



## Legislation Text

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Report regarding an update on outreach efforts concerning the potential regulation of Flavored Tobacco and E-Cigarettes. (*Christina Fernandez, Assistant to the City Manager*)

### **RECOMMENDATION**

Recommend City Council receive an update on business outreach efforts and provide further direction and guidance on the potential regulation of flavored tobacco and e-cigarettes in South San Francisco with the objective of limiting youth access to tobacco products.

### **BACKGROUND/DISCUSSION**

According to the California Department of Public Health, 80% of young people who used tobacco started with a flavored tobacco product. A majority of youth report flavoring as a leading reason for using tobacco products. This includes 82% of e-cigarette users, 79% of hookah users, 74% of cigar users, and 69% of smokeless users. Flavors such as watermelon, cherry, chocolate, mint, and gummy bear appeal to kids and teens. Flavorings mask the taste of tobacco making it more palatable for youth to begin tobacco use. Flavored tobacco products also use the same flavoring chemicals as Jolly Rancher, Kool-Aid, and Life Savers. Certain minority groups also disproportionately use flavored tobacco products, including menthol cigarettes. In one survey, 82.6% of African American cigarette smokers reported smoking menthol cigarettes in the month prior.

### **Federal Guidance and Regulations**

The U.S. Surgeon General warns that flavored tobacco products help new users establish habits that lead to long-term addiction. Flavors like menthol in tobacco products make it more difficult for users to quit. All nicotine products are addictive and increase the risk of developing serious health problems including cancer, heart disease, and emphysema.

In 2009, the Federal Government passed the Family Smoking Prevention and Tobacco Control Act that banned the manufacture of flavored cigarettes. Menthol cigarettes were exempt from this ban. The ban also does not restrict non-cigarette tobacco products such as smokeless tobacco.

More recently, the Food and Drug Administration announced a new plan to protect youth by preventing access to flavored tobacco and banning menthol in cigarettes. The proposed plan would ban menthol cigarettes finding that menthol cigarettes are easier to smoke and harder to quit. It is also the choice combustible cigarette for youth and underserved communities.

### **Flavored E-Cigarettes**

Most commonly used among youth, e-cigarettes deliver flavorings, nicotine and other additives via an inhaled aerosol. E-cigarettes entered the marketplace in 2007, and since 2014 have been the most commonly used tobacco product among youth. E-cigarette use among U.S. middle and high school students have increased 900% between 2011-2015. During the past year, e-cigarette use has increased 78% among high school students. In 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school

students currently use e-cigarettes. The chemical Diacetyl is found in 75% of flavored e-liquids and is linked to “popcorn lung” which causes irreversible lung damage.

### ***South San Francisco Tobacco-Related Ordinances***

In 2008, the City enacted South San Francisco Municipal Code (SSFMC) Section 6.46.010 “Authorization of enforcement by San Mateo County personnel” which adopts by reference San Mateo County Ordinance Code Chapter 4.98 “Tobacco Retailer Permit.”

San Mateo County Ordinance Chapter 4.98 requires all retailers to obtain and maintain a valid tobacco retailer’s permit from San Mateo County for each location where tobacco products are sold. Further, Chapter 4.98 authorizes the County’s Environmental Health Division to hold hearings, suspend permits, and issue administrative fines in enforcing the governing of tobacco retailer permits. The adoption of SSFMC Section 6.46.010 is significant as it serves as the mechanism for enforcement should the City Council decide to adopt a Flavored Tobacco Ban.

In 2012, the City enacted SSFMC Chapter 20.420 “Prohibition on new significant tobacco retailers,” which regulates a business whose principal or core is selling tobacco products and/or paraphernalia. Significant tobacco retailers are defined as any tobacco retailer with 20 percent or more of floor area and display area devoted to the sale or exchange of tobacco products, tobacco paraphernalia, or both; or 50 percent or more of completed sales transactions include tobacco products or paraphernalia.

At a Special City Council Meeting on April 9, 2019, Council directed staff to explore the prohibition of flavored tobacco and e-cigarettes citywide at all businesses with the exception of adult only retailers. Adult only retailers allow those 21 and over on their premises. Minors may only enter an adult only establishment if accompanied with a parent.

### ***Business Town Hall Meetings***

The City Manager’s office in coordination with the Economic and Community Development Department hosted a series of four Business Town Hall meetings on June 17, 2019, June 24, 2019, June 27, 2019 and June 28, 2019. Two meetings were held in the morning and two in the evening.

The City advertised the town hall meetings through mailers sent to every business license holder citywide. Approximately 6,000 mailers were sent via U.S. Postal Mail to every business license address. Please see *Attachment 1* for a copy of the mailer. In addition, the non-profit organization Gatepath personally handed out mailers to every business along Grand Avenue and Linden Avenue.

Further, the City advertised the business town hall meetings on social media platforms including the City’s Facebook page, the Economic and Community Development Facebook page, NextDoor and the City’s Website Calendar of Events. The Economic and Community Development department and the City Manager’s office also provided e-blasts to their distribution lists. Lastly, the city also called businesses along Grand Avenue to inform them of the business town hall meeting dates.

Representatives from the hotel, restaurant, tobacco retail, and grocer industries participated in the Business Town Hall meetings. However, despite the above named outreach efforts, fewer than 20 businesses

cumulatively participated.

### ***Feedback***

A significant tobacco retailer attended a Business Town Hall meeting and were supportive of the direction provided by Council at its April 9, 2019 study session. At this study session, the City Council directed staff to study prohibiting the sale of flavored tobacco and e-cigarettes at all retailers citywide with the exception of adult only establishments. Adult only establishments only allow those 21 and over to enter their premises unless they are with a parent.

A large South San Francisco grocer is also supportive of Council's direction to prohibit the sale of flavored tobacco and e-cigarettes, as they consider it important to limit youth access to tobacco products.

### ***JUUL Labs, Inc.***

JUUL Labs, Inc. has provided the City with a plan to implement additional, targeted youth prevention measures to restrict youth access. (*Attachment 3*)

Some of those measures include:

- Deployment of automated point-of-sale (POS) systems that restrict sales to verified adults 21+ and limit the amount of product that can be purchased
- Targeted secret shopper program that ensures compliance with age verification and bulk purchasing requirements
- Partnerships with track-and-trace programs for JUUL products to identify where products are being obtained by youth

JUUL piloted its track and trace program in a U.S. metropolitan area in addition to providing targeted education and information campaigns. JUUL has offered to work with the City to create awareness about the track and trace program in order to assess where youth are accessing JUUL products.

### **Staff Recommendation**

It is recommended City Council receive an update on business outreach efforts and given the additional feedback provide further direction on the potential regulation of flavored tobacco and e-cigarettes in South San Francisco. Guidance is requested in the following areas:

- Flavors - Should the City prohibit the sale of all flavors? Should the City include banning menthol and mint?
- Retail Sale Exemptions - Should the City proceed with an exemption for Adult Only (21+) retailers?
- Enforcement - Should the City proceed with enforcement by the County of San Mateo through its enforcement of the Tobacco Retailer permit?

FISCAL IMPACT

There is no known fiscal impact.

RELATIONSHIP TO STRATEGIC PLAN

Regulating the sale of flavored tobacco and e-cigarettes meets the city's strategic goal of providing a high quality of life for our residents.

CONCLUSION

It is recommend City Council receive an update on business outreach efforts and provide further direction and guidance on the potential regulation of flavored tobacco and e-cigarettes in South San Francisco.

Attachments:

1. Business Town Hall Flyer
2. PowerPoint Presentation
3. JUUL Labs, Inc. letter