CCC by Unincorporated Community

District I Tobacco Stores Maps

District II Tobacco Stores Maps

District III Tobacco Stores Maps

District IV Tobacco Stores Maps

District V Tobacco Stores Maps