Proposed Tobacco Retail Permit Ordinance

City Council Meeting
Background

December 9, 2019, Council Colleagues’ Memo discussed the rise in youth vaping. Council directed staff to return with:

1. An ordinance prohibiting the sale and distribution of all electronic cigarettes and flavored tobacco products, in alignment with the County of Santa Clara’s recent approach, with as few exemptions as possible;
2. Avenues to support legislation that deters minors from ordering e-cigarette products online;
3. An update on the enforcement activities of the existing Tobacco Retail Permit Ordinance;
4. Recommended funding based recommendations from a community meeting led by Healthy Cities in January 2020;
5. Potential disincentives and/or fines for vaping in public;
6. Work done with Palo Alto Unified School District (PAUSD) through the City/School Liaison Committee to reduce youth vaping; and,
7. A recommendation of appropriate disposal methods and education for electronic cigarettes.
Update on Action Items from December 9 Council Meeting

1. Proposed Ordinance for discussion and Council direction
2. New state legislation and federal regulation further deters youth access to tobacco products in effect (SB 39 online sales, FDA flavored pod ban);
3. PAPD youth-decoy undercover checks were conducted;
4. Community Funding: Healthy Cities identified the ThinkFund as a good potential recipient to increase funds for youth-led initiatives to reduce tobacco use;
5. Existing restrictions on public smoking, new free “no smoking” signage for businesses now provided to expand public signage;
6. Work done with Palo Alto Unified School District (PAUSD) through the City/School Liaison Committee to reduce youth vaping;
1. All retailers must maintain a permit with Santa Clara County Department of Health and pay annual permit fees;
2. Retailers cannot sell flavored tobacco products/e-liquids
   • Adult-only stores are exempt from this requirement;
3. Limits store advertising;
4. Under age-21 only allowed to enter store with an adult;
5. Repeat violations are considered over 24 months.

Agreement with City and Santa Clara County requires County administration of permit checks, and annual Palo Alto Police Department undercover youth decoy checks.
## Palo Alto’s Tobacco Retailers

<table>
<thead>
<tr>
<th>Retailers</th>
<th>Type of Retailer</th>
<th>Proposed Ordinance Impacts</th>
</tr>
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<tbody>
<tr>
<td>1. Gas stations, liquor stores, convenience stores (15)</td>
<td>Retailer</td>
<td>Low impact. Most changes occurred with previous ordinance adoption.</td>
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<td>2. Two cigar retailers</td>
<td>Over age-21</td>
<td>None</td>
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<tr>
<td>3. Three vape/tobacco stores</td>
<td>Over age-21</td>
<td>Significant</td>
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<tr>
<td>4. Two unique retailers:</td>
<td>Over age-21</td>
<td>Significant</td>
</tr>
<tr>
<td>• Hookah Nites and Lounge (lounge-only, no product leaves premises);</td>
<td></td>
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<tr>
<td>• Mac’s Smoke Shop (snacks, periodicals and smoking/vaping products)</td>
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Five stores expressed concern about impact of proposed ordinance to continue their business (Hookah Nites, Mac’s, Raw Smoke Shop, Smokes and Vapes, Vapes and More.)
1. Prohibits sales of electronic cigarette devices (flavored tobacco products and e-liquids already banned). Only traditional tobacco products and smoking cessation products can be sold;

2. Current exemptions remain for adult-only stores where flavored tobacco and electronic cigarette products can be sold due to financial impact on these stores:

3. Additional restrictions:
   • No new adult only stores would be permitted. Stores must have a permit June 30, 2020 to operate as an over-21 retailer in future years.
   • Customers under age-21 cannot enter stores, even if legal adult present;
   • Age must be confirmed before anyone can enter store;
   • Permit revoked if two sales to under age 21 within 60 months occur;
   • Violations of County or State Health Directives could result in permit loss.
<table>
<thead>
<tr>
<th>City</th>
<th>Ordinance Requirement</th>
<th>County Partner?</th>
<th>Stores Impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Altos</td>
<td>No flavored tobacco or e-cigarettes.</td>
<td>No</td>
<td>Several stores impacted but the single adult-only store was exempted.</td>
</tr>
<tr>
<td>Los Gatos, Cupertino</td>
<td>No flavored or e-cigarette products. No exemptions.</td>
<td>Yes</td>
<td>Few retailers impacted, no adult-only stores. Palo Alto is the only County partner to have adult-only stores that would be impacted by the proposed County Ordinance.</td>
</tr>
<tr>
<td>Saratoga, San Jose, Mountain View, Sunnyvale, considering options in future.</td>
<td>Considering no flavored or e-cigarettes.</td>
<td>No</td>
<td>San Jose and Sunnyvale reported that stores would likely close if their Councils do not exempt adult-only stores.</td>
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## Public Comments

<table>
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<tr>
<th>Public Comment Theme</th>
<th>Staff Response/How Ordinance Addresses Comment</th>
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<tbody>
<tr>
<td>The City must do its part to reduce youth access to vaping and flavored tobacco.</td>
<td>Palo Alto’s Proposed Ordinance would be the strongest among cities in the County that have adult-only stores.</td>
</tr>
<tr>
<td>Exempting adult-only stores will lead to more adult-stores and more access to vaping products.</td>
<td>No new adult only stores can open. The ordinance requires adult-only retailers to be operating on June 30, 2020 in order to continue.</td>
</tr>
</tbody>
</table>
| Flavored tobacco product availability is what compels kids to use smoking/vaping products. | • Flavored tobacco/flavored vaping products currently prohibited at 15 retailers;  
  • Proposed Ordinance would remove sales of all e-cigarettes products (devices and liquids) at non-adult retailers;  
  • Ordinance adds requirements to limit under age-21 access to adult-only stores. |
| The City would have to cover the costs to enforce the permitting process and this would become a low priority. | • The City would require permit fees to cover administrative and staff costs (currently done by the County). Some fees could help fund youth smoking/vaping reduction programs;  
  • Adult-only stores would be a high priority for Palo Alto enforcement;  
  • State and Federal checks at stores would also continue. |
| The Ordinance will negatively impact my business financially.                        | • Proposed exemptions for adult-only stores, with new restrictions to deter under-age sales.                                                                                  |
1. Most tobacco retailers (15 stores) would be prohibited from selling flavored tobacco and e-cigarette products (devices and liquids);
2. Adult-only stores would have additional requirements to continue operating
3. Palo Alto’s Proposed Ordinance would be the strongest among cities in the County among those that have adult-only stores;
4. Additional measures to further strengthen the ordinance and reduce teen vaping can be considered in the future.
Options

1. Adopt the Ordinance as proposed by staff (Attachment D), and direct staff to explore the following and return to Council at a later date:
   a) Investigate further restrictions for adult-only stores (e.g., card readers, purchase log, additional fees to support youth programs, etc.);
   b) Consider alternative exemption structure for retailers, e.g., exempt lounges where no product leaves the store;
   c) Consider additional measures over time to reduce the number of adult-only stores.

2. Direct Staff to modify the proposed Ordinance and return to Council at a future date, eliminating the current exemption for those adult stores where the subject products leave the store. Introduce a future effective compliance date that would allow the other four impacted adult-only stores time to sell/remove their current inventory and modify their business model to address the exemption elimination.