



AGENDA REPORT

Meeting Date: August 7, 2018
Item Number: D-8
To: Honorable Mayor & City Council
From: Logan Phillippo, Senior Management Analyst *LP*
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING ARTICLE 21 OF CHAPTER 4 OF TITLE 5 OF THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS

Attachments:

1. Ordinance
2. August 7, 2018 City Council Study Session Staff Report (without attachments)

RECOMMENDATION

Staff recommends the City Council conduct a First Reading of an Ordinance of the City of Beverly Hills Amending Article 21 of Chapter 4 of Title 5 of The Beverly Hills Municipal Code to Prohibit the Sale of Flavored Tobacco Products

INTRODUCTION

At the February 26, 2018 Health and Safety Commission Regular Meeting, the Commission voted (5-0) in support of a draft ordinance that would prohibit the sale of flavored tobacco products. The recommendation includes prohibiting the sale of menthol cigarettes.

Attachment 1 includes the proposed ordinance for City Council consideration.

A more detailed overview of the Ordinance can be found in the August 7, 2018 City Council Study Session Staff Report related to this topic, which is included in this report as Attachment 2.

DISCUSSION

The proposed ordinance includes five modifications to Article 21 of Chapter 2 of Title 4 of the Beverly Hills Municipal. The proposed ordinance:

1. Adds to the definition of 'Tobacco Product';
2. Defines 'Characterizing Flavor';
3. Defines 'Flavored Tobacco Product';
4. States that it shall be unlawful for any Tobacco Retailer to sell or offer for sale any Flavored Tobacco Product; and
5. Establishes a timeline of three months before the City shall enforce violations of the ordinance.

Typically, ordinances go into effect 31 days after adoption by City Council. After Health and Safety Commission deliberation, the ordinance includes a three-month implementation period after the effective date of the ordinance. This allows time for the City to notify tobacco retailers in Beverly Hills as well as time for tobacco retailers to comply and sell current supplies. If City Council were to proceed with adoption of the ordinance as presented, the implementation timeline would be as follows.

- August 7, 2018: First Reading of Ordinance
- August 21, 2018: Second Reading
- September 21, 2018: Ordinance Takes Effect
- December 21, 2018: Enforcement Takes Effect

FISCAL IMPACT

Costs associated with the implementation of the ordinance will include outreach and enforcement. Outreach is expected to include the dissemination of notices to existing tobacco retailers and development of an informational flyer. Because of the small number of tobacco retailers in the City, Staff does not anticipate significant costs beyond already budgeted expenditures.

No additional funding is requested at this time. Staff will evaluate impacts on Code Enforcement and the Police Department as the proposed regulations go into effect and return to City Council with an update if additional resources are needed.

The City has received Proposition 56 grant funding through the California Department of Justice in the amount of \$305,810. These funds will be used over a two-year period for tobacco and anti-smoking program outreach and enforcement purposes. In addition to receiving grant funding, the City provides grant funding to the Cedars-Sinai Medical Care Foundation to offer free one-on-one smoking cessation counseling with a clinical pharmacist to Beverly Hills residents and those who work in the City.

Pamela Mottice Muller *PM*

Approved By

Attachment 1

ORDINANCE NO. 18-O-_____

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING ARTICLE 21 OF CHAPTER 4 OF TITLE 5 OF
THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT
THE SALE OF FLAVORED TOBACCO PRODUCTS**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million deaths per year.

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibits cigarettes with characterizing flavors other than tobacco and menthol, largely because these flavored products are marketed to youth and young adults, and younger smokers are more likely than older smokers to try these products. When Congress enacted the FSPTCA, it found that the use of tobacco products by the nation's children is a pediatric disease of "considerable proportions" that results in new generations of tobacco dependent children and adults. Congress further found that virtually all new users of tobacco products are under the minimum legal age to buy the products.

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor California law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices.

WHEREAS, the 2014 California Tobacco Advertising Study found that flavored tobacco products are very common in California tobacco retailers as evidenced by the following:

- 97.4% of stores that sell cigarettes sell menthol cigarettes;
- 94.5% of stores that sell little cigars sell them in flavored varieties;
- 84.2% of stores that sell electronic smoking devices sell flavored varieties; and
- 83.8% of stores that sell chew or snus sell flavored varieties.

