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Staff Report for an Ordinance of the City of San Leandro Amending Chapter 4.36 of the San Leandro Municipal Code to prohibit the sale of menthol cigarettes in San Leandro, effective January 1, 2023

RECOMMENDATIONS

The City Council Rules Committee recommends that the City Council adopt the attached Ordinance amending Chapter 4.36 of the San Leandro Municipal Code to prohibit the sale of menthol cigarettes in San Leandro, effective January 1, 2023.

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 prohibiting 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).

On October 16, 2017, the San Leandro City Council also adopted a local ordinance amending Chapter 4.36 of the Municipal Code to require the licensure of tobacco retailers and to regulate the sales of cigars,

cigarillos, electronic cigarettes and other tobacco products.

Applicability and Prohibitions:

The existing 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 18;
- The non-sale distribution of tobacco and electronic cigarette products in a public place;
- The sale of cigars in a package at less than \$7 per five cigars, except for the sale of single cigars in excess of \$5;
- 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, currently set at \$500 per year. The fees obtained from tobacco retailers 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.

Status of Menthol Cigarette Sales in San Leandro

It is worth noting that the existing ordinance does not prohibit the sale of menthol cigarettes, which are presently the only flavored tobacco product that may be sold in San Leandro. The rationale for this carve-out for menthol cigarette sales is that at the time of adoption of the above-referenced ordinance in 2017, it was unclear whether local municipalities had the legal authority to ban the sale of menthol cigarettes due to concerns that such a ban may have been pre-empted by federal regulations of menthol cigarettes. However, since the time of adoption, the legal landscape has settled and it is now clear that local municipalities do indeed have the authority to ban the sale of menthol cigarettes.

Following on an Agenda Item 14 referral request that was raised in 2020, the City Council Rules Committee has hosted various discussions about the possibility of modifying local tobacco regulations in San Leandro.

The following represents a summary of the related public meetings and discussions that took place related to this topic:

October 27, 2020 Rules Committee Meeting:

Rules Committee directed staff to develop new regulations with the following provisions:

- Ban pharmacies from selling tobacco
- Require point-of-sale system at registers for Tobacco Retailer Licenses (TRLs) at *new locations only* that requires entry of a birth date or scanning of a driver license
- Impose a total cap on the number of TRLs citywide (using a formula based on population), while grandfathering all existing TRL locations
- Prohibit the issuance of new TRLs in proximity to schools

January 19, 2021 City Council meeting Item 14 request:

- Council directed staff to schedule a future discussion of menthol cigarette sales ban before the Rules Committee

May 26, 2021 Rules Committee Meeting:

- Schedule a roundtable forum that includes health advocates and retailers

July 20, 2021 Tobacco Policy Roundtable Forum

- Roundtable Forum held

October 27, 2021 Rules Committee Meeting

- Rules Committee votes unanimously to recommend banning menthol cigarette sales effective January 1, 2023

Proposed ordinance:

Based on the direction of the Rules Committee at its October 27th meeting, staff presents for the Council's consideration in the agenda packet a proposed ordinance that would add menthol cigarettes to the list of prohibited products that may not be sold in San Leandro. In order to allow local retailers time to adjust to the new regulations, the proposed ban would not go into effect until January 1, 2023.

Status of Statewide ban on flavored tobacco products

In August 2020, Governor Newsom signed into law SB 793, which was set to create a statewide ban on the sale of all flavored tobacco products throughout California (including menthol cigarettes), which was to be effective on January 1, 2021. However, a referendum was subsequently filed and so the measure is now set to appear on the upcoming November 2022 ballot, at which time statewide voters will have the opportunity to vote on whether or not to affirm the statewide flavor ban. In the event that state voters affirm SB 793, then the proposed local ordinance changes that are the subject of this report would become moot, since State law would serve to ban the sale of menthol cigarettes.

Fiscal Impacts: None. Enforcement of the proposed menthol cigarette sales ban would be incorporated into existing enforcement programs that are already administered by the San Leandro Police Department.

Attachments: Proposed Ordinance amending Chapter 4.36 of the San Leandro Municipal Code.
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