



CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

MAY 22, 2014

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CITY OF HAYWARD
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AGENDA
HAYWARD PLANNING COMMISSION
THURSDAY, MAY 22, 2014 , AT 7:00 PM
COUNCIL CHAMBERS

MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:
 Obtain a speaker’s identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

ROLL CALL

SALUTE TO FLAG

PUBLIC COMMENT: (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action).

ACTION ITEMS: (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item).

PUBLIC HEARING: For agenda item No. 1, the Planning Commission may make a recommendation to the City Council.

1. Establishment of Zoning Regulations related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City's Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes that the Project will not have a Significant Negative Impact on the Environment; Applicant: City of Hayward

[Staff Report](#)
[Attachment I - Proposed Tobacco Retail Sales Regulations](#)



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

[Attachment II - Proposed Revisions to General Commercial \(CG\) Zoning District Regulations](#)

[Attachment III - Proposed Revisions to the Smoking Pollution Control Ordinance Definitions \(HMC 5-6.02\)](#)

[Attachment IV - Proposed Revisions to the Master Fee Schedule](#)

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[Attachment XI - Feb 18, 2014 CC Agenda Report and Minutes](#)

COMMISSION REPORTS:

2. Oral Report on Planning and Zoning Matters
3. Commissioners' Announcements, Referrals

APPROVAL OF MINUTES

4. None

ADJOURNMENT

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

NOTE: Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

DATE: May 22, 2014

TO: Planning Commission

FROM: Linda Ajello, AICP, Associate Planner

SUBJECT: Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City's Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward.

RECOMMENDATION

Staff recommends that the Planning Commission, making the required findings (Attachment V), recommends that the City Council adopts the attached Negative Declaration/Initial Study (Attachment VII) and approves the proposed Tobacco Retail Sales Regulations (Attachment I), revisions to the General Commercial (CG) Zoning District regulations related to land uses (Attachment II), revisions to the Smoking Pollution Control Ordinance (Attachment III) and related new fees (Attachment IV).

SUMMARY

In response to City Council direction and concerns with the negative health consequences of tobacco use among youth, due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, staff is recommending new regulations pertaining to the retail sales of tobacco and tobacco-related products. Given the large number of establishments in Hayward that sell tobacco (146 tobacco retailers and 8 electronic cigarette retailers), staff is recommending new regulations that would limit new tobacco retail sales establishments (with an exception for stores over 10,000 square feet that dedicate no more than 5% of their square footage to tobacco products) to the General Commercial (CG) Zoning District, subject to approval of a Conditional Use Permit (CUP), and impose a 500 foot separation requirement from schools, parks and other sensitive receptors. Additionally, all new and existing retailers would be required to obtain a Tobacco Retailers License (TRL) (and pay an associated annual fee of approximately \$400), which would establish some operational standards, compliance inspections and enforcement provisions, and provide a funding source to help pay for inspections.

BACKGROUND

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco and tobacco-related products in recent years, and with the introduction of a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth.

History of Proposed Regulations - In late 2011/early 2012, staff received direction from City Council to develop regulations pertaining to the sales of tobacco and tobacco-related products. In conjunction with the Alameda County Health Department and the Hayward Police Department, staff reviewed available studies and draft ordinances. Sources of information utilized in the development of the proposed regulations included several other jurisdictions in Alameda County and northern California, the American Lung Association, Change Lab Solutions (formerly TALC) and the Center for Disease Control (CDC). In addition, staff used the results of decoy operations performed by the Hayward Police Department.

May 31, 2012 Planning Commission Meeting - Staff developed draft regulations and presented them to the Planning Commission at a work session on May 31, 2012 for consideration. Overall, the Planning Commission was supportive of the proposed regulations, but after lengthy discussion, the Commission felt that additional work was needed and directed staff to come back with regulations that would more effectively prevent sales of tobacco and tobacco-related products to youth (see staff report and minutes, Attachment VII).

Community Meeting - On October 28, 2013, a Community Meeting was held and all existing tobacco and electronic cigarette retailers doing business in Hayward were invited. The purpose of the meeting was to inform the existing tobacco retailers of the upcoming Tobacco Retail Sales Regulations and to gather feedback, comments and concerns. Twenty (20) people attended the meeting, including local tobacco and electronic cigarette retailers and youth advocates from the Castro Valley Community Action Network (CV CAN) and the Hayward Coalition for Healthy Youth (HCHY). Most attendees expressed support for new regulations.

Work Sessions - On November 21, 2013 and December 17, 2013, work sessions were held with the Planning Commission and City Council, respectively. At both work sessions, several members of the public spoke in favor of the proposed tobacco regulations (see Attachments VIII and IX). Speakers included a Downtown business owner, members and student advocates from Hayward Coalition for Healthy Youth (HCHY), the American Lung Association, and the Alameda County Department of Environmental Health. Overall, both the Planning Commission and City Council expressed support for the establishment of tobacco regulations and were supportive of a moratorium to allow staff more time to research the issues and develop regulations.

Moratorium - In order to allow staff additional time to research and develop tobacco regulations for the City, on January 14, 2014, the City Council adopted an urgency ordinance to place a 45-day moratorium on the issuance of business licenses or building permits for any new

small and large format tobacco retailers (see Attachment X). The moratorium was extended an additional ten (10) months and fifteen (15) days at the February 18, 2014 City Council meeting (see Attachment XI).

Pending Legislation - The State Assembly is currently considering Senate Bill (SB) 648 and Assembly Bill (AB) 1500. SB 648, which was introduced by Sen. Ellen Corbett, D-San Leandro, would extend restrictions and prohibitions against smoking cigarettes and other tobacco products, to include electronic cigarettes. The California Senate voted 21-10 in favor; the bill awaits hearing by the California Assembly, possibly later this year. AB 1500 was introduced by Assembly Member Dickenson and, as introduced, would prohibit any person engaged in the business of selling or distributing cigarettes, tobacco products or e-cigarettes, to ship or cause to be shipped any cigarettes, tobacco products or e-cigarettes to any person in this state other than specified businesses. The bill was scheduled to go to Committee on May 7, 2014, but the Committee hearing was cancelled at the request of the bill sponsor.

Food and Drug Administration (FDA) Ruling - On April 24, 2014, the FDA released a proposed rule to expand its tobacco authority to cover products that meet the statutory definition of a tobacco product, including currently unregulated marketed products, such as electronic cigarettes (e-cigarettes), cigars, pipe tobacco, nicotine gels, waterpipe (or hookah) tobacco, and dissolvables. Under the proposed rule, the FDA would regulate said products in the same manner as traditional tobacco products, including, but not limited to, requiring product registration with the FDA and reporting of product and ingredient listing; allowing marketing of new tobacco products only after FDA review; only making direct and implied claims of reduced risk if the FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as a whole; and prohibiting distribution of free samples. Additional provisions include minimum age and identification restrictions to prevent sales to underage youth; requirements to include health warnings; and prohibition of vending machine sales, unless in a facility that never admits youth. The proposed rule is currently under a 75-day public comment period.

DISCUSSION

Overview of Proposed Tobacco Retail Sales Regulations (Attachment I) – As proposed, the Tobacco Retail Sales Regulations will be codified at Section 10-1.2780 et seq. of the Zoning Ordinance. The stated specific purpose of the regulations is “to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.”

The proposed tobacco retail sales regulations require that any new tobacco retail sales establishment that is either less than 10,000 square feet or larger than 10,000 square feet with more than 5% of its retail floor space dedicated to tobacco products be limited to the General Commercial Zoning District, not be located within 500 feet of schools, parks and other sensitive receptors, and be subject to approval of a Conditional Use Permit (CUP). Additionally, all *new* and *existing* Tobacco Retail Sales Establishments will be required to obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for

Tobacco Retail Sales Establishments. If adopted, the TRL requirement will go into effect next fiscal year. Staff would mail all existing establishments a notice of the adoption of the regulations and the procedures and timeframe in which they must obtain their TRL.

The General Commercial (CG) district was determined to be most suitable for tobacco establishments because it provides regional-serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas (see proposed ordinance, Attachment II). By requiring a CUP for new establishments (other than certain situations as noted below), the City could evaluate proposed tobacco sale locations in a public hearing format to ensure they are compatible with the surrounding properties. The intent of a separation requirement is to keep said establishments away from sensitive receptors, such as schools, parks, libraries, playgrounds, recreation centers, day care centers and health care facilities (i.e., areas where children or people with medical issues are typically present), as well as to ensure that there is not an oversaturation of tobacco sales establishments in one area. There are currently one hundred and forty-six (146) tobacco retail sales establishments and eight (8) “vapor” or electronic cigarette retailers in the City, the majority of which are located in close proximity to schools and other sensitive receptors. The establishment of the separation requirement would prevent any new tobacco retailer from opening up within 500 feet from any existing establishment and any sensitive receptors.

Similar to the City’s regulations pertaining to the sale of alcohol, the proposed regulations would allow sale of tobacco products without need of a conditional use permit in retail stores having 10,000 square feet or more area in any zoning district where the primary retail use is allowed; however, no more than five (5) percent of such floor area could be devoted to the sale, display and storage of tobacco or tobacco-related products combined. This provision would allow larger grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning district in which those stores are allowed (see discussion below regarding potential impacts to businesses).

The recommended *Requirements and Operational Standards* provisions will create local provisions as well as reinforce state and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia. This includes posting prominently near the cash register or other point of sale the legal age to purchase such items and checking the identification of purchasers to ensure they are of legal age. The inclusion of state and federal laws in the local ordinance will allow the City to enforce them at a local level.

Tobacco Retailer License (TRL) - All tobacco retail sales establishments - including those that are existing and would be considered legal non-conforming uses, new establishments requiring a CUP, and shops that sell tobacco as a secondary use and do not require a CUP - would be required to obtain an annual Tobacco Retailer License from the City. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement provisions would give City staff the authority to issue administrative fines, fees, penalties and/or citations and/or abatement to violators of the provisions of the ordinance. The TRL will have an annual fee of \$400 that will serve to recover the costs for annual inspections and enforcement at the local level, including the continued operation of the Hayward Police Department’s Youth Decoy Program.

Definitions - Broad definitions have been developed to identify tobacco and tobacco-related products to comprehensively regulate the type of products that are allowed to be sold and the products that would be prohibited. Some of the key definitions are as follows:

“Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vapor cigarette or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

“Imitation Tobacco Product” means any edible non-tobacco product designed to resemble a tobacco product or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.

“Tobacco Retail Sales Establishment” or “Tobacco Retailer” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

“Tobacco Product” means any product that contains tobacco, is derived from tobacco, or contains synthetically produced nicotine and is intended for human consumption. “Tobacco Product” does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

“Tobacco Retailer License” means the license issued pursuant to Section 10-1.2785 that authorizes electronic smoking device or tobacco retail sales at a certain, fixed location and by a certain Tobacco Retailer. Mobile vendors of tobacco products and electronic smoking devices are prohibited.

Potential Impacts to Existing Businesses - Many of the existing establishments would become legal, non-conforming uses under the proposed regulations and would be allowed to continue to operate in accordance with the Section 10-1.2900 of the City’s Zoning Ordinance (Non-conforming Uses). Per those provisions, these retailers would be allowed to continue operation as a tobacco retail sales establishment, as long as the non-conforming use is not expanded or has not been discontinued for a period of six consecutive months or more, with the intent to abandon the use. Also, additional

development of any property on which a legal non-conforming use exists is required to have all new uses conform. Thus, non-conforming tobacco sales locations would cease operating over time.

Proposed Revisions to Smoking Pollution Control Ordinance - Minor amendments to the City's Smoking Pollution Control Ordinance are proposed in order to make it consistent with the proposed Tobacco Retail Sales regulations and to address the smoking of electronic cigarettes in the City (see Attachment III). The proposed amendments include revisions to the definitions of "smoking" and "tobacco products" and the addition of a definition for "smoke", to include electronic cigarettes and vapor produced from said devices. With the proposed revisions, it will be unlawful for anyone to use electronic cigarettes and smoking devices wherever smoking is prohibited.

Text Amendment Findings for Approval - In order for the Text Amendment to be approved, the following findings must be made:

A. *Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.*

The proposed Text Amendments will promote the public health, safety, convenience, and general welfare of the residents of Hayward by:

- a. amending the Zoning Ordinance to provide a definition for tobacco sales, to include the regulation of the sale of electronic cigarettes and other specified items;
- b. establishing performance and operational standards that would apply to all new and existing tobacco retail sales establishments that will help ensure such establishments are not operated in a manner that violates any local, state or federal laws and so as not to constitute a public nuisance;
- c. establishing local enforcement provisions for tobacco retail sales establishments found to be in violation of the regulations;
- d. prohibiting more tobacco retail sales establishments in areas of the City that are in close proximity to sensitive receptors and to existing tobacco retail sales establishments to prevent an overconcentration of such establishments in the City;
- e. establishing a Tobacco Retailers License (TRL) which all new and existing tobacco retail sales establishments will be required to obtain annually; and
- f. creating cost recovery mechanisms through the TRL fee, which will cover annual inspections by the Code Enforcement Division and for the Youth Decoy Program by the Hayward Police Department;

B. *The proposed change is in conformance with all applicable, officially adopted policies and plans.*

The proposed Text Amendments conform to City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the Text Amendments, as described in the preceding finding, are aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.

- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, over the last several years, the City of Hayward has established various policies to create a healthier Hayward. On May 20, 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code prohibiting the use of tobacco products in or around public places in the City of Hayward. On July 26, 2011, the City adopted a Resolution for the City of Hayward to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over 75 other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this text amendment would be consistent with the goals of making Hayward a healthier City.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. Any new tobacco retail sales establishments will be required to have adequate streets and facilities before operating, as currently required.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified. The Text Amendments will provide standards to help ensure tobacco retail sales establishments are operated in a manner that do not generate impacts to surrounding properties and neighborhoods. In addition, the proposed Text Amendments will provide cost-recovery mechanisms that currently do not exist, which will allow for greater oversight of such establishments by the Hayward Code Enforcement Department.

Environmental Impact Analysis – Staff prepared and circulated for public review and comment a Negative Declaration and Initial Study (Attachment VIII), in accordance with the California Environmental Quality Act (CEQA), which concludes the proposed text amendment and new fees would not generate significant environmental impacts.

ECONOMIC IMPACT

The adoption of tobacco retail sales regulations would provide more enforcement authority on the local level for problematic establishments and the ability to keep said establishments away from sensitive receptors, such as schools, parks, and community centers. There is expected to be positive economic benefits through an enhanced and attractive Downtown and business environment throughout the City; however, smaller new retail stores that rely on tobacco sales for a large percent of total sales would be discouraged from locating in Hayward, which may result in a decrease in sales tax revenue from tobacco sales for the City.

FISCAL IMPACT

Based on a fiscal impact analysis conducted by Code Enforcement Department staff, an annual TRL fee of \$400 has been proposed to help ensure cost recovery. The fee will recover costs pertaining to City staff, including the Police Department to continue the Youth Decoy Program and Code Enforcement, for enforcement, education, compliance inspections, and administrative costs associated with all new and existing tobacco retail sales establishments in Hayward. It is anticipated that future annual adjustments to fees may be needed in response to additional demands and costs that may arise after the implementation of the TRL.

PUBLIC CONTACT

Significant outreach has occurred over the last year for these proposed regulations, as described in the BACKGROUND section of this report. A community mailing, which included key points of the proposed amendments and notice of this hearing and the planned future City Council hearing, was sent in early May to all existing tobacco retailers in Hayward and various interested parties (Hayward Chamber of Commerce President Kim Huggett, Alameda County Health Department, the American Lung Association, Hayward Coalition for Healthy Youth (HCHY), etc.). Also, a notice of this hearing and future planned Council hearing was published in *The Daily Review* on May 10, 2014. Staff has not received specific comments regarding those notices as of the date of finalization of this report.

NEXT STEPS

Staff will incorporate input from the Planning Commission and forward the Commission's recommendation to the City Council for a public hearing scheduled for June 17, 2014.

Prepared by: Linda Ajello, AICP, Associate Planner

Recommended by: Sara Buizer, AICP, Interim Planning Manager

Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- | | |
|-----------------|--|
| Attachment I | Proposed Tobacco Retail Sales Regulations |
| Attachment II | Proposed Revisions to General Commercial (CG) Zoning District Regulations |
| Attachment III | Proposed Revisions to the Smoking Pollution Control Ordinance Definitions (HMC Section 5-6.02) |
| Attachment IV | Proposed Revisions to the Master Fee Schedule |
| Attachment V | Findings |
| Attachment VI | Negative Declaration/Initial Study |
| Attachment VII | Planning Commission Agenda Report and meeting minutes, May 31, 2012 |
| Attachment VIII | November 21, 2013 Planning Commission Agenda Work Session Agenda Report and Minutes |
| Attachment IX | December 17, 2013 City Council Work Session Agenda Report and Minutes |
| Attachment X | January 14, 2014 City Council Agenda Report and Minutes |
| Attachment XI | February 18, 2014 City Council Agenda Report and Minutes |

ORDINANCE NO.

ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE
HAYWARD MUNICIPAL CODE TO ADD REGULATIONS
RELATING TO TOBACCO RETAIL SALES ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS
FOLLOWS:

Section 1. Sections 10-1.2780 through 10-1.2797 of the Hayward Municipal Code, entitled
“Tobacco Retail Sales Establishments,” are hereby enacted to read as follows:

SECTION 10-1.2780 TOBACCO RETAIL SALES ESTABLISHMENTS

Sections:

Section 10-1.2780	Purpose
Section 10-1.2781	Applicability
Section 10-1.2782	Definitions
Section 10-1.2783	Requirements and Operational Standards for Tobacco Retail Sales Establishments
Section 10-1.2784	Large-Format Tobacco Retailers
Section 10-1.2785	Tobacco Retailer License (TRL)
Section 10-1.2786	Conditional Use Permit for New Tobacco Retail Sales Establishments
Section 10-1.2787	Posting of Conditions of Approval
Section 10-1.2788	Findings
Section 10-1.2789	Application for Conditional Use Permit
Section 10-1.2790	Prohibited Uses
Section 10-1.2791	Existing Tobacco Retail Sales Establishments
Section 10-1.2792	Liability for Expenses
Section 10-1.2793	Inspection and Right of Entry
Section 10-1.2794	Public Nuisance
Section 10-1.2795	Cumulative Remedies
Section 10-1.2796	Revocation of Tobacco Retailer Licenses and Conditional Use Permits; Appeals
Section 10-1.2797	Annual Report

SECTION 10-1.2780 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Tobacco Retail Sales Establishments regulations is to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.

SECTION 10-1.2781 APPLICABILITY.

These regulations apply to all Tobacco Retail Sales Establishments, including the operation of existing businesses, new businesses, relocating businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, electronic smoking devices or tobacco paraphernalia, as defined herein. Tobacco Retailers legally existing prior to the adoption of these regulations may exist without the approval of a conditional use permit but must otherwise comply with all standards set forth in these regulations.

SECTION 10-1.2782 DEFINITIONS.

For purposes of these regulations, certain words and terms have the following meaning:

- a. "Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."
- b. "Characterizing Flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- c. "Distinguishable" means perceivable by an ordinary consumer by either the sense of smell or taste.
- d. "Drug Paraphernalia" is defined in California Health & Safety Code section 11014.5, as that section may be amended from time to time.
- e. "Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "Electronic Smoking Device" includes any such device, whether

manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vapor cigarette or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

- f. “Flavored Tobacco Product” means any tobacco product (other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor. For purposes of this definition, “constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- g. “Hookah bar” or “hookah lounge” means any facility, building, structure or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.
- h. “Imitation Tobacco Product” means any edible non-tobacco product designed to resemble a tobacco product or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.
- i. “Labeling” means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
- j. “Licensee” means the holder of a valid, City-issued Tobacco Retailer License.
- k. “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- l. “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.
- m. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- n. “Proprietor” means a person with an ownership or managerial interest in a Tobacco Retail Sales Establishment. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a Tobacco Retail Sales Establishment, other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day

operations of a Tobacco Retail Sales Establishment.

- o. “Residential District” is any area within City limits that is designated in the City’s zoning ordinance as one of the following districts: RS; RNP; RM; RH; RO; MH; SMU; any residential Planned Development; T3, T4, T4-1, T4-2 or T-5 (in the City’s Form-Based Code zoning districts); or any subsequently created zoning district whose primary use is residential in character.
- p. “Self-Service Display” means the open display of tobacco products, electronic smoking devices or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- q. “Tobacco Retail Sales Establishment” or “Tobacco Retailer” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.
- r. “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.
- s. Tobacco Product” means any product that contains tobacco, is derived from tobacco, or contains synthetically produced nicotine and is intended for human consumption. “Tobacco Product” does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
- t. “Tobacco Retailer License” means the license issued pursuant to Section 10-1.2785 that authorizes electronic smoking device or tobacco retail sales at a certain, fixed location and by a certain Tobacco Retailer. Mobile vendors of tobacco products and electronic smoking devices are prohibited.
- u. “Vapor bar” or “vapor lounge” (also referred to as “smoking device bar” or “electronic smoking device lounge”) means any facility, building, structure or location where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment.

SECTION – 10-1.2783 REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All new and existing Tobacco Retail Sales Establishments shall abide by all of the following requirements and operational standards:
 - 1. All Tobacco Retail Sales Establishments shall comply with local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia, including posting prominently near the cash register or other point of sale the

legal age to purchase such items, and checking the identification of purchasers to ensure they are of legal age.

2. All new Tobacco Retail Sales Establishments shall obtain a conditional use permit pursuant to Section 10-1.3200 prior to operation, unless exempt as provided hereinafter, and a Tobacco Retailer License. It shall be unlawful for any person to operate as a Tobacco Retail Sales Establishment without first obtaining a conditional use permit if one is required and a Tobacco Retailer License.
3. All Tobacco Retail Sales Establishments shall display their Tobacco Retailer License to sell tobacco products and their annual inspection certificate in a visible, prominent location.
4. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices or tobacco paraphernalia.
5. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment or any of the Tobacco Retail Sales Establishment's agents or employees to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code section 11364.7, except that conduct authorized pursuant to the state Medical Marijuana Program (California Health and Safety Code sections 11362.7 *et seq.*) shall not be a violation of these regulations.
6. No Tobacco Retail Sales Establishment shall sell or transfer tobacco products or electronic smoking devices to any person who appears to be under twenty-seven (27) years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state and federal law to purchase and possess tobacco products or electronic smoking devices.
7. No person who is younger than the minimum age established by state or federal law for the purchase or possession of tobacco products or electronic smoking devices shall engage in the sale of such products.
8. Tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia shall be secured so that only store employees have immediate access to these items. Self-service displays of tobacco products, electronic smoking devices, and tobacco products are prohibited.
9. All Tobacco Retail Sales Establishments that do not sell imitation tobacco products or flavored tobacco products as of the effective date of these regulations are prohibited from selling any imitation tobacco product or flavored tobacco product. The burden of proof to establish that sales of imitation tobacco products and/or flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.

10. No Tobacco Retail Sales Establishment shall sell tobacco products, tobacco paraphernalia, or electronic smoking devices at a mobile location. For example, sales of tobacco products, tobacco paraphernalia, or electronic smoking devices on foot or from vehicles are prohibited.
 11. Mobile vendors of tobacco products and electronic smoking devices are prohibited.
- b. Notwithstanding any other provision of law, it shall be a violation of these regulations for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:
1. Any single cigar, whether or not packaged for individual sale;
 2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;
 3. Any package of cigars containing fewer than five (5) cigars.
- This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars.
- c. With the exception of Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of this Article, it shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product within a 500 foot radius of any private or public kindergarten, elementary, middle, junior high, or high school. The burden of proof to establish that sales of flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.
- d. A tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:
1. Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used explicitly or implicitly to communicate information about the flavor, taste, or aroma of a tobacco product;
or
 2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.
- e. Every Tobacco Retail Sales Establishment shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for

sale by the establishment separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale and may be disposed of upon the sale of the entire contents of such package.