WHEREAS, according to a 2010 Surgeon General's report, menthol and flavored products have been shown to be "starter" products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction.

WHEREAS, young people are much more likely than adults to use menthol, candy, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco.

WHEREAS, according to a 2015 report, 70% of middle school and high school students who currently use tobacco report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets.

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of US middle school and high school smokers report using flavored little cigars or flavored cigarettes.

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products.

WHEREAS, between 2004 and 2014 use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26 and older).

WHEREAS, in an undercover operation conducted in 2017, close to half of the tobacco retailers that are operating in Beverly Hills, sold tobacco products to persons under the age of 21 in violation of both State law and Beverly Hills Municipal Code section 4-2-109.

WHEREAS, it is the intent of the City Council of the City of Beverly Hills to provide for the public's health, safety, and welfare by protecting youth from commencing the inherently dangerous activity of smoking.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 4-2-2102 (DEFINITIONS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add the definitions of "Characterizing Flavor" and "Flavored Tobacco Product" in alphabetical order, and to amend the definition of "Tobacco Product" as follows with all other provisions of Section 4-2-2102 remaining in effect without amendment:

"Characterizing Flavor": A taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

"Flavored Tobacco Product": Any Tobacco Product that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacture of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a Characterizing Flavor shall constitute presumptive evidence that the Tobacco Product is a Flavored Tobacco Product.

“Tobacco Product”: Includes (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco; (2) any electronic cigarette; and (3) any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Section 2. Code Amendment. Section 4-2-2109 (REQUIREMENTS FOR OPERATION) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection “H” to read as follows:

“H. It shall be unlawful for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to sell or offer for sale any Flavored Tobacco Product. This regulation is not intended to impose any requirement which is different from, or in addition to, any requirement under the provisions of the Family Smoking Prevention and Tobacco Control Act relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.”

Section 3. Code Amendment. Section 4-2-2115 (ENFORCEMENT) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection “G” to read as follows:

“G. The City shall not enforce a violation of Section 4-2-2109 subsection H against any Tobacco Retailer that is lawfully operating in the City until [insert date that is three months after the ordinance goes into effect].”

Section 4. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only prohibits the sale of Flavored Tobacco Products. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the city within fifteen

(15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

Section 7. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

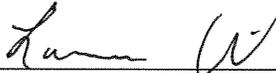
Adopted:
Effective:

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

Attachment 2



STAFF REPORT

Meeting Date: August 7, 2018
To: Honorable Mayor & City Council
From: Logan Phillippo, Senior Management Analyst 
Subject: Health and Safety Commission Recommendation on Proposed Ordinance to Prohibit the Sale of Flavored Tobacco Products in Beverly Hills

Attachments:

1. Proposed Ordinance
2. Local Tobacco Policies in the Retail Environment
3. Flavored Tobacco Products Fact Sheet
4. Menthol and Cigarettes Fact Sheet

INTRODUCTION

In October 2017, Los Angeles County Health Department staff recommended the City consider prohibiting the sale of flavored tobacco products in Beverly Hills, indicating that predatory marketing tactics target youth and minority populations.

On November 30, 2017, the City Council Health and Safety Commission Liaisons, consisting of Mayor Gold and Councilmember Bosse, met with a County Health Department representative to discuss the dangers of tobacco products and the possibility of restricting their sale in Beverly Hills. The Liaisons requested the Health and Safety Commission study the topic, seek public input, and return to the full City Council for discussion.

At the February 26, 2018 Health and Safety Commission Regular Meeting, the Commission voted (5-0) in support of a draft ordinance that would prohibit the sale of flavored tobacco products. The recommendation also includes prohibiting the sale of menthol cigarettes.

Staff is seeking City Council input and direction on the proposed ordinance.

The following attachments are included to provide additional background information.

Attachment 1: includes the proposed ordinance.

Attachment 2: published by the American Lung Association, includes a summary of California municipalities' policies regarding flavored tobacco sales.

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Attachment 3: published by the California Department of Public Health, provides information regarding the types of flavored tobacco products and consumption patterns in the United States.

