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**City Manager's Report**  
**October 22, 2024, City Council Meeting**  
**Prepared by: Pierre Rivas, Director of Development Services**  
**Item #: 10.1**

**Subject:** Consideration of an Ordinance adding Chapter 30 (Tobacco Retailers) to Title 5 (Business Regulations) to regulate retail of tobacco products and to establish a tobacco retail licensing program; and adoption of a Resolution and Findings in support of said Ordinance.

**Recommendation:** (1) Adopt a Resolution finding the well-established negative health impacts of tobacco use; (2) Introduce and waive the first Reading of an Ordinance adding Chapter 30, Tobacco Retailers, to Title 5, Business Regulations; to regulate the retail sales of tobacco products and electronic smoking devices, and to require the licensing tobacco retailers; (3) Find that the proposed ordinance is not a "project" within the meaning of Public Resources Code Section 21065 and California Environmental Quality Act (CEQA) Guidelines Sections 15060(c)(2) and 15378 because the regulations of tobacco retailers does not have the potential of resulting in a direct or reasonably foreseeable indirect physical change in the environment; and (4) direct staff to return to the Council with a resolution establishing a tobacco retail licensing fee schedule.

**Purpose:** To regulate and to license tobacco retailers to protect the public health, safety, and general welfare of its residents.

**Strategic Plan Strategy:** Health & Public Safety: (no specific strategy identified).

**Background/Discussion:** The Police Department applied for the Department of Justice (DOJ) Proposition 56 Tobacco Grant in October of 2018. In January of 2019, the Department was notified that the City was awarded \$395,267 for tobacco education and prevention in the City of Placerville. On May 28, 2019, the City Council ratified a Memorandum of Understanding with the California Department of Justice for the 2019-2021 Department of Justice, Proposition 56 Tobacco Grant, approved additional part-time Community Services Officer position in the Police Department, and approved the creation of a full-time Code Enforcement Official position in the Development Services Department. As part of the DOJ tobacco grant, the primary responsibility of the Community Services Officer position within the Police Department, with the assistance of the Code Enforcement Official position in the Development Services Department, was to educate retailers, schools, parents, and youth on the types of tobacco products, the current laws regarding tobacco sales and use, including electronic smoking devices, and to educate on tobacco use prevention.

In addition to the educational component of the program, the County Public Health Division staff and the Development Services Department staff developed a draft Tobacco Retail Ordinance and a draft Tobacco Smoking Ordinance.

On February 13, 2024, the Council received a presentation from El Dorado County Public Health and Human Services Agency, Public Health Division, regarding the County-wide Tobacco Use Prevention Program, public health issues associated with tobacco use, and information on the retail and zoning regulation of the sale of tobacco products and electronic smoking devices.

Staff requested that the City Council consider providing direction to staff to return with an urgency ordinance to prohibit the establishment of any new tobacco retail shops to allow for the completion of the Tobacco Retail Ordinance and to provide direction to staff to return with a Resolution of Intent (ROI) to amend the Zoning Ordinance should the Council desire to limit the establishment of tobacco retailers to a certain number or density, and to limit the location of tobacco shops within a certain distance of schools or other sensitive land uses. The Council directed that staff return with a proposed ordinance regulating tobacco retailers through licensing requirements and not through any zoning regulations.

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 was to 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.

State Law requires that the Council adopt actions to alleviate concerns by allowing the establishment of new tobacco retailer establishments 10 days prior to considering an extension of the 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, the following 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 departments: Police Department and Development Services-Code Enforcement).
4. Other measures recommended by the City Council.

On April 23, 2024, the Council adopted an ordinance (Ordinance No. 1720) 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. The temporary moratorium will end on March 15, 2025.

SB 793 “Flavored Tobacco Products” law: SB 793 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.

On May 13, 2024, Placerville Police assisted the California Department of Tax and Administration (CDTFA) inspectors to conduct inspections of several tobacco shops located within the City. Four smoke/vape shops were inspected, and all four shops were found to be selling not only products banned under AB 793, but also selling unlawful cannabis products.

**Options:**

1. Adopt the Resolution adopting Finding in support of the Ordinance and waive the first reading of the proposed Ordinance as recommended by staff.
2. Continue the item and provide additional directions to staff.
3. Take no action and allow the extended urgency Ordinance to expire on March 15, 2025.

**Environmental Review:** 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:** The cost of staff time administering the licensure of tobacco retailers and the cost of inspections and enforcement will be recovered through licensing fees.



M. Cleve Morris, City Manager



Pierre Rivas, Development Services Director

Attachments:

A: Tobacco Retailer Ordinance

B: Resolution of Findings in Support of Tobacco Retailers Ordinance