- f. Each application for a conditional use permit to operate a Tobacco Retail Sales Establishment shall include a plan for demonstrating the means by which the applicant will comply with the operating standards outlined in this section.
- g. Compliance with these regulations shall be enforced by the City’s Planning Director, in conjunction with the City’s Code Enforcement Division and the Hayward Police Department. The Code Enforcement Supervisor or his/her designee shall use reasonable efforts to conduct a compliance check visit to each Tobacco Retail Sales Establishment at least once per twelve (12) month period to determine if the Tobacco Retail Sales Establishment is in compliance with these regulations. Nothing in this section shall create a right of action in any Tobacco Retail Sales Establishment or other person against the City or its agents in conducting these annual inspections.

SECTION 10-1.2784 LARGE-FORMAT TOBACCO RETAILERS.

Retail establishments, such as grocery stores, big-box stores, pharmacies, etc., that have 10,000 square feet or more of floor area and that devote not more than five (5%) percent of such floor area to the sale, display, sale and storage of tobacco products, electronic smoking devices or tobacco paraphernalia (“Large-Format Tobacco Retailers”) are permitted in any zoning district in which retail sales are allowed, without the need to obtain a conditional use permit for tobacco sales. Large-Format Tobacco Retailers are required to obtain a Tobacco Retailer License as set forth in Section 10-1.2785 and are subject to compliance with all requirements and operational standards as set forth in these regulations.

SECTION 10-1.2785 TOBACCO RETAILER LICENSE (TRL).

All new and existing Tobacco Retail Sales Establishments must obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 above.

- a. Tobacco Retailer License Application Procedure:
 - 1. Application for a Tobacco Retailer License shall be submitted in the name of each proprietor proposing to conduct tobacco retail sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retail sales, including those laws affecting the issuance of a Tobacco Retailer License. No proprietor may rely on the issuance of a TRL as a determination by the City that the proprietor has complied with all laws applicable to tobacco retail sales. A TRL issued contrary to these regulations, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 10-1.2796 herein. Nothing in these regulations shall be construed to vest in any person obtaining and maintaining a TRL any status or right to act as a Tobacco Retailer in contravention of any

provision of law.

2. All applications for a TRL shall be submitted on a form supplied by the City and shall contain the following information:
 - i. The name, address, and telephone number of each proprietor of the business seeking a TRL;
 - ii. The business name, address, e-mail, and telephone number of the single fixed location for which a TRL is sought;
 - iii. A single name and mailing address authorized by each proprietor to receive all communications and notices (the “authorized address”). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (b)(2);
 - iv. Proof that the location for which a TRL is sought has been issued a valid state tobacco retailer’s license by the California Board of Equalization;
 - v. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, these regulations and, if so, the dates and locations of all such violations within the previous five years;
 - vi. A statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the TRL is sought; and
 - vii. Such other information as the Planning Director deems necessary for the administration or enforcement of these regulations as specified on the application form required by this section, including any proposed signage or artwork for the business premises to ensure that the signage/artwork does not encourage youth smoking.
3. All Tobacco Retail Sales Establishments shall inform the Planning Director or his/her designee in writing of any change in the information submitted on an application for a TRL within ten business days of a change.
4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to any applicable exemptions.

b. Issuance of TRL:

Upon the receipt of a complete application for a TRL and the license fee required hereunder, the Planning Director or his/her designee shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete, inaccurate, false or otherwise fails to comply with Section 10-1.2785(a)(2) above. Intentionally supplying inaccurate or false

information shall be a violation of these regulations;

2. The application seeks authorization for tobacco retail sales at a location for which the issuance of a TRL is prohibited under these regulations, unless tobacco retail sales were being conducted at the proposed location prior to the effective date of these regulations and provided that such sales constitute a legal, nonconforming use;
3. The application seeks authorization for tobacco retail sales that is prohibited under these regulations (e.g., mobile vending) or that is unlawful pursuant to this Article, including without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law;
4. The location for which a TRL is sought lacks a valid state tobacco retailer's license by the California Board of Equalization; or
5. The applicant has been found in violation of three (3) or more of the Operational Standards listed in Section 10-1.2783 of these regulations within the last three years.

c. TRL Renewal and Expiration:

1. Term and Renewal of TRL. A TRL is invalid if the appropriate fee has not been timely paid in full or if the term of the TRL has expired. The term of a TRL is one year, commencing the first day of each calendar year.
2. Expiration of TRL. A TRL that is not timely renewed shall expire at the end of its term. To apply for reinstatement of a license that was not timely renewed, the proprietor must:
 - i. Submit the TRL fee, including any fees for late renewal, and application renewal form; and
 - ii. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product, electronic smoking device or tobacco paraphernalia after the TRL expiration date and before the TRL is renewed; and
 - iii. Has paid all outstanding fines and resolved any outstanding violations of these regulations, before seeking renewal of the license.

d. TRL Nontransferable:

A TRL may not be transferred from one person to another or from one location to another. A new TRL is required whenever a Tobacco Retail Sales Establishment has a change in proprietor(s).

e. TRL Conveys a Limited, Conditional Privilege:

Nothing in these regulations shall be construed to grant any person obtaining and maintaining a TRL any status or right other than the limited conditional privilege to act as a Tobacco

Retail Sales Establishment at the location in the City identified on the face of the license. Nothing in these regulations shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including but not limited to, any provision of the Hayward Municipal Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. ATRL does not make the Tobacco Retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

f. Fee For TRL:

The fees for the annual TRL shall be established by the City Council from time to time in the City’s Master Fee Schedule, and are payable at the time the establishment obtains or renews its business license. The fee shall be calculated so as to recover the cost of administration and enforcement of these regulations, including but not limited to, issuing a license, Tobacco Retailer inspections and compliance checks, documentation of violations and prosecution of violators. Annual fees shall not be pro-rated or refunded during the course of the year.

g. Compliance and Monitoring:

1. Compliance with these regulations shall be enforced by the Planning Director, in conjunction with the Code Enforcement Division and Hayward Police Department. The City Manager may designate any number of additional persons to monitor compliance with these regulations.
2. Compliance checks shall be conducted so as to allow the City to determine, at a minimum, if the Tobacco Retailer is in compliance with all laws regulating sales of tobacco products, electronic smoking devices, tobacco paraphernalia, and imitation tobacco products. City staff shall endeavor to perform compliance inspections at least annually on all Tobacco Retail Sales Establishments.
3. The City shall not enforce any law establishing a minimum age for tobacco product or electronic smoking device purchases or possession against a person who otherwise might be in violation of such law because of the person’s age (hereinafter “youth decoy”) if the potential violation occurs when:
 - i. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;
 - ii. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations; or
 - iii. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services or other governmental agency.

SECTION 10-1.2786 CONDITIONAL USE PERMIT FOR NEW TOBACCO RETAIL SALES ESTABLISHMENTS.

a. All new Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, electronic smoking devices or tobacco paraphernalia shall apply for and obtain a conditional use permit, in addition to a Tobacco Retailer License.

b. New Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, electronic smoking devices or tobacco paraphernalia are only allowed in the General Commercial (CG) Zoning District. In addition to obtaining a conditional use permit, new Tobacco Retail Sales Establishments shall be subject to the following separation requirements:

1. No new Tobacco Retail Sales Establishments shall be established or located within 500 feet from any existing residential district or use, park, school, church, museum, daycare center or public facilities serving children, or similar use as determined by the Planning Director, or within 500 feet of any other Tobacco Retail Sales Establishment.
2. The distances set forth above shall be measured as a radius from property line to property line without regard to intervening structures.
3. The applicant shall be required to submit a map, drawn to scale, showing how their proposed business location meets the aforementioned location requirements as part of the conditional use permit application.

SECTION 10-1.2787 POSTING OF CONDITIONS OF APPROVAL.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the Tobacco Retail Sales Establishment and posted in a place where it may readily be viewed by the general public.

SECTION 10-1.2788 FINDINGS.

In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration of Tobacco Retail Sales Establishments in the area. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2789 APPLICATION FOR CONDITIONAL USE PERMIT.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit for a new Tobacco Retail Sales Establishment shall set forth and include the following:

- a. A map showing that the proposed establishment meets all location and separation requirements as set forth in Section 10-1.2786; and
- b. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- c. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

SECTION 10-1.2790 PROHIBITED USES.

The following uses are prohibited in all zoning districts: Vapor bars or vapor lounges; smoking device bars or electronic smoking device lounges; and hookah bars or hookah lounges.

SECTION 10-1.2791 EXISTING TOBACCO RETAIL SALES ESTABLISHMENTS.

Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations shall be considered a legal non-conforming use and will be permitted to continue in operation as a Tobacco Retail Sales Establishment. In order to maintain its legal non-conforming status, each such Tobacco Retail Sales Establishment shall be required comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 and the Non-Conforming Use regulations set forth in Section 10-1.2900 et seq., and shall obtain an annual Tobacco Retailer License as set forth in Section 10-1.2785.

SEC. 10-1.2792 LIABILITY FOR EXPENSES.

Any person who is found to have violated the Tobacco Retail Sales Establishments regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2793 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Planning Director or his designees shall have the right to enter and inspect any Tobacco Retail Sales Establishment for the purpose of ensuring compliance with these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Tobacco Retail Sales Establishments regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the establishment, the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2794 PUBLIC NUISANCE.

It shall constitute a public nuisance for any person to operate a Tobacco Retail Sales Establishment in violation of these regulations.

SEC. 10-1.2795 CUMULATIVE REMEDIES.

Any person who violates any provision of the Tobacco Retail Sales Establishment regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code and/or abatement pursuant to Chapter 5, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Tobacco Retail Sales Establishments regulations shall be established by the City Council in the Master Fee Schedule.

SEC 10-1.2796 REVOCATION OF TOBACCO RETAILER LICENSES AND CONDITIONAL USE PERMITS; APPEALS.

- a. Any Tobacco Retail Sales Establishment that violates these regulations three (3) times within a three-year period shall be subject to revocation of its Tobacco Retail License and/or its conditional use permit.
- b. For Large-Format Tobacco Retail Sales Establishments, written notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in Chapter 1, Article 7 of this Code.
- c. For Tobacco Retail Sales Establishments that have a conditional use permit or that are legal nonconforming uses, a revocation hearing will be scheduled before the Planning Commission in accordance with the procedures set forth in Section 10-1.3260 of this Code. Appeals shall be governed by Section 10-1.2845 of this Code.
- d. The hearing officer, in the case of administrative action under 10-1.2796 subsection (a), or the Planning Commission, in the case of administrative action under 10-1.2796 subsection (b), has the authority to order a suspension of the Tobacco Retail Sales Establishment's TRL and/or conditional use permit in lieu of revocation.

SECTION 10-1.2797 ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the implementation of these provisions unless Council no longer requests such report.”

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2014, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTION 10-1.1000 ET SEQ., REGULATING THE CITY'S
GENERAL COMMERCIAL (CG) DISTRICT, TO IMPLEMENT
THE CITY'S TOBACCO RETAIL SALES ESTABLISHMENTS
ORDINANCE

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution
No. 14-____, approving the text changes requested in Zone Change Application PL-2013-0389TA.

Section 2. Zoning Ordinance Sections 10-1.1000 through 10-1.1020, relating to the
General Commercial (CG) District, are hereby amended to add certain text (as indicated by
underline) to implement the City's Tobacco Retail Sales Establishments ordinance introduced
herewith, with such amendments more specifically shown in Attachment "A" hereto.

Section 3. Severance. Should any part of this ordinance be declared by a final decision
by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the
authority of the City, such decision shall not affect the validity of the remainder of this ordinance,
which shall continue in full force and effect, provided that the remainder of the ordinance, absent the
unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this
ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the _____ day of _____, 2014, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held
the _____ day of _____, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

Sections:

- Section 10-1.1005 Purpose.
- Section 10-1.1010 Subdistricts.
- Section 10-1.1015 Uses Permitted.
- Section 10-1.1020 Conditionally Permitted Uses.
- Section 10-1.1025 Lot Requirements.
- Section 10-1.1030 Yard Requirements.
- Section 10-1.1035 Height Limit.
- Section 10-1.1040 Site Plan Review Required.
- Section 10-1.1045 Minimum Design and Performance Standards.

SEC. 10-1.1005 PURPOSE.

The CG District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained in order to provide services for the support of primary business activities in the CB District or CC Districts.

SEC. 10-1.1010 SUBDISTRICTS.

Any combining B or SD District (See Sections 10-1.2400 and 10-1.2600).

SEC. 10-1.1015 USES PERMITTED.

a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District as primary uses.

(1) **Administrative and Professional Offices/Services.**

- (a) Accounting and financial offices. (Excluding check cashing stores)
- (b) Architectural and engineering offices.
- (c) Banks and financial institutions.
- (d) Chiropractic and acupuncture offices.
- (e) Insurance and real estate offices.
- (f) Law offices.
- (g) Medical and dental offices.
- (h) Travel and airline agency offices.

(2) **Automobile Related Uses.**

- (a) Automobile parts store.
- (b) Automobile dealership. (Dealership selling primarily new vehicles, when

all minimum design standards are met and when located along Mission Blvd. between Highland/Sycamore and 700 feet south of Harder Road.)

- (3) Personal Services.
 - (a) Barber or beauty shop.
 - (b) Dance studio.
 - (c) Dry cleaner/laundry.
 - (d) Health club.
 - (e) Martial arts studio.
 - (f) Music studio.
 - (g) Nail salon.
 - (h) Palm reading service.
 - (i) Photography studio.
 - (j) Physical fitness studio.
 - (k) Shoe repair shop.
 - (l) Tailor/seamstress shop.

- (4) Residential Uses.
Residential dwelling unit(s). (Above first floor commercial uses only)

- (5) Retail Commercial Uses.
 - (a) Antique store.
 - (b) Appliance store.
 - (c) Art and art supplies store.
 - (d) Bakery.
 - (e) Bicycle store.
 - (f) Bookstore.
 - (g) Camera store.
 - (h) Card shop.
 - (i) Carpet/drapery store.
 - (j) Clothing store.
 - (k) Consignment store.
 - (l) Coffee/Espresso shop.
 - (m) Delicatessen.
 - (n) Fabric store.
 - (o) Floral shop.
 - (p) Furniture store.
 - (q) Gift shop.
 - (r) Hardware store.
 - (s) Jewelry store.
 - (t) Locksmith shop.
 - (u) Music store.
 - (v) Nursery (plant).

Attachment A

- (w) Paint/wallpaper store.
 - (x) Pet grooming shop.
 - (y) Pet store.
 - (z) Plumbing and heating store.
 - (aa) Restaurant. (Where not abutting a residential district or property and with no bar)
 - (bb) Sporting goods store.
 - (cc) Stationary store.
 - (dd) Supermarket.
 - (ee) Theater (Small Motion Picture or Live Performance only.)
 - (ff) Thrift shop.
 - (gg) Toy store.
 - (hh) Variety store.
 - (ii) Video sales and rental store.
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop. (Not ancillary to a primary use.)
 - (b) Copying or reproduction facility.
 - (c) Equipment rental.
 - (d) Hotel or motel.
 - (e) Mailing or facsimile service.
 - (f) *Not Used*
 - (g) Reverse vending machine(s). (When located within a convenience zone.)
 - (h) Upholstery shop (furniture).
- (7) Other Uses.
- (a) Broadcasting studio.
 - (b) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served.)
 - (c) Catering facility. (Where not abutting a residential district or property.)
 - (d) Christmas tree or pumpkin patch lot. (See Section 10-12750 et seq. for standards)
 - (e) Day Care Home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions)
 - (f) Educational facility. (Small, generally less than 2000 square feet, designed to augment the learning process of elementary and secondary school students.)
 - (g) Public agency facilities.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses

to the uses permitted in the CG District:

- (1) Accessory buildings and uses. (See section 10-1.1045.)
- (2) Garage sales. (4 per year per dwelling. See Section 10-1.2735d.)
- (3) Home Occupation. (See definitions)
- (4) Household pets.

Sec. 10-1.1020 CONDITIONALLY PERMITTED USES

a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit:

- (1) Administrative and Professional Office/Services.
Medical/dental laboratory.
- (2) Automobile Related Uses.
 - (a) Automobile brokerage office. (See definitions.)
 - (b) Automobile repair (minor and major). (See Section 10-1.1045h. for special requirements.)
 - (c) Automobile service station. “ “
 - (d) Automobile storage facility. “ “
 - (e) Car wash. “ “
 - (f) Drive-in establishments. “ “
 - (g) Parking lot.
- (3) Personal Services.
 - (a) Suntan parlor.
- (4) Residential Uses.
None.
- (5) Retail Commercial Uses.
 - (a) Wine Shop
 - (b) Convenience market. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (c) Restaurant. (Where abutting a residential district or property with no bar.)
- (6) Service Commercial Uses.
 - (a) Appliance service and repair shop.(Not ancillary to a primary use)
 - (b) Equipment rental.
 - (c) Hotel or motel. (Where abutting a residential district or property)

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- (d) Recycling collection area. (When located within a convenience zone)
- (e) Sign shop.

(7) Other Uses.

- (a) Ambulance service.
- (b) Animal grooming service.
- (c) Animal hospital.
- (d) Auction.
- (e) Banquet hall. (Where abutting a residential district or property but not where alcohol is served)
- (f) Carnival.
- (g) Catering facility. (Where abutting a residential district or property)
- (h) Commercial amusement facility.
- (i) Cultural facility.
- (j) Day care center. (state-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions)
- (k) Educational facility.
- (l) Flea market.
- (m) Kennel.
- (n) Mortuary.
- (o) Outdoor gathering. (Refer to General Regulations Section 10-.2735g.)
- (p) Passenger terminal.
- (q) Recreational facility.
- (r) Religious facility.
- (s) Sign shop.
- (t) Temporary use. (i.e., parking lot or tent sale)
- (u) Wind energy conversion system.

b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District subject to approval of a conditional use permit:

(1) Administrative and Professional Offices/Services.

- (a) Check cashing store.
- (b) Payday loan facilities.

(2) Automobile Related Uses.

- Automobile sales and rental. Except as provided for under Sec. 10-1.1015a.(2)(b)

(3) Personal Services.

- (a) Massage parlor.
- (b) Tattoo parlor.

- (4) Residential Uses.
None.

- (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 - (d) Dance or night club.
 - (e) Liquor store
 - (f) Theater, Large Motion Picture.
 - (g) Tobacco Retail Sales Establishment (See General Regulations Section 10-1.2780 for tobacco regulations).

- (6) Service Commercial Uses.
None

- (7) Other Uses
 - (a) Homeless shelter
 - (b) Warehouse (When located behind and ancillary to primary uses).
 - (c) Wholesale establishment

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTION 5-6.02, SMOKING AND POLLUTION CONTROL
DEFINITIONS, TO CONFORM TO THE TOBACCO RETAIL
SALES ESTABLISHMENTS ORDINANCE

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution, approving the text changes requested in Zone Change Application PL-2013-0389TA.

Section 2. Zoning Ordinance Section 5-6.02, relating to definitions, is hereby amended to add certain text (as indicated by underline) and to delete certain text (as indicated by strikeout) to conform to the City’s Tobacco Retail Sales Establishments ordinance introduced herewith, with such amendments more specifically shown in Attachment “A” hereto.

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective thirty days after adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the _____ day of _____, 2014, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held
the _____ day of _____, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Attachment A

ARTICLE 6

SMOKING POLLUTION CONTROL

Section Subject Matter

5-6.00	TITLE
5-6.01	FINDINGS AND PURPOSE
5-6.02	DEFINITIONS
5-6.03	APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES
5-6.04	PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS
5-6.05	REASONABLE SMOKING DISTANCE REQUIRED - 20 FEET (This section removed by Ord. 10-13, Adopted Oct. 26, 2010)
5-6.06	AREAS NOT SUBJECT TO SMOKING REGULATIONS
5-6.07	POSTING OF SIGNS
5-6.08	TOBACCO SAMPLES PROHIBITED
5-6.09	TOBACCO VENDING MACHINES RESTRICTED
5-6.10	ENFORCEMENT OFFICER
5-6.11	CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS
5-6.12	OTHER APPLICABLE LAWS

ARTICLE 6

SMOKING POLLUTION CONTROL

SEC. 5-6.00 TITLE. This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 FINDINGS AND PURPOSE. The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that tobacco smoke is a major contributor to indoor pollution;
- b. The U.S. Environmental Protection Agency has determined that second-hand smoke is a Class-A carcinogen for which there is no safe exposure level;
- c. Reliable studies have shown that breathing second hand smoke is a particular health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- d. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
- e. Nonsmokers with allergies or respiratory diseases, and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;
- f. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to second-hand smoke;
- g. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places;
- h. Smoking is a documented cause of fires;
- i. Cigarette, cigar burns, and ash stains on merchandise and fixtures cause economic losses to businesses;
- j. The Surgeon General has determined that cigarettes and other forms of tobacco are as addictive as drugs such as heroin and cocaine;
- k. The free distribution of cigarettes encourages people to begin smoking, and tempts those, who had to quit, to begin smoking again;

Attachment A

- l. With certain exceptions, state law prohibits smoking inside an enclosed place of employment;
- m. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision of school district employees;
- n. State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.

WHEREFORE, it is the intent of the City Council of the City of Hayward in enacting this ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use around non-tobacco users; by protecting children from exposure to smoking and tobacco while they play; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and tobacco-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SEC. 5-6.02 DEFINITIONS. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- a. 'Business' means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- b. 'Dining area' means any area, both enclosed and unenclosed, available to or customarily used by the general public, that is designed, established, or regularly used for the consuming food or drink;
- c. 'Enclosed' means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.
- d. 'Playground' means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.
- e. 'Public Place' means any place to which the public is invited or in which the public is permitted including, but not limited to, any rights-of-way, (*which include but are not limited to sidewalks, streets, and medians*), banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

Attachment A

- f. 'Reasonable distance' means any distance necessary to insure that occupants of a building are not exposed to second-hand smoke created by smokers outside of the building.
- g. 'Recreational area' means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, and playgrounds.
- h. 'Service line' means any place where one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and taxi stands.
- i. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, hookah smoke and marijuana smoke.
- j. 'Smoking' means inhaling, exhaling, burning, or carrying a lighted pipe, lighted cigar, electronic cigarette, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed, plant, or combustible substance, including medical marijuana.
- k. 'Sports arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- l. ~~'Tobacco Product' means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis (flavored cigarettes), or any other preparation of tobacco.~~ "Tobacco Products" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, electronic cigarettes, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

SEC. 5-6.03 APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES.

Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward or the Hayward Redevelopment Agency, and all such areas shall be subject to the provisions of this Article.

