



County of San Mateo

Inter-Departmental Correspondence

Department: HEALTH

File #: 23-292

Board Meeting Date: 5/9/2023

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Louise F. Rogers, Chief, San Mateo County Health
Heather Forshey, Director, Environmental Health Services
Clara Boyden, Deputy Directory of Alcohol and Other Drug Services, Behavioral Health and Recovery Services

Subject: Ordinances repealing Chapters 4.95, 4.96, 4.98, and 4.99, and enacting new Chapters 4.96 and 4.98 of the San Mateo County Ordinance Code to consolidate and clarify existing and to enact additional requirements for tobacco retailer permits and amending Chapter 5.64 to adjust program fees for tobacco retailer permits.

RECOMMENDATION:

Introduction of:

- A) An ordinance repealing Chapters 4.95, 4.98, and 4.99, and adopting a new Chapter 4.98 of Title 4 of the San Mateo County Ordinance Code to consolidate and clarify existing definitions and enact additional requirements for tobacco retailer permits, and waive the reading of the ordinance in its entirety; and
- B) An ordinance repealing and replacing Chapter 4.96, related to smoking, of Title 4 of the San Mateo County Ordinance Code to delete redundant sections relating to retail sales of tobacco products and to clarify definition of Tobacco Products, and waive the reading of the ordinance in its entirety; and
- C) An ordinance amending Section 5.64.070 (Collection of Fees) of Chapter 5.64 (Fees for Enforcement of State Public Health Laws) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code, relating to imposition of fees for Enforcement of State Public Health Laws and collection of fees for enforcement of Chapter 4.98, and waive the reading of the ordinance in its entirety.

BACKGROUND:

In 1998, the San Mateo County Board of Supervisors enacted Chapter 4.98, establishing one of

California's earliest Tobacco Retailer Permit Programs. Chapter 4.96 was updated in 2014 to include electronic cigarettes in the definition of "Tobacco Products." In 2019, Chapter 4.95 was enacted, which prohibits the sale and distribution of electronic cigarettes. As data about youth tobacco use and access to tobacco products evolved and best practices from other jurisdictions were studied, the need to update tobacco retail permit requirements became clear. In addition, consolidation of the tobacco retail permit policies and regulations into one Chapter promotes more efficient administration and enforcement.

In California, 67% of current and former smokers report that they started smoking by the age of 18. In 2019-20, 28.6% of high school students in California reported having used a tobacco product, with 9.7% reporting they are current tobacco users. In San Mateo County, 8.7% of high school students use vape products. Despite San Mateo County's overall success in lowering tobacco use rates among all ages, youth can still access tobacco products. In a 2019-20 survey, 51.2% of California youth vape users reported buying their own products. In 2019, 25 out of 289 visits to tobacco retailers were by underage decoys, resulting in tobacco sales to the youth decoys; from April 2021 to June 2022, 11 of 74 tobacco retailers in San Mateo County sold to underage youth decoys during Sheriff Office enforcement operations. Limiting youth access to tobacco products in retail is a key component of a comprehensive tobacco prevention strategy.

Fourteen cities in San Mateo County adopted tobacco retailer permit ordinances over the last 25 years, with varying degrees of inconsistency with the County's ordinance. Amendments to both the County and various cities' tobacco retailer permit ordinances and subsequent ordinances regarding flavored tobacco and e-cigarettes have increased the inconsistencies between the County's ordinance, on the one hand, and various city ordinances, on the other hand, ordinances.

DISCUSSION:

San Mateo County Health has sought further opportunities to reduce access to tobacco products by underage youth by incorporating input from state health organizations, the Tobacco Education Coalition (TEC), and researching best practices in other California jurisdictions. Health has identified opportunities to advance its goals by making technical and substantive changes to the ordinance code provisions addressing tobacco retailer permitting and enforcement. Additionally, the County's Tobacco Retailers' Permit requirements span several chapters of the ordinance code. Health clarified and consolidated them into one comprehensive Chapter to facilitate the enforcement of all provisions. Beyond increasing the efficiency and clarity of the ordinance, proposed changes will update the definition of terms to incorporate best practices across the State and strengthen the ordinance's provisions to reduce youth access to tobacco products in the retail setting in unincorporated San Mateo County.

