



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

GREG COX
First District

DIANNE JACOB
Second District

KRISTIN GASPAR
Third District

NATHAN FLETCHER
Fourth District

JIM DESMOND
Fifth District

DATE: October 27, 2020 and November 17, 2020

XX

TO: Board of Supervisors

SUBJECT

APPROVE AN ORDINANCE ADDING AND REPEALING PROVISIONS IN THE SAN DIEGO COUNTY CODE REGARDING THE SALE OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY (10/27/2020 – FIRST READING; 11/17/2020 – SECOND READING) (DISTRICTS: ALL)

OVERVIEW

On October 15, 2019 (02), Chairwoman Dianne Jacob and Supervisor Nathan Fletcher directed staff to develop several recommendations designed to improve public health for county residents including:

- Establish a tobacco retail licensing program to strengthen enforcement of minimum-age sale laws and to facilitate compliance monitoring of retailers;
- Revise applicable sections of County Administrative Code related to tobacco control regulations to align with State law and resolve any inconsistencies and duplications; and
- Add the prohibition of smoking in County of San Diego (County) parking lots to future negotiations with employee bargaining units.

The main goals of these priorities are to help address the considerable increase in youth and young adult e-cigarette use, which threatens to undo decades of progress in reducing the prevalence of smoking; to update County Administrative Code to reflect changes in State law; and to create smoke-free environments within all County parking lots.

The action taken on October 15, 2019 (02), was in response to the public health concerns associated with flavored tobacco products, e-cigarette devices, and high rates of youth exposure to these products. The proposed ordinance was crafted with a positive public health impact in mind. Today's request requires two steps: on October 27, 2020, it is requested that the San Diego County Board of Supervisors (Board) consider an ordinance adding provisions to Title 2, Division 1 of the San Diego County Code of Regulatory Ordinances and complete the first reading of provisions to the County Regulatory Code Ordinances. If the Board takes the actions recommended, then on November 17, 2020, the proposed provisions will be brought back to the Board for consideration and adoption.

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Additionally, on January 14, 2020 (13), the Board directed staff to return with actions to include smokeless tobacco in the ban on flavored smoking products and to conduct further review of hookah usage to identify how to preserve its cultural aspect and report back with recommendations. Today's action provides an update on this item.

These actions support the Building Better Health, Living Safely, and Thriving components of the *Live Well San Diego* vision by implementing comprehensive policies that protect the health of youth and young adults from the harms of exposure to and purchase of tobacco products.

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER

On October 13, 2020:

1. Find, in accordance with Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and that it is therefore exempt from CEQA review.
2. Approve the introduction of the Ordinance (first reading), read the title, and waive further reading of the Ordinance:

AN ORDINANCE ADDING AND REPEALING PROVISIONS IN THE SAN DIEGO COUNTY CODE REGARDING THE SALE OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY

If, on October 27, 2020, the San Diego County Board of Supervisors approves action as recommended, then, on November 17, 2020, consider and adopt the following Ordinance:

AN ORDINANCE ADDING AND REPEALING PROVISIONS IN THE SAN DIEGO COUNTY CODE REGARDING THE SALE OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY

3. Approve the language change in Section 32.882 of the San Diego County Code of Regulatory Ordinances from “flavored smoking product” to “flavored tobacco product.”
4. Receive recommendations regarding how to preserve the cultural aspect of the use of hookah.

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FISCAL IMPACT

Funds for this request are included in the Fiscal Year 2020-22 Operational Plan in the Health and Human Services Agency (HHSA). If approved, today's recommendations will result in estimated costs of \$270,000 for initial outreach and education efforts. The funding source is the new tobacco retail license fee. All tobacco retailers will be required to pay a yearly fee to Public Health Services to be allowed to sell tobacco products. Newly implemented annual fees required of tobacco retailers will be used in future fiscal years to fund the program costs including strengthening enforcement of minimum age sale laws and facilitating compliance monitoring of retailers. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

If approved, these recommendations could potentially impact all retailers in the unincorporated area who rely on the sale of tobacco products. Staff review of the California Department of Tax and Fee Administration tobacco-licensed businesses; Agriculture, Weights, and Measures licensed gas stations; and the Alcohol Beverage Control type 20 and type 21 licensed alcohol retailers indicates that there are approximately 330 retailers that may sell tobacco products, which could potentially be impacted. A period of transition would be provided to businesses so they may adjust to the new ordinance. The proposed ordinance also includes a provision that would restrict pharmacies from selling any tobacco products, other than those used for cessation purposes. There are 17 pharmacies (standalone pharmacies, grocery stores with pharmacies, and supercenters with pharmacies) in the unincorporated area that sell tobacco products and would be impacted by this restriction.