SEC. 5-6.04 PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

- a. Smoking shall be prohibited in any and all public places within the City of Hayward, whether enclosed or unenclosed, including but not limited to the following:
 - (1) Elevators and restrooms;
 - (2) Buses, taxicabs, and other means of public transit offered within the City, and in ticket, boarding, and waiting areas of public transit depots, including bus shelters;
 - (3) Service lines;
 - (4) The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs; provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger;
 - (5) Retail stores, except in areas in the stores not open to the public;
 - (6) Within enclosed common areas for hotels and motels, as well as 35 percent of private hotel and motel rooms rented to transients, as defined by Hayward Municipal Code, Chapter 8, Article 4.
 - (7) Restaurants, dining areas, and bars, whether enclosed or unenclosed;
 - (8) Public areas of libraries and museums when open to the public;
 - (9) Any facility used primarily for exhibiting any motion picture, stage drama, lecture, music recital, or other similar performance, except when smoking is part of any such production by the performers;
 - (10) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
 - (11) Sports arenas, recreational areas, parks, playgrounds, and greenways.
- b. Notwithstanding any other provision of this Article, any person, business, nonprofit entity, owner, operator, manager, or employer who controls any premises described in this section may declare that entire establishment as a non-smoking establishment.

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- c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this Article.

SEC. 5-6.05 REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

(This section removed by Ord. 10-13, Adopted Oct. 26, 2010)

SEC. 5-6.06 AREAS NOT SUBJECT TO SMOKING REGULATIONS.

- a. Private residences, except when used as a child care or a health care facility.
- b. Hotel and motel rooms rented to guests; provided, however that each hotel and motel designates not less than 35 percent of their guest rooms as non-smoking rooms and removes ashtrays from these rooms. Permanent “no smoking” signage shall be posted in nonsmoking rooms.

SEC. 5-6.07 POSTING OF SIGNS.

- a. “Smoke Free” or “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager, or other person having control of such building or other place.
 - (1) Every theater owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.
 - (2) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SEC. 5-6.08 TOBACCO SAMPLES PROHIBITED. No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store.

SEC. 5-6.09 TOBACCO VENDING MACHINES RESTRICTED. No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other applicable or similar device designed or used for vending purposes, except in a bar.

SEC. 5-6.10 ENFORCEMENT OFFICER. Enforcement shall be implemented by the City Manager or designee.

SEC. 5.6.11 CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

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- a. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.
- b. It shall be unlawful for any person who owns, manages, operates, or otherwise controls any use of any premises subject to any regulation under this section to fail to comply with its provisions.
- c. Violations of this Article are subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the Hayward City Council. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.
- d. Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public during the normal course of operations, such smoking constitutes a public nuisance.
- e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.
- f. Upon a proper showing and hearing before the City Council that determines that a business establishment has violated the provisions contained in this section more than three times in any calendar year, the City Council has the discretion to revoke the business license of the establishment.
- g. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

SEC. 5-6.12. OTHER APPLICABLE LAWS. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.

Finance**A. ASSESSMENT DISTRICT FEES**

- | | | |
|----|---|------------------------------------|
| 1. | <u>Establishment Fee</u> (applicable to all districts petitioned or requested after September 9, 1988) | \$3,084.00 |
| 2. | <u>Annual Administration Fee</u> (applicable to all districts) | \$2,934.00 |
| 3. | <u>Bond Call Fee</u> (applicable to all districts) | \$302.00 |
| 4. | <u>Annual Adjustment</u> : The 3 fees listed above shall be adjusted annually. Each fee shall increase by the lesser of: (1) 5% or (2) the percentage of increase, if any, in the San Francisco Bay Area Consumer Price Index (CPI-U) or (3) the City's actual incremental cost. When the 3 fees are so adjusted, the adjusted fees shall become the new base. The CPI for the San Francisco Bay Area in effect at the time of each annual updating of the Master Fee Resolution shall be used in determining each set of annual adjustments. | Calculated
Adjustment |
| 5. | <u>Irrevocability of the Establishment Fee</u> : Whether or not a proposed local improvement district becomes legally established, the Establishment Fee applies as the City's charge for initiating the transaction. | Same as
amount paid
in A (1) |
| 6. | <u>Special Assessment Inquiries</u> | \$26.00 each |
| 7. | <u>Secondary Disclosure Reporting</u> | \$256.00/
District |

B. OPERATING PERMITS

- | | | |
|----|---|------------------------------|
| 1. | <u>Bingo Permit</u> (Reference HMC 4-3) | |
| | a. Initial or renewal Fee | \$50.00 |
| 2. | <u>Card Club Permit</u> (Reference HMC 4-3) | |
| | a. Application Fee | \$40.00 |
| | b. Annual Table Fee | \$8,693.00 per table |
| 3. | <u>Closeout Sale Permit</u> (Reference HMC 6-4) | |
| | a. Initial Fee | \$76.00 |
| | b. Renewal | \$67.00 |
| 4. | <u>Cabarets and Dance Licenses and Permits</u> (Reference HMC 6-2) | |
| | a. Annual License (payable quarterly in advance) | \$103.00/year |
| | b. Single Event Permit | \$42.00 |
| 5. | <u>Preferential Parking Permit</u> (Reference Hayward Traffic Regulations Section 3.95 and Hayward Traffic Code 6.36) | |
| | a. Initial Fee and Biennial Renewal Fee (for up to two residential or visitor permits) | \$50.00 |
| | b. Each additional residential permit | \$25.00 |
| | c. Each additional visitor permit | \$25.00 |
| 6. | <u>Peep Show Permit</u> (Reference HMC 6-9) | |
| | a. Peep Show Device | Time & Material |
| | b. Investigation Fee | Time & Material |
| 7. | Tobacco Retailer License (Reference HMC 10-1.3500) | \$400.00 (Annual Fee) |

C. MISCELLANEOUS FEES

- | | | |
|----|---|-----------------|
| 1. | Monthly Listing of New Hayward Based Businesses | \$5.50/month |
| 2. | Business Verification/Ownership Research | \$8.00/business |
| 3. | Parking Tax Offset Fee | \$2.50 |

FINDINGS FOR APPROVAL

**Text Amendment No. PL-2013-0389
City of Hayward**

Establishment of Zoning Regulations related to the Retail Sales of Tobacco and tobacco-related products, including electronic cigarettes, including Proposed New Fees, and Amendments to Chapter 5, Article 6 – Smoking Pollution Control, within the City of Hayward

A Negative Declaration was prepared pursuant to the California Environmental Quality Act (CEQA). No significant environmental impacts are expected to result from the project.

A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.

The proposed Text Amendments will promote the public health, safety, convenience, and general welfare of the residents of Hayward by:

- a. amending the Zoning Ordinance to provide a definition for tobacco sales, to include the regulation of the sale of electronic cigarettes and other specified items;
- b. establishing performance and operational standards that would apply to all new and existing tobacco retail sales establishments that will help ensure such establishments are not operated in a manner which violates any local, state or federal laws and so as not to constitute a public nuisance;
- c. establishing local enforcement provisions for tobacco retail sales establishments found to be in violation of the regulations;
- d. prohibiting more tobacco retail sales establishments in areas of the City that are in close proximity to sensitive receptors and to existing tobacco retail sales establishments to prevent an overconcentration of such establishments in the City;
- e. establishing a Tobacco Retailers License (TRL) which all new and existing tobacco retail sales establishments will be required to obtain annually; and
- f. creating cost recovery mechanisms through the TRL fee, which will cover annual inspections by the Code Enforcement Division and for the Youth Decoy Program by the Hayward Police Department;

B. The proposed change is in conformance with all applicable, officially adopted policies and plans.

The proposed Text Amendments conform to City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the Text Amendments, as described in the preceding finding, are aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.

- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, over the last several years, the City of Hayward has established various policies to create a healthier Hayward. On May 20, 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code prohibiting the use of tobacco products in or around public places in the City of Hayward. On July 26, 2011, the City adopted a Resolution for the City of Hayward to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over 75 other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this text amendment would be consistent with the goals of making Hayward a healthier City.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. Any new tobacco retail sales establishments will be required to have adequate streets and facilities before operating, as currently required.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified. The Text Amendments will provide standards to help ensure tobacco retail sales establishments are operated in a manner that do not generate impacts to surrounding properties and neighborhoods. In addition, the proposed Text Amendments will provide cost-recovery mechanisms that currently do not exist, which will allow for greater oversight of such establishments by the Hayward Code Enforcement Department.



**DEPARTMENT OF DEVELOPMENT SERVICES
Planning Division**

INITIAL STUDY CHECKLIST

Project Title: Text Amendment Application No. PL-2013-0389: Establish zoning regulations related to tobacco retail sales establishments in the City of Hayward

Lead agency name/address: City of Hayward, Development Services Department; 777 B Street, Hayward, CA 94541-5007

Contact person: Linda Ajello, AICP, Associate Planner
(510) 583-4207
linda.ajello@hayward-ca.gov

Project location: Citywide

Project Sponsor's Name and Address: City of Hayward
777 B Street
Hayward, CA 94541

General Plan Designation: Various (no changes proposed)

Zoning Designation: Various (no changes proposed)

Project description:

Text Amendment Application No. PL-2013-0389:

Proposed revisions to the Hayward Municipal Code to establish regulations related to tobacco retail sales establishments to include:

- Revisions to definitions;
- Designate zoning districts in which Tobacco Sales establishments can be located;
- Create standards and operating procedures for all new and existing tobacco retail sales establishments;
- Create local enforcement provisions;
- Establish an annual Tobacco Retailer License and fee for cost recovery, including for annual inspections and enforcement; and
- Revisions to definitions in Article 6 – Smoking Pollution Control.

Surrounding land uses and setting:

Regional Setting

The City of Hayward is known as the “Heart of the Bay” due to its central location in Alameda County along the east side of the San Francisco Bay, twenty-five miles southeast of San Francisco, fourteen miles south of Oakland, twenty-six miles north of San Jose, and ten miles west of the valley communities of San Ramon, Dublin, and Pleasanton. The City of Hayward lies along the southeastern shore of the San Francisco Bay, at the western end of the Diablo Mountain Range. Topography in the eastern portion of Hayward generally consists of moderately steep foothills descending from the Diablo Range, leveling into a valley before reaching the San Francisco Bay.

The Nimitz Freeway (US 880) passes through the City of Hayward on its path between the City of San Jose and the San Francisco-Oakland Bay Bridge. The Hayward-San Mateo Bridge, State Route 92, spans the San Francisco Bay between the cities of Hayward and Foster City. The City of Hayward borders the cities of San Leandro, Union City, Fremont and Pleasanton. The census-designated places bordering Hayward within Alameda County are Castro Valley, San Lorenzo, Cherryland, and Fairview.

City Setting

The City of Hayward is highly urbanized, with the shoreline and hillsides containing natural open space. Commercial development tends to be located along major arterial streets such as Mission Boulevard, Foothill Boulevard, Jackson Street, Tennyson Road, and Hesperian Boulevard. The western and southern portions of Hayward primarily consist of industrial land uses. To the east and north of the industrial corridor lie numerous tracts of residential development often centered upon public school sites.

Requested Local Approvals: The following actions by the Lead Agency are necessary to carry out the project:

- Text Amendment: The project would entail:
 - Revisions to the City of Hayward Municipal Code to establish Sections 10-1.2780 through 10-1.2797);
 - Revisions to the Definitions Section of the Zoning Ordinance (Hayward Municipal Code Section 10-1.3500); and
 - Revisions to various Zoning District regulations to reflect recommended new definitions.
 - Revisions to the Definitions Section of 5-6.02 of the Municipal Code (Definitions).
- New Fees: Amend the Hayward Master Fee Schedule for Fiscal Year 2015.

Other public agencies whose approval is required:

None.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality |
| <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

April 28, 2014
Date

Linda Ajello, AICP

Printed Name

EVALUATION OF ENVIRONMENTAL IMPACTS:

ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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II. AGRICULTURE AND FOREST

RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? ***Comment:*** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact..*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? ***Comment:*** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? ***Comment:*** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>with such uses; thus, no impact..</i>				

d) Result in the loss of forest land or conversion of forest land to non-forest use? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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III. AIR QUALITY -- Where applicable, the significance criteria established by the Bay Area Air Quality Management District (BAAQMD) is relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife Service or U.S. Fish and Wildlife Service? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife Service or US Fish and Wildlife Service? <i>Comment:</i> <i>The Project would establish new standards and regulations</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

V. CULTURAL RESOURCES -- Would the

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in California Environmental Quality Act, Title 14; Chapter 3; Article 5; Section 15064.5? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact..</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact..</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VII. GREENHOUSE GAS EMISSIONS --

Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VIII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
hazardous materials into the environment? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? <i>Comment:</i> <i>The Project would establish</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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IX. HYDROLOGY AND WATER QUALITY -
- Would the project:

a) Violate any water quality standards or waste discharge requirements? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
levee or dam? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				

j) Inundation by seiche, tsunami, or mudflow? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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X. LAND USE AND PLANNING -- Would the project:

a) Physically divide an established community? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Conflict with any applicable habitat conservation plan or natural community conservation plan? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XI. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
state? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XII. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>with such uses; thus, no impact.</i>				
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XIII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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XIV. PUBLIC SERVICES --

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Fire protection? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Police protection? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Schools? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Parks? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Other public facilities? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>with such uses; thus, no impact.</i>				
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XVI. TRANSPORTATION/TRAFFIC --

Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? Comment: <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
intersections) or incompatible uses (e.g., farm equipment)? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				

e) Result in inadequate emergency access? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XVII. UTILITIES AND SERVICE SYSTEMS

-- Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
effects? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the City of Hayward that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Comment: *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*



DATE: May 31, 2012

TO: Planning Commission

FROM: Tim R. Koonze, Associate Planner

SUBJECT: **Text Amendment Application Number PL-2012-0140 / City of Hayward (Applicant) – Establish zoning regulations regarding the retail sale of tobacco.**

RECOMMENDATION

That the Planning Commission recommends that the City Council: 1) adopts the attached Initial Study and Negative Declaration (Attachment II), 2) approves the Zoning Ordinance text amendment to permit the sale of tobacco and tobacco products in the General Commercial (CG) District with the approval of a conditional use permit, and 3) adds a definition of tobacco sales to the Zoning Ordinance, subject to the attached findings (Attachment VI).

SUMMARY

In response to Council direction in late 2011/early 2012, and because the sale of tobacco products is not specifically listed anywhere in the City's Zoning Ordinance, which is challenging for staff, staff is recommending provisions be added to the Zoning Ordinance that would limit the retail sale of tobacco to the General Commercial Zoning District with a conditional use permit. A conditional use permit would require a noticed public hearing before the Planning Commission.

BACKGROUND

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths – one in every five deaths – each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. The economic burden of cigarette use includes \$193 billion annually in health care cost and loss of productivity.

Smoking is not a right protected by the United States Constitution. Specifically, smoking is neither a specially protected liberty nor a right to privacy under the "due process clause" of the Constitution. In addition, smokers are not a specially protected category under the "equal protection clause" of the Constitution. Consequently, the United States Constitution allows for the enactment of smoke free laws that relate to the legitimate government goals of public health, safety, and welfare.

Since 1998, the State of California has continued to implement legislation that restricts smoking and exposure to second-hand smoke (SHS). These include no smoking in public school facilities and athletic events, in public playgrounds and tot lots, as well as day care centers in private residences. State action has also banned smoking in workplaces, in all restaurants and bars, and smoking in the presence of a minor (17 years or younger) while in a moving vehicle and to treat it as a misdemeanor offense when cited with a larger offense. Through a provision in California Government Code 7597, the State of California allows for local governments to adopt and enforce additional smoking and tobacco control ordinances, regulations, and policies that are more restrictive than the applicable standards required by the State of California.

On that basis, in 1996, the City enacted the first Smoking Pollution Control Ordinance, found in Chapter 5, Article 6 of the Hayward Municipal Code (HMC). The ordinance allowed smoking in private residences, bars, tobacco shops that exclusively sold tobacco, and halls and rooms rented for private events. Smoking was prohibited in all enclosed areas customarily used by the public, such as restaurants, theaters, auditoriums, and public transit, including taxi cabs.

Since 1996, the City of Hayward has implemented policies to make Hayward a healthier city. On May 27, 2008, the City Council amended the Smoking Pollution Control Ordinance prohibiting the use of tobacco products in or around public places in the City of Hayward. The premise for such action relates to the desire of the Council to protect the health and well being of the general public by reducing impacts associated with second hand smoke especially on children (refer to 2008 staff report, Attachment VII). The Ordinance included a prohibition to smoke within 20 feet of any enclosed public place and on public sidewalks and streets.

After the City began to enforce the new smoking ordinance, downtown restaurant operators expressed concerns that the enforcement of the Ordinance made the Downtown a less desirable location for those patrons given citations for smoking on the way to and from the restaurants. In addition, restaurant patrons have expressed concern over their safety if they were to smoke in less visible areas around the Downtown. According to some restaurant operators in the Downtown, patrons desiring to smoke have been known to leave restaurants to smoke in their car and/or parking lots. Operators indicate that patrons who leave dining establishments don't always return, which represents a loss of business.

City staff, working with the Council and restaurant operators, came to a solution of eliminating the requirement that smoking could not occur within 20 feet of an opening into a building. This allowed restaurants with limited outdoor space to still provide designated smoking areas. The Ordinance was amended on October 19, 2010 (refer to 2010 staff report, Attachment VIII).

The City furthered its goal to become a healthier city by adopting a resolution to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign, thereby setting goals to provide its citizens and employees with healthier choices (refer to Attachment IX).

In a continuing effort to make Hayward a healthy city and in striving to improve the health and welfare of its citizens, and in response to previous City Council direction, staff recommends limiting the retail sale of tobacco and tobacco products to one commercial zoning district with the approval of a conditional use permit. The conditional use permit would allow the Planning Commission at a

noticed public hearing (or City Council on appeal) to determine if a site is suitable for tobacco sales and if the sale of tobacco would be compatible with surrounding uses. Staff also proposes a definition for tobacco sales to ensure that the tobacco retailers are clear as to the type of products that are allowed to be sold and what products would be prohibited.

DISCUSSION

Staff is proposing the following changes to the Zoning Ordinance:

- Allow retail sales of tobacco and tobacco products only in the Commercial (CG) District with approval of a conditional use permit;
- Allow tobacco sales, as a secondary use, in retail stores over 10,000 square feet in any zoning district;
- Prohibit tobacco sales within 500 feet of sensitive receptors; and
- Create a definition for tobacco sales, to include the prohibition of the sale of drug paraphanelia and other specified items.

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district. As there is no restriction of tobacco sales, the Planning Director has made the determination that tobacco sales were a general retail item permitted in any commercial zoning district, except in the Downtown core area.

Continuing with the City's direction to maintain a healthier Hayward and to minimize smoking and access to tobacco products within the City limits, staff recommends restricting the sale of tobacco or tobacco related products to the General Commercial (CG) District. The CG District is located primarily along the City's major arterials of Mission Boulevard, Jackson Street, and Foothill Boulevard (refer to Attachment I). This CG District was selected as it provides regional serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas. It is proposed that tobacco sales would be subject to the approval of a conditional use permit (CUP) (see Attachment III). By requiring a CUP, the City could evaluate proposed tobacco sale locations to ensure they are compatible with the surrounding properties.

Similar to the regulations for alcohol sales, the sale of tobacco products would be allowed without the need for a conditional use permit only in retail stores having 10,000 square feet or more in area in any zoning district; however, no more than 5 percent of such floor area could be devoted to the sale, display and storage of tobacco or alcohol products combined. This provision allows larger grocery stores and box retail stores to sell tobacco products as a secondary use. In addition, the sale of tobacco would be prohibited within 500 feet of sensitive receptors such as schools, parks, library, playground, recreation center, day care center, health care facilities or any other similar use (see Attachment IV).

Staff also proposes the following definition for "Tobacco Sales Establishments," which would limit tobacco retail establishments to any establishment involving the sale of tobacco and tobacco products (see Attachment V). The definition would read as follows:

Tobacco Sales Establishment – Any establishment that sells tobacco products such as cigarettes, cigars, chewing tobacco, and pipe tobacco, as well as tobacco related products such as pipes, lighters, ash trays, and other products associated with the use of tobacco. The sale of drug paraphernalia, items that are considered “kid friendly” such as flavored tobacco products, containers with secret compartments commonly referred to as “stash cans” and single cigarettes shall be prohibited.

The proposed regulations would prohibit tobacco sales in retail stores that commonly sell tobacco such as small grocery stores, minimarts, and gas stations. The proposed text amendment that would be presented in final form to the City Council for consideration would include revisions to the text for all of the commercial zoning districts where such uses are listed, to include a reference to the new recommended tobacco sales general regulations text that is shown in Attachment IV. For example, any place in the Zoning Ordinance where a convenience market is listed as an allowed use, there would be a reference to the General Regulations section of the Zoning Ordinance, which is proposed to reflect the text in Attachment IV. All existing retailers of tobacco products would be considered legal non-conforming uses and could continue selling tobacco unless the tobacco sales are discontinued for a period of six months or more, pursuant to Section 10-1.2915, Nonconforming Uses, of the Zoning Ordinance, and the City determines they cannot be re-established in accordance with Federal and State laws.

Text Amendment Findings for Approval - In order for the Text Amendment to be approved, the following findings must be made:

A. Substantial proof exists that the proposed change will promote public health, safety, convenience and general welfare of the residents of Hayward.

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. Regulating the sale of tobacco and tobacco related products will promote public health, safety, convenience and general welfare of the residents of Hayward as it is a continuation of the City’s direction to maintain a healthier Hayward and to minimize the exposure of its citizens to tobacco by restricting the sale of tobacco or tobacco related products to certain commercial areas.

B. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans.

The City of Hayward has established various policies to create a healthier Hayward. On May 20, 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code prohibiting the use of tobacco products in or around public places in the City of Hayward. On July 26, 2011, the City adopted a Resolution for the City of Hayward to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over 75 other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this text amendment would be consistent with the goals of making Hayward a healthier City.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

This finding is not applicable in that this application does not involve a reclassification.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and further, a beneficial effect will be achieved which is not obtainable under existing regulations.

This finding is not applicable in that this application does not involve a reclassification.

Environmental Review - An Initial Study and Negative Declaration (IS/ND) have been prepared for the project pursuant to the California Environmental Quality Act (CEQA) (see Attachment II). No significant environmental impacts are expected to result from the project. The review period for the environmental documents ends May 30, 2012. No response to the notice indicating availability of the IS/ND had been received when this staff report was completed.

PUBLIC CONTACT

On May 21, 2012, a Notice of this Public Hearing and Availability of the Draft Negative Declaration was published in *The Daily Review*. At the time this report was prepared, staff had not received any public comments.

NEXT STEPS

Should the Planning Commission recommend that the City Council adopt the proposed text amendments, a public before the City Council will be held, tentatively scheduled for June 26, 2012. The decision of the City Council would be final.

Prepared by: Tim R. Koonze, Associate Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- Attachment I Zoning Map Showing the Location of CG Zoning District
- Attachment II Initial Study and Negative Declaration
- Attachment III Addition of Tobacco Sales to the General Commercial District of the Zoning Ordinance
- Attachment IV Addition of Tobacco Sales Requirements to the General Regulations of the Zoning Ordinance
- Attachment V Addition of Definition For Tobacco Sales Establishments in the Definition Section of the Zoning Ordinance
- Attachment VI Findings for Approval for the Text Amendment Application
- Attachment VII City Council Report Amending the Smoking Pollution Control Ordinance 2008
- Attachment VIII City Council Report Amending the Smoking Pollution Control Ordinance 2010
- Attachment IX City Council Report by Adopting a Resolution for the City of Hayward to Become a Member of the Healthy Eating Active Living (HEAL) Cities Campaign

Assistant City Attorney Maureen Conneely advised the Commission to make a final action or at least steps toward a final action. She pointed out there were no conditions of approval or findings for approval, but said it would be appropriate for the Commission to direct staff to prepare both since it appeared a majority of the Commission was inclined to approve the business.

