CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date: June 3, 2010

To: Honorable Mayor & City Council

From: Pamela Mottice-Muller, Director of Emergency Management PM

Megan Roach, Senior Management Analyst MR

Subject: Tobacco Control Options

INTRODUCTION

The City of Beverly Hills has been among a growing list of progressive cities throughout the nation which have adopted more stringent local tobacco control ordinances to protect public health. Smoking is restricted in and around certain public facilities and is completely prohibited in public parks and outdoor dining areas in the city.

In California, 36,000 children become new smokers every year, with tobacco use continuing to be one of the leading causes of preventable death in the State. In April 2009, a survey conducted by the Los Angeles County Department of Public Health explored the percentage of Beverly Hills retail establishments willing to sell tobacco products to minors under the age of 18.

The survey's results indicated that 47% of the city's businesses were willing to sell a tobacco product to a minor, reflecting a rate nearly four times greater than the 12.6% rate discovered in a California 2008 statewide survey.

At the February 2nd study session, the City Council directed staff and the Health and Safety Commission to explore two principal options for expanding the city's anti-smoking commitment, particularly as it relates to youth and school-age children: a tobacco retailer regulatory permit ordinance and an expanded zoning ordinance. Council also asked the Commission to make a recommendation to them on which option to pursue.

This report provides an overview of the Commission's consideration and their recommendations for the development and implementation of a tobacco sale permit process.

DISCUSSION

The Health and Safety Commission discussed the following tobacco control options over the course of four meetings:

- The adoption of an expanded zoning ordinance
- The adoption of a tobacco retailer regulatory permit ordinance

- A combination of zoning and permit
- Take no action on the issue

An expanded zoning ordinance would prohibit the sale of tobacco to minors within a specified distance of schools. California State Senator Alex Padilla recommends a distance of 600 to 1,000 feet. A tobacco retailer regulatory permit ordinance would require businesses that sell tobacco to obtain a special permit from the City in order to lawfully sell tobacco products. Once issued, if the City finds the tobacco retailer selling tobacco products to minors or engaged in other violations, a series of local penalties could apply which may eventually result in the suspension or revocation of the tobacco product retailing license.

During the Commission meetings, staff from the City's Planning, Code Enforcement, Police, and Finance Divisions answered questions regarding the zoning and permit options. On March 15th, a meeting was held with the city's tobacco retailers to solicit their comments on the two principal options. Retailers that attended the meeting expressed concern that an expanded zoning ordinance would have a negative impact on their business operations. There was consensus among the retailers to support the tobacco retailer regulatory permit option if the fee was set at a reasonable amount to avoid a financial burden to the retailers. At their April 26th meeting, after carefully considering all options, the Health and Safety Commission voted to recommend to the City Council that the City establish a tobacco retailer permit program by ordinance, which includes fees and a penalty structure.

Proposed Tobacco Retailer Permit Program

Under the proposed program, retailers would be required to submit an application for a separate tobacco retailer's permit to the City's Finance Division. Once the permit is issued, they would be required to clearly display it at the sales facility and would be expected to abide by all local and state laws. The permit fee will cover the City's administrative costs to issue the permit, as well as cover the law enforcement and code compliance to monitor and enforce the ordinance. The ordinance will include penalties for violating tobacco-related laws, including fines and/or the suspension or revocation of the tobacco retailer's permit.

Additionally, staff and the Commission recommend a two year pilot program that would be reviewed after the first year of implementation to evaluate the permit fee/recovery of costs, number of non-compliant retailers and the effectiveness of penalties.

Fee Structure and Enforcement Element

The Commission evaluated two options for the permit fee. Under the first option, the Police Department would conduct annual compliance checks of all fifty-one tobacco retailers. The annual cost to process the permit applications and administer compliance checks of all retailers totals $10,425.56. Fifty-one retailers sharing the total cost of the program equals an estimated permit cost of $204.42 per retailer. Under the second option, the Police Department would conduct annual compliance checks of twenty-five tobacco retailers, approximately half of the existing retailers. The annual cost to process the permit applications under this option is the same; however, adding in the cost to administer compliance checks of twenty-five retailers derives a total cost of $5,690.39. Fifty-one retailers sharing the total cost of the program equals an estimated permit cost of $111.58 per retailer. In an effort to provide the most effective enforcement program,

the Commission recommends compliance checks of all retailers annually and a corresponding permit fee of $204.42.

Non-Compliant Retailers

As proposed, the permit fee would not include costs associated with non-compliant retailers. Staff and the Commission believe it would be unfair to burden compliant retailers with the costs to penalize non-compliant retailers. It is difficult to estimate the cost of non-compliance to the City. Other cities administering this type of program estimate a 10% non-compliance rate. For Beverly Hills this would be approximately five retailers. Staff is working with the City Attorney's Office to evaluate various fines and penalties that would serve as the most effective deterrent for non-compliant retailers and also provide partial cost-recovery to the City.

Educational Element

The permit fee will allow the City to recover most of the costs to administer the program. However, as proposed, it would not include costs for public outreach and education. Staff will work with the business community to determine the different types of educational mechanisms which will be used to inform the public and the business community of the new program. Staff anticipates public outreach costs to be approximately $1,000 - $2,000 for the first year of the program. Staff believes these outreach costs can be absorbed within the existing program budget and will work closely with the Communications Division of the Policy and Management Department to coordinate the effort.

FISCAL IMPACT

The cost of the retailer permit cannot exceed the cost of processing, administering, and enforcing the permit. The majority of staff time required to administer and enforce the tobacco retailer permit program would be offset by the cost of the annual permit.

RECOMMENDATION

It is recommended that the City Council provide direction to staff to develop an ordinance that would establish a local tobacco retailer permit program, including the appropriate permit fee amount and enforcement penalties for non-compliance. Staff anticipates bringing the ordinance back for City Council review in July or August of this year.

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