ADVISORY BOARD STATEMENT

The Health Services Advisory Board voted to support or reject the recommendations at its meeting on October 6, 2020.

BACKGROUND

Smoking, which includes vaping, is the leading preventable cause of death in the United States (U.S.), leading to more than 480,000 deaths each year, and continues to be a top public health issue at the State and local levels. The County of San Diego (County) seeks to build on statewide regulations that reduce the ease and availability of smoking products with the implementation of the proposed ordinance in the sections below. On October 15, 2019 (02), the San Diego County Board of Supervisors (Board) directed staff to return to the Board within 180 days with recommendations that would apply to the unincorporated area for the following:

- Establish a tobacco retail licensing program to strengthen enforcement of minimum age sale laws and to facilitate compliance monitoring of retailers.

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- Revise applicable sections of County Administrative Code related to tobacco control regulations to align with State law and resolve any inconsistencies and duplications.
- Add the prohibition of smoking in County parking lots to future negotiations with employee bargaining units.

The County's recommendations to the Board to address Board directives from October 15, 2019 (02) and January 14, 2020 (13) were postponed. On August 28, 2020, the Governor passed Senate Bill 793, (Flavored Tobacco Products Ban) legislation that ends the retail sale of most flavored tobacco in California, effective January 1, 2021. The proposed ordinance aligns with the provisions set forth in Senate Bill 793.

Tobacco Retail Licensing Program

Despite the State's efforts to limit youth access to tobacco, youth and young adults under age 21 are still able to access tobacco products. According to the National Survey on Drug Use and Health, in 2017, four-fifths of people who smoke become daily smokers before turning 21. Additionally, the 2020 National Youth Tobacco Survey found that 3.6 million U.S. middle and high school students reported current e-cigarette use. The California Department of Public Health (CDPH) notes that 86.4% of youth tobacco users report using flavored tobacco products, and nearly a quarter of high school students in California have tried cigarette smoking. In 2014, before the increase in use of electronic smoking devices by youth, the U.S. Centers for Disease Control and Prevention (CDC) estimated that unless smoking rates declined, approximately one out of every 13 Americans under age 18 would die prematurely from smoking-related illnesses.

Requiring tobacco retailers to obtain a license will allow the Board to regulate the operation of lawful businesses to discourage violations of federal, State, and local tobacco control and youth tobacco access laws. A 2013 literature review from the Ontario Tobacco Research Unit found that comprehensive strategies to improve tobacco retailer compliance with youth tobacco access laws are necessary. Components of comprehensive strategies include active enforcement, education, and community involvement or outreach. Additionally, in 2019, the Institute of Medicine found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations. A review of 41 California communities with strong tobacco retailer licensing ordinances by September 2018, found that there was an average decrease of 25 percentage points in youth sales rates from 34% before the tobacco retail license programs were in place to 9% after such license programs were implemented.

On October 15, 2019 (02), the Board directed staff to establish a tobacco retail licensing program to strengthen enforcement of minimum age sale laws and to facilitate compliance monitoring of retailers. The proposed ordinance will establish a tobacco retail licensing program.

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The County Health and Human Services Agency, Public Health Services, Tobacco Control Resource Program (TCRP) will oversee implementation of the tobacco retail licensing program. The TCRP is funded by the CDPH and collaborates with community partners to advance tobacco control efforts in San Diego County. Prior to full launch and implementation of enforcement, the TCRP will conduct an educational and outreach phase. This may include dissemination of information through mailers, the County website, and online and in-person retailer trainings. Once fully developed, the program will include licensing application and annual renewal application; enforcement through annual inspections and annual decoy operations; and violations enforced through the County's violation structure including fines and/or suspensions of tobacco product sales. The TCRP will offset the cost of the education and outreach components of the program through existing funds from the CDPH's California Tobacco Control Program.

Additional important provisions of the tobacco retail licensing program include:

- Prohibiting selling or gifting tobacco products to anyone under the legal minimum age of purchase;
- Expanding prohibition on vending machines to include all vending machines;
- Requiring all sales to be onsite (no delivery or Internet sales);
- Requiring all clerks who sell tobacco products to be of the legal minimum age to purchase tobacco products;
- Restricting persons who are under the legal minimum age to purchase tobacco products from entering tobacco shops or private smokers' lounges;
- Expanding restrictions on offering or accepting coupons or other discounts;
- Establishing a minimum pack size for cigars and little cigars;
- Establishing a minimum price for cigarettes, cigars, little cigars, and electronic smoking devices;
- Restricting pharmacies from selling tobacco products;
- Limiting the density of tobacco retailers by putting a cap on the total number of tobacco retailers (330) and restricting new tobacco retailers from opening up in close proximity to other tobacco retailers after October 31, 2021; and
- Prohibiting anyone under the legal minimum age to purchase from obtaining a tobacco retail license.