Attachment 4: published by the California Department of Public Health provides information regarding menthol cigarettes and consumption patterns in the United States.

DISCUSSION

Background on Flavored Tobacco Products

Flavored tobacco products include come in a variety of flavors such as chocolate, berry, cherry, apple, wintergreen, and peach and are sold in colorful packaging, which can make them especially appealing to young people. The flavored products apply to cigars, cigarillos, smokeless tobacco, shisha or hookah tobacco, and liquid nicotine solutions used in electronic smoking devices. According to the National Cancer Institute, cigarettes usually differ from cigars in size and in the type of tobacco used.

Cigarettes: Cigarettes are uniform in size and contain less than 1 gram of tobacco each. U.S. cigarettes are made from different blends of tobaccos and are wrapped with paper.

Cigars: Most cigars are composed primarily of a single type of tobacco and they have a tobacco wrapper. They can vary in size and shape and contain between 1 gram and 20 grams of tobacco.

In 2009, the United States Food and Drug Administration (“FDA”) banned cigarettes with characterizing flavors other than menthol (e.g., cherry, chocolate).

Currently, the FDA does not ban flavors from other tobacco products, although, according to the FDA, research suggests flavors may also make these products more enticing to youth and young adults. Data from FDA’s Population Assessment of Tobacco and Health found that nearly 80 percent of youth ages 12-17 and nearly 75% of young adults ages 18-25 who were current tobacco users in 2014 reported that the first tobacco product they ever used was flavored.

While the FDA bans flavored cigarettes, menthol products are not included. The proposed ordinance, however, includes prohibiting the sale of menthol cigarettes.

According to the FDA, menthol is a flavor additive with a minty taste and aroma that is widely used in consumer and medicinal products due to its reported cooling or painkilling properties. When used in cigarettes, menthol may reduce the irritation and harshness of smoking.

Additionally, according to the FDA:

- 19.7 million people are current smokers of menthol cigarettes;
- 84.6% of African American smokers, 44.4% of Hispanic smokers, 37.5% of Asian smokers, and 28.5% of White smokers smoke menthol cigarettes;
- Youth who smoke are more likely to smoke menthol cigarettes than older smokers. More than half of smokers ages 12-17 smoke menthols; and
- Menthol is also used in other tobacco products, such as cigars, hookah tobacco, smokeless tobacco, e-cigarettes, and other electronic nicotine delivery systems

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Proposed Policy Background

Restricting **the sale of tobacco products** differs from **City smoking restrictions**. The following two paragraphs distinguish these two concepts.

City Smoking Restrictions. In order to promote healthy living, the City has long supported no-smoking policies. Most recently in 2017, the City prohibited smoking in the public-right-of-way, increased the open air dining no-smoking buffer zone from five feet to 20 feet, and adopted a new ordinance to prohibit smoking in multi-unit residences. These policies address the locations where smoking is prohibited. This includes the smoking of traditional tobacco products, electronic cigarette products, and marijuana products.

Sale of Tobacco Products. While the City prohibits smoking in many locations, the sale of tobacco products, is permitted in the City. BHMC Section 4-2-2102 defines a tobacco product as "any manufactured substance made from the tobacco plant, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco and smokeless tobacco, or products prepared from tobacco and designed for smoking or ingestion."

The County Health Department has indicated support for policies that restrict the sale of **flavored tobacco products**, which is not a product type specifically addressed in the Beverly Hills Municipal Code. The City already has a process for permitting tobacco retailers, through an ordinance that was adopted in 2010. Since 2010, tobacco retailers in Beverly Hills have been required to obtain a tobacco retailer's permit for each location where tobacco products are sold. This is in addition to State licensing requirements. There are approximately 30 licensed tobacco product retailers in Beverly Hills.

According to an April 2018 report from the American Lung Association, more than 100 California communities have adopted policies to regulate the sale of tobacco in the retail environment. 15 California communities have included flavored tobacco restrictions. 10 of these communities have included menthol products in the ban.