The new ordinance proposes to repeal Chapters 4.95, 4.98. and 4.99 and adopt a new Chapter 4.98 of Title 4 of the San Mateo County Ordinance Code-- which incorporates all critical components pertaining to tobacco retail sales into a single chapter. In addition, several provisions have been added to advance the County's priority of reducing youth access to tobacco products.

The following are the key provisions of the proposed ordinance enacting a new Chapter 4.98:

- It updates definitions to align with similar model ordinances across California. For example, the "Tobacco Product" definition will now include synthetic nicotine, and align language, where appropriate, with the new Statewide ban of flavored tobacco products.
- It restricts where new retailers may be located: no new Tobacco Retailer Permit will be issued

to a location within 1,000 of a Youth-Populated Area, or within 500 feet of a location already occupied by another tobacco retailer. "Youth-Populated Areas" is updated to include college campuses.

- It prohibits posting of advertisements offering tobacco products unless the retailer has a valid permit to sell tobacco products.
- It increases the age for those who sell tobacco products to match the minimum age allowed to purchase tobacco under State law, currently 21 years old.
- It increases fines up to five hundred dollars (\$500) for the first violation, and up to one thousand dollars (\$1,000) for all subsequent violations within a sixty (60) month period.
- It requires that a permit be suspended if a business is found to have sold tobacco products to persons under the age of 21
- It requires two inspections per year of each tobacco retailer by an enforcement designee to monitor compliance with applicable laws.
- It increases the permit suspension and revocation escalation period for cumulative violations from 12 months to 60 months.
- It mandates a fine, at a minimum, for any violations pursuant to the ordinance.

With regard to the Chapter 4.96 ordinance, the sections of existing Chapter 4.96, which address the retail sales of tobacco products, have been removed from the Chapter and incorporated into the new Chapter 4.98, along with some minor technical changes to eliminate duplication and inconsistencies between the chapters. The definition of Tobacco and Tobacco Products in 4.96 has been updated to match the definition in the new Chapter 4.98.

This amendment also clarifies requirements for cities to authorize the County to administer and enforce the Tobacco Retailer Permit ordinance in incorporated jurisdictions. Many cities adopted similar ordinances, though different from the County. This has caused uncertainty regarding the County's authority to administer and enforce the tobacco retailer permit scheme in incorporated areas. Additionally, many cities still need to adopt all the amendments the County has passed over the years or adopt them with substantive changes, making it challenging to administer a tobacco retailer permit ordinance in such cities. Passing a new, comprehensive ordinance will eliminate the current logistical challenges and the ambiguity regarding the County's authority in cities, enabling efficient, uniform enforcement, permitting, and administration of the ordinance. The County aims to reduce tobacco sales to underage young people and, to that end, will implement the ordinances for those cities that adopt this comprehensive ordinance in its entirety. If this ordinance is passed, staff will return to cities to encourage the adoption of the County's updated tobacco retailer permit ordinance.

The Board of Supervisors considered this a new Chapter 4.98 of the Ordinance Code at its April 25, 2023, meeting. At that time, members of the Board requested that staff make several changes to the version of the ordinance presented at that time and return to the Board with those revisions. Accordingly, staff has made the requested changes to Chapter 4.98, specifically in sections 4.98.250

(a), 4.98.270(b), and 4.98.300(a). For clarity and to facilitate review by the Board and interested stakeholders, attached to this memorandum as Exhibit A is a version of Chapter 4.98 marked to show these changes from the version of the ordinance that was presented to the Board at the April 25th meeting.

The addition of two inspections per year for all tobacco retailers would increase the annual fee from \$174 to \$672, and a one-time application fee of \$249 to review the application of a new business (and assess various new location restrictions) are necessary to obtain full cost recovery for the administration of the permit. This fee increase will be presented as an amendment to section 5.64.070 of the County's Ordinance Code, which sets forth the fee schedule for all Environmental Health Services' fees. If the amendment increasing the aforementioned fees is passed, staff will incorporate these new fee amounts into the comprehensive fee schedule in section 5.64.070.

FISCAL IMPACT:

Health's Environmental Health Services Division permit fees are established by ordinance to fund this program. The proposed fee ordinance amendment would take effect July 1, 2023. There is, therefore, no Net County Cost associated with this ordinance.