Commissioner Mendall said he wanted to make that motion and he asked that staff to be very strict with the conditions of approval. He said he wanted to see conditions that constrained the use by limiting the number of cars that could be painted, limit the hours of operation, and that staff monitor the fumes, if possible, so the City ended up with a fairly mild, innocuous use that would not effect the neighbors. Commissioner Lamnin seconded the motion, agreed with the restrictions, and asked staff to make the revised staff report available to the neighbors so they would be ensured that they were safe and property values protected. She emphasized that the Commission had heard their concerns.

Commissioner Lavelle said she would be supporting the motion and she asked staff if the decision would be made administratively or if the conditions of approval and the findings for approval would come back for Commission review. Planning Manager said the matter would come back to the Commission and confirmed for Commissioner Lavelle that it could take four to six weeks for that to happen. Commissioner Lavelle said she wanted to make sure the applicant understood that the business would have to wait for final approval before opening.

Commissioner Mendall urged neighbors to remain involved and if there were conditions that they thought would make the proposed business a good neighbor, to express those to staff and to the applicant so when the matter came back in four weeks everyone could be comfortable with the conditions and everyone could move forward and feel good about the decision.

The motion passed 4:3:0.

AYES: Commissioners Lamnin, Lavelle, Mendall
Chair Márquez
NOES: Commissioners Faria, Loché, McDermott
ABSENT:
ABSTAINED:

2. Text Amendment Application PL-2012-0140 / City of Hayward (Applicant) – Establish zoning regulations regarding the retail sale of tobacco.

Associate Planner Tim Koonze gave a synopsis of the report.

Commissioner Lamnin asked if there had been any response from the Chamber of Commerce or any other businesses and Associate Planner Koonze said no, but Planning Manager Patenaude interjected saying that during discussions with 7-11, representatives had expressed concern. The proposed regulations wouldn't apply to current 7-11 locations, which would be entitled to continue selling tobacco, but would impact several planned future locations. Mr. Patenaude said that representatives had indicated that tobacco sales comprised 25% of total sales dollars and with alcohol sales of approximately 12-13%, together almost 40% of 7-11's total dollar sales. Representatives had indicated to staff that they would be unlikely to open any new stores in Hayward if the regulations were approved, he said.

Commissioner Lamnin asked if there was a fee for a Conditional Use Permit (CUP) and Planning Manager Patenaude said currently there was a fee deposit of \$5,000 to apply and fees for time and materials were added to that for a total of around \$8-9,000. He noted that the deposit amount was going up July 1st to start at



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

around \$8-9,000. Commissioner Lamnin asked if all that money went to planning and development staff and not to enforcement efforts and Planning Manager Patenaude said that was correct. Commissioner Lamnin asked if there was any mechanism to recoup enforcement costs and Mr. Patenaude said no. Commissioner Lamnin asked if the proposed regulations would have any impact on hookah bars and Planning Manager Patenaude said any new establishment would need a CUP in a General Commercial District, existing hookah bars would be a legal non-conforming use.

Commissioner Mendall asked why allow tobacco sales at a large store but not a small store. He asked what the logic or reasoning was behind that. Planning Manager said it was a policy issue and followed the direction given to staff to restrict the sale of tobacco. Commissioner Mendall made the point that the impact to smaller stores would be greater because tobacco sales comprised a larger percentage of total sales. He said if the City was trying to limit the number of places tobacco was sold, why not limit sales at the businesses that would be less likely to be impacted. Planning Manager Patenaude said that was another approach that could be taken, but noted that in other cities restricting the sale of tobacco at larger stores had created legal issues. Commissioner Mendall asked if the same legal issues wouldn't apply to smaller stores and then he asked if it was just that the smaller stores didn't have the money to sue. Planning Manager Patenaude said the one particular case was a suit by pharmacies, which would fall in the store size range of 10,000 square feet and above.

Assistant City Attorney Conneely explained that the City of San Francisco enacted a ban on the sale of tobacco products at pharmacies and the tobacco industry sued the City and ultimately the case was disposed before it went to trial. The matter was going to be heard, she said, because the court had found there was a rational basis for banning tobacco products at pharmacies where, they said, sales should benefit health, not hurt it. Ms. Conneely explained that the tobacco industry asked for a restraining order and the District Court Judge denied it. That was the only recorded case that she was aware of, she said, that dealt with at which establishments the sale of tobacco was appropriate.

Commissioner Mendall said it felt like an arbitrary recommendation on where tobacco should be sold, and if there was a lawsuit, there should be a rational basis to support the restriction. Restricting tobacco sales at a pharmacy made sense, he said, but if the City was going to restrict sales at gas stations then the City better have a good reason for allowing sales at the grocery store next door. Planning Manager Patenaude said one rational for the zone district limitation was to limit sales to new establishments along major corridors rather than in neighborhoods. Commissioner Mendall said that was a sound basis to limit sales to General Commercial zoning districts, but not to single out certain types of businesses. He asked the Assistant City Attorney if he was off-base with wanting a logical, defensible argument for saying "yes here, no there," and Ms. Conneely said she didn't think he was off-base.

Before expanding regulations, Commissioner Faria asked about enforcement and how much time and effort it took to enforce current regulations. Planning Manager Patenaude said he wasn't clear about the question because there was no ordinance in place regulating sales and Commissioner Faria said not sales, but the smoking ordinance already in place that prohibited smoking on the sidewalk and in public areas. She asked how much enforcement effort that was taking and could the City handle the extra burden of expanded regulations. Planning Manager Patenaude said enforcement of the current ordinance wasn't the City's highest priority, although he knew of some citations issued, and he said Hayward police was not capable of fully enforcing the ordinance. Mr. Patenaude pointed out that the difference was a control of uses and sales and where they were to take place rather than a behavioral issue. By limiting the sale of tobacco to the General

Commercial District, he said, Community Preservation could deal with businesses selling tobacco in other districts more effectively and enforcement rates would be higher.

Commissioner McDermott asked if an existing business that sold tobacco changed ownership would it still be grandfathered in and Planning Manager Patenaude said yes, a change of ownership would not affect use. Based on a previous matter than came before the Commission, Commissioner McDermott said the City should have a clear definition so there no question of interpretation of the ordinance. She said it appeared to her that police had had some confusion about enforcement and changes were made to make the ordinance clearer. Commissioner McDermott said this report seemed to be a working document.

Commissioner Loché said that the City did not list the sale of tobacco as a permitted use wasn't good and he said he applauded that the Commission was having this discussion. In the presentation, he said, staff mentioned that there were 150 locations where tobacco sales occur. He asked staff how many were within 500 feet of sensitive receptors and Planning Manager Patenaude said existing businesses would not be subject to that limitation and that he didn't know what percentage would fall within that radius. Commissioner Loché said he was trying to imagine what stores were 10,000 square feet and above and he said he knew 7-11 was under and Lucky was over, but what about a Fresh & Easy. Planning Manager Patenaude said stores less than 10,000 square feet would include typical convenience markets and gas stations, while larger would include Trader Joes and Fresh & Easy. Commissioner Loché asked if there had been any research conducted that showed smaller businesses were more likely to sell to minors and Mr. Patenaude said that would certainly be something to look into. Commissioner Loché said when looking at an ordinance that would effect small businesses in such a major way, there would need to be a clear understanding of why the City would go down that road.

Commissioner Mendall asked if the 500 foot restriction to sensitive receptors would apply to large stores as well as small and staff said no. Commissioner Mendall commented that there could be a Lucky right next to a school or a park selling cigarettes and staff said yes. He said Union City passed something similar to the proposed regulations in the last year or so and he asked staff if they had spoken to representatives and what they learned. Associated Planner Koonze said Union City adopted a 1,000 foot restriction to sensitive receptors and according to a planner at Union City, pretty much rendered the city a non-tobacco sale area. Mr. Koonze said nine gas stations that already sold tobacco products in the City were grandfathered in and the modification Commissioner Mendall mentioned allowed a tenth station, that was under construction at the time the restriction was original put in place, to also sell tobacco products.

Chair Márquez asked if staff had had any discussion with COMPRE about local businesses selling tobacco products to minors and staff said no.

Chair Márquez opened the Public Hearing at 8:39 p.m.

Francesca Lomotan, with business address on Second Street, spoke on behalf of the Hayward Coalition for Healthy Youth which was comprised of diverse set of community members striving to make the City of Hayward a safer and healthier place for kids to live. She said the coalition was excited that regulations restricting the sale of tobacco to minors were being established and the definition of tobacco sales was being included. Ms. Lomotan said the coalition was especially happy that in the definition of "a tobacco sales establishment" the sale of kid-friendly items was being prohibited. While the coalition was supportive of the proposed ordinance, she said, they had a few suggestions including requiring 500 feet between tobacco retailers and a 1,000 foot radius from sensitive receptors because their research had determined that there was already a high concentration of retailers located near to three middle schools and two high schools in Hayward. She mentioned that in Alameda County, five cities had already adopted ordinances restricting tobacco retailers within a certain distance of schools including Albany (500 feet), Union City and Oakland (1,000 feet), Berkeley (1,400 feet) and San Leandro (1,500 feet). Ms. Lomotan said lastly, the coalition asked



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for the prohibition of single cigars sales and that the coalition appreciated the City's continuing efforts to make Hayward a healthy city.

Janice Louie, with the Coalition as well as the Alameda County Public Health Department, said she was there to support the proposed ordinance. She provided materials for the Commissioners from the Center of Tobacco Policy that included a matrix of local ordinances that restricted tobacco sales within a certain distance of schools and summarized policies from 24 cities in California. She noted that 14 out of 24 cities had a 1,000 foot restriction of tobacco sales from schools. Ms. Louie said studies had shown that the density of tobacco retailers in neighborhoods near schools had been associated with an increase in smoking and that one-third of illegal sales occurred within a 1,000 feet of schools. She also mentioned that many of the ordinances limited how close retailers could be to each other. She concluded by saying the coalition supported the staff recommendation and asked the Commission to consider a 1,000 foot distance from sensitive receptors and 500 feet between retailers. Ms. Louie mentioned that at the May 10th Planning Commission meeting she distributed information regarding teen-friendly cigars and she asked that language be included in the proposed ordinance limiting the sale of single cigarettes and cigars.

Commissioner Mendall asked Ms. Louie if she had any opinion or comment about restricting sales at small businesses rather than large businesses or if there was any evidence that showed a gas station was a riskier place for children to buy cigarettes than a grocery store. Ms. Louie asked for clarification and Commissioner Mendall asked if it was the number of the places that sold tobacco products that was dangerous or the type of place that sold tobacco and Ms. Louie said the data she had read had indicated that it was the type of store; smaller stores were more likely to sell single purchase items like kid-friendly cigars that cost less than a candy bar. She said Alameda County was going to do a survey to find out how accessible these items were. Commissioner Mendall said that was a good argument to limit the sale of that particular product, but not necessarily that a mini mart was more dangerous than a Lucky and Ms. Louie said it came down to product availability and she noted that small grocery stores located near schools carried more single-sale items.

Commissioner Lamnin asked Ms. Louie if there was any difference or impact on enforcement efforts by cities that had use permits versus tobacco retailer licenses and Ms. Louie said the State of California had been encouraging local jurisdictions to adopt their own ordinances and she said those that do had more leverage against retailers that sold tobacco products than those that did not.

Doug Ligibel, Mesa Circle resident, speaking as a retired state-certified addiction professional, a nationally-certified rehab counselor, and a member of the Coalition, said that he wanted to focus on tobacco industry specifically targeting youth. He said the tobacco industry spent a million dollars an hour marketing their products, and 80% of underage smokers chose brands from the top three most heavily advertised products. Mr. Ligibel said that restricting the sale of tobacco was a good direction for the City to take, but that he agreed with the Coalition that the City needed to look at schools and how far the City was willing to have tobacco retailers able to operate, he said he supported 1,000 feet away from schools. Mr. Ligibel concluded that the City of Hayward had an over-saturation of tobacco sales just as it did alcohol retail sales, specifically in the downtown area, and he encouraged the Commission to listen to the Coalition because they made some really good points.

Deisy Bates, Ambrose Court resident, said she was there as a parent leader in the community and that her three children were born, raised and educated in Hayward. As part of her interest in the community, Ms. Bates said she was a member of the Coalition since inception because she cares for Hayward youth. She said she picked up her youngest son from school every day (he's a junior at Mt. Eden High School), because she

didn't want him to walk by the gas station and houses on Hesperian Boulevard at Panama because of the debris. She pointed out that most middle schools students didn't have the privilege of being picked up by their parents and by walking to and from school they had access to tobacco. She also said those kids were not going to go to Lucky or Safeway or Costco they were going to go to gas stations and small retailers that sell tobacco. She said it was very concerning how accessible these items were and how low the price. Ms. Bates, as a parent in the community, urged the Commission to consider the staff recommendation and in addition, adding a 1,000 foot radius from sensitive receptors and requiring 500 feet between tobacco retailers.

Sanjiv Patel, Starboard Lane resident, asked the City to consider the goal of the proposed ordinance saying he thought it was to reduce smoking in the general population and to reduce underage smoking. He said the goal was not to increase bureaucracy, but as written, the ordinance did exactly that. Mr. Patel pointed out that it was already illegal to sell cigarettes to minors regardless of whether the establishment was located opposite the school or 10,000 feet away. He said by not allowing the sale of tobacco near schools the only thing that was being achieved was not additional laws, but just the implementation of existing laws. Mr. Patel asked what the proposed ordinance did about the implementation of the existing law and he concluded: nothing. How do you make sure young kids do not get their hands on tobacco, he asked; remove the radius requirement and increase the enforcement of the existing law by having additional decoy operations. Mr. Patel said that would require additional funds so he suggested charging a fee for a tobacco license. He said he was a tobacco retailer and he was requesting the City add more fees so the Hayward could limit underage smoking. He also asked what the logic was behind allowing large businesses to sell tobacco and not small businesses. Mr. Patel said the third concern the City should have was the unintentional consequence of the proposed ordinance and he gave this example: in the last couple of years three gas stations closed in Hayward and if this ordinance was in place they would still be closed because no business owner would take the chance to reopen without a tobacco license. He reiterated what happened in Union City and asked if the City Hayward wanted to implement the ordinance right away or think it through first. Mr. Patel urged the City to not pass the proposed ordinance, but instead do more research and come back with a more comprehensive plan that would actually reduce smoking, underage smoking and second-hand smoke.

Commissioner Lamnin thanked Mr. Patel for coming and after confirming he was a business owner asked what business and Mr. Patel said he owned a gas station at Mission and Garin. He noted that the gas station had been closed but they he was able to reopen because the proposed ordinance was not in place.

Nick Patel, Starboard Lane resident, asked if anyone had thought about the impact of a 500 foot radius limit and he said after a quick search of the Mission Boulevard/Tennyson Road area, taking into consideration the school and church, it would it pretty much cover the entire area allowing no new tobacco retailer to come in. He said when he expanded the search to City-wide, what was left was probably a very small area. With so many vacant properties, Mr. Patel pointed out that if the regulation passed there would be no new gas stations, convenience stores, or grocery stores less than 10,000 square feet that could come in and start a business. He asked if the City wanted to discourage businesses from coming in to these vacant properties that were basically magnets for crime and other unwanted activities, or did the City want to support business. Mr. Patel said he was not a smoker and was all for discouraging smoking and underage smoking but he said there were other ways to do this. He agreed with Commissioner Mendall that a law that restricted the sell of small cigars would have an impact and would be the right thing to do rather than just a distance limitation. He also suggested a restriction on signs that attract youth to tobacco retailers. Mr. Patel concluded by asking that the City revisit the ordinance and come up with a better solution that would actually help reduce smoking.

Ronald Gruel, parent and longtime Hayward resident living in the Jackson Triangle, said he commuted by local schools and saw small shops and the accessibility students had to tobacco products. Mr. Gruel asked what would be a healthy thing to do for Hayward and he said setting boundaries was perfect. He mentioned one gas station was closed because an underground tank was leaking and after a pump was installed it still "burst up" once in a while and dissipated toxins into the air. He said a new business couldn't move in because



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the site was still cleaning. Mr. Gruel said it was critical that youth have new facilities at which to play, have healthy activities, and to be engaged.

Julie Waters, with the American Lung Association with offices in Oakland, thanked the Commission for taking the issue on. She said tobacco had a devastating effect on all communities, but disproportionately on the communities in Hayward. Ms. Waters said CUPs were one of the most effective ways to get people to quit smoking or not start smoking in the first place. She said looking at the map presented by staff, Hayward's "main drag" had nothing but back to back retailers and when looking at a community where the prevalence of smoking was around 15%, she said the City already had an abundance of existing retailers. Ms. Waters said she heard the Commissioners discussing increasing the radius from sensitive receptors to 1,000 feet and she explained that this was important because in her experience, a large parking lot could take up the entire 500 feet and allow the business to come in right next to a school without any notice. She said a CUP was an effective method to prevent kids from smoking and that was the ultimate goal. Ms. Waters said the tobacco industry was well aware that the younger a person is when they start smoking, the more addicted they will become and they specifically target youth. She said studies show that if someone starts smoking after age 19 they won't become addicted. Younger kids will develop sensation-seeking brain receptors that make them even more addicted to cigarettes, she said, and that was why the tobacco industry targeted youth. She concluded by saying the city should take any measure necessary to prevent youth access to tobacco.

Commissioner Lamnin asked Ms. Waters how a CUP would limit youth access versus some other enforcement method. Ms. Waters said a CUP limited the number of establishments where tobacco would be available. She said unlike alcohol retailers that had been in business longer, businesses like donut shops and gas stations were applying for retail licenses and when looking at state statistics, these were the kinds of places with the highest buy rate. She said liquor stores were better because they had more to lose; they didn't want to lose their liquor license. Gas stations had a buy rate of around 20%, she said, and donut shops had the highest rate at about 30%.

Chair Márquez closed the Public Hearing at 9:06 p.m.

Commissioner Loché said under definitions "stash cans" and "single cigarette" were mentioned but not "single cigars." Associate Planner Koonze said that language could be added as part of the definition.

Commissioner Lamnin said the single cigar issue needed to be addressed because, as was noted in the report, tobacco manufacturers work around current restrictions and make cigars so small they look like cigarettes. She also suggested candy flavors, flavors in general, and candy shaped packaging be prohibited to counteract the trend of smoking addiction starting in youth. Commissioner Lamnin thanked staff for their research, clarity and the desire for consistency, but said she wasn't sure if the CUP piece of the ordinance addressed all of the issues. She heard there was an over saturation of tobacco retailers in Hayward, but she said she was really concerned about the high concentration of retailers near middle schools. Commissioner Lamnin acknowledged concerns about the need for 1,000 foot radius near sensitive receptors, but said notification would have to be made and training may be needed so carding takes place and youth don't have access. She said she also had concerns about where tobacco was located at stores; was it stored next to candy displays or was it kept up high. She said she wasn't quite ready to make a motion because she wasn't sure how all the information fit together.

Commissioner Mendall said the goal of reducing smoking by underage children was the right one, and he was glad the City was working on an ordinance to do that, but said he wasn't sure if what he had in front of

him was the most effective way to do that. He said requiring a CUP if a retailer was within 1,000 feet of school was great because the matter would come before the Planning Commission and they would have to make a conscious decision to allow it, but the density of uses and proximity to kids was what mattered and the degree of compliance from those businesses. Commissioner Mendall said Mr. Patel's suggestion to double fees and use the money to increase enforcement was a good idea because it was the businesses violating the existing law that were the biggest part the problem. Creating a definition that eliminated the kid-friendly stuff was a "no brainer," he said, and using a broad definition would be good. He noted that cigars were usually sold individually so he suggested creating a minimum price that was high enough to eliminate the 49 cent cigars and the ones the kids might buy. Commissioner Mendall concluded by saying the ordinance needed more work and that logical arguments were needed to back the recommendations. He said in his opinion, the proposed ordinance was not defensible and he wanted to kick it back to staff for additional work focusing on keep tobacco products away from teens rather than picking establishments that can and cannot sell tobacco in what felt like an arbitrary way.

Commissioner Loché mentioned that he worked less than a mile away from the gas station on Hesperian mentioned by Mr. Gruel, and his daughter attended school right around the corner, and he said he could see exactly what Mr. Gruel was referring too. He said there should definitely be a restriction on tobacco sales within at least 500 feet of schools. He noted that when he said "sensitive receptors," he meant schools in particular. Commissioner Loché said there should be no single cigar sales even if it made it more difficult to purchase cigars. He said he wasn't against stiff restrictions on some of these tobacco sales. Regarding the size of the business where tobacco was being sold, he said the focus should be on the type of the tobacco sold and agreed that more work was needed on the proposed ordinance. Commissioner Loché said requiring a CUP was a good thing, and having the item come before the Commission was a step in the right direction.

Commissioner Lavelle said they all knew that smoking was a significant public health issue; smoking cigarettes was dangerous to one's health, and the Commission didn't want to do anything that would thwart the processes to reduce the number of youth who start smoking. But she said she was opposed to the ordinance philosophically because society can't legislate everything away including the negative influences or all the things that young people can't do. Kids do a lot of things they aren't supposed to, she said, including smoking marijuana which was against the law and police have great difficulty enforcing laws about that issue among others. She said she considered cigarette smoking as being lower down on the list of negative influences and didn't require such strict restrictions included in the ordinance. She said she agreed with many of the pronged approaches especially through public education and through the state's efforts citing that California was behind only Utah in the fewest number of adults who smoked.

Commissioner Lavelle said Commissioner Mendall got right to the issue that concerned her when she read the report and that was restricting sales of cigarettes at small businesses in favor of the large ones. She said that was not fair and noted there were already many small businesses in Hayward that sold these products. She said she understood that requiring a CUP for tobacco sales was one of four approaches that have worked in other locations, but she said that would create more government process in the City that, in her opinion, they didn't need. Commissioner Lavelle said the City had a lot of issues it needed to deal with and had CUPs for a lot of other uses and adding the proposed ordinance would make it extremely difficult to sell one product among many. She said she just didn't agree with that philosophically.

Commissioner Lavelle said that she passed an Arco gas station that she had bought gas at many times and it was boarded up. She said that added to the many businesses that were boarded up along Mission Boulevard and she said she didn't want to thwart a potential new owner at that location from doing business here by requiring that he go through a CUP process just to sell cigarettes. That just doesn't seem right, she said.

Commissioner Lavelle said she heard the comments made about approaches to reduce smoking by youth, but in her opinion, parents had the most significant influence on their children. She said she wished parents had more time to be more involved with their children's lives, however, the economy made that very difficult. As



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a non-parent she acknowledged she didn't have to deal with this issue in her own home, but she reiterated that parents were the number one influence to get kids not to smoke. As a society, as a community, as churches, as business people, as responsible citizens, she said all of us needed to get the message out to youth that they should not take up smoking and that it was dangerous. She concluded that she didn't think this ordinance was the way to go about doing that.

Commissioner McDermott agreed with Commissioner Mendall that more work needed to be done on the ordinance and she said she was leaning toward kicking it back to staff. She said it needed to be more definitive and in some cases, a little more broad based regarding the description of tobacco products. She said she had the highest respect for Commissioner Lavelle, and agreed that parents played a role in their children's lives, but when they are teenagers, she said, the peer pressure is very, very strong. She noted that her mother was a smoker who started at the age of 16 and died of cancer. Commissioner McDermott said she and her siblings constantly told her mom "Don't smoke," but she was so addicted that even when she was diagnosed with lung cancer she wasn't able to stop. She said she wished as parents they did have that much of an influence on kids in regards to smoking specifically, but unfortunately the truth of the matter was, she said, we don't. Commissioner McDermott said sometimes government did need to take measures to provide certain restrictions so kids could be protected because they were so easily influenced, especially in junior high and high school.