<u>Municipality</u>	<u>Date Passed</u>	<u>Menthol Products Included</u>
1. Hayward	July 2014	Yes
2. Sonoma	June 2015	No
3. Berkeley	September 2015	Yes
4. El Cerrito	October 2015	Yes*
5. Manhattan Beach	December 2015	No
6. Yolo County	October 2016	Yes
7. Santa Clara County	November 2010	Yes
8. Novato	January 2017	No
9. Los Gatos	May 2017	Yes
10. San Francisco	June 2017	Yes
11. Contra Costa County	July 2017	Yes
12. Oakland	September 2017	Yes
13. Palo Alto	October 2017	Yes
14. San Leandro	October 2017	No
15. Cloverdale	January 2018	No

* Does not include menthol cigarettes.

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San Francisco Flavored Tobacco Restrictions

On June 27, 2017, the City and County of San Francisco adopted an ordinance prohibiting the sale and distribution of all flavored tobacco products. The ordinance does not contain any exceptions to the ban.

After the ordinance was adopted, a referendum was brought to stop the implementation of the ordinance. Under the San Francisco Charter, a resident can require that the City Council place an ordinance on the ballot by, prior to the ordinance's effective date, gathering enough signatures (at least 10% of the number of votes cast for all candidates for mayor in the last preceding general municipal election for mayor) supporting the referendum. The Referendum Against the City and County of San Francisco's Ordinance Prohibiting the Sale of Flavored Tobacco Products, Including Menthol Cigarettes qualified for the June 2018 ballot. The referendum effectively placed the ordinance on the ballot for voter consideration so that voters could decide whether the ban on the sale of flavored tobacco products should become law. The referendum did not raise any legal challenges to the ordinance.

On June 5, 2018, 68% (164,844) of votes were in favor of the ordinance prohibiting local tobacco retailers from selling flavored tobacco products. The ban is now in effect, but the City of San Francisco has not yet commenced enforcement.

Summary of California Attorney General Opinion

In March 2016, the California Department of Public Health published a report, funded by the Center for Disease Control and written by California's deputy attorney general, discussing the legality of local bans of flavored tobacco products. The report, titled "Focus on Flavors," primarily discussed the federal Family Smoking Prevention and Tobacco Control Act ("FSPTCA") and three subsequently enacted flavored-tobacco ordinances that were challenged and upheld by courts. The report concludes that "no court, to date, has been required to consider the validity of a complete prohibition of sales and distribution of all types of [flavored] tobacco products [...]. There does not, however, appear to be a legal barrier to a state or local government enacting a complete sales prohibition on the sale of menthol cigarettes, flavored tobaccos products, and/or flavored electronic cigarettes."

The FSPTCA gave the Food and Drug Administration ("FDA") the authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and any other tobacco products that the FDA deems to be under its authority. See 21 U.S.C. § 387a(b). The FSPTCA expressly preserves the power of local governments to enact additional or more stringent regulations related to or prohibiting "the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products," which may be in addition to or more stringent than the requirements of the Act (the "Preservation Clause"). [21 U.S.C. § 387p(a)(1).] Local governments, however, are preempted from regulating in the areas of "tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products [e.g. nicotine gum and patches]," (the "Preemption Clause"). See 21 U.S.C. § 387p(a)(2)(A). The Preemption Clause is followed by an exception (the "Savings Clause"), which states that local regulation of the sale, distribution, or possession of tobacco products by individuals of any age is not preempted. See 21 U.S.C. § 387p(a)(2)(B). While the Preservation Clause and Savings Clause may at first glance appear to be redundant, the Savings Clause in fact allows local authorities to enact a regulation regarding the sale,

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distribution, or possession of tobacco products even if such a regulation can be said to relate to a product standard or other preempted area.

