

PLANNING COMMISSION PUBLIC HEARING MEETING
May 28, 2020, PH 20-023
Planning Commission Comments and Recommendations for City Council
Tobacco Retail Sales Establishment Ordinance, HMC 10-1.2780

Comment/Concern	Staff Evaluation	Staff Action
For tobacco retailers with verified violations, can the City impose community service (i.e. cleanup work for Keep Hayward Clean and Green Taskforce)?	Staff confirmed with Legal that discretion to impose community service for a violation will fall under the purview of California Law and the discretion of a judge.	No further change is recommended, as the City does not have the authority to impose community service.
Why can't we limit flavored tobacco products to adult-only locations?	<p>Staff reviewed information regarding local jurisdictions (Berkeley, Oakland, and S.F.) with exemptions in the sale of flavored to "tobacco only" smoke shops. Non-exempted retailers indicated facing unfair competition among tobacco retailers that the exemption created.</p> <p>In addition, some the tobacco retailers began shifting their stores to meet the minimum requirements of a "tobacco only" shop in order to continue to sell flavored tobacco products.</p>	No further changes are recommended. The proposed revision supports a complete ban of flavored and electronic smoking devices and vaping products to eliminate any unfair competition by the retailers and eliminate any loopholes of retailers shifting to full smoke shops if an exemption were to be granted.
Why can't we regulate these retailers as we do cannabis dispensaries?	<p>New tobacco retailers and cannabis businesses both require approval of a conditional use permit, which allows the ability to impose additional conditions, i.e. security, etc. However, the existing tobacco retailers are deemed legal non-conforming as they were in existence prior to the first adoption of the tobacco ordinance in 2014.</p> <p>Additionally, a tobacco retailer use and cannabis use are not comparable, i.e. number of dispensaries allowed vs. number of existing retailers; higher level of security standards for dispensaries that would be unreasonable for a typical tobacco retailer such as a local convenience store; cannabis uses are specific uses while tobacco uses may be mixed with other commercial activities.</p>	<p>For new tobacco retailers, City may implement specific requirements to regulate the sale of tobacco products located within the allowable districts.</p> <p>No other changes proposed to the text amendments.</p>
Why can't we enforce the buffer zones?	<p>Staff recommended increasing the buffer zones to youth sensitive areas to 1,000 feet for all new tobacco retail sales locations.</p> <p>Staff verified with legal that new retailers would not be allowed to establish a tobacco retailer use within 1,000 feet to youth sensitive receptors. Also, if an existing tobacco retailer is outside of the 500-foot buffer zone but less than 1,000 feet, they are deemed legal non-conforming from a land use prospective as long as the use does not cease for more than 6 months and conforms to all other zoning legal non-conforming use requirements.</p>	<p>The proposed text amendment includes increasing the buffer zones to use sensitive areas from 500 feet to 1,000 feet. This would allow a gradual phasing out of these retailers located within the required buffer zones when a tobacco sales retail use ceases.</p> <p>No further changes to the proposed text revisions.</p>

	Banning flavored tobacco is not a land use regulation and could be enforced without regard to the pre-existing use.	
What are the other things we have considered before we implement this ban all across?	<p>Staff has reviewed other local and state information regarding implementing exceptions within a ban and has concluded that exceptions create disparity within the retailers and consumers. Overtime, it is evident that the youth will find ways and loopholes to access tobacco products. Any other amendment to the ordinance short of banning flavored tobacco products for all retailers, will not fully eliminate the access of these products to youth in Hayward.</p> <p>If it is not sold in Hayward, then the City has done all we can as a community to protect the youth and address the growing crisis of flavored tobacco and vaping use among youth.</p>	Staff recommends the proposed full ban of flavored tobacco products and vaping products and paraphernalia to meet the council's Strategic Priority goal of eliminating the access of flavored tobacco and vaping products.
What will we do to mitigate the impact to the community as a result of having a full ban of flavored tobacco products, i.e. assistance with addiction, health information?	Staff is partnering with the County of Alameda Department of Public Health to obtain information of local available resources for the public and to assist the retailers during the transition of the adopted new regulations.	As part of the process of the implementation of the new text amendments, staff will incorporate a community outreach component to include information of available resources for retailers and the community.
<p>Why are vaping products included in the flavored tobacco ban?</p> <p>Comments were made regarding the ambiguity of Section 10-1.2783.c. pertaining to vaping products in contrast to flavored tobacco products.</p>	<p>The existing Tobacco Ordinance includes a ban in the sale of flavored tobacco products (which includes flavored vaping products) in place.</p> <p>Research shows mounting evidence of the imminent health risks, which have been declared by the California Department of Public Health and Federal agencies.</p> <p>The proposed revisions are intended to provide clarity in the existing ban and a sunset date for the end of sale of these products.</p> <p>The text amendments also provide language consistent with local, State and Federal standards to prohibit the sale of all vaping products and vaping paraphernalia.</p>	<p>Staff recommends the proposed text amendment to prohibit the sale of all vaping products and vaping paraphernalia; so as to eliminate any loopholes and the accessibility of vaping products to the youth for inhaling tobacco or other substances entirely, whether by means of electronic smoking devices or any other available vaping devices, i.e. bong, hookahs, bowls, etc.</p> <p>Staff has further modified the text amendment presented to the Planning Commission, Section 10-1.2783.c. for additional clarity.</p>