



CITY OF CARSON

Legislation Text

File #: 2021-215, Version: 1

Report to Mayor and City Council

Tuesday, March 16, 2021

Discussion

SUBJECT:

CONSIDER AND PROVIDE DIRECTION TO STAFF REGARDING A POTENTIAL POSTPONEMENT OF ENFORCEMENT OF CITY ORDINANCE NO. 19-1940 WITH RESPECT TO THE SALE OF FLAVORED TOBACCO PRODUCTS, INCLUDING MENTHOL, AGAINST EXISTING PERMITTEES UNTIL THE ELECTION ON THE STATEWIDE BAN (CITY COUNCIL)

I. SUMMARY

On January 14, 2020, the City Council adopted Ordinance No. 19-1940 ("Ordinance"), prohibiting the retail sale of: (1) electronic cigarettes and other vaping devices that have not been approved by the U.S. Food and Drug Administration; and (2) the retail sale of flavored tobacco products, including menthol tobacco.

Faced with the impending effectiveness of the Ordinance, Carson tobacco permit holders requested the City Council's assistance in granting additional time to comply to allow them to sell their remaining inventory. Based on these and other considerations related to economic hardship resulting from the onset of the COVID-19 pandemic, the City Council adopted Resolution No. 20-066 on April 7, 2020, granting existing permittees until January 1, 2021 to come into compliance with the Ordinance.

Recently, Senate Bill 793, prohibiting the retail sale of flavored tobacco products statewide, was signed by the Governor and was set to take effect as state law on January 1, 2021. However, effectiveness of the new law has been suspended pending a referendum on SB 793 to be considered at the statewide election in November 2022. Based on these developments, some Carson tobacco permit holders believe the City's ban on the sale of flavored tobacco products is unfair since the State's ban is on hold. Permit holders have also expressed concern due to the loss of revenue caused by Carson's ban on flavored tobacco products. Permit holders are requesting the City's Ordinance pertaining to no retail sales of flavored tobacco to be suspended pending the election on the Statewide ban.

Councilman Hilton has requested Council's consideration of these permit holder concerns. Accordingly, the City Council is requested to discuss and provide direction to

staff regarding whether it is interested in approving a further grace period during which enforcement of the flavored tobacco sales ban portion of the Ordinance would be postponed, possibly until the November 8, 2022 statewide election takes place. If Council is interested in taking such action, Council is requested to provide direction to staff as to the terms of a proposed resolution for staff to prepare and bring back to Council at a subsequent meeting.

II. RECOMMENDATION

1. DISCUSS and PROVIDE DIRECTION regarding the suspension of the statewide ban on the sale of flavored tobacco products (SB 793) and potential preparation of a resolution for subsequent Council consideration of an extended grace period for compliance with the City's prohibition on the sale of flavored tobacco products pursuant to Ordinance No. 19-1940.

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

On January 14, 2020, the City Council adopted Ordinance No. 19-1940 (the "Ordinance"), which made it unlawful in the City for any tobacco and electronic cigarette retailer to sell, offer to sell, exchange, or offer to exchange, for any form of consideration, any flavored tobacco product, and any electronic cigarette not permitted by the FDA. The Ordinance's original effective date was February 13, 2020, and all Carson tobacco permit holders were notified, in writing, about the Ordinance.

During the City Council meeting on February 18, 2020, the City received public input and comments from City-permitted tobacco retail business owners stating they were facing economic hardship complying with the Ordinance, due to the existing inventories of prohibited products with no time to sell them off and recoup their investment. On April 7, 2020, the City Council approved Resolution 20-066, which granted existing permittees a grace period to exhaust existing inventory and come into compliance with the Ordinance by suspending enforcement of the ordinance against existing permittees until the end of 2020, with full enforcement to resume on January 1, 2021. All tobacco permittees were notified in writing about the grace period. The grace period has now concluded and the Ordinance is fully effective and enforceable.

On August 28, 2020, Governor Newsom signed SB 793, which was set to take effect as law on January 1, 2021, prohibiting a tobacco retailer from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer statewide. However, after the bill was signed, a petition to overturn the ban was filed and qualified as a referendum measure on the November 8, 2022 statewide election ballot, and a Court ordered the effective date of SB 793

suspended pending the outcome of the election.

Based on this development at the state level and the prior grace period for enforcement of the Ordinance, tobacco permittees were confused and believed that the Carson's ban of flavored tobacco sales was on hold as well. City staff notified all permit holders in writing that the City's Ordinance (including its ban on the sale of flavored tobacco products) is unaffected by the suspension of SB 793 and is still in effect, but some permit holders expressed their belief that it is unfair for the City's ban to remain in effect while the Statewide ban is suspended. Tobacco permit holders have also called stating they are losing revenue because customers are frequenting retail stores outside of Carson. Permit holders are requesting another delay and postponing the enforcement of the City's Ordinance, with respect to flavored tobacco only, for consistency with the status of the Statewide ban.

For these reasons, Councilmember Hilton is requesting that the City Council consider suspending enforcement of the Ordinance with respect to its ban on the sale of flavored tobacco products only (not with respect to its ban on the sale of electronic cigarettes). However, the City Council is not legally obligated to do so, as the Ordinance remains fully effective and enforceable irrespective of the suspension on the statewide ban. The City Council is requested to discuss and provide direction to staff on whether to prepare a resolution that would approve such a suspension until the November 8, 2022 election on the statewide ban. At that point, the Council could revisit the issue and take further action as it sees fit in light of the statewide election results.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Tobacco Ordinance 19-1940 (pgs. 4-9)
2. Resolution 20-066 (pgs. 10-13)

1.

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