

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: JASON NUTT, ASSISTANT CITY MANAGER,
CITY MANAGER'S OFFICE
SUBJECT: ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA
ADDING CHAPTER 6-20 OF THE SANTA ROSA CITY CODE
TITLED "REGULATION OF RETAIL TOBACCO SALES,"
AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND
EXECUTE AN AGREEMENT WITH THE COUNTY FOR
COMPLIANCE MONITORING AND ENFORCEMENT

AGENDA ACTION: ORDINANCE INTRODUCTION

RECOMMENDATION

It is recommended by the City Manager's Office that the Council: 1) hold a public hearing to discuss regulation of retail tobacco sales; 2) introduce an ordinance adding Chapter 6-20 to the Santa Rosa City Code titled "Regulation of Retail Tobacco Sales"; and 3) by motion, authorize the City Manager to negotiate and execute an agreement with the County of Sonoma for compliance monitoring and enforcement.

EXECUTIVE SUMMARY

The City Council will consider an ordinance that proposes adding Chapter 6-20 to the Santa Rosa City Code titled "Regulation of Retail Tobacco Sales" requiring all tobacco retailers to obtain a license and comply with enhanced regulations associated with tobacco sales, in particular, those targeting sales to youth. The ordinance would establish a buffer between retail locations and schools and parks, a ban on electronic tobacco smoking devices and flavored tobacco sales, and establishment of minimum package sizes and pricing. If adopted, the ordinance will impose a license fee on retailers selling tobacco products within the City limits. Staff will return to Council with a resolution to impose any such fees.

BACKGROUND

During the FY 2023-24 Council Goal Setting Workshop, staff was asked to add the evaluation and development of a tobacco retail license similar to the City of Petaluma to the work plan. Staff researched the various tobacco retail license policies throughout the county and discussed various approaches with Impact Sonoma, the division within the

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County of Sonoma Department of Health Services focused on reducing the use of tobacco products.

Tobacco retail license policies currently exist in the Town of Windsor, the cities of Petaluma, Healdsburg, Cloverdale, Sebastopol, and Sonoma as well as unincorporated Sonoma County. Using policy and data points from these agencies, staff have developed a proposed tobacco retail license policy framework for Santa Rosa, with the policy implemented by the City of Petaluma being the basis.

A 2023 Youth Truth survey shows that Santa Rosa's tobacco use among high school-aged youth mirrors the increasing use trends throughout the county with the largest city high school-aged population in the county. While the state restricts tobacco sales to those 21 or older, recent tobacco purchase surveys indicate that retailers continue to sell to youth in the community. In 2021, 75 of 156 retailers sold to the decoy minor, resulting in a 48% buy rate within the county. In 2023, a non-representative sample of 100 retailers were surveyed, and found that 17 retailers sold to the decoy.

A key policy factor for consideration relates to the number and density of tobacco retailers, which the City of Petaluma incorporated a density cap on the number of retailers while the City of Sonoma banned the sale of tobacco to any new retailers. In 2021, the City of Petaluma adopted a regulation of retail tobacco sales tax. That policy added an annual fee for tobacco retailers allowing them to sell tobacco and be subject to compliance checks and violation enforcement. Their policy outlines protections for youth by restricting new tobacco retailers from locating within 1,000 feet of a youth oriented area or 500 feet of another tobacco retailer and their density cap only allows one new license per 2,000 residents. In addition, they banned the sale of flavored tobacco products and electronic smoking devices, established a minimum package price, and banned all coupons and discounts for tobacco products. Several agencies have implemented these additional components; however, these are not consistent across all local agencies.

PRIOR CITY COUNCIL REVIEW

November 14, 2023 – Study Session outlining key features of an ordinance. Council provided directive feedback.

ANALYSIS

The draft Ordinance includes the following key criteria that was developed based on the feedback from Council during the November 14, 2023, study session, review of other agency tobacco retail policies, feedback from existing tobacco retailers within the City limits and comparison with existing City ordinances covering similar activities:

1. Caps the number of retailers at the current number of 118 as reported by the State for the calendar year 2023;
2. Imposes a 600-foot radius between new tobacco retailers and schools providing K-12 instruction, daycare centers, youth centers, sports facilities, and parks;

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3. Bans the sale of flavored tobacco products including those used in electronic devices (as this exceeds the state ban on flavored tobacco);
4. Establishes a minimum package size and pricing for various tobacco products;
5. Grandfather in and not require current tobacco retailers to conform with the 600-foot radius requirements until an ownership transfer is requested at which time the retail location must comply with all sections of the policy.
6. The Council can also direct staff to evaluate and return with a pack size and price component;
7. Development of a Memorandum of Understanding with Sonoma County Department of Health Services that would allow the County department to collect fees from the annual Tobacco Retail License allowing them to conduct annual inspections of the retailer's compliance with the ordinance. Citations resulting from the inspections would be followed up by City Code Enforcement.

Finance, City Attorney, Code Enforcement, and Planning and Economic Development have been consulted regarding the potential staff and financial impacts that could result from this policy and it has been determined to be less than significant at this time.

If adopted, the ordinance would go into effect on January 1, 2025.

FISCAL IMPACT

Approval of this action may have a fiscal impact on the General Fund through increased responsibilities of Code Enforcement; however, specific data on staff involvement is unknown at this time. While license fees will be collected by the County for their efforts to manage the program on behalf of the City, fines and appeal fees will be collected by the City to offset costs to the General Fund.

Should the MOU with the County be terminated or expire and not renewed, implementation of the ordinance will be conducted by Code Enforcement. The License fee will be adjusted appropriately to ensure cost recovery of the services needed to fully implement the ordinance and offset General Fund costs.

Potential sales tax loss is not currently measurable.

ENVIRONMENTAL IMPACT

This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). Pursuant to CEQA Guidelines section 15378 (b), the Ordinance is not a project within the meaning of CEQA because it creates a licensing and government funding mechanism that will not result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

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In the alternative, adoption and implementation of the proposed ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. Adoption and implementation of the standards, license requirements, and other measures contained in the ordinance will not in and of themselves result in any direct physical change to the environment subject to CEQA.

In addition, the adoption and implementation of the proposed ordinance is exempt from CEQA pursuant to Sections 15307 and 15308 of the State CEQA Guidelines as actions taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment as authorized by state law where the regulatory process involves procedures for protection of the environment. The basis for this determination is that the proposed ordinance establishes standards, license requirements, and other measures that regulate the licensure of tobacco retailers more stringently than existing codes, and will result in reduced sales of tobacco products to minors. These standards, license requirements, and other measures will protect human health, which is an aspect of the environment under Public Resources Code Section 21083(b)(3), by strengthening existing standards for preventing the sale of tobacco products to youth and establishing new limitations on tobacco retailer licensure. Reduced sale of tobacco products will reduce the harmful environmental effects of disposal of tobacco products.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

To notify and obtain input on the proposed Regulation of Retail Tobacco Sales Ordinance, the City Manager's Office:

- Conducted a study session with Council on November 14, 2023, where Council approved the purpose statement and provided feedback on criteria that was to be evaluated and incorporated into a draft ordinance.
- Conducted both an in-person and virtual information meeting with existing tobacco retailers on May 13 and 14, respectively. Fliers were both hand delivered to all registered businesses and mailed to the owner of record.
- A public hearing notice was published in the Press Democrat on May 10, 2024.

ATTACHMENTS

- Attachment 1 - Map showing 600 foot radius from existing retailers.

PRESENTER

Jason Nutt, Assistant City Manager