Commissioner Faria agreed with Commissioner McDermott that peer groups had a lot of influence on teens and she also agreed that additional clarification was needed regarding the small businesses versus the larger businesses. She said smoking was a public health issue and she saw the impact of smoking on a daily basis not only on the smokers themselves, but on their families. Commissioner Faria said an ordinance was needed, but the proposed ordinance needed more work and some clarification.

Commissioner Lamnin noted that many members of her family smoked, some still did, but it was the images of black lungs that she saw in kindergarten that kept her from starting. She said more than a CUP process, they needed an education process and she made a recommendation to send the proposed ordinance back to staff to include members of the coalition, business owners, Chamber of Commerce members, and community members who may not have known the City was addressing this issue, to determine if the City needed a CUP, a tobacco retailers license, an administrative use permit, or strictly an educational program. She asked what the City should do to address the asthma rates and safety of youth in the community and what could the City do to make the biggest impact on the folks who were here. She also expressed concern about the consistency of the ordinance and the question of why this store and not that store. Research shows, she said, that restrictions on tobacco reduced tobacco use and not just for existing users, so she concluded by asking staff to get some more voices involved.

Commissioner Mendall seconded the recommendation and asked that staff come back with a clear recommendation that targeted sales to youth and built out from there. He mentioned he was a parent too and acknowledged that while parents had a lot of power, if kids were walking by a store right next to their school every day to buy a candy bar on their way home from school and they see the cigarettes, that mattered too. Commissioner Mendall said if the City could just make it a little bit easier for parents that would be a good thing. Rather than try to craft a specific set of recommendations, Commissioner Mendall asked staff to use what they had heard to bring the issue back.

Chair Márquez clarified the motion and commented that she when she read the report she found it confusing because it mentioned collaboration with the Healthy Program and employees and the City and then it moved

to tobacco. She said when she thought of “healthy living” she thought of more physical activity and education, and while she agreed with many of the comments made by the other Commissioners, she said she would like to see more on enforcement and what the community could do to create more healthy activities for youth and their families in the community. Chair Márquez mentioned there were a lot of underutilized facilities, and education about tobacco and alcohol use could be tied into after school and sports programs. She said it was a great discussion with a lot of good points, but she questioned how the City could enforce the proposed ordinance and what the difference was between selling tobacco products at locations under 10,000 square feet versus above. She said she would like to know if the Coalition had a survey of how many outlets were actually selling to youth and said the City should target those outlets and work with them to reduce sales and the signage and advertisements. She concluded by saying that a lot of work needed to be done and while she admired the work that had already been done, the Commission wanted to dig into this a little bit deeper.

The motion passed 7:0:0.

AYES: Commissioners Faria, Lamnin, Lavelle, Loché, McDermott, Mendall
Chair Márquez

NOES:

ABSENT:

ABSTAINED:

COMMISSION REPORTS

3. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude discussed future meeting topics and as a follow-up to past discussions, mentioned that the appeal to bring a Walmart grocery store into the former Circuit City site was denied by Council and the proposed condo project on Maple Court with a change to add some live/work units on the groundfloor was approved by Council.

4. Commissioners’ Announcements, Referrals

Commissioner Lamnin said she had the honor of being one of the representatives from the Planning Commission on the Sustainability Committee as well as the development review process focus group and she said as a Planning Commission it had been really valuable, but due to work commitments she asked that someone else take her place. The Sustainability Committee needed three representatives and the focus group needed one, she said.

Commissioner Mendall said that was a great idea and said he had been to two of the meetings himself and found them very informative. He said the discussions between staff and the architects touched on what the Commission did and agreed that one or two Commissioners should attend or at least they should read the minutes. The Commissioners discussed when and where the groups met and Chair Márquez said she was interested in participating and would look into it.

Commissioner Lavelle reminded all registered voters to participate in the election on June 5, 2012.

APPROVAL OF MINUTES

5. April 12, 2012 approved unanimously

April 26, 2012 approved unanimously with one minor change and Commissioners Lavelle and McDermott abstaining



DATE: November 21, 2013

TO: Planning Commission

FROM: Linda Ajello, AICP, Associate Planner

SUBJECT: Establishment of zoning regulations related to the retail sales of tobacco and tobacco-related products, including electronic cigarettes, within the City of Hayward

RECOMMENDATION

That the Planning Commission review and provide comment on this report and the staff recommendations for the establishment of regulations related to the sales of tobacco and tobacco-related products, including electronic cigarettes.

SUMMARY

In response to City Council direction and concerns with the negative health consequences of tobacco use among youth, due partially to availability and generally unregulated land use regulations in Hayward, staff is recommending changes to the zoning ordinance to establish regulations pertaining to the retail sales of tobacco and tobacco-related products in an effort to reduce the sales of said products to youths. The proposed tobacco retail sales regulations would require that any new tobacco retail sales establishment that is less than 10,000 square feet be limited to the General Commercial Zoning District, not be located within 500 feet of schools, parks and other sensitive receptor, and be subject to approval of a Conditional Use Permit (CUP). Also, staff is recommending that all new and existing retailers obtain a Tobacco Retailers License (TRL), which would include operational standards, compliance inspections and enforcement provisions. Staff is also seeking input from the Commission on a possible ban on the sale of tobacco and tobacco-related products in pharmacies.

BACKGROUND

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco and tobacco-related products in recent years, and with the introduction of a variety of new tobacco related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it is clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth.

In late 2011/early 2012, staff received direction from City Council to develop regulations pertaining to the sales of tobacco and tobacco-related products. In conjunction with the Alameda County Health Department and the Hayward Police Department, staff reviewed available studies and draft ordinances. Sources of information included several other jurisdictions in Alameda County and northern California, the American Lung Association, Change Lab Solutions (formerly TALC) and the Center for Disease Control (CDC). In addition, staff used the results of decoy operations performed by the Hayward Police Department.

Staff developed draft regulations and presented them to the Planning Commission on May 31, 2012 for consideration. At that time, staff recommended amendments to define Tobacco Retail Sales, restricting said use to the General Commercial (GC) Zoning District and require that all new establishments not be located within 500 feet from schools and other sensitive receptors, and obtain a Conditional Use Permit (CUP). Overall, the Planning Commission was supportive of the proposed regulations, but after lengthy discussion, the Commission felt that additional work was needed and directed staff to come back with clear regulations that would target the prevention of sales of tobacco and tobacco-related products to youth (see Attachment I).

DISCUSSION

Retention of Previous Key Provisions - In addition to further developing draft regulations for the retail sales of tobacco and tobacco-related products, staff is proposing to continue with some key provisions that were established in the previous draft, as follows:

- Restrict the location allowing sale of tobacco or tobacco-related products to the General Commercial (CG) Zoning District;
- Require the approval of a Conditional Use Permit (CUP) at all new locations, with some exceptions (see discussion below);
- Allow tobacco sales, as a secondary use, in retail stores over 10,000 square feet in any zoning district;
- Create a definition for tobacco sales, to include the regulation of the sale of drug paraphernalia, electronic cigarettes and other specified items;
- Require a 500 foot separation requirement from sensitive receptors;
- Prohibit any new tobacco retailers from operating within 500 feet of an existing tobacco retailer; and
- Require that all new and existing stores selling tobacco and tobacco-related products, including electronic cigarettes, in Hayward obtain a Tobacco Retailers License (TRL).

The CG district was originally selected because it provides regional serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas. If the Commission wishes, staff can explore the possibility of allowing new tobacco sales establishments in additional zoning districts; however, given the number of existing establishments, staff would not recommend doing so. By requiring a CUP for new establishments (other than certain situations as noted below), the City could evaluate proposed tobacco sale locations to ensure they are compatible with the surrounding properties. The intent of a separation requirement (see later discussion under 'Additional Research') is to keep said establishments away from sensitive receptors, such as schools, parks, libraries, playgrounds, recreation centers, day care centers and health care facilities (i.e., areas where children or sick people are typically present), as well as to

ensure that there is not an oversaturation of tobacco sales establishments in one area. In the City of Hayward, there are currently 142 tobacco retail sales establishments and six “vapor” or electronic cigarette retailers, the majority of which are located in close proximity to schools and other sensitive receptors. The establishment of the separation requirement would prevent any new tobacco retailer from opening up within 500 feet from any existing establishment and any sensitive receptors.

Definitions - Staff has also been working on developing comprehensive definitions to identify tobacco and tobacco-related products to ensure that the tobacco retailers are clear as to the type of products that are allowed to be sold and what products would be prohibited. Some of the key definitions are as follows:

“Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vapor cigarette or any other product name or descriptor.

“Imitation Tobacco Product” means either: any edible non-tobacco product designed to resemble a tobacco product; or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.

“Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.

“Tobacco Sales Establishment” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, imitation tobacco products or any combination thereof.

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

“Tobacco Products” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or

formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

Additional Research - Over the past several months, staff has been able to resume work on the draft regulations. As part of the research required to further develop the draft regulations, staff reviewed similar ordinances in other jurisdictions, as well as studies on the subject matter from various organizations. One such resource utilized by staff, created by The Center for Tobacco Policy and Organization, was a matrix of local ordinances that restrict tobacco retailers within a certain distance of schools (Attachment II). The matrix is current as of July 2013 and includes 29 California cities and counties.

The statewide policies included in the matrix were restrictions pertaining to distance of said business from schools, which range from 500 feet to 1,500 feet, with the majority (16 of 29 ordinances) restricting the sales of tobacco within 1,000 feet of schools. In addition to schools, the majority of surveyed jurisdictions (21 of 29 ordinances) also restricted tobacco retailers from within certain distance of other youth-oriented areas. The most common “other” location is parks and playgrounds. Nineteen cities and counties restrict tobacco retailers near parks in addition to schools. Based on this information, and the number and location of existing tobacco retailers in Hayward, staff is recommending a 500-foot separation from schools and other sensitive receptors for all new tobacco retail sales establishments.

The Center for Tobacco Policy and Organization also conducted a study regarding the effectiveness of retail tobacco licensing (see Attachment III). Based on a study of 33 California communities that have retail tobacco ordinances in place, those ordinances with strong enforcement provisions in communities that actively enforce were indeed effective in reducing tobacco sales to minors. An example of such enforcement is through the establishment of a financial deterrent via fines and penalties, including the suspension and revocation of the license. However, the study concluded that an ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws were also needed.

Electronic Cigarettes - An e-cigarette is a battery powered device that allows users to inhale a vapor containing nicotine or other substances. According to the Food and Drug Administration (FDA), the safety of these devices is still unknown, and initial studies have found carcinogens and toxic chemicals in the vapor, including ingredients used to make anti-freeze. California is one of the states to place a ban on the sale of electronic cigarettes to minors, but there currently are not any state laws regulating where people can use e-cigarettes. Cities do have the ability to adopt local regulations to define “smoking” to include the use of e-cigarettes and to place restrictions of the use on them in certain public areas. In California, there are currently 59 cities and counties that require retailers to obtain a license to sell electronic cigarettes, including Contra Costa County, and the Bay Area cities of Dublin, Concord, Richmond, Albany and Oakland (see Attachment IV). These jurisdictions have added special language in the definition of tobacco products in their local tobacco retailer ordinance to include electronic cigarettes. Further, in recent months, several California cities have placed moratoriums on electronic cigarettes to allow further study to determine if and

how to regulate them. These jurisdictions include the cities of Seal Beach, Union City, Bellflower, Duarte and Orange County.

The State Assembly is currently considering Senate Bill 648, which was introduced by Sen. Ellen Corbett, D-San Leandro, which would extend restrictions and prohibitions against smoking cigarettes and other tobacco products, to include electronic cigarettes. The California Senate voted 21-10 in favor; the bill awaits hearing by the California Assembly, possibly in 2014.

A recent study released by the Center for Disease Control (CDC) (see Attachment V) related to middle and high school students who currently use e-cigarettes, indicates:

- 9.3 percent of all students in grades 6-12 reported that they had never smoked traditional cigarettes;
- 76.3 percent of all students in grades 6-12 reported current conventional cigarette smoking;
- 20.3 percent of middle school students reported that they had never smoked traditional cigarettes;
- 61.1 percent of middle school students reported current conventional cigarette smoking;
- 7.2 percent of high school students reported that they had never smoked traditional cigarettes; and
- 80.5 percent of high school students reported current conventional cigarette smoking.

In conclusion, the CDC study states that experimentation with e-cigarettes among U.S. middle and high school students doubled during 2011-2012, with an estimated 1.78 million students having used an e-cigarette as of 2012. Furthermore, an estimated 160,000 students who reported using e-cigarettes had never used conventional cigarettes. Because the overall health effects of the use of e-cigarettes is still not known, there is particular concern over how the use of nicotine and other tobacco products may negatively impact youth.

Based on recent data, including the CDC report, it appears that the use of electronic cigarettes may be gaining popularity among youths, including those who have never smoked traditional cigarettes. E-cigarettes come in a variety of fruit and candy flavors, such as watermelon, cotton candy and gummy bear, which are feared to attract and addict youth to nicotine at an early age. According to the Surgeon General¹, young people are sensitive to nicotine. The younger they are when they start using tobacco, the more likely they are to become addicted to nicotine and the more heavily addicted they will become. If a person does not begin smoking before the age of 26, they are less likely to ever start. Additionally, while many electronic cigarette manufacturers advertise these devices as a smoking cessation device, the FDA has not approved them as such. Since the long-term effects of electronic cigarettes are still unknown and because of their growing attraction and use by youth, staff is recommending that electronic cigarettes be included in the tobacco retail sales regulations and is seeking concurrence from the Commission.

¹ http://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf

Tobacco Sales in Pharmacies - Over the last several years, a number of cities and counties have passed regulations to ban the sale of tobacco products in pharmacies. Because pharmacies are a place where people generally go to get health care advice and medicine to improve their health, many health advocates feel that the sale of both tobacco products, which have been proven to cause death, and the medicines used to treat tobacco-related illnesses, presents a troubling conflict of interest. The City of San Francisco was the first city in the nation to place a ban on sales of tobacco products in pharmacies. The law was challenged in three lawsuits, one which resulted in a revision to the law to omit an exemption for grocery stores and big box stores with pharmacies. Ultimately, the court decisions in all three cases demonstrated that there is no legal barrier to banning the sale of tobacco in pharmacies, so long as the law treats all retailers that contain pharmacies equally (see Attachment VI). Because many pharmacies are located in or in close proximity to schools, residential neighborhoods and other areas where children are present, staff is recommending that a similar law be considered as part of the tobacco retail sales regulations for the City of Hayward and is seeking concurrence from the Commission.

Additional Recommendations -

- Similar to the City's regulations pertaining to the sale of alcohol, staff is recommending that the sale of tobacco products be allowed without need of a conditional use permit in retail stores having 10,000 square feet or more area in any zone district where the primary use is allowed; however, no more than five (5) percent of such floor area could be devoted to the sale, display and storage of tobacco or tobacco related products combined. This provision would allow larger grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning district for which the primary use is allowed. (See discussion below regarding potential impacts to businesses.)
- In addition, staff is recommending specific operational standards that would apply to all new and existing tobacco retail sales establishments. For instance, the staff's recommendation would restrict product packaging to prohibit the sale of single cigarettes and cigars.
- In 2009, the City and County of San Francisco passed a law prohibiting the sale of tobacco in pharmacies. One argument for this law is that pharmacies are a place that people attribute to improving one's health and that selling tobacco is in conflict with this. Since the law was passed in San Francisco, other communities, including the Bay Area jurisdictions of Richmond and San Mateo County, have adopted similar tobacco-free pharmacy laws. Staff supports a similar ban for Hayward and is seeking direction from the Commission as to whether or not this should be further evaluated. If the direction is to include pharmacies in the proposed regulations, the aforementioned provision for big box stores and large retailers will need to be modified to state that said stores cannot have a pharmacy that sells tobacco products.
- Include electronic cigarettes in the new regulations.

Potential Impacts to Businesses - There are currently one hundred and forty two (142) licensed tobacco retailers in the City of Hayward and four (4) electronic cigarette establishments. These existing establishments would become legal-non-conforming under the proposed regulations and

would be allowed to continue to operate in accordance with the Section 10-1.2900 of the City's Zoning Ordinance – Non-conforming Uses. Per the Non-Conforming Use provision of the City of Hayward Zoning Ordinance, these retailers would be allowed to continue operation as a tobacco retail sales establishment, as long as the non-conforming use is not expanded or has not been discontinued for a period of six consecutive months or more. Also, additional development of any property on which a legal non-conforming use exists is required to have all new uses conform. Thus, non-conforming tobacco sales locations would gradually cease operating.

All tobacco retail sales establishments, including those that are existing and considered legal non-conforming, new establishments requiring a CUP, and shops that sell tobacco as a secondary use and do not require a CUP, would be required to obtain an annual Tobacco Retailer License from the City. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement provisions would give the City's Code Enforcement Division the authority to issue administrative fines, fees, penalties and/or citations and/or abatement to violators of the provisions of the ordinance. Staff is currently working on developing an annual fee amount that will serve to recover the costs for annual inspections and enforcement at the local level. In addition to the annual inspections to be conducted by Code Enforcement, the Hayward Police Department will continue its existing Youth Decoy Program.

Staff has received two specific concerns with the recommendations. One concern is the impact the recommendations would have on small gas stations and convenience stores. Staff has endeavored to learn how much of the revenues earned by gas stations and convenience stores is from tobacco sales. According to the Association for Convenience and Petroleum Retailing (NACS), in 2012, cigarette sales accounted for more than a third of sales inside convenience stores and generated more than \$622,248 in sales revenue for the average convenience store (See Attachment VII). Each of these existing gas stations and convenience stores would be able to continue to sell tobacco, but they would be required to get a Tobacco Retail License (TRL) and would be subject to annual monitoring and compliance checks. Going forward, all existing gas stations and convenience stores selling tobacco products would be considered non-conforming uses, which could limit their ability to expand their business. Any new tobacco retailer would be subject to approval of a CUP and conformance with all standards and regulations pertaining to tobacco retail sales.

The second concern pertains to the exemption for large retailers with ancillary sales of tobacco products. Per the recommended regulations, an existing small smoke shop would become a non-conforming use or a CUP would be required for a new shop, whereas the larger ($\geq 10,000$ sq. ft.) retailer that does not contain a pharmacy, with small areas devoted to tobacco sales, display, etc., would not become non-conforming or be required to obtain a CUP. However, studies have shown that the occurrences of sales of tobacco and tobacco products to youths are typically not occurring at the larger establishments². While most small retailers and convenience stores rely on employee training to prevent sales of tobacco products to youth, many large format retail stores, such as grocery stores, have price scanners which will prompt the clerk to verify age for tobacco products which could explain why violations occur less frequently at the large format retailers than the gas stations and convenience stores³. Furthermore, since the Hayward Police Department began conducting the Youth Decoy Operations in 2010, of the 77 citations issued, only one occurrence

² <http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPRetailerPresentation07.pdf>

³ http://stic.neu.edu/trri/No_Sale/pt3.htm

was at a large format retailer. The remaining 76 citations were issued to gas stations, convenience stores and tobacco stores.

PUBLIC CONTACT

On October 28, 2013, a Community Meeting was held in which all 146 existing tobacco and electronic cigarette retailers were invited. The purpose of the meeting was to inform the existing tobacco retailers of the upcoming Tobacco Retail Sales Regulations and to gather feedback, comments and concerns. Twenty (20) people attended the meeting, including local tobacco and electronic cigarette retailers and youth advocates from the Castro Valley Community Action Network (CV CAN) and the Hayward Coalition for Healthy Youth (HCHY).

The owners of one of the electronic cigarette stores in Hayward reiterated their dismay, expressed previously at the October 2, 2013 Downtown Business Improvement Area (DBIA) meeting, regarding the inclusion of electronic cigarettes in the proposed regulations, arguing that electronic cigarettes are not a tobacco product. They went on to state that they are “anti-tobacco” and in the business of helping people quit tobacco. One tobacco retailer expressed support for the regulations, because he felt it would help hold storeowners who sell tobacco products minors accountable. Another retailer in the audience did not agree, stating that they are responsible business owners and strictly adhere to the laws pertaining to sales to minors. Staff commended them and all of the other responsible business owners in the City, but went on to point out that, based on the results of the HPD Youth Decoy Program, there are retailers selling tobacco products to minors in Hayward. Several Hayward student advocates, who participate in the Hayward Police Department Youth Decoy Program, spoke on their experiences as decoys and how easy it was for them to purchase tobacco products as minors. They also spoke on their experiences at school with other kids who use the various candy flavored tobacco and electronic cigarette products targeted at youths and expressed support for the proposed regulations.

Further, staff conducted additional community outreach by making oral presentations about the forthcoming regulations to the Community and Economic Development Committee (CEDC) at their September 16, 2013 meeting, Keep Hayward Clean and Green (KHGC) on September 26, 2013 and the Downtown Business Improvement Area (DBIA) on October 2, 2013. Overall, all three groups were supportive of the proposed regulations.

NEXT STEPS

A work session before the City Council is scheduled on December 17, 2013. Staff will incorporate input from Council, from the public received at the October 28, 2013 community meeting, and from the Planning Commission at this work session, to develop recommended comprehensive regulations pertaining to tobacco retail sales establishments in Hayward. The regulations will be presented at a community meeting in early to mid-January, and at noticed public hearings to the Planning Commission for consideration in late January 2014 and to the City Council in late February 2014.

Prepared by: Linda Ajello, AICP, Associate Planner

Recommended by: Patrice Siefers, MPA, Planning Manager

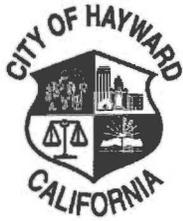
Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- Attachment I Planning Commission Agenda Report and meeting minutes, May 31, 2012
- Attachment II Matrix of Local Ordinances Restricting Tobacco Retailers Within a Certain Distance of Schools, The Center for Tobacco Policy and Organization, July 2013
- Attachment III Tobacco Retailer Licensing Is Effective, The Center for Tobacco Policy and Organization, September 2013
- Attachment IV Tobacco Retailer Licensing and Electronic Cigarettes, The Center for Tobacco Policy and Organization, July 2013
- Attachment V Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012, Centers for Disease Control and Prevention, September 6, 2013
- Attachment VI A Prescription for Health: Tobacco Free Pharmacies, Change Lab Solutions, July 2013
- Attachment VII Cigarettes Generate Big Revenue for Convenience Stores; Analysis of 2013 State of the Industry Report, The Center for Tobacco Policy and Organization, 2013
- Attachment VIII Tobacco Retailer Licensing: An Effective Tool for Public Health, Change Lab Solutions, September 2012



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 21, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Faria.

ROLL CALL

Present: COMMISSIONERS: Loché, McDermott, Márquez, Lavelle
CHAIRPERSON: Faria
Absent: COMMISSIONERS: Trivedi, Lamnin
CHAIRPERSON: None

Commissioner Loché led in the Pledge of Allegiance.

Staff Members Present: Ajello, Bristow, Conneely, Madhukansh-Singh, Rizk, Siefers,

General Public Present: 8

PUBLIC COMMENTS

Ms. Traci Cross, Project Director for the Hayward Coalition for Healthy Youth, supported changes to the Zoning Ordinance establishing regulations for retail sales of tobacco products and tobacco-related products. She shared that under current regulations, electronic cigarettes could be sold at retail stores that are not tobacco outlets and emphasized the need to regulate this product. Ms. Cross expressed concern that smokeless and odorless products that contain nicotine are attracting teenagers. She reported that currently there are seven vapor retailers located in Hayward.

