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Title: Staff Report for an Ordinance of the City of San Leandro adding Chapter 4.36 "Tobacco Retailers" to the San Leandro Municipal Code to require the licensure of Tobacco Retailers and to regulate the sale of cigars, cigarillos and electronic cigarettes

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Staff Report for an Ordinance of the City of San Leandro adding Chapter 4.36 "Tobacco Retailers" to the San Leandro Municipal Code to require the licensure of Tobacco Retailers and to regulate the sale of cigars, cigarillos and electronic cigarettes

RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Ordinance adding Chapter 4.36 "Tobacco Retailers" to the San Leandro Municipal Code to require the licensure of Tobacco Retailers and to regulate the sale of cigars, cigarillos and electronic cigarettes

BACKGROUND AND SUMMARY

State and federal law currently establish restrictions and regulations on tobacco and electronic cigarette retailing. These restrictions and regulations include, but are not limited to:

- Prohibiting the sale or furnishing of cigarettes (including electronic cigarettes), tobacco products, and smoking paraphernalia to anyone under the age of 21;
- Requiring that retailers post conspicuous notices stating that selling tobacco products to anyone under 21 years of age is illegal;
- Prohibiting the sale of tobacco products and paraphernalia through self-service displays with limited exceptions;
- Prohibiting the sale of "bidis" (filterless cigarettes wrapped in temburni or tendu leaf) except in adult-only establishments;
- Prohibiting the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco; and

- Prohibiting the sale of flavored cigarettes (except for menthol).

Despite state and federal regulations, studies show that underage individuals are still able to gain access to tobacco and electronic cigarette products. Additionally, while regulations exist regarding the flavor and package size of cigarettes, similar regulations do not exist regarding the flavor and package size of electronic cigarettes and cigars.

State and federal law generally provide local jurisdictions with authority to enact retail licensing ordinances and other regulations that are more restrictive than existing state and federal regulations. As a result, more than one hundred and forty-eight cities and counties throughout California have adopted a tobacco retailer licensing ordinance in an effort to prevent underage tobacco use.

The City Council referred the consideration of a potential ordinance establishing regulations for tobacco retailing in 2015. Since then, staff prepared and presented draft tobacco retailers ordinances to the City Council Rules Committee on: May 25, 2016; November 28, 2016; and April 24, 2017. The City Council considered the draft tobacco retailers ordinance on June 5, 2017 and referred the draft ordinance to the City Council Rules Committee for further consideration. The City Council Rules Committee considered the draft ordinance on June 26, 2017. The proposed draft tobacco retailers ordinance includes direction from the City Council Rules Committee. A summary of the key provisions of the tobacco retailers ordinance, including the proposed revisions on June 26, 2017, is below:

Applicability and Prohibitions:

The ordinance applies to all tobacco retailers within the City, which includes any person who sells electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products, or tobacco paraphernalia. Prohibited activities include:

- The sale of tobacco or electronic cigarette products without a valid tobacco retailers license;
- Tobacco retailing via a self-service display;
- Tobacco retailing by an individual that is younger than the established age for possession and use of tobacco and electronic cigarette products;
- The non-sale distribution of tobacco and electronic cigarette products in a public place;
- The sale of cigars in a package containing less than five cigars except individual cigars valued in excess of \$7;
- The sale of flavored cigars; and
- The sale of flavored electronic cigarette products, whether such products contain nicotine or not.

Licensing Provisions and Enforcement:

The ordinance requires that all tobacco retailers obtain a tobacco retailers license from the City. A tobacco retailers license requires the payment of an annual fee in order to fund costs of administration and enforcement of the ordinance. The fees obtained from tobacco retailers will fund a compliance monitoring program operated by the Police Department. If violations are discovered, tobacco retailers are subject to the below penalties:

1. First Violation: Written warning and thirty days to cure the violation.

2. Second Violation: Licensee fined two thousand five hundred dollars (\$2,500)
3. Third Violation: License suspended for 20 days.
4. Fourth Violation: License revoked and license cannot be issued to retailer or the retail location for three years.

In addition to administrative penalties, the ordinance permits criminal and civil enforcement by the City.

Proposed Revisions from the June 26, 2017 Rules Committee Meeting:

The Rules Committee recommended the following changes to the draft tobacco retailers ordinance at its June 26, 2017 meeting:

1. The minimum age for persons engaged in tobacco retailing was lowered to 18 years old.
2. The minimum pack size for cigars was lowered from fifteen cigars to five cigars and for no less than \$7.00 per package.
3. The proposed penalties were revised to provide that: a second violation results in a fine of two thousand five hundred dollars (\$2,500) rather than a revocation for a 90-day period; a third violation results in a 20-day suspension rather than a revocation for a 120-day period; and a fourth violation results in a revocation for a 3-year period rather than a revocation for a 5-year period.

Effective Date:

Staff seeks direction regarding the effective date of the ordinance. In order to permit retailers that currently have flavored tobacco and electronic cigarette inventory to sell that inventory, the draft ordinance provides that it shall not become operative until March 1, 2018. This provides approximately an additional fourteen weeks from the effective date of the ordinance until it becomes operative. This date was revised from the date of the original ordinance in order to provide the additional timeframe to permit retailers to sell existing inventory.