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City Manager's Report
April 23, 2024, City Council Meeting
Prepared by: Pierre Rivas
Item #: 10.1

Subject: Consideration of an ordinance extending the Temporary Moratorium on the establishment of new tobacco retailers for an additional 10 months and 15 days.

Recommendation: Adopt an ordinance extending the existing 45-day moratorium on the establishment of new tobacco retailers within the City of Placerville for an additional 10 months and 15 days to allow staff the opportunity to continue collaboration with El Dorado County Public Health Division's County-wide Tobacco Use Prevention Program (TUPP) on developing the tobacco retail ordinance.

Purpose: To extend an urgency ordinance prohibiting the establishment of new tobacco retailers to protect the public health, safety, and general welfare of its residents, allowing the City to prepare an ordinance to regulate the establishment, operation, and licensure of tobacco retailers.

Strategic Plan Strategy: Health & Public Safety: (no specific strategy identified);
 Maintain/Improve Quality of Life: Strategy 5 – Maintain and Update Planning Documents

Background: On March 12, 2024, the Council adopted an urgency ordinance (Ordinance No. 1716) creating a 45-day temporary moratorium on the establishment of new tobacco retailers within the City of Placerville. The urgency ordinance will expire on April 26, 2024. The Ordinance, by law, is only in effect for a period of 45 days unless extended by action of the Council. California Government Code Section 65858 provides that an extension can be for a period of 10 months and 15 days with an additional one-year extension at the end of that time. The Ordinance extending the moratorium must be passed by a 4/5 vote of the Council. If the Council elects to extend the urgency Ordinance an additional 10 months and 15 days, the temporary moratorium will end on March 15, 2025. However, at that point, the Council does have the option to extend the urgency Ordinance by one year.

Discussion: SB 793 "Flavored Tobacco Products" law became effective on December 21, 2022. The sale of the following tobacco products from retail locations are no longer permitted:

- Flavored e-cigarettes or vapes, e-juice, pods, or cartridges,
- Menthol cigarettes,
- Flavored little cigars and cigarillos,
- Flavored loose leaf roll-your-own tobacco,
- Flavored smokeless tobacco products,
- Flavored Tobacco Rolling Papers, and
- Tobacco product flavor enhancers.

- Compliance with the law lies solely with retailers.
- Retailers are expected to comply with the law and are required to immediately remove the current stock of flavored tobacco products covered by the law and tobacco product flavor enhancers from their shelves by December 21, 2022.
- Local law enforcement agencies have the authority to enforce the state law.

City staff continues to collaborate with El Dorado County Public Health Division's County-wide Tobacco Use Prevention Program (TUPP) team on developing the tobacco retail ordinance. City staff have received complaints from competitor tobacco retailers regarding shops that have continued to sell product inventory of banned tobacco products. In addition, signage violations of tobacco retailers continue to be an issue.

On April 9, 2024, the City Council adopted the following actions, as recommended by staff, to alleviate the effects of continued tobacco product sales and operations. As required, these actions were adopted at least 10 days prior to the expiration of the urgency Ordinance.

1. Continue to follow-up on complaints regarding the sale of banned tobacco products (responsible departments: Police and Code Enforcement).
2. Continue to collaborate with El Dorado County Public Health Division's County-wide Tobacco Use Prevention Program (TUPP) team in tobacco prevention programs (responsible department: Development Services Department).
3. Conduct regular visits of existing tobacco retailers and provide education and/or enforcement of current City codes and state regulations (responsible department: Development Services-Code Enforcement).
4. Other measures recommended by the City Council.

Options:

1. Adopt the Ordinance extending the urgency Ordinance.
2. Do not adopt the actions and provide further direction to staff.
3. Take no action and allow the urgency Ordinance to expire on April 26, 2024.

Environmental: The proposed action is not a "project" within the meaning of Public Resources Code Section 21065 and CEQA Guidelines Section 15378 because the proposed actions will not have the potential of resulting in a direct physical change to the environment or reasonably foreseeable indirect physical change in the environment.

Cost: Staff time to prepare the ordinance.

Budget Impact: None



M. Cleve Morris, City Manager



Pierre Rivas, Development Services Director

Attachment A: Propose Urgency Ordinance Extending the Temporary Moratorium