Ms. Janice Louie, Alameda County Public Health Department employee, supported Hayward adopting a Tobacco Retailer Licensing Ordinance, and noted that four cities in Alameda County have adopted a local ordinance restricting tobacco retailers operating near schools. She recommended that Hayward adopt a policy where tobacco retailers are located at least 1,000 feet away from schools and other sensitive receptors, as compared to Hayward's proposed tobacco retail sales regulations which would require a separation of 500 feet between sales locations, schools and other sensitive receptors. Ms. Louie highlighted that according to a density report which she received from the State, in one of Hayward's zip codes, 94541, there are 40 tobacco retailers serving a population of 27,000 people and that 27% of these retailers were situated within 1,000 feet of schools. The proposed ordinance would require a conditional use permit application for new vendors and would require a license fee that will be used to increase enforcement of underage tobacco sales.

Ms. Karishma Khatri, a student at CSUEB, stated that she is a participant in alcohol, tobacco and other drug prevention activities, including being a youth decoy for cities throughout Alameda

County. She noted that although e-cigarettes are intended to be used by individuals who attempt to quit smoking cigarettes, it was not uncommon to see students at her university using these devices and she added that children as young as middle school-aged students use e-cigarettes.

Ms. Beneba Thomas, owner of the Golden Tea Garden, said that establishing a Zoning Ordinance regulation for tobacco retailers was an opportunity for the City to be proactive in addressing a potential problem. She encouraged that any future ordinance addressing tobacco concerns be enforceable; that local authorities are able to randomly inspect tobacco retailers; that the City has the ability to terminate business licenses for noncompliant establishments; the regulation allow for the inspection of the tobacco retailer's accounting records to confirm the percentage of sales from tobacco paraphernalia or tobacco products. As the owner of a business in downtown Hayward, Ms. Thomas stressed that tobacco retailers may attract individuals exhibiting behaviors that are not desirable for the downtown.

Mr. James Mamable, resident of Hayward, expressed concern that children are easily influenced to use tobacco products. He suggested that the zoning regulations prohibit tobacco retailers from operating within 500 feet of schools and other sensitive receptors in order to prevent minors from being exposed to such establishments.

Ms. Serena Chen, American Lung Association employee, emphasized that Hayward is a place where nicotine products are being marketed due to its large youth population. She reported that 20% of deaths occurring in Hayward result from the use of tobacco products. She urged the City to restrict where new tobacco retailers can be located because the fewer places that sell and advertise tobacco products to the youth, the less likely children will be able to purchase these products. She stated that the average teenager visited a convenience store about once a week and commented that convenience stores are the main location where children purchase tobacco products. Ms. Chen indicated that Hayward currently had four vapor dens that were attracting college students and potentially leading them towards nicotine addiction.

WORK SESSION

1. Establishment of zoning regulations related to the retail sales of tobacco and tobacco-related products, including electronic cigarettes, within the City of Hayward.

Associate Planner Ajello provided a synopsis of the staff report. She noted that the American Lung Association produced a report card which gave Hayward a grade of 'D' for its efforts on reducing the sale of tobacco products. She said that the percent of tobacco retailers located within 1,000 feet of schools in the Hayward zip code of 94541 was 25% and 29% for the 94544 zip code. She stated that there were six existing vapor stores in Hayward and that these types of businesses were opening up quickly in the City, emphasizing the need to quickly establish zoning regulations pertaining to tobacco-related products. She pointed out that the tobacco regulations would include specific operational standards and enforcement provisions allowing the City's Code Enforcement Division and the Hayward Police Department (HPD) to enforce the regulations. In addition to being required to obtain Tobacco Retail Licenses (TRL), Ms. Ajello stated that all tobacco retailers would have to comply with federal, state, and local laws pertaining to tobacco. She stated that the tobacco regulations would include applying over-concentration criterion to smoking lounges and that the non-conforming uses may eventually even close down.



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In response to Commissioner McDermott's question on how the HPD Youth Decoy Program operated, Neighborhood Partnership Manager Bristow stated that the youth decoy program was previously funded through a grant program with Alameda County. She pointed out that the tobacco licensing ordinance will help the City provide funding for programs such as the youth decoy. She shared that the HPD runs approximately three or four decoy operations per year.

Ms. Khatri clarified for Commissioner McDermott that youth decoys are accompanied by law enforcement officers to tobacco retailers such as Safeway or Lucky. She described that the inspection process consisted of the youth decoys attempting to purchase tobacco products at these establishments. If the youth decoys were sold tobacco products, then the retailer would be cited by the officer. She elaborated that there are community programs that recruit youth decoys for these volunteer positions.

Commissioner McDermott expressed that there was a need to have youth decoys go out more frequently in order to perform inspections and she added that more frequent visits to retailers would help ensure compliance by tobacco retailers in selling tobacco products to those of legal age.

Neighborhood Partnership Manager Bristow noted for Commissioner McDermott that staff performed a preliminary analysis and determined that an annual licensing fee would provide adequate funding for the youth decoy operations as well as the annual inspections of tobacco retail establishments. She noted that a minimum of one inspection would be performed per tobacco retail establishment.

Commissioner McDermott said that she was supportive of an annual TRL fee of \$500 and noted that a fee of \$1400 per year was excessive. She stated that by the City being more proactive in performing inspections it was possible that there would be a decline in the number of noncompliant establishments. Commissioner Loché thanked the public for sharing their comments on the need for establishing tobacco regulations in the Hayward. He urged that strict measures need to be put in place to enforce regulations on the sales of e-cigarettes and claimed that even though e-cigarettes were being marketed as a smoking cessation tool, it was clear to him that young individuals were not utilizing this product for that purpose.

Associate Planner Ajello indicated for Commissioner Loché that once the TRL was in place, staff could enforce compliance of tobacco retailers with the parameters that the business licenses were approved for. In regards to Commissioner Loché's comment on the percentage of sales being tobacco products versus the sale of e-cigarettes, she stated that if tobacco retailers were operating outside of what was authorized in the conditional use permit, then staff could respond to this by issuing a notice of violation.

Ms. Chen noted for Commissioner Loché that in comparison to other nearby cities, Hayward had more vapor retailers. Associate Planner Ajello added that once a definition is established in the

City's tobacco regulations ordinance on tobacco-related products, staff expected to see a decline in the number of vapor retailers operating in Hayward.

In response to Commissioner Márquez's question, Associate Planner Ajello said that if staff's recommendations were implemented, then large format stores such as Lucky, Target, or Safeway, that would like to continue selling tobacco products and that also have a pharmacy would have to obtain a conditional use permit for this purpose.

Associate Planner Ajello confirmed for Commissioner Márquez that the separation requirements for sensitive receptors included religious institutions such as churches. Commissioner Márquez encouraged staff to explore if senior centers and other establishments that dealt with individuals with compromised health qualified as sensitive receptors.

Associate Planner Ajello said that the initial draft of the tobacco regulations consisted of a separation requirement of 500 feet; however, she indicated that if staff received direction from the Planning Commission to increase the separation requirement, then staff could modify this.

Commissioner Márquez supported having a more expansive definition of tobacco-related products, especially to include electronic cigarettes in this definition. She asked staff how the tobacco regulations could be reviewed and measured for success after it was implemented.

Associate Planner Ajello commented that one tool for measuring the success of the program could be through data acquired from the Code Enforcement Division and also through the HPD Youth Decoy Program and from the results of the annual inspections. She shared that since the start of the youth decoy program in 2010, seventy-seven violations had been reported.

Neighborhood Partnership Manager Bristow mentioned that Code Enforcement staff had a software system from which statistical information could be generated on the number of inspections performed and the occurrence of violations and she noted that this could be shared with the Planning Commission and the City Council in order to provide an update on the progress that was being made with the implementation of the tobacco regulations.

Commissioner Lavelle asked staff why longstanding retail establishments in Hayward would need to acquire a TRL in order to be able to sell tobacco products. Associate Planner Ajello stated that the TRL would permit staff to enforce tobacco regulations and to be able to monitor all tobacco establishments by conducting inspections in order to ensure compliance with all laws pertaining to the sale of tobacco products. She commented that through the youth decoy program, it had become evident that many existing establishments were selling tobacco-related products to minors and noted that the TRL would make businesses accountable.

Commissioner Lavelle expressed concern that some businesses in Hayward were going to have to pay an additional fee to the City. She said that the Code Enforcement staff was already busy with enforcing other regulations in the City and that the proposed regulations were going to be additional tasks staff would have to cope with. Commissioner Lavelle said that more than half of the businesses in Hayward were already compliant and not selling tobacco products to minors, while large format stores could continue to sell tobacco products.



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Associate Planner Ajello responded that one of the reasons staff recommended excluding the large format retailers from certain tobacco regulations was because studies have revealed that these types of establishments do not sell to minors. She stated that according to data collected from the youth decoy program, of the seventy-seven violations in Hayward where minors were sold tobacco products, only one of these sales occurred at a large format retailer. Ms. Ajello said that the TRL requirement had to be equitably applied to all tobacco retailers and not just new tobacco retailers.

Commissioner Lavelle was concerned that tobacco regulations would be onerous and harmful to existing businesses in Hayward, even though she was supportive of the goal of the TRL which was to prevent minors from purchasing tobacco-related products. She emphasized that one of the main objectives of the City was to attract and retain businesses and pointed out that Hayward recently underwent a process of adopting the alcohol beverage outlet regulations which also consisted of businesses being subject to new fees.

Chair Faria said that she was concerned at the speed at which the vapor stores were commencing business in Hayward and that the City could not prohibit such businesses until there was an ordinance in place to regulate such establishments. She shared that she recently became aware that some e-cigarettes contain antifreeze which have been reported to have harmed the young individuals who used these products. She asked staff if anything could be done to limit the expansion of vapor stores more expeditiously, prior to the enactment of the ordinance being passed. Chair Faria expressed concern that some establishments had deviated from what they had reported as the nature of their business on the business license application and they were selling vapor products.

Neighborhood Partnership Manager Bristow responded to Chair Faria's concern indicating that staff will be working with the City Attorney's Office to consider declaring a moratorium on establishments such as vapor stores opening up in Hayward.

Commissioner Márquez agreed with Commissioner Lavelle's comments on the potential hardship that the additional fees may have on Hayward businesses, noting that the fees proposed by staff were steep. She asked staff if it would be possible to set up a payment plan for businesses so that they could pay any required fees through a structured installment plan.

Neighborhood Partnership Manager Bristow indicated that the median fee throughout the State was approximately \$350 and also reported that fees among Bay Area cities varied from being as low as \$50 to as high as \$1050. She shared that staff polled other municipalities in how they determined the fee structure for the TRL program and eleven jurisdictions responded. Ms. Bristow stated that a fee of \$400 would be sufficient to cover the cost of conducting inspections and operating the youth decoy program.

Commissioner Lavelle said that Hayward businesses should not be harmed through the imposition of fees for selling products that were legal for adults to purchase. She also objected to including a

prohibition of tobacco sales at stores that contain a pharmacy. She supported strategies in preventing youth from purchasing tobacco-related products such as the youth decoy program and agreed with the 500 feet separation requirement banning tobacco retailers from being situated near schools and other sensitive receptor locations. Commissioner Lavelle noted that City staff was overburdened already, commenting that the Code Enforcement staff receives complaints through Access Hayward on numerous violations of non-tobacco related matters occurring in Hayward on a daily basis. She stated that currently in California, there was peer pressure to not smoke and urged that an approach be explored to make this peer pressure to not smoke stronger. Commissioner Lavelle recommended that cigarette sales regulations should be separated from the sale of e-cigarette products and indicated her support for a temporary moratorium as this would give staff more time to further study this matter. She agreed with staff's recommendation on requiring new tobacco retailers to undergo a conditional use permitting process, however, she opposed implementing a TRL.

Commissioner Loché suggested that staff consider increasing the separation requirement to 1,000 feet and he also supported having a moratorium on the sale of e-cigarettes in Hayward.

Commissioner McDermott asked staff to elaborate on the consequences that would be imposed on a tobacco retailer that was being negligent and who was cited more than once for violating tobacco regulations.

Neighborhood Partnership Manager Bristow responded to Commissioner McDermott's question by stating that businesses in violation of tobacco regulations, whether this was identified through an inspection or complaint driven, would be subject to the following: the retailer would have up to three days to remedy the violation, the establishment would receive a letter of violation from the City, and the retailer could choose between a thirty-day suspension on tobacco sales or they could opt to pay a \$1,500 fine.

In response to Commissioner McDermott's question, Neighborhood Partnership Manager Bristow said that staff was considering decreasing the fees for compliant businesses over time.

Chair Faria supported instituting a moratorium on the sale of e-cigarettes.

Commissioner Loché supported removing the annual fees for establishments that had demonstrated after a number of years that their business had been operating in compliance with tobacco regulations.

Commissioner Márquez stated that she was supportive of a moratorium in the operation of hookah and vapor lounges. She asked staff if it would be possible to conduct a one year study during which the amount of inspections and youth decoy programs performed could be doubled, in order to collect information on which establishments were complying or violating the tobacco regulations. Commissioner Márquez added that this information could then be utilized to determine which businesses would be charged the annual TRL fees. She said that she agreed with Commissioner McDermott that incentives be explored in having adherence to the tobacco regulations and also noted that the fees either be reduced or removed for establishments that were in good standing.



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Neighborhood Partnership Manager Bristow responded that this option had not been previously considered and said that the HPD would have to be consulted on this matter. She mentioned that it was her understanding that the Alameda County was no longer going to provide funding for the HPD Youth Decoy Programs which was why the annual TRL fees were being proposed in order help finance the costs of staff inspections and youth decoy operations being conducted at tobacco retail establishments.

Commissioner Lavelle requested that the HPD provide information on what efforts were currently being made in preventing teenagers and young people from smoking marijuana, since marijuana was an illegal product compared to other tobacco-related products.

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Planning Manager Siefers announced that the Integral Communities project was on the agenda for the December 19, 2013 Planning Commission meeting, pending their provision of revised plans. She reported that on December 16, 2013, staff and Mayor Sweeney would be meeting with residents of the Cannery development who had expressed concerns over the following issues: parking, landscaping, lighting and high speed cut-through street traffic in the neighborhood. Ms. Siefers mentioned that the Planning staff was continuing to work with the Stonebrae developer on ways to bring more open space to the area. She further pointed out that staff is in receipt of many development applications and that staff was trying to get these processed in a timely manner, and despite staffing limitations. Ms. Siefers shared that the Planning Division and Public Works staff are working in conjunction with the City Manager's Office to ensure that Hayward retains the Capitol Corridor Amtrak Station and train service. Ms. Siefers indicated that there is a proposal to be studied that would move the service to the Mulford track adjacent to the Bay.

5. Commissioners' Announcements, Referrals

Commissioner Márquez shared that the City's *Light Up The Season* event would be held on December 5, 2013.

Planning Manager Siefers noted for Commissioner Márquez that a conditional use permit application for operating a distillery and ancillary tasting room by the Buffalo Bill's Property Group was on the agenda for the December 5, 2013 Planning Commission meeting.

Commissioner McDermott commented that she was pleased to experience firsthand how busy some restaurants in downtown Hayward were becoming as this indicated that the economy may be picking up.

Commissioner Márquez thanked staff for their efforts in trying to retain the Amtrak station as this was a great asset to the City.

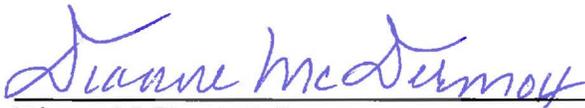
APPROVAL OF MINUTES

6. The minutes of October 17, 2013 were unanimously approved with Chair Faria abstaining.

ADJOURNMENT

Chair Faria adjourned the meeting at 8:19 pm.

APPROVED:



Dianne McDermott, Secretary
Planning Commission

ATTEST:



Avinta Madhukansh-Singh, Senior Secretary
Office of the City Clerk



DATE: December 17, 2013

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, Within the City of Hayward

RECOMMENDATION

That the City Council reviews and provides comments on this report and the staff recommendations for the establishment of regulations related to the sales of tobacco and tobacco-related products, including electronic cigarettes.

SUMMARY

In response to City Council direction and concerns with the negative health consequences of tobacco use among youth, due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, staff is recommending regulations pertaining to the retail sales of tobacco and tobacco-related products. Given the large number of establishments in Hayward that sell tobacco, staff is recommending zoning restrictions for new establishments that sell tobacco and tobacco-related products, and a new license and fee applicable to all tobacco-sales establishments, to offset the cost of enforcement of the proposed regulations.

The proposed regulations would limit new tobacco retail sales establishments (with an exception for secondary sales in stores over 10,000 square feet) to the General Commercial (CG) Zoning District, subject to approval of a Conditional Use Permit (CUP), and impose a 500 foot separation requirement from schools, parks and other sensitive receptors. Also, staff is recommending that all new and existing retailers obtain a Tobacco Retailers License (TRL) (and pay an associated annual fee of approximately \$400), which would establish some operational standards, compliance inspections and enforcement provisions. Staff is also seeking input from the Council on a possible ban on the sale of tobacco and tobacco-related products in all pharmacies.

Staff also plans to bring an urgency ordinance to Council on January 14 for consideration, which would establish a moratorium on the establishment of new e-cigarette and tobacco retail sales establishments, given the number of establishments being proposed and developed. Staff anticipates bringing new regulations to Planning Commission and City Council in early spring of 2014.

BACKGROUND

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco and tobacco-related products in recent years and with the introduction of a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it is clear that the City needs to develop standards pertaining to the sale of such items in order to prevent sales to youth.

In late 2011/early 2012, staff received direction from City Council to develop regulations pertaining to the sales of tobacco and tobacco-related products. In conjunction with the Alameda County Department of Environmental Health and the Hayward Police Department, staff reviewed available studies and draft ordinances. Sources of information included several other jurisdictions in Alameda County and northern California, the American Lung Association, Change Lab Solutions (formerly TALC), and the Center for Disease Control (CDC). In addition, staff used the results of decoy operations performed by the Hayward Police Department.

Previous Planning Commission Meetings - Staff developed draft regulations and presented them to the Planning Commission at a work session on May 31, 2012 for consideration. Overall, the Planning Commission was supportive of the proposed regulations, but after lengthy discussion, the Commission felt that additional work was needed and directed staff to come back with regulations that would target the prevention of sales of tobacco and tobacco-related products to youth (see staff report and minutes, Attachment I).

At the November 21, 2013 Planning Commission work session, five (5) members of the public spoke in favor of the proposed tobacco regulations (see meeting minutes, Attachment II). Speakers included a Downtown business owner, members and student advocates from Hayward Coalition for Healthy Youth (HCHY), the American Lung Association, and the Alameda County Department of Environmental Health. The Commissioners expressed support for the establishment of tobacco regulations; however, several concerns were expressed regarding the fee that would be associated with the establishment of a TRL. The Commission directed staff to further analyze the fee associated with the TRL and to also look at an incentive program that would reward those establishments in good standing by waiving or reducing the TRL fee after a determined period of time. The Commission was also in support of the 500-foot separation requirement from sensitive receptors; however, at least one Commissioner felt that a 1,000-foot separation requirement should be considered. Lastly, the Commissioners expressed concern over the number of electronic cigarette stores that have opened in the City recently and were in support of a moratorium.

DISCUSSION

Summary of Recommendations – In order to develop draft regulations for the retail sales of tobacco and tobacco-related products, staff is proposing the following recommendations for Council input:

- Similar to the City's regulations pertaining to the sale of alcohol, staff recommends that the sale of tobacco products be allowed without need of a conditional use permit in retail stores

having 10,000 square feet or more area in any zoning district where the primary retail use is allowed; however, no more than five (5) percent of such floor area could be devoted to the sale, display and storage of tobacco or tobacco-related products combined (similar to the City's alcohol regulations). This provision would allow larger grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning district for which the primary use is allowed (See discussion below regarding potential impacts to businesses).

- In addition, staff is recommending specific operational standards that would apply to all new and existing tobacco retail sales establishments. For instance, staff's recommendation would restrict product packaging to prohibit the sale of single cigarettes and cigars.
- In 2009, the City and County of San Francisco passed a law prohibiting the sale of tobacco in pharmacies. Since the law was passed in San Francisco, other communities, including the Bay Area jurisdictions of Richmond and San Mateo County, have adopted similar tobacco-free pharmacy laws. Staff supports a similar ban for Hayward and is seeking direction from the Council as to whether or not this should be further evaluated. If the direction is to include pharmacies in the proposed regulations, the aforementioned provision for big box stores and large retailers will need to be modified to state that said stores cannot have a pharmacy and sell tobacco products anywhere in the store.
- Include electronic cigarettes in the new regulations.

Retention of Previous Key Provisions - In addition to further developing draft regulations for the retail sales of tobacco and tobacco-related products, staff is proposing to continue with some key provisions that were recommended in the 2012 draft regulations, and also require Council input, as follows:

- Restrict the location of establishments selling tobacco or tobacco-related products to the General Commercial (CG) Zoning District (with the exception noted below);
- Require the approval of a CUP at all new locations, with some exceptions (see discussion below);
- Allow tobacco sales, as a secondary use, in retail stores over 10,000 square feet in any zoning district, without a CUP;
- Create a definition for tobacco sales, to include the regulation of the sale of electronic cigarettes and other specified items;
- Require a 500-foot separation from sensitive receptors;
- Prohibit any new tobacco retailers from operating within 500 feet of an existing tobacco retailer; and
- Require that all new and existing stores selling tobacco and tobacco-related products, including electronic cigarettes, obtain a TRL.

The CG district was originally selected as suitable for tobacco establishments because it provides regional-serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas. If the Council wishes, staff can explore the possibility of allowing new tobacco sales establishments in additional zoning districts; however, given the number of existing establishments, staff would not recommend doing so. By requiring a CUP for

new establishments (other than certain situations as noted below), the City could evaluate proposed tobacco sale locations to ensure they are compatible with the surrounding properties. The intent of a separation requirement (see later discussion under ‘*Additional Research*’) is to keep said establishments away from sensitive receptors, such as schools, parks, libraries, playgrounds, recreation centers, day care centers and health care facilities (i.e., areas where children or people with medical issues are typically present), as well as to ensure that there is not an oversaturation of tobacco sales establishments in one area. There are currently 146 tobacco retail sales establishments and six (6) “vapor” or electronic cigarette retailers in the City, the majority of which are located in close proximity to schools and other sensitive receptors. The establishment of the separation requirement would prevent any new tobacco retailer from opening up within 500 feet from any existing establishment and any sensitive receptors. The separation requirements would not apply to stores over 10,000 square feet, where no more than five (5) percent of such floor area could be devoted to the sale, display and storage of tobacco or tobacco-related products combined, and tobacco sales is a secondary use.

Definitions - Staff has also been working on developing comprehensive definitions to identify tobacco and tobacco-related products to comprehensively regulate the type of products that are allowed to be sold and the products that would be prohibited. Some of the key definitions are as follows:

“Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vapor cigarette or any other product name or descriptor.

“Imitation Tobacco Product” means either an edible non-tobacco product designed to resemble a tobacco product or any non-edible, non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.

“Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, and electronic cigarette vapors.

“Tobacco Sales Establishment” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, imitation tobacco products or any combination thereof.

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

“Tobacco Products” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

Additional Research - As part of the research required to further develop the draft regulations, staff reviewed similar ordinances in other jurisdictions, as well as studies on the subject matter from various organizations. One such resource utilized by staff, created by The Center for Tobacco Policy and Organization, was a matrix of local ordinances that restrict tobacco retailers within a certain distance of schools (Attachment III). The matrix is current as of July 2013 and includes 29 California cities and counties.