The report examined three different local ordinances that banned flavored tobacco products and that were upheld in court. The first case to examine a post-FSPTCA flavored tobacco ban is *U.S. Smokeless Tobacco Mfg. Co. LLC v. City of New York* (2d Cir. 2013) 708 F.3d 428. In that case, New York City prohibited the sale of all flavored tobacco products—except for menthol, mint, and tobacco-flavored products in all establishments besides “tobacco bars.” The plaintiffs argued that the ordinance, on its face regulated sales of tobacco products and was therefore a preempted product standard regulation because of the effect it would have on tobacco manufacturers. The court rejected this argument, drawing a distinction between a sales regulation that incentivizes manufacturers to create certain products, versus a regulation that would require a manufacturer to “alter the construction, components, ingredients, additives, constituents and properties of their products.” Furthermore, the court held that even if the ordinance did indirectly set a product standard, the FSPTCA’s Savings Clause in fact allows local governments to enact sales regulations relating to product standards. The plaintiffs countered by asserting that the Savings Clause does not save from preemption outright bans related to product standards, pointing out that while the Preservation Clause expressly allows “prohibitions,” the Savings Clause only mentions “requirements relating to the sale” of tobacco products. [ibid.] The court rejected this argument as well, reasoning that the ordinance, while severe, was not an outright ban because it allowed the sale of some flavors (menthol, tobacco) in some places (tobacco bars). The court therefore explicitly declined to opine on whether the plaintiffs’ interpretation of the Savings Clause was correct.

Months after the Second Circuit upheld New York City’s ordinance, the First Circuit upheld a very similar ordinance enacted by Providence, Rhode Island. In *Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence, R.I.* (1st Cir. 2013) 731 F.3d 71, Providence adopted an ordinance prohibiting all retailers besides “tobacco bars” from selling flavored tobacco products, except for menthol, mint, and tobacco flavors. The plaintiffs in this case made many of the same preemption arguments as the Smokeless Tobacco plaintiffs, and the First Circuit agreed with the Second Circuit’s reasoning for rejecting those arguments in every instance.

In 2013, Chicago adopted an ordinance that banned the sale of all flavored tobacco products, including menthol, within 500 feet of a school—except at shops that derive over 80% of their revenue from tobacco products, i.e. “tobacco shops.” *Indeps. Gas & Serv. Stations Associations, Inc. v. City of Chicago* (N.D. Ill. 2015) 112 F. Supp. 3d 749, 751. The district court fully adopted the Second Circuit’s reasoning in rejecting all of the Independents Gas plaintiffs’ preemption arguments.

The collective takeaway from these cases is that courts in three distinct jurisdictions have all subscribed to the same reasoning in holding that cities have the power to enact severe restrictions on the sale of flavored tobacco products—including, in one case, menthol-flavored products. While a court has not yet affirmed that cities may enact a comprehensive ban of flavored tobacco products, the FSTCPA itself states that a city may enact a regulation “prohibiting the sale [...] of tobacco products [to] individuals of any age.” 21 U.S.C. § 387p(a)(1).

Summary of Outreach Activity to Tobacco Retailers

The policy was initially discussed at the November 30, 2017, City Council Health and Safety Commission Liaison meeting. Several groups, primarily representatives from the

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tobacco industry outside of Beverly Hills, expressed opposition to any policy that would prohibit the sale of flavored tobacco products.

The policy was additionally discussed at two Health and Safety Commission meetings on January 22, 2018 and on February 26, 2018. At these two meetings, several residents and local Beverly Hills High School students attended and expressed support for a policy that would prohibit the sale of flavored tobacco products. One local business owner attended and expressed opposition. Staff notified existing City-permitted tobacco retailers of public meetings to consider policies restricting the sale of flavored tobacco products. For the January 22, 2018 Commission Regular Meeting, this included outreach by telephone and email. For the February 26, 2018 Commission Regular Meeting, this included outreach by email and post-office mail. For this August 7, 2018 Study Session Meeting, Staff provided outreach by email and post-office mail. Staff has additionally updated the website to provide updates of the ongoing policy discussions.

Tobacco retailers have indicated that if a ban on flavored products were to go into effect, that the City should allow for an implementation period in order to exhaust existing stock reduce any financial strains on business owners.

Key Details of the Proposed Ordinance

The proposed ordinance includes five modifications to Article 21 of Chapter 2 of Title 4 of the Beverly Hills Municipal Code. The proposed ordinance:

1. Adds to the definition of 'Tobacco Product';
2. Defines 'Characterizing Flavor', **which includes menthol**;
3. Defines 'Flavored Tobacco Product';
4. States that it shall be unlawful for any Tobacco Retailer to sell or offer for sale any Flavored Tobacco Product; and
5. Establishes a timeline of three months before the City shall enforce violations of the ordinance.

