



CITY OF CARSON

Legislation Text

File #: 2019-765, Version: 1

Report to Mayor and City Council

Tuesday, August 20, 2019

Discussion

SUBJECT:

CONSIDERATION OF INTRODUCTION OF ORDINANCE NO. 19-1937, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 3501 (TOBACCO DISTRIBUTION) OF CHAPTER 5 (BUSINESS REGULATIONS) OF ARTICLE III (PUBLIC SAFETY) AND SECTIONS 63150.5 ET SEQ. (TOBACCO AND ELECTRONIC CIGARETTE PERMIT) OF CHAPTER 3 (BUSINESS, PROFESSIONS AND TRADES) OF ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE TO PROHIBIT THE RETAIL SALE OF TOBACCO PRODUCTS (INCLUDING ELECTRONIC CIGARETTES) AND TOBACCO PARAPHERNALIA, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CITY COUNCIL)

I. SUMMARY

This ordinance has been proposed by Mayor Robles to ban the retail sale of tobacco products (including electronic cigarettes) and tobacco paraphernalia in the City, and to provide for the termination of the City's existing tobacco and electronic cigarette permitting program. The City would cease accepting new permit applications on December 1, 2019, and would cease issuing new permits on January 1, 2020. Existing permittees would be allowed to continue to operate under their existing permits and/or apply for permit renewal authorizing continued operation until December 31, 2020, at which point any and all permits remaining active would permanently expire.

Permitted retailers would be allowed to apply for up to two one-year hardship exemptions, which would be granted upon a hearing by an independent administrative hearing officer provided the applicant can establish that it would suffer undue hardship due to loss of reasonable investment-backed expectations resulting from immediate effectiveness of the ban as to the applicant's business.

Persons who operate illegally as tobacco and electronic cigarette retailers after the effective date of the ban would be subject to a civil action for injunctive relief and recovery of prevailing party attorneys' fees by the City, in addition to all code enforcement remedies generally available to the City.

II. RECOMMENDATION

INTRODUCE for first reading, by title only and with further reading waived, Ordinance No. 19-1937, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 3501 (TOBACCO DISTRIBUTION) OF CHAPTER 5 (BUSINESS REGULATIONS) OF ARTICLE III (PUBLIC SAFETY) AND SECTIONS 63150.5 ET SEQ. (TOBACCO AND ELECTRONIC CIGARETTE PERMIT) OF CHAPTER 3 (BUSINESS, PROFESSIONS AND TRADES) OF ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE TO PROHIBIT THE RETAIL SALE OF TOBACCO PRODUCTS (INCLUDING ELECTRONIC CIGARETTES) AND TOBACCO PARAPHERNALIA, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

III. ALTERNATIVES

1. DO NOT INTRODUCE Ordinance No. 19-1937.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

The City currently has 72 active tobacco and electronic cigarette retail permittees. This permit program is administered in a manner that is closely related to its business license program. Permits are required for all retailers of tobacco products and tobacco and electronic cigarette paraphernalia, in addition to business licenses. Permits are subject to annual renewal consistent with the City's standards for business licenses. The current permit fee, established by City resolution 08-009, is \$600. Permit determinations are made by the Finance Director, and are appealable to the City Council.

In May of 2019, the City of Beverly Hills passed an ordinance banning the retail sale of tobacco products (including electronic cigarettes) within city limits. The ordinance was touted as the first of its kind in the nation.

Proposed Ordinance

The devastating health consequences of tobacco are well-documented and are detailed in the recitals/findings of the proposed ordinance. The proposed ordinance would address these health risks, and would follow the lead of Beverly Hills, by providing for a permanent ban on the retail sale of tobacco products (including electronic cigarettes) and tobacco paraphernalia within the City of Carson. The ordinance is intended to protect public health and safety from the harmful effects of smoking or ingesting tobacco, and is a valid exercise of the City's police power pursuant to Article XI, Section 7 of the California Constitution.

The proposed ordinance would achieve these goals by providing for the wind down of the City's existing tobacco and electronic cigarette retailer permitting program. The City would cease accepting new applications on December 1, 2019, and would cease issuing new permits on January 1, 2020. Existing permittees would be allowed to continue to operate

until no later than December 31, 2020, at which point all remaining permits would expire.

Unrelated to the wind-down process, the proposed ordinance would make certain minor modifications and clarifications applicable to the brief remaining life of the City's existing permitting program, such as clarifying the one-year term of permit duration and providing for appeals to be heard by an independent hearing officer in lieu of the City Council. Appeals of permit determinations remaining pending as of the permit expiration date would be deemed moot and would be dismissed.

After the December 31, 2020, permit expiration date, permittees would be required to obtain a "hardship exemption" in order to continue to operate legally. No more than two hardship exemptions would be available for each permittee, and the term of each hardship exemption would be one year. To be granted a hardship exemption, a permittee would have to submit a completed application and then prove to an independent hearing officer that the retail sales ban, if applied immediately to the applicant's business, would constitute an undue hardship on the applicant by depriving the applicant of its reasonable investment-backed expectations. Determinations of administrative hearing officers on hardship exemption applications would be appealable to the City Council. Fees for hardship exemption applications and appeals would need to be established by resolution of the City Council.

Any continued operation of a tobacco and electronic cigarette retailer after effectiveness of the ban (inclusive of any hardship exemption) would trigger all penalties generally applicable to Carson Municipal Code violations (including issuance of administrative citations and prosecution of criminal misdemeanor charges), and would be grounds for initiation of a civil action by the City for injunctive relief, with recovery of attorneys' fees available to the prevailing party.

In sum, the proposed ordinance would completely eliminate the retail sale of tobacco products and tobacco paraphernalia in the City by December 31, 2022, although most if not all currently-existing permittees would have ceased operation long before then, and no new tobacco retailers would be allowed to commence operation after 2019. By phasing out the City's existing permitting program while allowing for hardship exemptions for existing City businesses, the ordinance would have a significant positive effect on public health and safety in the City, while respecting the permit rights and reasonable investment-backed expectations of existing permittees.

CEQA

The proposed ordinance contains a finding that it is exempt from CEQA in that it does not constitute a "project" within the meaning of CEQA because it constitutes general policy and procedure making and has no potential for resulting in a physical change to the environment, either directly or indirectly. Alternatively, the ordinance is deemed exempt from CEQA on the basis that it can be seen with certainty that there is no possibility the ordinance will have a significant effect on the environment, because the Ordinance merely prohibits the retail sale of tobacco products and tobacco paraphernalia.

V. FISCAL IMPACT

The City currently charges a permit fee of \$600 per tobacco and electronic cigarette permit, which must be renewed annually. The City currently has 72 active permits, generating \$43,200 annually. The proposed ordinance would provide for the termination of the City's tobacco and electronic cigarette permitting program, eliminating such revenue. However, the permit fees were established and exist solely to recoup City costs involved in administering the program, so the termination of the program would result in no net fiscal impact to the City.

VI. EXHIBITS

- A. Ordinance No. 19-1937, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 3501 (TOBACCO DISTRIBUTION) OF CHAPTER 5 (BUSINESS REGULATIONS) OF ARTICLE III (PUBLIC SAFETY) AND SECTIONS 63150.5 ET SEQ. (TOBACCO AND ELECTRONIC CIGARETTE PERMIT) OF CHAPTER 3 (BUSINESS, PROFESSIONS AND TRADES) OF ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE TO PROHIBIT THE RETAIL SALE OF TOBACCO PRODUCTS (INCLUDING ELECTRONIC CIGARETTES) AND TOBACCO PARAPHERNALIA, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PP. 5-18)

Prepared by: City Attorney's Office