The statewide policies included in the matrix were restrictions pertaining to the distance of the business from schools, which range from 500 feet to 1,500 feet, with the majority (16 of 29 ordinances) restricting the sales of tobacco within 1,000 feet of schools. In addition to schools, the majority of surveyed jurisdictions (21 of 29 ordinances) also restricted tobacco retailers from within certain distance of other youth-oriented areas. The most common “other” location is parks and playgrounds. Nineteen cities and counties restrict tobacco retailers near parks in addition to schools. Based on this information, and the number and location of existing tobacco retailers in Hayward, staff is recommending a 500-foot separation from schools and other sensitive receptors for all new tobacco retail sales establishments.

The Center for Tobacco Policy and Organization also conducted a study regarding the effectiveness of retail tobacco licensing and enforcement (see Attachment IV). Based on a study of 33 California communities that have retail tobacco ordinances in place, those ordinances with strong enforcement provisions in communities that actively enforce were indeed effective in reducing tobacco sales to minors. An example of such enforcement is through the establishment of a financial deterrent via fines and penalties, including the suspension and revocation of the license. However, the study concluded that an ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws were also needed.

Electronic Cigarettes - An e-cigarette is a battery powered device that allows users to inhale a vapor containing nicotine or other substances. According to the Food and Drug Administration (FDA), the safety of these devices is still unknown, and initial studies have found carcinogens and toxic chemicals in the vapor, including ingredients used to make anti-freeze. California is one of the states to place a ban on the sale of electronic cigarettes to minors, but there currently are not any state laws regulating where people can use e-cigarettes. Cities do have the ability to adopt local

regulations to define “smoking” to include the use of e-cigarettes and to place restrictions of the use on them in certain public areas. In California, there are currently 59 cities and counties that require retailers to obtain a license to sell electronic cigarettes, including Contra Costa County, and the Bay Area cities of Dublin, Concord, Richmond, Albany and Oakland (see Attachment V). These jurisdictions have added special language to the definition of tobacco products in their local tobacco retailer ordinance to include electronic cigarettes. Further, in recent months, several California cities have placed moratoriums on electronic cigarettes to allow further study to determine if and how to regulate them. These jurisdictions include the cities of Seal Beach, Union City, Bellflower, Duarte and Orange County.

On November 26, 2013, Union City City Council passed an ordinance on a 5-0 vote, to prohibit E-Cigarette bars/lounges, vapor bars/lounges, hookah bars/lounges, and medical marijuana dispensaries within their city limits¹. Union City is the first jurisdiction in California to explicitly prohibit vapor lounges. A more common approach than an outright ban has been to enact zoning restrictions or CUP requirements for e-cigarette lounges.

The State Assembly is currently considering Senate Bill 648, which was introduced by Sen. Ellen Corbett, D-San Leandro, which would extend restrictions and prohibitions against smoking cigarettes and other tobacco products to include electronic cigarettes. The California Senate voted 21-10 in favor; the bill awaits hearing by the California Assembly, possibly in 2014.

A recent study released by the Center for Disease Control (CDC) (see Attachment VI) related to middle and high school students indicates that over 3/4 of those students that use e-cigarettes smoke traditional cigarettes. The data shown in the attachment is summarized below :

- 9.3 percent in grades 6-12 reported that they had never smoked traditional cigarettes;
- 76.3 percent of e-cigarette users in grades 6-12 reported current conventional cigarette smoking;
- 20.3 percent of those in middle school reported that they had never smoked traditional cigarettes;
- 61.1 percent of those in middle school that used e-cigarettes reported current conventional cigarette smoking;
- 7.2 percent of those in high school reported that they had never smoked traditional cigarettes; and
- 80.5 percent of those in high school that used e-cigarettes reported current conventional cigarette smoking.

The attached CDC study states on page 2, “E-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011-2012, resulting in an estimated 1.78 million students having ever used e-cigarettes as of 2012. Moreover, in 2012, an estimated 160,000 students who reported ever using e-cigarettes had never used conventional cigarettes.” Because there appears to be a high correlation between e-cigarette use and traditional cigarette use, and because the use of e-cigarettes by youth appears to be rising significantly, there are concerns with youth having access to e-cigarettes.

¹ <http://f2.unioncity.org/WebLink8/DocView.aspx?id=28139&dbid=0>

Based on recent data, including the CDC report, it appears that the use of electronic cigarettes may be gaining popularity among youth, including those who have never smoked traditional cigarettes. Electronic cigarettes come in a variety of fruit and candy flavors, such as watermelon, cotton candy and gummy bear, which are feared to attract and addict youth to nicotine at an early age. According to the Surgeon General², young people are sensitive to nicotine. The younger they are when they start using tobacco, the more likely they are to become addicted to nicotine and the more heavily addicted they will become. If a person does not begin smoking before the age of 26, they are less likely to ever start. Additionally, while many electronic cigarette manufacturers advertise these devices as a smoking cessation device, the FDA has not approved them as such.

Since the long-term effects of electronic cigarettes are still unknown and because of their growing attraction and use by youth, staff and the Planning Commission recommend that electronic cigarettes be included in the tobacco retail sales regulations and seek concurrence from the Council.

Tobacco Sales in Pharmacies - Over the last several years, a number of cities and counties have passed regulations to ban the sale of tobacco products in pharmacies. Because pharmacies are places where people generally go to get health care advice and medicine to improve their health, many health advocates feel that the sale of both tobacco products, which have been proven to cause death, and the medicines used to treat tobacco-related illnesses, presents a troubling conflict of interest. The City of San Francisco was the first city in the nation to place a ban on sales of tobacco products in pharmacies. The law was challenged in three lawsuits, one which resulted in a revision to the law to omit an exemption for grocery stores and big box stores with pharmacies. Ultimately, the court decisions in all three cases demonstrated that there is no legal barrier to banning the sale of tobacco in pharmacies, so long as the law treats all retailers that contain pharmacies equally (see Attachment VII). Because many pharmacies are located in close proximity to schools and in residential neighborhoods and other areas where children are present, staff recommends that a similar law be considered as part of the City's tobacco retail sales regulations and seeks concurrence from the Council.

Potential Impacts to Businesses - There are currently one hundred and forty-six licensed tobacco retailers in the City of Hayward and six (6) electronic cigarette establishments. These existing establishments would become legal non-conforming uses under the proposed regulations and would be allowed to continue to operate in accordance with the Section 10-1.2900 of the City's Zoning Ordinance – Non-Conforming Uses. Per the Non-Conforming Use provision of the City's Zoning Ordinance, these retailers would be allowed to continue operation as a tobacco retail sales establishment, as long as the non-conforming use is not expanded or has not been discontinued for a period of six consecutive months or more. Thus, non-conforming tobacco sales locations would gradually cease operating.

Tobacco Retailer License - All tobacco retail sales establishments, including those that are existing and considered legal non-conforming, new establishments requiring a CUP, and shops that sell tobacco as a secondary use and are not required to obtain a CUP, would be required to obtain an annual Tobacco Retailer License from the City and pay an annual fee. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement

² http://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf

provisions would give the City's Code Enforcement Division the authority to issue administrative fines, fees, penalties and/or citations or abatement notices to violators of the provisions of the ordinance. Staff is currently working on developing an annual fee amount that will serve to recover the costs for annual inspections and enforcement at the local level. In addition to the annual inspections to be conducted by Code Enforcement, the Hayward Police Department will continue its existing Youth Decoy Program.

Prior to the recent Planning Commission work session, staff had received two specific concerns with the proposed regulations. One concern is the impact the regulations would have on small gas stations and convenience stores. Staff has endeavored to learn how much of the revenues earned by gas stations and convenience stores derive from tobacco sales. According to the Association for Convenience and Petroleum Retailing (NACS), in 2012, cigarette sales accounted for more than a third of sales inside convenience stores and generated more than \$622,248 in sales revenue for the average convenience store (See Attachment VIII). Each of these existing gas stations and convenience stores would be able to continue to sell tobacco, but they would be required to get a TRL and would be subject to annual monitoring and compliance checks. Going forward, all existing gas stations and convenience stores selling tobacco products would be considered non-conforming uses, which could limit their ability to expand their business without compliance with all location and operational standards and approval of a Conditional Use Permit. Any new tobacco retailer would be subject to approval of a CUP and conformance with all standards and regulations pertaining to tobacco retail sales.

The second concern pertains to the exemption for large retailers with ancillary sales of tobacco products. Staff recommends this exemption for a variety of reasons, most notably that studies have shown that sales of tobacco and tobacco products to youths are typically not occurring at the larger establishments³. Under the recommended regulations, an existing small smoke shop would become a non-conforming use or a CUP would be required for a new shop, whereas the larger ($\geq 10,000$ sq. ft.) retailer that does not contain a pharmacy, with small areas devoted to tobacco sales, display, etc., would be a conforming use and would not be required to obtain a CUP.

While most small retailers and convenience stores rely on employee training to prevent sales of tobacco products to youth, many large format retail stores, such as grocery stores, have price scanners that will prompt the clerk to verify age for tobacco products. Such checks could explain why violations occur less frequently at the large format retailers than the gas stations and convenience stores⁴. Furthermore, since the Hayward Police Department began conducting the Youth Decoy Operations in 2010, of the 77 citations issued, only one occurrence was at a large format retailer. The remaining 76 citations were issued to gas stations, convenience stores, and tobacco stores.

ECONOMIC IMPACT

The adoption of tobacco retail sales regulations would provide more enforcement authority on the local level for problematic establishments and the ability to keep said establishments away from sensitive receptors, such as schools, parks, and community centers. There would be expected to be

³ <http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPRetailerPresentation07.pdf>

⁴ http://stic.neu.edu/trri/No_Sale/pt3.htm

positive economic benefits through an enhanced and attractive Downtown and business environment throughout the City; however, smaller new retail stores that rely on tobacco sales for a large percent of total sales would be discouraged from locating in Hayward, which may result in a decrease in sales tax revenue from tobacco sales for the City.

FISCAL IMPACT

At a future meeting, along with recommended Code revisions, staff will provide a fiscal impact analysis associated with administering and enforcing the City's regulations. Such analysis will include recommended new fees to recover costs pertaining to City staff, including the Police Department to continue the Youth Decoy Program and Code Enforcement, for enforcement, education, compliance inspections, and administrative costs associated with the approximately 146 tobacco retail sales establishments and six electronic cigarette or "vapor" establishments in Hayward.

PUBLIC CONTACT

On October 28, 2013, a Community Meeting was held to which all 146 existing tobacco and electronic cigarette retailers were invited. The purpose of the meeting was to inform the existing tobacco retailers of the upcoming Tobacco Retail Sales Regulations and to gather feedback, comments and concerns. Twenty people attended the meeting, including local tobacco and electronic cigarette retailers and youth advocates from the Castro Valley Community Action Network (CVCAN) and the Hayward Coalition for Healthy Youth (HCHY). The Community Meeting notice sent to the existing tobacco and electronic tobacco retailers included the dates for the Planning Commission and City Council work sessions and public hearing dates.

The owners of one of the electronic cigarette stores in Hayward reiterated their dismay, expressed previously at the October 2, 2013 Downtown Business Improvement Area (DBIA) meeting, regarding the inclusion of electronic cigarettes in the proposed regulations, arguing that electronic cigarettes are not a tobacco product. They went on to state that they are "anti-tobacco" and in the business of helping people quit tobacco. One tobacco retailer expressed support for the regulations, because he felt it would help hold storeowners accountable who sell tobacco products to minors. Another retailer in the audience did not agree, stating that they are responsible business owners and strictly adhere to the laws pertaining to sales to minors. Staff commended them and all of the other responsible business owners in the City, but went on to point out that, based on the results of the HPD Youth Decoy Program, there are retailers selling tobacco products to minors in Hayward. Several Hayward student advocates, who participate in the Hayward Police Department Youth Decoy Program, spoke on their experiences as decoys and how easy it was for them to purchase tobacco products as minors. They also spoke on their experiences at school with other kids who use the various candy-flavored tobacco and electronic cigarette products targeted at youth and expressed support for the proposed regulations.

Staff has conducted additional community outreach by making oral presentations and providing an handout outlining (see Attachment IX) the proposed regulations to the Council Economic Development Committee (CEDC) at their September 16, 2013 meeting, Keep Hayward Clean and

Green (KHCG) on September 26, 2013, and the Downtown Business Improvement Area (DBIA) on October 2, 2013. Overall, all three groups were supportive of the proposed regulations.

NEXT STEPS

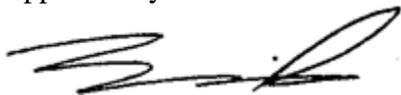
Staff will incorporate input from Council, from the Planning Commission at the November 21, 2013 work session, and from the public received at the October 28, 2013 community meeting, to develop recommended comprehensive regulations pertaining to tobacco retail sales establishments in Hayward. The regulations will be presented at a community meeting in early to mid-January 2014, and at noticed public hearings to the Planning Commission for consideration in late January and to the City Council in late February 2014.

Prepared by: Linda Ajello, AICP, Associate Planner

Reviewed by: Pat Siefers, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Planning Commission staff report and meeting minutes, May 31, 2012
- Attachment II November 21, 2013 Planning Commission Work Session Minutes
- Attachment III Matrix of Local Ordinances Restricting Tobacco Retailers Within a Certain Distance of Schools, The Center for Tobacco Policy and Organization, July 2013
- Attachment IV Tobacco Retailer Licensing Is Effective, The Center for Tobacco Policy and Organization, September 2013
- Attachment V Tobacco Retailer Licensing and Electronic Cigarettes, The Center for Tobacco Policy and Organization, July 2013
- Attachment VI Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012, Centers for Disease Control and Prevention, September 6, 2013
- Attachment VII A Prescription for Health: Tobacco Free Pharmacies, Change Lab Solutions, July 2013
- Attachment VIII Cigarettes Generate Big Revenue for Convenience Stores; Analysis of 2013 State of the Industry Report, The Center for Tobacco Policy and Organization, 2013

Attachment IX Tobacco Retailer Licensing: An Effective Tool for Public Health, Change
Lab Solutions, September 2012



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 17, 2013, 7:00 p.m.**

The following Service Employees International Union (SEIU) Local 1021 employees and representatives expressed they were frustrated over labor negotiations and unfair labor practice; and urged the Council to help achieve a fair contract.

Ms. Kristine Rott
Ms. Linda Reid
Ms. Mary French
Ms. Duce O'Bayley
Mr. Justin Temores
Ms. Jessica Perkinson
Ms. Bethany Bender
Mr. Michael Stotts

Mr. John Stead-Mendez, Berkeley resident and SEIU Local 1021 Deputy Executive Director, submitted a Local Revenue Forecast study conducted by Beacon Economics.

Mr. Gil Hesia, SEIU 1021 Local member, submitted a Resolution adopted by the Alameda Labor Council Executive Committee in support of City of Hayward workers.

Ms. Alysabeth Alexander, SEIU Local 1021 Vice President of Politics, referred to a petition of over 5,000 signatures garnered from Hayward residents in support of City of Hayward workers.

Mr. S.J. Samiul, Hayward resident, encouraged residents to become friends of the Hayward Library and Hayward Neighborhood Alert; spoke about the Calpine Power Plant; claimed that Standard Pacific Homes development was destroying trees; and urged Council to give Library workers a salary raise.

WORK SESSION

1. Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, Within the City of Hayward

Staff report submitted by Associate Planner Ajello, dated December 17, 2013, was filed.

Development Services Director Rizk announced the report and introduced Associate Planner Ajello who provided a synopsis of the report.

Discussion ensued among Council and City staff. The Council concurred to move forward with a moratorium to prohibit the establishments of new tobacco, e-cigarette and related establishments; supported the annual Tobacco Retailer License fee and suggested reducing the number of violations

that would be necessary to revoke a license; agreed to consider increasing the license fee in support of educational efforts; ban sale of tobacco products in pharmacies; outright ban small tobacco retailers; and directed staff to research the possibility of expanding the prohibition to larger retailers.

2. Financing Mechanisms for the City’s Critical Facility Needs and Update on Polling Results##

Staff report submitted by Assistant City Manager McAdoo and Director of Finance Vesely, dated December 17, 2013, was filed.

Assistant City Manager McAdoo provided a synopsis of the report.

Discussion ensued among Council and City staff. The Council concurred that staff move forward with further discussion and with the proposed community outreach about a possible 2014 funding measure for the purpose of learning if the community is in agreement with such a voter-approved revenue measure. There was further consensus for the Council Budget and Finance Committee to continue to be involved and provide input regarding a possible local sales tax as well as a bond measure.

Council Member Mendall left the Council Chambers at approximately 10:08 p.m.

CONSENT

Consent Items 3, 13, 16, 17, and 21 were removed for further discussion.

3. Approval of Minutes of the City Council Meeting on December 3, 2013

It was moved by Council Member Zermeño, seconded by Council Member Halliday, and carried with Mayor Sweeney abstaining and Council Member Mendall absent, to approve the minutes of the City Council Meeting on December 3, 2013.

4. Adoption of an Ordinance Adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Halliday, and carried with Council Member Mendall absent; to adopt the following:

Ordinance 13-17, “Ordinance of the City of Hayward, California adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices”

5. Adoption of an Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices



DATE: January 14, 2014

TO: Mayor and City Council

FROM: Director of Development Services
City Attorney

SUBJECT: Adoption of Interim Urgency Ordinance Imposing a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The adoption of the Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378.

RECOMMENDATION

That the City Council adopts the attached interim urgency ordinance (Attachment I) finding the action categorically exempt from CEQA review and establishing a temporary moratorium on the development, establishment, and operation of new Small-Format and Large Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward, which will become effective immediately upon adoption, and be in effect for forty-five days through February 28, 2014.

SUMMARY

Staff is recommending a moratorium to prohibit establishment of new small-format and large-scale tobacco retail establishments. Small-format tobacco retailers are stores that are less than 10,000 square feet in size. Large-scale tobacco retailers are stores that devote more than five (5) percent of their floor areas to the sale, display, sale and storage of tobacco products. Staff is also recommending a moratorium on all new hookah bars and e-cigarette and related establishments, due to the recent proliferation of such establishments in Hayward and because of the unknown long-term health impacts of e-cigarettes on youth. Staff is developing regulations to address and manage these establishments, but is also recommending this moratorium on all tobacco and tobacco-related products, including e-cigarettes, to allow staff sufficient time to complete its research, conduct adequate public outreach, and develop such regulations to present to the Planning Commission and City Council.

BACKGROUND

In response to concerns with the negative health consequences of tobacco use among youth, due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, staff received direction from City Council to develop regulations pertaining to the sales of tobacco and tobacco-related products. Staff is currently in the process of developing proposed regulations to take forward to the Planning Commission and City Council for adoption in late winter or early spring of 2014. However, in the interim, staff has received and anticipates additional requests for the development and operation of new Tobacco Retailers, E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars.

Currently, in the City of Hayward, staff is aware of eight E-Cigarette or "Vapor" retailers (seven opening up in the last ten months), one hundred and forty-six tobacco retailers and two hookah lounges. In recent months, City staff, including staff of the Hayward Police Department (HPD), has noticed an increase in the number of business license applications submitted for E-Cigarette or Vapor stores.

Given the large number of existing establishments in Hayward that sell tobacco and tobacco-related products, including e-cigarettes, and since the long-term effects of electronic cigarettes are still unknown, a moratorium is needed in order to protect the public health, safety and welfare and provide staff with an opportunity to develop proposed regulations to best address the prevention of sales of said products to youths and potential imminent threats to public safety, health, and welfare resulting from e-cigarette lounges, vapor bars and hookah bars.

DISCUSSION

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. As there was no specific restriction of tobacco sales, the Planning Director had made the determination that tobacco sales were a general retail item permitted in any commercial zoning district except in the downtown core area. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco and tobacco-related products in recent years, and with the introduction of a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth. At the direction of City Council, staff began research and development of draft regulations pertaining to the sales of tobacco and tobacco-related products in early 2012.

Electronic cigarettes come in many shapes and prices, ranging from the disposable types that can be purchased at convenience stores for a few dollars and resemble real cigarettes to the more complex vaporizers sold at so-called "Vapor" stores or bars, which can sell for hundreds of dollars. In "Vapor" bars or e-cigarette lounges, patrons fill a tank with a solution that may contain nicotine and that comes in various flavors and potencies and press a button that heats

the solution into a vapor that is inhaled by the user. The health effects of inhaled vapor, with or without nicotine, and second-hand vapor are unknown.

A hookah lounge or hookah bar is a central location, typically with a layout similar to a restaurant or coffee shop, where customers share flavored tobacco from a communal hookah. Typically, a hookah with a long flexible tube is placed at various tables throughout the establishment. Customers sit at the table and smoke the flavored tobacco. Additionally, some hookah lounges sell food and other drinks, although hookah lounges do not typically serve alcohol. Hookah bars differ from E-cigarette or “Vapor” stores, because hookah typically involves smoking tobacco. Although not all hookah contains tobacco, a study by the National Institute of Health that compared smoke toxicant content for tobacco and non-tobacco products concluded that smoke from both categories of products contained substantial quantities of toxicants¹. While California law permits local agencies, such as the City, to pass and enforce laws regulating the distribution of electronic cigarettes that are stricter than state law, there are no state-wide rules governing "vapor bars," e-cigarette lounges, or hookah bars. While several of these businesses have already been permitted in Hayward as “retail” uses, the City does not have any zoning designations or regulations that specifically pertain to such establishments.

Previous Work Sessions - At work sessions conducted with the Planning Commission and City Council at their November 21, 2013² and December 17, 2013³ meetings, respectively, staff presented and sought feedback on draft regulations pertaining to the sale of tobacco and tobacco related products, including e-cigarettes. At both meetings, members of the public, including members of the Hayward Coalition for Healthy Youth (HCHY), the American Lung Association, and the Alameda County Health Department spoke in support of the proposed regulations and provided testimony as to their knowledge and experience with tobacco and tobacco-related products, including e-cigarettes and vapor devices. Furthermore, staff provided an update to both the Commission and Council on the influx of new e-cigarette or “vapor” stores in the City and asked whether or not they would support a moratorium so that staff to research and develop appropriate regulations for review by the Planning Commission and the Council. Both the Commission and Council expressed support of a moratorium. Accordingly, staff prepared an urgency ordinance imposing a moratorium on new E-Cigarette Retailers, as well as Electronic Cigarette Lounges, Vapor Bars, Hookah Bars, and Tobacco Retailers.

Urgency Ordinance - Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. The City may adopt a moratorium on an urgency basis provided that the City finds that there exists a current and immediate threat to

¹ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407543/#R3>

² See staff report and attachments at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2013/PCA13PDF/pea112113full.pdf>.

³ See staff report and attachments at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca121713full.pdf>.

the public health, safety and welfare and that the approval of additional use permits, building permits, license or other land use entitlements would result in that threat to public health, safety or welfare.

Staff has prepared the attached urgency ordinance for the City Council's consideration. As described in more detail below, this urgency ordinance would establish a temporary moratorium on business licenses, use permits, building permits and other land use approvals for certain new tobacco and all e-cigarette retailers, e-cigarette lounges, vapor bars, and hookah bars.

