



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: September 19, 2023

Subject

Amendments to the Cupertino Municipal Code Chapter 5.50 of Title 5 (Business Licenses and Regulations), regulating the sale of tobacco products.

Recommended Action

Conduct the first reading of Ordinance No. 23-____: "An Ordinance of the City Council of the City of Cupertino Amending Chapter 5.50 to Title 5 (Business Licenses and Regulations) to Regulate the Sale of Tobacco Products.

Reason for Recommendation

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or diseases, such as cancer, heart disease, and respiratory diseases. More than one in ten youth in the County currently use tobacco products, including electronic smoking devices, and nearly 1 in 3 Santa Clara County teens report that they have used an e-cigarette at least once.

On November 19, 2019, the City of Cupertino adopted Ordinance No. 19-2190, which established that any retailer selling tobacco products would be required to obtain and annually renew a tobacco retailer permit (TRP) to continue selling tobacco in Cupertino. This ordinance was adopted with the understanding that Santa Clara County's Department of Environmental Health (DEH) would administer, implement, and enforce Cupertino's ordinance. DEH's efforts would include monitoring retailers for compliance with tobacco control laws and decoy operations to determine if retailers are illegally selling tobacco products to underage individuals. The specific roles, responsibilities, and protocols for such administration and enforcement were established in an Agreement (Attachment A) between the City and the County. Notably, the County provides these services at no expense to the City. The agreement states that the County's administration and enforcement under this Agreement is contingent upon the City's adoption and maintenance of a City Ordinance that is the same as the County Ordinance in all material respects.

Discussion

On September 13, 2022, the Santa Clara County Board of Supervisors approved an update to the County Ordinance regarding enforcement changes to the TRP. In order for the City to continue its partnership with the County pertaining to the administration and enforcement, Cupertino must also adopt policy changes similar to those adopted by Santa Clara County. These updates aim to improve enforcement and reduce retailer violations by increasing fines and strengthening consequences for frequent violations. These updates are outlined in the redline draft (Attachment B).

Staff sent individual letters to all tobacco retailers in Cupertino (Attachment D) outlining the following proposed changes:

1. Establish fines of up to \$2,500 and up to a 180-day suspension of the business's TRP permit for a second violation of the TRP ordinance within a 5-year period.
2. Require the permanent removal of a TRP for a third violation within a 5-year period. Any business continuing to sell tobacco products after TRP revocation will be subject to additional fines.
3. Increase fines and penalties for retailers operating without a valid permit as follows:
 - Fines up to \$2,500 and 30 days of ineligibility for an initial violation.
 - Fines up to \$5,000 and one year of ineligibility for a second violation within a five-year period.
 - Fines up to \$10,000 and permanent TRP ineligibility for each subsequent violation within a five-year period.
4. Require businesses that have their TRP suspended to post a prominent public notice at their business during the entire suspension period.
5. Require businesses, as a condition of its TRP, to (1) consent to inspection by the County of all areas and records; and (2) comply with any impound or seizure order issued by the County. Violations of these provisions would be a basis for suspension/revocation of a TRP.
6. Require that if inspections reveal noncompliance with any of the ordinance requirements, such that reinspection is needed to determine compliance, the cost of such reinspection will be billed to the retailer.
7. Clarify that a retailer is liable for all enforcement-related fees and costs.
8. Make explicit that all tobacco retailers are responsible for the actions of their employees relating to the sale and furnishing of tobacco products at the retail location, and that nothing in the ordinance shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.
9. Requires businesses to examine an individual's identification to confirm the age of that person, regardless of appearance, prior to selling tobacco products to any person.

California Environmental Quality Act

Not applicable.

Sustainability Impact

No impact.

Fiscal Impact

If the City adopts the County's updated regulations, the County will continue to enforce the City's program at no cost to the City. The County would recover costs through the Tobacco Retailer Permit fee and additional fines.

Prepared by: Astrid Robles, Senior Management Analyst

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

Approved for Submission by: Pamela Wu, City Manager

Attachments:

- A – Agreement Between the County and Cupertino for a Tobacco Retail Permit Program
- B – Draft Ordinance to Update the Tobacco Retail Permit – Redline
- C – Draft Ordinance to Update the Tobacco Retail Permit – Clean
- D – Letter to Tobacco Retailers in Cupertino