

CITY OF OAKLAND



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VICE MAYOR LARRY REID
DISTRICT 7

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Date: May 7, 2020
To: Members of the City Council
From: Vice Mayor Larry Reid, District 7
President Pro Tempore Dan Kalb, District 1
Councilmember Loren Taylor, District 6
Councilmember Sheng Thao, District 4
Re: Emergency Ordinance Closing Oakland's Flavored Tobacco
Loophole and Other Tobacco Related Amendments to Oakland
Municipal Code Chapter 5.91

RECOMMENDATION

We Respectfully Request That The City Council: Adopt An Emergency Ordinance Changing Local Rules For The Sale Of Tobacco Products By: (A) Amending Oakland Municipal Code Chapter 5.91 To: (1) Eliminate The "Tobacco Store" Exception To The City's General Prohibition On The Sale Of Flavored Tobacco Products; (2) Prohibit Pharmacies From Selling Tobacco Products; (3) Impose A Minimum Price And Package Size For Cigars And Cigarettes; (4) Require The On-Site Purchase Of Tobacco Products; (5) Change Definitions Of Terms; (6) Make Administrative Changes For The Licensure Of Tobacco Retailers; And (B) Repealing Oakland Municipal Code Chapter 8.34, Which Prohibits Tobacco Product Vending Machines In Areas Accessible To People Under Twenty One (21) Years Of Age.

EXECUTIVE SUMMARY

The Oakland Children Smoking Prevention Ordinance went into effect in July 2018. At the request of Tobacco Retailers an exemption for adult-only tobacco stores was included. What began as a handful of adult-only tobacco stores in Oakland (2-5 tobacco stores) prior to the law's effective date, is now a proliferation of 56 adult-only tobacco stores (as of February 2020). As a result of this exemption, candy-flavored and menthol tobacco products are still available in Oakland in some of the most vulnerable communities that are most heavily targeted by Big Tobacco, particularly youth of color and LGBTQ. For the public's health, especially our youth, this updated ordinance will close the flavored tobacco loophole and place new restrictions on how tobacco is sold within the City of Oakland in accordance with health experts' recommendations.

BACKGROUND

The flavored tobacco ordinance adopted in 2017 was considered a big win for youth and community health at the time, but it has become clear that the exemption in the loophole, to allow adult-only stores, has undermined efforts to reduce health inequities. Since the ordinance went into effect, the number of adult-only tobacco stores has expanded from a couple to 56 stores (as of February 2020), representing approximately 15% of the tobacco retailers in the city (Attachment A). These are not new businesses; these are existing tobacco retailers that are converting sections of their stores to adult-only in order to continue the sale of flavored tobacco products, including menthol. Enforcement of the adult-only exemption for stores that continue to sell other goods to all ages presents many enforcement challenges for Oakland Police Department and creates an uneven playing field for tobacco retailers in the city. Additionally, these adult-only tobacco stores are disproportionately located in the flatlands of East and West Oakland (Attachment B) where poor health outcomes are more prevalent within the population. This means that flavored tobacco products, including menthol, are still widely accessible, particularly to low-income communities of color and youth.

ANALYSIS

Tobacco companies have historically targeted youth, communities of color and the LGBTQ community with aggressive marketing of flavored tobacco products, including menthol. Research has shown that 95% of African American teen smokers, 61% of Asian teen smokers, and 58% of Hispanic teen smokers report smoking menthol-flavored cigarettes. The majority of the stores carrying these flavored tobacco products are located in communities of color and areas with higher levels of poverty (Attachment C). Flavors including menthol, grape, cotton candy, bubble gum and gummy bear mask the harsh taste of tobacco and are highly appealing to youth, encouraging a new generation of smokers. Four out of five kids who have used tobacco started with a flavored product. Youth who smoke menthol are more likely to become addicted to nicotine than their peers that smoke non-menthol tobacco. As a result, vulnerable communities bear a disproportionate burden of tobacco-related disease and death; for example, 47,000 African Americans die annually from smoking-related illnesses, making tobacco use the largest preventable cause of death among African Americans.

When tobacco is cheap and pack-sizes are small, tobacco products are more affordable for youth and low-income populations to buy. According to a tobacco store survey conducted by the Alameda County Public Health Department in Oakland (2018), over 99% of tobacco retailers sell little cigars or cigarillos in packs of 5 or less for just under \$2.00 (after taxes). The cheapest cigar/ cigarillo single was sold for as little as \$0.49. Establishing a minimum price and pack size for the sale of tobacco products is an effective strategy for reducing access to price sensitive consumers like youth and low-income populations.

Additionally, making pharmacies tobacco-free further reduces the density of tobacco retailers and establishes pharmacies as places of health, enabling pharmacists to dispense medications in the back of the store without cancer-causing tobacco being sold at the front of the store. Very few independent pharmacies exist anymore and of those existing, almost all are tobacco-free. In other jurisdictions, big chain pharmacies are not closing due to adopted tobacco-free pharmacy requirements. Tobacco-free pharmacies would have a positive impact for the health of the city.

