



## CITY ATTORNEY'S OFFICE

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## CITY COUNCIL STAFF REPORT

Meeting: April 3, 2024

### **Subject**

Amendments to Municipal Code Chapter 5.50 (Regulating the Sale of Tobacco Products) and to the Memorandum of Understanding (“MOU”) with the County of Santa Clara to enforce Chapter 5.50

### **Recommended Action**

1. Conduct a first reading of and introduce Ordinance No. 24-\_\_\_\_, entitled “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CHAPTER 5.50 OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) TO REGULATE THE SALE OF TOBACCO PRODUCTS”
2. Authorize the City Manager to amend the Memorandum of Understanding (“MOU”) with the County of Santa Clara to administer, implement, and enforce Municipal Code Chapter 5.50 (Tobacco Retailer Permit Ordinance)

### **Reasons for Recommendation**

#### *Background*

Chapter 5.50 of the Cupertino Municipal Code imposes permit requirements on retailers selling tobacco products in the City and includes provisions for compliance monitoring and enforcement. Since 2020, the Santa Clara County Department of Environmental Health (“DEH”) has enforced these Municipal Code requirements under a Memorandum of Understanding (“MOU”) with the City, at no cost to the City. As a condition of continuing to enforce the City Ordinance, DEH requires that the City Ordinance substantially conform to the Santa Clara County ordinance governing the retail sale of tobacco products. On October 1, 2023, the City Council voted to adopt Ordinance No. 23-2251, which incorporated certain revisions required to address DEH requirements, such as, increasing penalties for retailers in violation of the ordinance. Subsequent to the adoption, the County identified further revisions required to ensure continued County enforcement of the City Ordinance.

#### *Proposed Amendments to Retail Tobacco Ordinance*

As requested by County DEH, Draft Ordinance No. 24-\_\_\_\_ (Attachment A) proposes revisions to Municipal Code Chapter 5.50 that are required to ensure continued County

enforcement of the City Retail Tobacco Ordinance. A redline comparing the proposed Ordinance to the currently effective provisions of Chapter 5.50 is provided as Attachment B. The proposed Ordinance would strengthen the enforcement provisions available to DEH staff, including increased penalties and fines, and includes amendments for clarity and consistency. In addition, the proposed Ordinance incorporates appeals procedures that would allow the County to continue to administer the process for appealing penalties imposed under the Ordinance on behalf of the City. Staff has notified all tobacco retailers in Cupertino of these proposed changes with a letter (Attachment C) sent via email and through traditional mail.

Staff recommends that Council conduct the first reading and introduce the proposed Ordinance to allow for continued DEH enforcement of City regulations on the retail of tobacco at no cost to the City. If Council votes to introduce the Ordinance, staff anticipates placing the Ordinance on the April 16 agenda for a second reading.

#### *Amendments to County-City MOU*

As noted above, DEH enforces the City of Cupertino Retail Tobacco Ordinance pursuant to an existing MOU between the City and Santa Clara County. In order for DEH to continue administering and enforcing these new proposed regulations at no cost to the City, staff recommends that Council authorizes the City Manager to amend the MOU (Attachment D) to align with Ordinance No. 23-2251 and Ordinance No. 24-\_\_\_\_. A redline comparing the original agreement with the proposed amendments is provided as Attachment E.

#### **Sustainability Impact**

No sustainability impact.

#### **Fiscal Impact**

No fiscal impact.

#### **California Environmental Quality Act**

Not applicable.

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Reviewed by: Tina Kapoor, Deputy City Manager  
Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

#### **Attachments:**

A – Draft Ordinance No. 24-\_\_\_\_ (Amending Municipal Code Chapter 5.50)

B – Draft Ordinance No. 24-\_\_\_\_ (redline)

C – Letter to Tobacco Retailers

D – Amended Memorandum of Understanding (Clean)

E – Amended Memorandum of Understanding (Redline)