



DATE: July 14, 2020

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adopt an Ordinance Amending Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), Section 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments, of the Hayward Municipal Code

RECOMMENDATION

That the Council adopts the Ordinance introduced on July 7, 2020, by Council Member Mendall.

SUMMARY

The item entails adoption of an Ordinance amending Tobacco Retail Sales Establishments, Chapter 10, Article 1 of the Hayward Municipal Code, Section 10-1.2780 through 10-1.2797, and further modification of Section 10-2782, Section 10-1.2785(b)(5), Section 10-1.2794, and Section 10-1.2795.

BACKGROUND

The Ordinance was introduced by Council Member Mendall at the July 7, 2020, meeting of the City Council with the following roll call vote:

AYES: COUNCIL MEMBERS: Lamnin, Márquez, Mendall, Salinas, Wahab, Zermeño
MAYOR Halliday

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

The Ordinance was introduced with three amendments: 1) modify language in Section 10-1.2794(a) and Section 10-1.2785(b)(5) by replacing “three-year” with “five-year”; 2) review enforcement process and draft a mechanism for revocation of tobacco retailer licenses by the Planning Commission; and 3) ensure preparation of an annual report that includes information regarding the enforcement of updated regulations.

Amended sections are highlighted below and Attachment III includes a redlined version of the updated Ordinance.

July 7 revisions shown in red text
July 14 revisions shown in blue text

SECTION 10-1.2785 - TOBACCO RETAILER LICENSE (TRL).

- b (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~~-five years.

SEC. 10-1.~~2796~~2794 - REVOCATION OF TOBACCO RETAILER LICENSES AND CONDITIONAL USE PERMITS; APPEALS.

- a. In addition to the remedies set forth in Section 10-1.2793, ~~A~~any Tobacco Retail Sales Establishment ~~in violation of that violates~~ these regulations three (3) times within a ~~five~~ ~~three~~-year period shall be subject to revocation of ~~the its~~ Tobacco Retail License ~~and/or its~~ Conditional Use Permit, unless the business can demonstrate by clear and convincing evidence that a lesser penalty is warranted.
- b. For Large-Format Tobacco Retail Sales Establishments, as defined in Section 10-1.2784.a, a 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~~ and/or Chapter 5, Article 7 of the Hayward Municipal Code.
- c. For any Tobacco Retail Sales Establishments found to be in violation of Section 10-1.2794.a operating with that have a Conditional Use Permit or deemed a 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~~ the Hayward Municipal Code. Appeals shall be governed by Section 10-1.2845 of ~~this~~ the Hayward Municipal Code.
- ~~d. The hearing officer in the case of administrative action under 10-1.27964. subsection (a), or the Planning Commission, in the case of administrative action under 10-1.27964 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 2795 – ANNUAL REPORT

An annual report shall be provided to the City Council regarding the implementation enforcement of these provisions unless Council no longer requests such report- including but not limited to administrative and enforcement compliance data.

In addition, Section 10-1.2782(dd) has been amended to correct a typographical error reference. The correct subsection reference should be “h” located on the first sentence of the provision and not “f” as previously submitted.

SECTION 10-1.2782 – DEFINITIONS

dd. “Vaping device” means as defined in Subsection ~~f.~~ h. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bong, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof, For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

STRATEGIC ROADMAP

This agenda item is a routine operational item and does not relate to any of the six priorities outlined in the Council’s Strategic Roadmap.

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC CONTACT

The summary of the Ordinance was published in the Hayward Daily Review on Friday, July 10, 2020. Adoption at this time is therefore appropriate.

NEXT STEPS

The Hayward Municipal Code will be updated accordingly if the Ordinance is adopted.

Prepared and Recommended by:

Michael Lawson, City Attorney
Laura Simpson, Development Services Director
Miriam Lens, City Clerk

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager