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Title: CONSIDERATION OF A RESOLUTION NO. 20-066 TEMPORARILY POSTPONING THE ENFORCEMENT OF ORDINANCE NO. 19-1940 AGAINST EXISTING TOBACCO AND ELECTRONIC CIGARETTE PERMITTEES (CITY COUNCIL)

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Attachments: 1. Resolution No. 20-066, 2. Ordinance 19-1940

Date	Ver.	Action By	Action	Result
4/7/2020	1	City Council		

Report to Mayor and City Council

Tuesday, April 07, 2020

Discussion

SUBJECT:

CONSIDERATION OF A RESOLUTION NO. 20-066 TEMPORARILY POSTPONING THE ENFORCEMENT OF ORDINANCE NO. 19-1940 AGAINST EXISTING TOBACCO AND ELECTRONIC CIGARETTE PERMITTEES (CITY COUNCIL)

I. SUMMARY

On January 14, 2020, the City Council unanimously adopted Ordinance No. 19-1940 ([Exhibit 2](#)), an ordinance prohibiting, city-wide, (1) the sale of electronic cigarettes and other vaping devices approved by the FDA for introduction into interstate commerce, and (2) the retail sale of flavored tobacco products, including menthol and flavored hookah products. The ordinance became effective on February 13, 2020.

Around the Ordinance’s effective date and during the February 18, 2020 City Council meeting, the City received significant public input and public comments from City-permitted tobacco retail business owners stating they are facing economic hardship complying with the Ordinance No. 19-1940, in that they have significant existing inventories of prohibited products with no time to sell them off and thereby recoup their investment. Based on this input, during its February 18, 2020 meeting, the Council indicated it would like to consider a resolution providing such permitted business owners with additional time to exhaust existing inventory and come into compliance with the ordinance.

The proposed resolution (Exhibit 1) would grant existing City tobacco permittees a grace period until the end of the 2020 calendar year (a grace period of 323 days, or approximately 10.5 months) to sell off their existing inventories and come into compliance with Ordinance No. 19-1940. This proposed action is similar to actions taken by other local agencies such as the County of Los Angeles and the City of Long Beach, but is longer than the 180-day grace periods provided by those agencies by some 3.5 months as a response to the economic hardships caused to such permittees by the COVID-19 pandemic.

II. RECOMMENDATION

WAIVE further reading and ADOPT Resolution No. 20-066, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, TEMPORARILY POSTPONING THE ENFORCEMENT OF ORDINANCE NO. 19-1940 AGAINST EXISTING TOBACCO AND ELECTRONIC CIGARETTE PERMITTEES"

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Adoption of Ordinance No. 19-1940 and Existing City Regulations

Electronic cigarettes and other vaping devices, also known as "vapes," have recently been linked to numerous lung injuries and deaths throughout the U.S. Despite the reported injuries and deaths, the U.S. Food and Drug Administration ("FDA") has not yet analyzed the appropriateness of such products (hereinafter "E-Cigarettes") for public safety or approved them for commercial marketing or distribution.

To address these risks and to protect public health and safety, on December 3, 2019, the City Council introduced Ordinance No. 19-1940, which, as adopted on January 14, 2020, prohibits the sale of electronic cigarettes and other vaping devices not approved by the FDA for introduction into interstate commerce, and prohibits the retail sale of flavored tobacco products, including menthol and flavored hookah products. With respect to E-Cigarettes, the intent of the ordinance is that if and when a particular E-Cigarette product is approved by the FDA, it would then be eligible for sale in the City, subject to compliance with the City's permitting ordinance. This would happen, if at all, on a product-by-product basis as particular products are approved by the FDA. Meanwhile, sale of all other E-Cigarette products remaining unapproved by the FDA would continue to be prohibited in the City unless and until the time that such products are approved by the FDA, if ever.

The impetus for Ordinance No. 19-1940 was a desire to follow the action taken by the Los Angeles City Council in approving a motion of Councilman Paul Koretz to study and develop an ordinance prohibiting the sale of electronic cigarettes. However, to date, the City of Los Angeles has not yet considered or adopted or enacted final regulations on this topic, and the draft regulations are not publicly available.

In lieu of waiting to ascertain the precise details of final regulations that the City of Los Angeles prepares or adopts, and in light of the current nationwide public health crisis being caused by vaping, the Carson City Council opted to move forward with adoption of Ordinance No. 19-1940 on January 14, 2020 (Exhibit 2). The Ordinance became effective February 13, 2020.

Prior to effectiveness of Ordinance No. 19-1940, the City regulated the sale of E-Cigarettes (along with other tobacco products, as it still does) by requiring E-Cigarette retailers to maintain a special regulatory permit in addition to a City business license. (CMC §63150.5 *et seq.*). Retailers holding such permits were then forbidden, by adoption and effectiveness of the ordinance, from selling such products, including selling off their existing inventory.

Around the time of effectiveness of the ordinance, the City received significant public input and public comments from retail and business owners alleging that they would suffer substantial economic hardships if they were forced to comply with the Ordinance No. 19-1940 immediately upon its effectiveness. Some business owners indicated that they may have to close their businesses. Business owners are requesting additional time to phase out the sale and exhaust existing inventory of E-Cigarettes and flavored tobacco products.

To help alleviate these concerns, the Council indicated during its February 18, 2020 meeting that it would like to grant some leeway to these existing permittees with respect to coming into compliance with the ordinance.

The City generally has discretion to enforce its laws as it sees fit, and under Section 818.2 of the California Government Code, the City has immunity from injuries caused by its failure to enforce any law. Accordingly, the City Council has discretion to enforce its law as it deems reasonable.

Regulations and Enforcement by Other Cities

A survey of other cities indicates that a few local agencies have granted retail businesses time to comply with prohibitions against the sale of E-Cigarettes or flavored tobacco products, as follows:

- Los Angeles County - On October 1, 2019, the Los Angeles County Board of Supervisors adopted an ordinance proclaiming that after 180 days from the effective date of the County ordinance, it would be a violation for a tobacco retailer or licensee or its agents to sell or offer for sale, or to possess with the intent to sell or offer to sell, any flavored tobacco products.
- City of Long Beach - On December 5, 2019, the City Council of the City of Long Beach adopted an ordinance prohibiting the sale of certain flavored tobacco products within the City of Long Beach after 180 calendar days from the ordinance's effective date.
- City of Richmond - On July 23, 2019, the City Council of the City of Richmond

prohibited the sale of electronic cigarettes after 114 days from the passage and adoption of the ordinance.

Proposed Resolution

The proposed resolution (Exhibit 1) would approve a 323-day grace period for enforcement of Ordinance No. 19-1940 against existing tobacco permittees. The grace period would commence retroactively from the effective date of the Ordinance, February 13, 2020, and would continue until the end of 2020. City Staff would therefore be directed to postpone enforcement through December 31, 2020, and to begin enforcing the Ordinance in full on January 1, 2021, with no exceptions.

If the Council approves the proposed resolution, existing permittees would be afforded a longer grace period than the aforementioned agencies have granted to their business owners. The reason for the additional time to comply relative to the aforementioned agencies is the COVID-19 pandemic, which gave rise to a state of emergency declared in the State of California on March 4, 2020, and a local state of emergency declared in the City of Carson on March 17, 2020. The pandemic is causing serious economic hardship to the City's tobacco permittees due to the "stay at home" order issued by Governor Newsom and the general public health obligation of every person to avoid leaving their homes for non-essential purposes. These circumstances have interfered with the ability of permittees to exhaust their existing inventories of products the sale of which is prohibited by Ordinance No. 19-1940. Granting these businesses additional time to comply as set forth in the proposed resolution would avoid compounding these hardships and would ensure ample time for all permittees to exhaust existing inventories.

The proposed resolution would not amend or affect the validity of Ordinance No. 19-1940.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Proposed Resolution No. 20-066 (pgs. 5-8)
2. Ordinance No. 19-1940 (pgs. 9-14)

Prepared by: City Attorney's Office