If the City continues to approve the above uses prior to the City having an opportunity to further study and adopt appropriate regulations, it could create conflicts among land uses or conflict with the City's long-term planning goals, as well as create an overconcentration of said uses within the City. Furthermore, according to the Food and Drug Administration (FDA), the safety of e-cigarettes is still unknown, and initial studies have found carcinogens and toxic chemicals in the vapor, including ingredients used to make anti-freeze. In particular, the above activities are adults-only uses that may not be appropriate in all zoning districts or near sensitive receptors or other uses where minors are present. With respect to the proposed moratorium on new small-format and large-scale tobacco retailers, studies have shown that sales of tobacco and tobacco-related products to youth are typically not occurring at the larger retailers with only ancillary tobacco sales. Accordingly, further establishment of new small-format and large-scale tobacco retailers and new e-cigarette retailers, e-cigarette lounges, vapor bars or hookah bars (of any size) in the City at this time, before the City can adopt regulations, presents a current and immediate threat to the public health, safety, and welfare. The negative health impacts related to tobacco use have been known for some time, and studies show a steady increase in the use of e-cigarettes by youth. Also, the long-term health effects of using e-cigarettes are still unknown. Therefore, staff recommends adoption of the urgency ordinance in order to avoid this current and immediate threat to the public health, safety, and welfare, which could occur if parties seeking to evade the adoption of regulations were permitted to continue to obtain approval for uses that might defeat the ultimate objective of the adoption of regulations.

Additional time is needed to allow staff to analyze the potential impacts of such new uses in the City and determine if modifications to the Zoning Ordinance regulations or other sections of the City's Municipal Code would be appropriate. California Government Code Section 65858 states the City Council, without prior notice or a public hearing, "in order to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." The Government Code section further states that the Council shall not adopt an interim ordinance "unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance

would result in that threat to public health, safety, or welfare.” The attached ordinance contains such findings.

Environmental Review- Adoption of the interim urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065, based on the finding that this ordinance is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Sections 15061(b)(3) – Review for Exemption, because the activity is covered by the general rule that CEQA applies only to projects with the potential for causing a significant effect on the environment, and 15306 – Information Collection, because the ordinance consists of basic data collection and research, which do not result in a serious or major disturbance to an environmental resource.

ECONOMIC AND FISCAL IMPACT

An interim moratorium of limited duration, although potentially negatively impacting some properties in the short-term where such uses are proposed or contemplated, would have potential benefits to the community in the long term. It would ensure that adequate analysis is conducted by staff and presented to the Planning Commission and City Council that would identify the potential negative impacts and positive benefits to the City regarding the establishment of such uses. Such analysis will assist in determining what amendments to the Zoning Ordinance or other Municipal Code sections are appropriate.

NEXT STEPS

Should Council adopt the interim urgency ordinance by the required 4/5 vote (minimum six votes needed), staff will either present an additional ordinance with findings and a written report to the Council within ten days of the expiration of this ordinance (by February 18) to either extend the moratorium for an additional ten months and fifteen days to allow additional time for a more thorough analysis, or will provide the Council with an analysis and proposed revisions to the City’s regulations.

Prepared and recommended by: David Rizk, AICP, Development Services Director and
Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments

Attachment I: Interim Urgency Ordinance



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 14, 2014, 7:00 p.m.**

6. Adoption of Negative Declaration and Request for Text Amendment (PL-2013-0437 TA) to:
(1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10-1.145 related to Reasonable Accommodation for Persons with Physical Disabilities. Applicant: City of Hayward

It was noted that the item was carried over to January 28, 2014.

LEGISLATIVE BUSINESS

7. Adoption of Interim Urgency Ordinance Imposing a Temporary Moratorium on the Development, Establishment and Operation of New Small-Format and Large-Scale Tobacco Retailers and all New E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The Adoption of the Ordinance is Exempt from Environmental Review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378

Staff report submitted by Development Services Director Rizk and City Attorney Lawson, dated January 14, 2014, was filed.

Development Services Director Rizk announced the report and introduced Associate Planner Ajello who provided a synopsis of the report and noted that staff was in receipt of ten e-mail comments objecting to a ban on electronic cigarettes. Ms. Ajello clarified that the proposed ordinance did not ban electronic cigarettes, but it placed a temporary restriction on the issuance of business licenses, business permits, building permits for the establishment of tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, to allow staff time to fully develop comprehensive regulations.

Discussion ensued among Council and City staff.

Mayor Sweeney opened the public hearing at 7:30 p.m.

The following speakers expressed concern about a moratorium that would prohibit the establishment of tobacco retail establishments and offered the following comments: electronic cigarettes contain Food and Drug Administration (FDA) approved ingredients and serve as tobacco cessation tools; vapor stores generate revenue for the City; and electronic cigarettes “vaping” do not have the smoke and harmful side effects of traditional cigarettes.

Ms. Jennifer Mish, Vapor 5 business owner
Mr. Steven Hernandez, Vapor 5 business owner
Mr. Ben Jewell, owner of a Castro Valley vapor store
Ms. Charlene Shores, Hayward resident
Mr. Jim Drake, Hayward resident
Mr. Nicholas Morales, Vapor 5 employee

The following speaker expressed support for the ordinance imposing a temporary moratorium on the establishment of tobacco retail establishments and offered the following comments: flavored electronic cigarettes and hookah pens were becoming a major problem among the youth; more scientific cases for or against the effects of vaping needed to be researched in order to draft coherent tobacco regulations; the moratorium would help understand good business practice demonstrated by existing businesses; and the moratorium would help develop strategies to prevent the marketing and sale of electronic cigarettes to the youth.

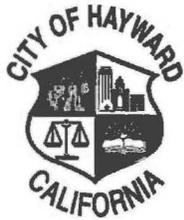
Ms. Karishma Khatri, Tobacco and Alcohol Decoy and Hayward Coalition for Healthy Youth representative
Ms. Jocelyn Bonilla, Undercover Decoy Program member
Ms. Janice Louie, Alameda County Public Health Department representative
Ms. Serena Chen, American Lung Association representative
Ms. Sara Lamnin, Hayward resident
Ms. Linda Pratt, COMMPRE representative
Mr. Jordan Leopold, Hayward resident

Mayor Sweeney closed the public hearing at 8:04 p.m.

Council Member Mendall said he would favor regulating electronic cigarettes, similarly to tobacco products, unless there was scientific evidence to prove that electronic cigarettes were healthier. Mr. Mendall offered a motion to adopt the interim urgency ordinance establishing a temporary moratorium on the establishment of new tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars, and hookah bars, in order to provide staff with the necessary time to conduct research and develop regulations.

Council Member Halliday seconded the motion and noted that while her focus was on preventing young people from getting into the smoking habit she was sensitive to the assertion that electronic cigarettes could help reduce nicotine intake. Ms. Halliday indicated that it was important to find an approach that balanced all interests. Ms. Halliday requested that staff provide Council with the information submitted by the owners of Vapor 5 or to include that information in the analysis for developing regulations.

Council Member Zermeño supported the motion and also asked for the information that was submitted by Vapor 5. Mr. Zermeño disclosed having met with Ms. Jennifer Mish and Mr. Ben Jewell. Mr. Zermeño stated that he needed to have arguments for and against electronic cigarettes in order to make an informed decision.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
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Tuesday, January 14, 2014, 7:00 p.m.**

Council Member Salinas supported the motion, shared health statistics and health risk factors in Alameda County, and noted that the Council needed to consider all the relevant information when making decisions.

Council Member Peixoto supported the motion and commented that absent reliable and scientific evidence, he was not ready to advocate either way on the use of electronic cigarettes and the moratorium was a common sense approach. Mr. Peixoto requested that staff provide the Council with the information provided by Vapor 5.

Council Member Jones supported the motion and noted that the moratorium would allow the Council to learn more about electronic cigarettes. Mr. Jones indicated it was the Council's responsibility to protect the health of the community and to regulate behavior. Mr. Jones added he was disturbed to learn about flavored vapor products because they directly targeted minors.

Mayor Sweeney supported the moratorium and he expressed he would review the results of scientific, credible and objective evidence on the use of electronic cigarettes and vapor products. Mayor Sweeney concurred with prior speakers that tobacco products were marketed to target young people and to get them started on smoking.

It was moved by Council Member Mendall, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Ordinance 14-02, "An Urgency Measure Adopting an Interim Ordinance Pursuant to Government Code Section 65858 Imposing a Moratorium on the Establishment, Operation, Permitting and/or Licensing of New Small-Format and Large-Scale Tobacco Retailers and All New Electronic Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars/Lounges, and Hookah Bars/Lounges Within the City of Hayward"

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño wished all students in attendance a prosperous 2014.

City Manager David reported on the successful City of Hayward Job Fair which was sponsored by the Human Resources Department on January 11, 2014. It was noted that over 1,100 people attended the fair.

Council Member Halliday spoke about a mailer from Alameda County Waste Management Authority regarding the consideration of a fee of \$9.55 per year per residential unit to support the countywide household hazardous waste program.



DATE: February 18, 2014

TO: Mayor and City Council

FROM: Director of Development Services
City Attorney

SUBJECT: Adoption of Interim Urgency Ordinance Extending a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The Adoption of the Ordinance is Exempt from Environmental Review Under the California Environmental Quality Act (CEQA), Pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378.

RECOMMENDATION

That the City Council adopts the attached interim urgency ordinance (Attachment I) finding the action categorically exempt from CEQA review and extending a temporary moratorium on the development, establishment, and operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward, to become effective immediately.

SUMMARY

Staff recommends that the City Council extends the moratorium on the development, establishment, and operation of new small-format and large-scale tobacco retail establishments. Small-format tobacco retailers are stores that are less than 10,000 square feet in size. Large-scale tobacco retailers are stores that devote more than five (5) percent of their floor areas to the sale, display, sale and storage of tobacco products. Also, staff is recommending that the City Council extends the moratorium on all new hookah bars and e-cigarette retailers and related establishments, due to the recent proliferation of such establishments in Hayward and because of the unknown long-term health impacts of e-cigarettes on youth. The extension would allow staff additional time to conduct further research needed to complete work on the modifications to the Zoning Ordinance regarding the establishment of such uses. Staff anticipates presenting recommendations for new regulations to the Planning Commission and City Council in the spring of this year.

BACKGROUND

On January 14, 2014, the City Council adopted Ordinance No. 14-02, an urgency ordinance establishing a temporary 45-day moratorium on the development, establishment, and operation of

new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The staff report associated with that action is available on the City's website¹ and the meeting minutes are included as Attachment II.

The temporary moratorium will expire on February 28, 2014, unless the City Council adopts an ordinance extending the moratorium at a noticed public hearing pursuant to Government Code Section 65858 et. seq. The City Council can extend the moratorium for a period up to ten months and fifteen days at a noticed public hearing. Prior to the expiration of that period, the City Council may approve a final extension of up to one additional year at a noticed public hearing.

Due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, and in response to concerns with the negative health consequences of tobacco use among youth, staff received direction from City Council in early 2012 to develop regulations pertaining to the sales of tobacco and tobacco-related products. Staff anticipates more permanent regulations will go forward to the Planning Commission and City Council for consideration in Spring 2014.

At the time of the January 14, 2014 Council meeting, staff was aware of eight E-Cigarette or "Vapor" retailers, one hundred and forty-six tobacco retailers and two hookah lounges in the City of Hayward. In 2013, City staff, including staff of the Hayward Police Department (HPD), had noticed an increase in the number of business license applications submitted for E-Cigarette or Vapor stores, with seven of the eight existing establishments opening in 2013 in less than a twelve month time period.

Given the large number of existing establishments in Hayward that sell tobacco and tobacco-related products, including electronic cigarettes, and since the long-term effects of electronic cigarettes are still unknown, an extension of the moratorium is needed in order to protect the public health, safety and welfare. Extending the moratorium will provide staff with additional time to conduct further research and develop proposed regulations to best address the prevention of sales of tobacco and tobacco-related products to youths and potential imminent threats to public safety, health, and welfare resulting from e-cigarette lounges, vapor bars and hookah bars.

DISCUSSION

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. As there was no specific restriction on tobacco sales, the Planning Director had previously made determinations that tobacco sales were a general retail item permitted in any commercial zoning district except in the downtown core area. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco, vapor, and tobacco-related products in recent years, and with the introduction of

¹ See report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca011414full.pdf>, agenda item #7.

a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth. At the direction of City Council, staff began research and development of draft regulations pertaining to the sales of tobacco and tobacco-related products, including electronic cigarettes, in early 2012.

Electronic cigarettes come in many shapes and prices, ranging from the disposable types that can be purchased at convenience stores for a few dollars and resemble real cigarettes to the more complex vaporizers sold at so-called "Vapor" stores or bars, which can sell for hundreds of dollars. In "Vapor" bars or e-cigarette lounges, patrons fill a tank with a solution that may contain nicotine and that comes in various flavors and potencies and press a button that heats the solution into a vapor that is inhaled by the user. The health effects of heated and inhaled vapor, with or without nicotine, and second-hand vapor are unknown.

A hookah lounge or hookah bar is a central location, typically with a layout similar to a restaurant or coffee shop, where customers share flavored tobacco from a communal hookah. Typically, a hookah with a long flexible tube is placed at various tables throughout the establishment. Customers sit at the table and smoke the flavored tobacco. Additionally, some hookah lounges sell food and other drinks. Hookah lounges do not typically serve alcohol. Hookah bars differ from E-cigarette or "Vapor" stores, because hookah typically involves smoking tobacco. Although not all hookah contains tobacco, a study by the National Institute of Health that compared smoke toxicant content for tobacco and non-tobacco products concluded that smoke from both categories of products contained substantial quantities of toxicants². While California law permits local agencies, such as the City, to pass and enforce laws regulating the distribution of electronic cigarettes that are stricter than state law, there are no state-wide rules governing "vapor bars," e-cigarette lounges, or hookah bars. While several of these businesses have already been permitted in Hayward as "retail" uses, the City does not have any zoning designations or regulations that specifically pertain to such establishments.

Operators of electronic cigarette or "vapor" stores and some anti-tobacco advocates argue that the product is a smoking cessation device that has helped thousands of people quit smoking traditional cigarettes³. Proponents go on to argue that electronic cigarettes are not tobacco and do not emit smoke and, therefore should not be regulated in the same manner as tobacco. However, the Food and Drug Administration (FDA) has not approved electronic cigarettes as a smoking cessation device and intends to issue a proposed rule extending FDA's tobacco product authority beyond the above products to include other products like e-cigarettes⁴. Furthermore, because electronic cigarettes have not been studied fully, the long-term health effects of electronic cigarettes are still unknown. Limited studies by the FDA found significant quality issues indicating that quality control processes used to manufacture these products are substandard or non-existent. During the FDA studies, cartridges labeled as containing no nicotine were found to

² <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407543/#R3>

³ http://www.casaa.org/FAQS_ecig.html

⁴ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>

contain nicotine and three different electronic cigarette cartridges with the same label emitted a considerably different amount of nicotine with each inhalation.

Experts have also raised concerns that the marketing of products such as e-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products⁵. Furthermore, a recent study of indoor air pollution caused by electronic cigarettes found that pollutants from electronic cigarettes are not emission-free and their pollutants could be of health concern for users and secondhand smokers. In particular, ultrafine particles formed from supersaturated 1,2-propanediol vapor can be deposited in the lung, and aerosolized nicotine seems capable of increasing the release of the inflammatory signaling molecule NO upon inhalation. In view of consumer safety, e-cigarettes and nicotine liquids should be officially regulated and labeled with appropriate warnings of potential health effects, particularly of toxicity risk in children⁶.

On January 17, 2014, the 2014 Surgeon General's Report was released and confirmed that smoking is deadlier and more addictive than it was 50 years ago, causing 87 percent of all lung cancer deaths and 61 percent of all lung disease deaths and it remains the single largest cause of preventable disease and death in the United States⁷. It also concluded that most first use of cigarettes occurs by 18 years of age (87%), with nearly all first use by 26 years of age (98%). Furthermore, the report went on to say that there is sufficient evidence to conclude that mass media campaigns, comprehensive community programs, and comprehensive statewide tobacco control programs prevent initiation of tobacco use and reduce the prevalence of tobacco use among youth and adults.

In the absence of a ruling from the FDA, many jurisdictions in the United States have already adopted laws to regulate electronic cigarettes as a tobacco product, including New York and Chicago. To date, more than fifty-nine (59) California cities include electronic cigarettes in their tobacco regulations and require all retailers to obtain a license⁸. Most recently, in December 2013, the California cities of Richmond and Carlsbad passed ordinances to prohibit the use of electronic cigarettes from public places, such as parks and restaurants, and the City of Los Angeles approved laws to regulate electronic cigarettes as tobacco products, including the requirement to obtain a tobacco retailers license. The City of Union City adopted regulations to amend their tobacco regulations to include electronic cigarettes, cigars, and cigarillos, and to prohibit the establishment of "vapor" lounges and hookah lounges.

The provisions of the Hayward Municipal Code that may regulate the development, establishment, and operation of new Small-Format and Large Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars in the City are inadequate and need further review, study and revision. Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a

⁵ <http://www.fda.gov/forconsumers/consumerupdates/ucm225210.htm>

⁶ Schober, W., et al., Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers. *Int. J. Hyg. Environ. Health* (2013), <http://dx.doi.org/10.1016/j.ijheh.2013.11.003>

⁷ <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>

⁸ <http://center4tobaccopolicy.org/wp-content/uploads/2013/08/E-cigarettes-in-TRL-8.9.13.pdf>

contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering in order to protect and preserve the public safety, health and welfare.

Since the adoption of the interim ordinance in January, staff has continued to review available scientific data and to analyze the potential impacts of such new uses in the City, along with drafting modifications to the Zoning Ordinance regulations and other sections of the City's Municipal Code as appropriate. The Food and Drug Administration (FDA), which currently does not regulate electronic cigarettes, is expected to make a ruling to extend its tobacco product authority beyond cigarettes, cigarette tobacco, roll-your-own-tobacco and smokeless tobacco to include other products like e-cigarettes⁹. However, the FDA will not say when the ruling will be released, so it could be anywhere from days to months before the ruling is made.

Additionally, Government Code Section 65858(d) requires a written report to be issued describing the measures taken to alleviate the condition that led to the adoption of the ordinance within ten days of the expiration of the ordinance. This staff report shall serve as the written report required by the Government Code. A notice of the Public Hearing was published in *The Daily Review* newspaper on February 8, 2014. A copy of this staff report describing the measures taken to alleviate the conditions that led to the adoption of the moratorium ordinance is available at the City of Hayward City Clerk's Office, 777 B Street, the Main City Library, 835 C Street, the Weekes Branch Library, 27300 Patrick Avenue, or on the City's website at <http://www.hayward-ca.gov/NEWS/2014/>

Pursuant to Government Code Section 65858(c), the legislative body shall not adopt or extend an interim ordinance unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. The attached Ordinance contains such findings.

Environmental Review - Adoption of the interim urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065, based on the finding that this ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Sections 15061(b)(3) – Review for Exemption, because the activity is covered by the general rule that CEQA applies only to projects with the potential for causing a significant effect on the environment, and 15306 – Information Collection, because the ordinance consists of basic data collection and research, which do not result in a serious or major disturbance to an environmental resource.

⁹ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>

ECONOMIC AND FISCAL IMPACT

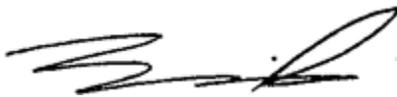
An interim moratorium of limited duration, although potentially negatively impacting some properties in the short-term where such uses are proposed or contemplated, would have potential benefits to the community in the long term. It would ensure that adequate analysis is conducted by staff and presented to the Planning Commission and City Council that would identify the potential negative impacts and positive benefits to the City regarding the establishment of such uses. Such analysis will assist in determining what amendments to the Zoning Ordinance or other Municipal Code sections are appropriate.

NEXT STEPS

Should the City Council adopt the Ordinance extending the moratorium by the required four-fifths vote (minimum six votes needed), the moratorium will be extended for up to ten months and fifteen days (until January 15, 2015). During that time, staff will continue its analysis of potential impacts related to the development, establishment and operation of new Small-Format and Large Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars.

Prepared and Recommended by: David Rizk, AICP, Development Services Director
Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Interim Urgency Ordinance
- Attachment II: January 14, 2014 City Council Meeting Minutes

There was consensus among Council to approve imposing terms and conditions of employment on the Maintenance and Clerical bargaining units, effective February 24, 2014. While Council members were faced with a difficult and unpleasant decision, they believed they had the responsibility to address the City's long-term fiscal challenges and unfunded liabilities in order to protect the employees' pensions and retirement benefits; there was a five-year contract on the table; the Council was responsible for maintaining the City's fiscal stability and meeting the Council's priorities; there was an uncertain future in the country's overall economy; and strongly urged the unions to get back to the table and collectively achieve a long-term solution for the City, union members and the community.

It was moved by Mayor Sweeney, seconded by Council Members Peixoto and Halliday, and carried unanimously, to adopt the following:

Resolution 14-020, "Resolution of the City Council of the City of Hayward Imposing the City's One-Year Last, Best, and Final Offer to Service Employees International Union, Local 1021 – Clerical and Related Unit Pursuant to Government Code Section 3505.7"

Resolution 14-021, "Resolution of the City Council of the City of Hayward Imposing the City's One-Year Last, Best, and Final Offer to Service Employees International Union, Local 1021 – Maintenance and Operations Unit Pursuant to Government Code Section 3505.7"

10. Adoption of Interim Urgency Ordinance Extending a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The adoption of the Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378

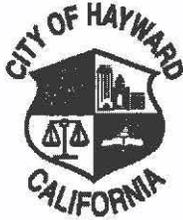
Staff report submitted by Development Services Director Rizk and City Attorney Lawson, dated February 18, 2014, was filed.

Development Services Director Rizk announced the report and introduced Associate Planner Ajello who provided a synopsis of the report.

Mayor Sweeney opened the public hearing at 9:34 p.m.

Ms. Janice Louie, Alameda County Public Health Department representative, expressed support for the interim ordinance extending a temporary moratorium.

Ms. Traci Cross, Hayward resident, urged the Council to extend the moratorium because of the concerns of sales to youth. Ms. Cross submitted two letters from tobacco decoys, Brandon Ko and Jocelyn Bonilla Araujo, who shared their experiences at vapor lounges and tobacco retail outlets.



**MINUTES OF SPECIAL JOINT CITY COUNCIL/ REDEVELOPMENT
SUCCESSOR AGENCY MEETING OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 18, 2014, 7:00 p.m.

Mayor Sweeney closed the public hearing at 9:36 p.m.

Council Member Halliday offered a motion to adopt the proposed interim ordinance. Council Member Zermeño seconded the motion.

It was moved by Council Member Halliday, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Ordinance 14-09, "An Ordinance Measure Adopting an Interim Ordinance Pursuant to Government Code Section 65858 Extending a Moratorium on the Establishment, Operation, Permitting and/or Licensing of New Small-Format and Large-Scale Tobacco Retailers and All New Electronic Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars/Lounges, and Hookah Bars/Lounges Within the City of Hayward for Ten Months and Fifteen Days, Expiring Not Later Than January 15, 2015"

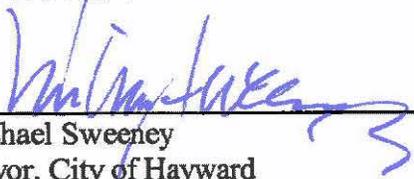
COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force and volunteers would be cleaning the Tyrrell-Glassbrook neighborhood on February 22, 2014, and invited all to participate.

ADJOURNMENT

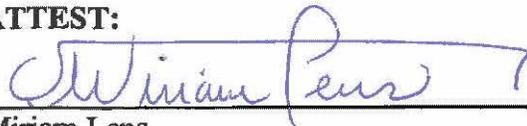
Mayor/Chair Sweeney adjourned the meeting at 9:38 p.m.

APPROVED:



Michael Sweeney
Mayor, City of Hayward
Chair, Redevelopment Successor Agency

ATTEST:



Miriam Lens
City Clerk, City of Hayward
Secretary, Redevelopment Successor Agency