County Administrative Code Revisions

On October 15, 2019 (02), the Board authorized staff to revise applicable sections of County Administrative Code related to tobacco control regulations to align with State law and resolve any inconsistencies and duplications. It is recommended to align County regulations to acknowledge shifts and current trends in smoking technology, tobacco marketing, scientific

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research, and state and federal regulations. Per Board guidance on October 15, 2019, staff recommendations include updates to the Code of Regulatory Ordinances to acknowledge that both California and federal law now both establish a minimum-purchase age of 21 years.

The proposed ordinance will do the following:

- Revise applicable sections of County Administrative Code related to tobacco control regulations to align with State law and resolve any inconsistencies and duplications.
- The proposed ordinance deletes the existing ban on bidis as substantially redundant with the County of San Diego flavors ban and State law.
- The proposed ordinance does not apply to Native American ceremonial use of tobacco.
- The proposed ordinance does not criminalize the actions of anyone under the age of 21.
- The proposed ordinance aligns County Code with recently passed Senate Bill 793 and adds exemptions to the current County flavor ban for loose leaf tobacco for pipes and premium cigars.

Prohibition of Smoking in County Parking Lots

Smoking in outdoor areas, including parking lots, creates harmful exposure to secondhand smoke to nonsmokers. It is recommended to take the appropriate measures towards prohibiting smoking in County parking lots in order to protect the health, safety, and well-being of all County employees and San Diego County residents who may visit County facilities.

During negotiations for successor memorandum of agreements with associations representing County employees, County Department of Human Resources, Labor Relations Division will negotiate language related to the prohibition of smoking in County parking lots. These negotiations are scheduled for 2022 and 2023 for non-safety unions/associations and safety unions/associations, respectively.

Inclusion of Smokeless Tobacco in Ban on Flavored Tobacco Products and Review of the Hookah Usage

On January 14, 2020 (13), the Board directed the Chief Administrative Officer to return to the Board in April 2020 (postponed to October 2020) with actions to include smokeless tobacco in the ban on flavored tobacco products and conduct further review of hookah usage to identify how to preserve the cultural aspect of the use of hookah and report back with recommendations.

If approved, today's action will revise Ordinance No. 10647 to include smokeless tobacco in the ban on flavored tobacco products:

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- Revise language in Ordinance No. 10647 from “Flavored Smoking Product” to “Flavored Tobacco Product.” Flavored tobacco product is defined as encompassing of all tobacco products, including but not limited to, smokeless tobacco.

Additionally, the proposed ordinance recommends the following regarding hookah:

- Maintain the existing exemption for flavored shisha products so individuals can continue to use hookah. The ordinance recommends no further restrictions on hookah or hookah lounges.

These ordinance recommendations focus on creating the greatest positive public health impact on San Diego County residents by addressing increasing youth and young adult vaping trends and access to tobacco products, ensuring that County Administrative Code aligns with state and federal law, and taking appropriate steps towards making County parking lots smoke-free. If approved, today’s actions will allow the County to protect the health of the public from the harms of smoking and secondhand smoke by implementing comprehensive policies that address this public health issue.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today’s proposed actions support the Building Better Health and Living Safely Strategic Initiatives in the County of San Diego’s 2020-2025 Strategic Plan, as well as the County’s *Live Well San Diego* vision by encouraging healthy behaviors and developing policies that protect the public’s health from the harms of smoking and exposure to secondhand smoke.

Respectfully submitted,

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HELEN N. ROBBINS-MEYER
Chief Administrative Officer

ATTACHMENT(S)

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Attachment A: AN ORDINANCE ADDING AND REPEALING PROVISIONS IN THE SAN DIEGO COUNTY CODE REGARDING THE SALE OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY

AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

Yes No

PREVIOUS RELEVANT BOARD ACTIONS:

January 14, 2020 (13) and January 28, 2020 (04), An Ordinance Adding Provisions to Title 3, Division 2 of the San Diego County Regulatory Code Regarding Smoking Related Prohibitions in the Unincorporated Area of the County; October 15, 2019 (02), Addressing the public health crisis from cigarettes and electronic smoking devices.

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

ORIGINATING DEPARTMENT: Health and Human Services Agency

OTHER CONCURRENCE(S): Public Safety Group
Department of Agriculture, Weights, and Measures
Department of Environmental Health
Department of Planning and Development Services

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