



County of San Mateo

Inter-Departmental Correspondence

Department: HEALTH

File #: 23-255

Board Meeting Date: 4/25/2023

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 remove 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 waive the reading of the ordinance in its entirety.

BACKGROUND:

In 1998, the San Mateo County (County) Board of Supervisors enacted Chapter 4.98, which established one of the earliest Tobacco Retailer Permit Programs in California. 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.

In California, 67% of current and former smokers report that they started smoking by the age of 18. In a 2019-20 survey, 28.6% of California high school students reported having used a tobacco product, with 9.7% reporting they were current tobacco users. In the 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 are still able to access tobacco products. From April 2021 - June 2022, 11 of 74 tobacco retailers (15%) in San Mateo County sold to underage youth decoys during Sheriff's 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 have adopted tobacco retailer permit ordinances over the last 25 years, with varying degrees of inconsistency with the County's ordinance. Amendments to the County's and various cities' tobacco retailer permit ordinances and subsequent ordinances regarding flavored tobacco and e-cigarettes have increased the inconsistencies between the County's and various cities' ordinances.

As new data about youth tobacco use and access to tobacco products have emerged and the County learned of best practices from other jurisdictions, the need to update and strengthen this existing ordinance became clear. In addition, consolidation of the tobacco retail permit policies and regulations into a single Chapter promotes more efficient administration and enforcement.

DISCUSSION:

This new ordinance proposes to repeal San Mateo County Ordinance Code Chapters 4.95, 4.98, and 4.99 and adopt a new Chapter 4.98 of Title 4, consolidating all critical components pertaining to tobacco retail sales into a single Chapter. Specifically, the following are key provisions in the newly added Chapter 4.98:

- Updated 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.
- Restrictions on 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.
- Prohibition on posting advertisements offering tobacco products unless the retailer has a valid permit to sell tobacco products.
- Increase in the age for those who sell tobacco products to match the minimum age allowed to purchase tobacco under State law, currently 21 years old.
- Increase in fines up to \$500 for the first violation, and up to \$1,000 for all subsequent violations within a 60-month period.
- Requirement that a permit be suspended if a business is found to have sold tobacco products to persons under the age of 21

- Required annual inspection of each tobacco retailer by an enforcement designee to monitor compliance with applicable laws.
- Increased permit suspension and revocation escalation period for cumulative violations from 12 to 60 months.

This amendment also clarifies requirements for cities to authorize the County to administer and enforce the Tobacco Retailer Permit ordinance in incorporated jurisdictions. Specifically, cities will have the option to have the County administer and enforce this ordinance if a city passes its own identical version of the County's ordinance. To date, many cities have adopted their own ordinances that are similar, though not identical to the County's. This has caused uncertainty regarding the County's authority to administer and enforce the tobacco retailer permit scheme in incorporated jurisdictions. Passing a new, comprehensive County ordinance will eliminate both the current logistical challenges and the ambiguity regarding the County's authority in cities, for more efficient and consistent enforcement, permitting, and administration.

The addition of an annual inspection for all tobacco retailers would increase the annual permitting fee from \$174 to \$423. Additionally, a \$249 one-time application fee would be assessed to review the application of a new business and assess various new location restrictions. These fees 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, Health staff will then incorporate these new fee amounts into the comprehensive fee schedule set forth in section 5.64.070.

FISCAL IMPACT:

County Health's Environmental Health Services Division permit fees are established by this 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.