A strong and comprehensive local tobacco retail license ordinance can help prevent and reduce youth usage of tobacco that lead to poor health outcomes in adulthood. Youth mainly obtain tobacco products from brick-and-mortar retail locations. According to the Truth Initiative, 74% of youth report obtaining

JUUL flavor pod products from physical retail locations, 52% from a social source and 6% from the internet. Our proposal strengthens, as an additive deterrent, the incremental penalties for first, second, and third time violations of this chapter. Our proposal additionally strengthens compliance check requirements, ensures retailers are held to higher penalties than clerks, clarifies that youth will not be penalized for possession, use or purchase of restricted tobacco products and includes an evaluation component with public access to annual reports.

We are asking for this Emergency Ordinance as it is necessary for preserving the public health and safety during this declared public health emergency. COVID-19 is a respiratory tract infection pandemic threatening the health and safety of Oakland residents, as reflected by the various emergencies declared at the local, state and national level. Immediate efforts to reduce health disparities related to COVID-19 are critical to protecting the health and safety of the City's vulnerable residents. COVID-19 is not an equal opportunity killer. African-American and Latino residents are becoming infected and dying from this disease at a higher rate, and menthol and little cigars are a critical vector into the local community that causes these health disparities.

Smoking doubles an individual's risk of developing respiratory infections. In a study of 391 healthy volunteers, the volunteers who smoked were twice as likely as those who did not smoke to develop an infection, including COVID-19. Further, smoking is known to weaken the immune system and the body's ability to fight infections such as COVID-19. Smoking doubles an individual's risk of getting significantly ill from COVID-19. In a study of 1099 people with COVID-19, people who smoked were 2.4 times more likely to get significantly ill (e.g. admitted to an intensive care unit, needing mechanical ventilation, or dying) compared to those who did not smoke.

Though they may be operating in conformance with the County of Alameda's current shelter in place order, many tobacco retailers are open for business in Oakland and are selling tobacco products, thereby increasing the likelihood that consumers who purchase and use such products will develop weakened immune systems and become especially susceptible to COVID-19.

FISCAL IMPACT

There is a potential reduction in tax revenue related to the prohibition of sale of certain tobacco products, but we believe that loss will be offset by higher tax revenue generated by the establishment of a price floor on the sale of other tobacco products which would be established in this ordinance.

PUBLIC OUTREACH

Vice Mayor Reid and his office engaged with the Alameda County Public Health Department, several Oakland-based community organizations that focus on the health and safety of Oakland's most vulnerable communities, and other key stakeholders.

Registered Support:

- African American Tobacco Control Leadership Council
- Alameda County Public Health Department
- Alameda County Supervisors Wilma Chan and Keith Carson
- Community Health Education Institute
- East Oakland Building Healthy Communities
- East Oakland Youth Development Center

- Alameda County Tobacco Control Coalition
- American Cancer Society – Cancer Action Network
- American Heart Association
- American Lung Association of California
- Americans for Nonsmokers Rights
- Amplify
- Asian Health Services
- Associated Students of Merritt College
- Breathe California of the Bay Area
- California LGBT Tobacco Education Partnership
- Campaign for Tobacco-Free Kids
- Castlemont High School Community Health Equity Academy Students
- First 5 Alameda County
- La Clinica de La Raza, Inc.
- Lifelong Medical Care
- Martin Luther King Jr. Freedom Center
- Merritt College Tobacco Less Club
- Oakland High School Students
- Oakland Technical High School Students
- Oakland Unified School District – Tobacco Use Prevention Education Program
- Oakland Youth Advisory Commission
- Regional Asthma Management and Prevention
- Roots Community Health Center
- Skyline High School Students

COORDINATION

Vice Mayor Reid worked extensively with the Oakland’s Police Department Alcoholic Beverage Action Team (ABAT), the Oakland City Attorney’s Office, and Councilmembers Kalb, Taylor, and Thao were consulted. The Alameda County Public Health Department has committed to work with ABAT and other relevant City staff to provide education and outreach support, when available, to retailers if this ordinance should be adopted. We have and will continue to work with stakeholders and public health experts moving forward.

SUSTAINABLE OPPORTUNITIES

Economic: The ordinance is intended to promote the reduction of the purchase of known cancer-causing products and the addictive risk to our youth who could face a lifetime of buying these products and the potential health complications associated with the use of tobacco.

Environmental: There are no environmental opportunities associated with this ordinance.

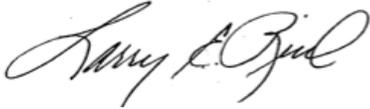
Social Equity: The ordinance is intended to promote social equity by eliminating or reducing the targeted sales of Big Tobacco to Oakland’s youth, low-income, LGBTQ and communities of color.

ACTION REQUESTED BY THE CITY COUNCIL

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Sincerely,



Vice Mayor Larry Reid
District 7



President Pro Tempore Dan Kalb
District 1



Councilmember Loren Taylor
District 6



Councilmember Sheng Thao
District 4

Attachment A: Maps of all tobacco retailers by Council District

Attachment B: Maps of flavored tobacco retailers and a table of the count by Council District

Attachment C: Analysis of youth, low-income populations and racial/ ethnic groups