

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION TO ADOPT A ZONING TEXT AMENDMENT TO CHAPTER 10 (PLANNING, ZONING, AND SUBDIVISIONS), ARTICLE 1, SECTION 10-1.2780 THROUGH 10-1.2797 OF THE HAYWARD MUNICIPAL CODE RELATED TO TOBACCO RETAIL SALES ESTABLISHMENTS

WHEREAS, the World Health Organization (WHO) estimates tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year; of today's American youths under the age of 18, 5.6 million die prematurely from smoking-related illnesses; and

WHEREAS, tobacco use is the number one preventable death in California and continues to be an urgent public health issue with an estimated annual death total of 40,000 adults; unless smoking rates decline, an estimated 5% of California youth will die prematurely; and

WHEREAS, the California Department of Public Health issued a Health Advisory on November 2019 pertaining to the imminent public health risks posed by vaping products; and

WHEREAS, despite the State's effort, youth are still able to access flavored tobacco and vaping products; in Alameda County of those high school students who purchased E-cigarettes, 69% reported purchasing them from the stores themselves or from someone else; and

WHEREAS, at the direction of the City Council, staff reviewed and prepared amendments to the Hayward Municipal Code related to the sale of tobacco products to establish regulations restricting the access of tobacco products, electronic cigarettes, and vaping products to youth and encourage responsible tobacco retailing; and

WHEREAS, on May 28, 2020, the Planning Commission considered Zoning Text Amendment to Chapter 10, Article 1, Section 10-1.2780 at a public hearing, and voted (6-0-1), that the City Council approve the Zoning Text Amendment; and

WHEREAS notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on July 7, 2020.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the proposed Amendments do not constitute a "project" within the meaning of Public Resources Code Section 21065, and CEQA Guidelines Sections 15061(b)(3) and 15378 because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

ZONING TEXT AMENDMENT FINDINGS FOR A ZONING TEXT AMENDMENT TO THE HAYWARD MUNICIPAL CODE

**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 public health by the elimination of the access of flavored tobacco products and electronic smoking devices currently existing in neighborhoods while encouraging responsible tobacco retailing. There is local and nation-wide evidence from the California Department of Public Health and the Centers for Disease Control and Prevention that:

1. Tobacco youth consumption and use of flavored tobacco products and electronic smoking devices are on a rapid rise.
2. The use of these products has been identified by the United States Surgeon General to pose significant health and safety risks to community at-large and youth individuals under the age of 18.
3. Tobacco use is the leading cause of preventable disease, disability, and death in the United States. Each year, nearly half a million Americans die prematurely of smoking or exposure to secondhand smoke. Another 16 million live with a serious illness caused by smoking.

The City of Hayward recognizes that the use of tobacco products and electronic smoking devices have long-lasting effects on personal and public health.

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

The proposed Text Amendments are consistent with the goals and policies set forth in the Hayward 2040 General Plan in that the amended regulations are designed to protect and improve the health and general welfare by a cross-jurisdictional approach of regulations consistent with State, County and other local jurisdictions best practices for a consistent enforcement in the sales of tobacco products. In addition, the Text Amendments are intended to improve access to healthier food sources by diminishing the access to tobacco related products currently existing in neighborhoods, while restricting the location of new tobacco retail near schools and other sensitive uses, such as parks, childcare centers, etc. The proposed Text Amendments are consistent with the following goal and policies set forth in the Hayward 2040 General Plan:

1. Health and Quality of Life Goal 1: Improve the health and well-being of all Hayward residents. Improving access to healthy living requires making health a City priority and taking a cross-jurisdictional and collaborative approach to promoting improved community health.
2. Health and Quality of Life Policy 1.1: Health in All Policies. The City shall prioritize the overall health of Hayward residents in its strategies, programs, daily operations, and practices.
3. Health and Quality of Life Goal 3: Collaboration for Improved Health. The City shall collaborate with local health officials, planners, nonprofit organizations, businesses, schools, the Hayward Area Recreation and Park District (HARD), hospitals, local health clinics, and community groups to improve community health.
4. Goal Health and Quality of Life Policy 3.2: Access to Healthy Foods. The City shall strive to ensure that all residents are within walking distance of sources of fresh and healthy foods (e.g., grocery stores, healthy corner stores, farmers' markets, and community gardens).
5. Health and Quality of Life Goal 4: Health Care Access and Disease Prevention.

6. Health and Quality of Life Policy 4.3: Prohibiting Cigarette Sales Near Schools. The City shall prohibit the sale of cigarettes near schools.
7. Health and Quality of Life Goal 7: Protect residents from the harmful effects of pollution, toxic substances, and environmental contaminants.
8. Health and Quality of Life Policy 7.5: Proximity to Pollution Sources. The City shall avoid locating new sensitive uses such as schools, childcare centers, and senior housing, to the extent feasible, in proximity to sources of pollution, odors, or near existing businesses that handle toxic materials. Where such uses are located in proximity to sources of air pollution, odors, or toxic materials, the City shall encourage building design, construction safeguards, and technological techniques to mitigate the negative impacts of hazardous materials and/or air pollution on indoor air quality.
9. Health and Quality of Life Policy 9.1: Resiliency. The City shall strive to create a strong and resilient community and region that can withstand or accommodate change and respond to challenges.

**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 re-classified. 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.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the findings in support of the Zoning Text Amendment, subject to the adoption of the companion Ordinance.

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 20-\_\_\_) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA July 7, 2020.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward