



CITY OF GLENDALE, CALIFORNIA REPORT TO THE SPECIAL CITY COUNCIL

AGENDA ITEM

Consideration of Ordinance to Ban Sale of Flavored Tobacco Products in the City of Glendale.

1. Ordinance for Introduction Amending Section 5.94.020 and 5.94.150, and Adding Section 5.94.160 Related to Banning the Sale of Flavored Tobacco Products

COUNCIL ACTION

Item Type: Action

Approved for April 20, 2021 **calendar**

ADMINISTRATIVE ACTION

Submitted by:

Philip S. Lanzafame, Director of Community Development

Prepared by:

Ani Garibyan, Planning Associate

Reviewed by:

Michele Flynn, Director of Finance

Michael J. Garcia, City Attorney

Approved by:

Roubik R. Golanian, P.E., City Manager

RECOMMENDATION

Staff recommends that Council introduce an ordinance to ban the sale of flavored tobacco products.

BACKGROUND/ANALYSIS

At the October 1, 2019 Glendale City Council Meeting, the Council brought forth the concern regarding flavored electronic tobacco products, specifically on how these products entice youth to begin vaping. Council also discussed the multiple deaths that are believed to be linked to vaping, and how local cities are considering banning flavored vaping products. Council asked staff to conduct further research and produce recommendations.

At the January 21, 2020 City Council meeting, based on the report provided by Community Development, City Council unanimously moved to direct staff to return with a draft ordinance to ban the sale of flavored electronic smoking products.

On August 28, 2020, California State Senate Bill 793 Flavored Tobacco Products was signed into law to take effect January 1, 2021, prohibiting the sale of flavored tobacco products or tobacco product flavored enhancers. This does not apply to flavored hookah tobacco products, premium cigars or loose leaf tobacco. As a result, Council directed staff to postpone bringing forward the proposed ordinance to avoid redundancy or conflict with State laws. This law has since been postponed due to a referendum brought forward by the tobacco industry and will be reintroduced on the November 2022 election ballot. As a result, the item is returning to City Council for consideration of independent action. Action taken regarding this item will not conflict with future legislation.

At the February, 16, 2021 meeting, City Council asked staff to draft an ordinance that would amend sections 5.94.020 and 5.94.150 and add section 5.94.160 to the Glendale Municipal Code, 1995, expanding the proposed ban on the sale of flavored electronic smoking products to include the sale of combustible, flavored tobacco products including menthol, but excluding traditional hookah and premium cigars.

Background

Electronic smoking devices, also known as e-cigarettes, are electric or battery-operated devices that people use to inhale an aerosol or vapor, using heated liquid or cartridges. These cartridges contain nicotine, flavors and other chemicals. Traditional cigarettes contain tobacco, whereas electronic smoking devices and products do not. Yet both still contain other similar chemicals that can cause potential health issues.

The City of Glendale's Municipal Codes 9.10.020 and 30.10.070, already prohibit the dispensing, cultivating, processing, and delivering/distributing marijuana or THC products. This would include any marijuana or THC based vaping product. As such, there is no recommended action related to vaping products containing THC in the draft ordinance.

Other Jurisdiction and Agency's Actions

In 2016, the Food and Drug Administration (FDA) adopted restrictions and provisions on manufacturers and retailers. As of August 8, 2016, it became illegal to sell electric smoking devices and products to people younger than 18 years of age. Retailers are also responsible for requiring age verification from those under the age of 27. Additionally, the FDA has banned the distribution of free tobacco product samples as well as sales in vending machines, except for in strictly adult-only facilities.

In November, 2019, the State of California sued Juul Labs, the largest and most popular manufacturer of electric smoking devices and products, for its marketing and sales practices, which included an inadequate online age verification system, as well as storing emails of minors for continued marketing to teens. The Glendale Unified School District also filed a lawsuit against Juul Labs, on November 26th. Glendale Unified Superintendent Dr. Vivian Ekchian said that the lawsuit was, "to ensure the company cannot continue to influence young consumers, and to recover costs and expenses spent battling the e-cigarette epidemic among students at Glendale Unified School District." The litigation is still in its infancy due to its complexity involving multiple parties.

On December 20, 2019, legislation was signed, raising the federal minimum age of sale of tobacco products from 18 to 21 years (California had already raised the age to 21 in 2016). As of January 2, 2020, the FDA is temporarily banning most fruit and mint flavored electric smoking products, excluding tobacco and menthol flavored products. Companies that do not stop the distribution of these products will risk enforcement action. The ban will stay in place until companies can prove to the FDA that their products are safe to use.

Following the federal ban of certain flavored products (discussed later in the report), the State legislature introduced Senate Bill 793 on January 6, 2020. The bi-partisan bill, that is far stricter than the current federal ban, would prohibit flavored electronic smoking products not covered by the federal ban. This would include menthol-flavored cartridges and refillable, tank-based vaping systems that can be filled with flavored chemicals. The ban would also prohibit flavors for traditional combustible cigarettes and cigars, as well as chewing tobacco and hookah pipes. The measure does not include products sold online or by out-of-state businesses. On August 28, 2020, Senate Bill 793 Flavored Tobacco Products was signed into law to take effect January 1, 2021, prohibiting the

sale of flavored tobacco products or tobacco product flavored enhancers. This does not apply to flavored hookah tobacco products, premium cigars or loose leaf tobacco. As a result, Council directed staff to postpone bringing forward the proposed ordinance to avoid redundancy or conflict with State laws. This State law has since been postponed due to a referendum brought forward by the tobacco-industry-funded California Coalition for Fairness group. California voters will make the final decision during the November 2022 General Elections.