Typically, ordinances go into effect 31 days after adoption by City Council. After Health and Safety Commission deliberation, the ordinance includes a three-month implementation period after the effective date of the ordinance. This allows time for the City to notify tobacco retailers in Beverly Hills as well as time for tobacco retailers to sell their existing inventory of flavored tobacco products and comply with the ban. Tobacco retailers have indicated that they could face a financial strain if an ordinance were to go into effect immediately, especially since the restrictions apply to menthol cigarettes that are more commonly sold. If City Council were to proceed with adoption of the ordinance as presented, the implementation timeline would be as follows.

- August 7, 2018: First Reading of Ordinance
- August 21, 2018: Second Reading
- September 21, 2018: Ordinance Takes Effect
- December 21, 2018: Enforcement Takes Effect

Enforcement

BHMC 4-2-2115 already sets forth the enforcement provisions of the existing City's Tobacco and Electronic Cigarette Retailer Permitting Regulations. The proposed ordinance would be subject to these same enforcement provisions. Additionally, the Municipal Code includes a provision for compliance monitoring that allows a "youth decoy" to participate in compliance checks supervised by a peace officer or code

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enforcement official of the City. On an annual basis, the Police Department conducts sting operations with a youth decoy to monitor compliance.

The City intends to continue in this manner with already established enforcement mechanisms. This includes escalating fines civil penalties. A first violation is \$250. A second violation within a five-year period is \$750 and suspends the retailer permit for 90 days. A third violation within a five-year period is \$1,000 and revokes the permit.

FISCAL IMPACT

Costs associated with the implementation of the ordinance would include outreach and enforcement. Outreach is expected to include the dissemination of notices to existing tobacco retailers and development of an informational flyer. Because of the small number of tobacco retailers in the City, Staff does not anticipate significant costs beyond already budgeted expenditures. There is currently no request for additional funding or staffing. Staff will evaluate impacts on Code Enforcement and the Police Department as the proposed regulations go into effect and return to City Council with an update if additional resources are needed.

The City has received Proposition 56 grant funding through the California Department of Justice in the amount of \$305,810. A portion of these funds can be used over a two-year period for tobacco and anti-smoking program outreach, education, and enforcement purposes. On June 19, 2018, City Council approved a Memorandum of Understanding with the Department of Justice related to this grant program. In addition to assisting the City with outreach and enforcement of this particular proposed ordinance the grant funding will be use to:

1. Develop and implement a comprehensive no-smoking awareness campaign to increase compliance through outreach and education;
2. Develop and implement a comprehensive no-smoking signage program by installing up to 100 signs at sidewalks, alleyways, parks, and other municipal facilities; and
3. Expand the City's existing Ambassador Program to include one (1) Ambassador fully dedicated to soft enforcement and outreach of City tobacco and no-smoking restriction.

In addition to receiving grant funding, the City provides grant funding to the Cedars-Sinai Medical Care Foundation to offer free one-on-one smoking cessation counseling with a clinical pharmacist. This is open to all Beverly Hills residents and employees.

RECOMMENDATION

On November 30, 2017, the City Council Health and Safety Commission Liaisons, consisting of Mayor Gold and Councilmember Bosse, met with the County Health Department to discuss the dangers of tobacco products and the possibility of restricting their sale in Beverly Hills. The Liaisons requested the Health and Safety Commission to study the topic, seek public input, and return to the full City Council for discussion.

At the February 26, 2018 Health and Safety Commission Regular Meeting, the Commission voted (5-0) in support of a draft ordinance that would prohibit the sale of flavored tobacco products, including menthol cigarettes.

Given these considerations, Staff recommends City Council adoption of the ordinance as presented and is seeking City Council input and direction.

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The following options are available for consideration.

- (1) City Council supports the regulations as presented: The proposed ordinance has been placed on this evening's (August 7, 2018) Formal Session Consent Agenda for City Council. Once adopted, Staff would notify existing tobacco retailers and monitor the implementation.
- (2) City Council supports the regulations with modifications: If City Council directs that Staff modify the proposed ordinance as a result of Study Session discussions, the proposed ordinance will be modified accordingly and introduced on a Formal Session Consent Agenda at a later date.
- (3) City Council does not support the ordinance: City Council may direct Staff not to proceed with further development of the policy or direct Staff consider other options.

Pamela Mottice Muller 
Approved By