



AGENDA REPORT

MAYOR'S OFFICE

DATE: July 23, 2019

TO: Members of the City Council

FROM: Mayor Tom Butt

SUBJECT: AMENDMENT TO RMC CHAPTER 7.106 TOBACCO RETAILER
LICENSE PROHIBITING THE SALE OF ELECTRONIC CIGARETTES

STATEMENT OF THE ISSUE:

The sale of electronic cigarettes pose a risk to public health and most electronic cigarettes have not obtained a premarket review order from the U.S. Food and Drug Administration to determine their appropriateness for the protection of the public health. The City of Richmond has an interest in protecting the public, particularly our youth, from products that contribute substantially to increased drug use and exposure to harmful substances.

RECOMMENDED ACTION:

INTRODUCE an ordinance (first reading) amending Richmond Municipal Code Chapter 7.106 – Tobacco Retailer License – to prohibit the sale of electronic cigarettes which require but have not been issued a premarket review order from the U.S. Food and Drug Administration.

FINANCIAL IMPACT:

There is no financial impact related to this item.

DISCUSSION:

Summary

On September 26, 2017, the City Council received a presentation from the Youth Tobacco Advocacy & Policy Project, highlighting the negative health impacts that tobacco products have on youth. The presentation initiated a process to revise the Tobacco Retailer License regulations to address the dangers of flavored tobacco

products, and reduce the availability of products. In keeping with the intent of the new regulations, this proposal would further restrict the types of tobacco products that can be sold in Richmond on the basis of protecting public health in particular as it relates to our youth. The purpose of this proposed amendment to Chapter 7.106 is to prohibit the sale of electronic cigarettes which have not received an approved premarket review order from the Food and Drug Administration.

Background

The City Council adopted an ordinance amending Richmond Municipal Code Chapter 7.106 by banning the sale of menthol and other flavored tobacco products, establishing a minimum pack size for little cigars and cigars, and imposing location requirements on new tobacco retailers. Those changes went in to effect on April 17, 2019 and are being actively enforced by the Richmond Police Department.

Virtually all e-cigarettes are considered “new tobacco products” under the Family Smoking Prevention and Tobacco Control Act enacted by Congress in 2009. The U.S. Food and Drug Administration (FDA) is responsible for conducting a premarket review of all new tobacco products not on the market as of February 15, 2007. The FDA’s premarket review process is intended to determine if a tobacco product is appropriate for the protection of the public health “with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account- (A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and (B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.”

Tobacco companies are required to report to the FDA for premarket review any information concerning health risks, the components, ingredients, additives, and manufacturing methods. Unfortunately nearly all e-cigarettes on the market have not obtained a premarket review order and the FDA has not taken appropriate action to enforce the requirements of the Tobacco Control Act.

Nationwide, electronic cigarette use has increased at alarming rates since the first products became available about 10 years ago. While there have been many successful efforts to reduce underage tobacco use, the growing availability of e-cigarettes has reversed those positive trends. The city’s current regulations prohibit the sale of all electronic cigarette products which have a taste or aroma other than the taste or aroma of tobacco. Examples of those characterizing flavors include menthol, fruits, candy, desserts, herbs and spices.

Proposal

If approved, this amendment would expand the prohibition on electronic cigarette products to include any device or delivery system which can be used to consume nicotine in aerosolized or vaporized form. Products would be identified as prohibited for sale if they are “new tobacco products” which require FDA premarket review and have not been issued an order approving their marketing.

The amendment adds a new subsection to the Tobacco Retailer License under chapter 7.106.030 of the municipal code entitled Requirements and Prohibitions. All existing tobacco regulations approved by the City Council in 2018 would remain in effect however for the purposes of the new subsection the following would apply.

“Electronic cigarette” shall have the definition set forth in the California Revenue and Taxation Code Section 30121 (c), as may be amended from time to time, and means: *(see attachment #4 for complete text)*

- Any device or delivery system including any component, part, or accessory used during the operation of the device when sold in combination with any substance containing nicotine and which can be used to deliver to a person nicotine in aerosolized or vaporized form.
- Any liquid or substance containing nicotine, whether sold separately or in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form.

“New tobacco product” shall have the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time, and means: *(see attachment #3 for complete text)*

- Any tobacco products that was not commercially marketed in the U.S. as of February 15, 2007; or
- Any modification (including any change in design, components, parts, content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the U.S. after February 15, 2007.

ENVIRONMENTAL REVIEW:

The project is exempt from the California Environmental Quality Act (CEQA) because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant adverse effect on the environment.

ATTACHMENTS:

- 1 – RMC 7.106.030 Requirements and Prohibitions MARK UP
- 2 – RMC 7.106.030 Requirements and Prohibitions CLEAN
- 3 – 21 U.S.C. § 387j: Application for Review of Certain Tobacco Products
- 4 – CA Revenue and Taxation Code Section 30121