Regionally, policy action regarding the sales and use of these products include the cities of Burbank, Pasadena, Los Angeles, Beverly Hills, Long Beach and West Hollywood and Los Angeles County. In October, 2019, the City of Burbank passed and adopted an amendment to the Burbank Municipal Code, prohibiting the sale of flavored tobacco products excluding hookah. That same month, LA County's Board of Supervisors voted unanimously to adopt an ordinance which took effect 30 days later, banning flavored tobacco and e-cigarettes/vaping products in the county's unincorporated areas. As of January, 2021, the City of Beverly Hills prohibited the sale of flavored tobacco products including e-cigarettes, except for cigars sold at three cigar lounges.

On October 8, 2019, Los Angeles City Councilmember Paul Koretz introduced a motion requesting the City Attorney's Office draft an ordinance that would prohibit the sale of all e-cigarettes/vaping devices until these devices are approved by the FDA and deemed safe. In September prior to the motion, the City Attorney's Office produced a policy options report: *Policy Options for Banning or Restricting the Sale of Flavored Tobacco Products to Youth*, proposing strategies to prohibiting or restricting the sale of flavored tobacco to youth. Since the report and motion, the City of Los Angeles has formed a special committee to conduct further research and to understand which policy options would be best for the City.

The City of Los Angeles has not yet passed a comprehensive flavored tobacco ordinance. On January 12, 2021, there was a motion to refer back to the Health, Education, Neighborhoods, Parks, Arts and River Committee, for a proposed strategy on restricting the sale of flavored e-cigarettes.

The cities of Pasadena, Long Beach and West Hollywood are drafting legislation for Council consideration to ban of the sale of flavored tobacco and e-cigarettes/vaping products.

Concerns from Vaping Community and Electronic Smoking Product Retailers

The vaping community that uses electronic smoking devices and products has been expressing their concerns regarding city and state bans. Vaping products have helped smokers quit traditional cigarettes and these constituents are worried that a ban on these products would result in a return to traditional cigarettes. Some have indicated

that flavored products are what attracted them to vaping and has helped them quit smoking.

Electronic smoking product retailers have also argued that these types of bans can create more sales in counterfeit products in the black market that are not regulated, which can cause further health issues and death. They also argued that authorities should put a limit on the amount of nicotine used in electronic smoking products instead of banning them altogether.

According to the tobacco-industry funded California Coalition for Fairness group, the ban on the sale of flavored e-cigarettes/vaping products would harm the reduction goals of tobacco dependency and will hurt small businesses. According to Matthew Myers, president of the Campaign for Tobacco-Free Kids, “Big Tobacco is going to use every deceptive trick in their playbook just so they can continue to market and profit from hooking young kids on their candy-flavored products.”

Draft Ordinance

Per the February 16, 2021 City Council meeting, Council directed staff to amend Chapter 5.94 of the Glendale Municipal Code to ban the sale of any combustible and electronic or battery-powered smoking product which imparts a characterizing flavor (flavored tobacco products). These products include but are not limited to flavored liquids, cartridges, and other compounds used in electronic smoking devices, as well as flavored combustible products. Banned electronic smoking devices include electronic hookah, but banned flavored tobacco products do not include traditional hookah or premium cigars with a wholesale price of no less than twelve dollars.

The ordinance for introduction will amend Sections 5.94.020 and 5.94.150 and add Section 5.94.160 to the Glendale Municipal Code, 1995, banning the sale of flavored tobacco products. Flavors include, but are not limited to, menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

The ordinance will take effect and be enforceable 30 days after the date of its passage. Enforcement will be undertaken by the Glendale police department, Neighborhood Services (code enforcement), and permit investigators. If the referendum to SB-793 is not successful and the bill goes into effect in November of 2022, any local regulations not in conflict with state legislation will remain in place.

Environment Review

Staff conducted environmental review of the ordinance and determined the ordinance is not subject to the California Environmental Quality Act (“CEQA”) and, therefore, an

environmental review is not required under Section 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment]; Section 15060(c)(3) [the activity is not a project as defined in Section 15378]; and Section 15061(b)(3)[no possibility exists that the activity in question may have a significant effect on the environment] of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the ordinance: (1) has no potential for resulting in physical change to the environment, directly or indirectly; and (2) prevents changes in the environment.

FISCAL IMPACT

There is no fiscal impact, other than a minor potential loss of sales tax revenue from the lack of sales of flavored tobacco products.

ALTERNATIVES

Alternative 1: Introduce the ordinance to ban the sale of flavored tobacco products.

Alternative 2: Direct staff to amend the ordinance to ban the sale of flavored tobacco products.

Alternative 3: The Council may consider any other alternative not presented by staff.

CAMPAIGN DISCLOSURE

There are no campaign disclosures.

EXHIBITS

None.