



# City of Chula Vista

## Staff Report

---

**File#:** 18-0094, **Item#:** 3.

---

ORDINANCE NO. 3417 OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 5.56 TO PERMIT AND REGULATE TOBACCO RETAILERS (SECOND READING AND ADOPTION)

### **RECOMMENDED ACTION**

Council adopt the ordinance.

### **SUMMARY**

Staff is recommending that City Council adopt an ordinance requiring tobacco retailers to obtain permits to operate and comply with specified operating requirements in the City of Chula Vista.

### **ENVIRONMENTAL REVIEW**

#### **Environmental Notice**

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

#### **Environmental Determination**

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because the activity consists of administrative actions that will not result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA.

### **BOARD/COMMISSION RECOMMENDATION**

Not Applicable

### **DISCUSSION**

Although the state of California has numerous laws that regulate the sale of tobacco and are intended to restrict access to minors, minors continue to obtain cigarettes and other tobacco products in local jurisdictions throughout the state. California law permits local jurisdictions to enact their own tobacco permitting or licensure programs and further regulate tobacco retailers within their jurisdictions. In San Diego County, the cities of San Diego, El Cajon, and Vista have adopted such tobacco retailer ordinances.

The City of Chula Vista currently has approximately 150 tobacco retailers operating within its jurisdiction; however, the Chula Vista Municipal Code does not presently require local tobacco retailers to obtain local permits to operate. A local tobacco retailer permit requirement would support the effective regulation of tobacco sales in the City of Chula Vista, including a prohibition on sales to

minors.

Local efforts to restrict minor access to tobacco are particularly needed as a result of recent changes in state law that have made it more difficult for law enforcement to curb youth access to tobacco and tobacco paraphernalia. Prior to 2016, law enforcement officers could cite minors in possession of tobacco and related paraphernalia under PC 308. From 2014 through 2015, the Chula Vista Police Department issued over 1,300 citations for PC 308(b) violations. The number of citations issued is an indicator of the widespread problem of youth smoking in Chula Vista.

In 2016, PC 308(b) was amended to eliminate any penal sanctions for minors possessing cigarettes or other smoking paraphernalia. The amended section now covers only criminal and civil sanctions for any “person, firm, or corporation” that furnishes tobacco products to anyone under the age of 21 (raised from 18, except for active military personnel). Since the elimination of PC 308(b), members of the community, including school staff and school resource officers, have noticed an increase in students smoking and possessing smoking paraphernalia. Due to the lack of sanctions for minor possession, these issues are handled individually with youth at the school level.

California Business and Professions Code section 22958 (“the STAKE Act”) is a state law directly prohibiting the sale of tobacco and electronic cigarettes to minors and permitting prosecution of the store owner for violations. However, the STAKE Act can be enforced only by the Food and Drug Branch of the California Department of Health Services, which has limited state funding to devote to enforcing tobacco control laws.

Considering both the gaps in state tobacco laws and the limited amount of enforcement at the state level, a local ordinance is essential to protecting public safety and limiting underage retail access to tobacco. Studies have shown that local tobacco retail permitting ordinances coupled with a strong enforcement program are effective in substantially reducing youth access to tobacco. The recent \$2.00 increase in cigarette taxes includes a provision directing revenue from the state tax to local jurisdictions to assist in local tobacco control enforcement efforts. A sufficiently funded program in our community that is coupled with effective enforcement and meaningful sanctions are key to curbing youth smoking and enhancing public health and safety in Chula Vista.

The proposed ordinance would create a permit program for tobacco retailers and impose limited operating requirements intended to increase public safety by reducing youth access to tobacco and to prevent the sale of black-market cigarettes. Operating requirements include compliance with all state laws, operation from a fixed location, prohibition on self-service displays, and requiring identification from any person who appears to be under twenty-seven (27) years of age. The proposed ordinance authorizes inspections of tobacco retail locations, which may include the use of underage minor decoys, to ensure compliance with applicable laws. Penalties for violations of local law include fines and the suspension and/or revocation of the permit to operate.

In an effort to provide information and solicit community feedback on the proposed permit program, the Police Department has reached out to the Neighborhood Market Association, current tobacco retailers operating in the City of Chula Vista, the Chula Vista Chamber of Commerce, and the Healthy Chula Vista Initiative. The Police Department also held two informational forums for current tobacco retailers operating in the City. The overwhelming response to the proposed permit program by both stakeholders and the larger community has been positive.

Staff now recommend that Chula Vista Municipal Code chapter 5.56 be amended to permit and regulate tobacco retailers in the City of Chula Vista.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Councilmember, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

#### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The amendment of chapter 5.56 supports the Healthy Community goal as it protects public health by further regulating tobacco retail establishments in the City of Chula Vista.

#### **CURRENT YEAR FISCAL IMPACT**

The subject amendments to chapter 5.56 results in no current year fiscal impact to the City, as permitting and regulatory costs are anticipated to be fully recovered by fees.

#### **ONGOING FISCAL IMPACT**

It is anticipated that the ongoing cost to permit and regulate tobacco retailers will be recovered through fees. In addition, the subject amendments to chapter 5.56 increase the City's opportunity to apply for a state-funded grant to local jurisdictions to assist in local tobacco control enforcement efforts.

#### **ATTACHMENTS**

1. Ordinance
2. Chapter 5.56 strike out underline version

*Staff Contact: Chief Roxana Kennedy; Sergeant Michael Varga; Megan McClurg*