

REPORT TO CITY COUNCIL

DATE: AUGUST 25, 2010

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: PRE-SCREEN REVIEW OF A PROPOSED ORDINANCE TO ADDRESS TOBACCO RETAIL REGULATIONS (CASE NO. 10-PSR-003)

Staff is requesting direction from the City Council on whether to proceed with a proposed Ordinance to address the regulation of tobacco retailers in the City. The purpose of the pre-screen review is to receive non-binding comments and direction from the City Council. This is consistent with the City's policy of conducting pre-screen reviews of requests that may require legislative changes.

At the City Council meeting held on January 13, 2010, City residents expressed concerns regarding a tobacco retail shop that had recently opened at a shopping center at the southeast corner of Thousand Oaks Boulevard and Lake Lindero Drive (Sam's Tobacco Shop). The complaints were of the alleged sale of drug paraphernalia and the impact cigarette and tobacco sales have on children. Subsequently, on January 27, 2010, the City Council requested staff to review these issues targeted specifically toward tobacco and paraphernalia sales to determine options for the City Council to consider.

There are numerous options for the City Council to consider in addressing tobacco and paraphernalia sales at existing and new businesses:

Options for Existing Uses

1. Establish new business license requirements to apply to existing tobacco shops.
2. Prohibit new paraphernalia sales at existing businesses.
3. Amortize existing paraphernalia sales at existing tobacco shops.
4. Amortize existing tobacco shops.
5. Amortize existing tobacco sales in other businesses.

Options for New Businesses

1. Establish new business license requirements to apply to new tobacco shops.
2. Prohibit new tobacco shops or paraphernalia sales.
3. Prohibit tobacco sales at new businesses.
4. Require a conditional use permit for new tobacco shops, particularly if a new tobacco shop meets certain zoning or distance criteria from sensitive receptors, including residential uses, schools, and parks.
5. Require a conditional use permit for all retailers of tobacco products.

In light of the numerous options listed above and given the preference for the targeted approach as expressed by the City Council on January 27, 2010, staff requested the City Attorney provide his opinion regarding the City's ability to regulate tobacco retailers under specified circumstances, including through zoning authority and special business licensing requirements. Based on the City Attorney's recommendations, staff respectfully requests the City Council consider the following methods to regulate tobacco and paraphernalia sales.

Regulating Through Zoning

The City may limit, through zoning, the number of tobacco retailers in the City or restrict the lawful location of tobacco retailers, including prohibiting all new tobacco retailers, capping the number of allowable tobacco retailers, applying location requirements by zone, and applying distance requirements from residences, schools, parks, youth centers, and other areas where children under the age of 18 years old congregate. Alternatively, the City may require that a tobacco retailer obtain a conditional use permit from the Planning Commission in order to operate in particular areas of the City. However, if the City desires to apply newly enacted Zoning Code amendments to existing businesses, the City must allow for a reasonable amortization period to recoup their investments prior to terminating the use. Prior to enacting an amortization, an economic study by a consultant would need to be completed.

Most cases dealing with existing non-conforming uses and the reasonableness of amortization periods deal with rezoning property for less intensive purposes, regulating adult business establishments, or regulating signage. However, the City Attorney's office has indicated that they have not found any cases defining amortization periods for retail tobacco stores. Staff recommends that if the City Council's direction regarding tobacco and paraphernalia sales is to draft new zoning regulations, that it exempt existing retailers from new zoning regulations and apply them only to new businesses.

Regulating Through Special Business Licensing

An alternative or an addition to regulating through zoning is to regulate through business licensing. This could apply to both new uses as well as to existing businesses and would become

effective shortly after adoption without an amortization period. The City Council may require a tobacco retailer to obtain a special business license to ensure retailers comply with current tobacco control laws and business standards of the City, and to protect the health, safety, and welfare of the City residents. Cities enjoy broad authority to regulate tobacco retailers within their jurisdictions through business licensing requirements. State tobacco laws explicitly provide, in many instances, that local agencies may enforce State law provisions and, in some cases, even adopt stricter standards than those imposed by State law. Imposing special business license requirements on tobacco retailers could effectively restrict access of tobacco products and paraphernalia to minors and help ensure compliance with State tobacco laws. Many jurisdictions have enacted their own business licensing requirements for tobacco retailers. In Los Angeles County alone, 15 cities, including the City of Calabasas, and the County of Los Angeles have adopted such ordinances.

If the City Council's direction is to pursue regulation of tobacco retailers through business licensing, one approach could be to include certain development and operational standards such as the following: 1) sales of paraphernalia in a separate room or area inaccessible to minors; 2) no minors in the store without an adult and the posting of signs to this effect; 3) no paraphernalia visible from anywhere from outside the store; 4) prominent display of "no loitering" signage; and 6) limitations on the sale of food and beverage products. Again, these provisions would be in place within a reasonably short time period after enactment by the City and would not be subject to the amortization requirement. The primary retail tobacco sales use would continue, but certain accessory components would be subject to greater control.

The City Economic Development Committee (EDC) considered the two aforementioned methods of regulation on June 15, 2010. Both EDC Members supported the requirement for a special business license for tobacco shops and to require a conditional use permit for new tobacco shops. One EDC Member also supported more restrictions, including amortizing the sale of paraphernalia and requiring a conditional use permit for all retailers of tobacco products. The other EDC Member supported grandfathering existing tobacco shops and requiring a conditional use permit for future tobacco shops and limiting their locations.

Based on the foregoing analysis, staff recommends that if the City Council wishes to proceed with enacting new regulations pertaining to tobacco and paraphernalia retailers, the City Council direct staff as follows:

1. Prepare a zoning ordinance amendment to require a conditional use permit for any new tobacco shops and for existing tobacco shops that wish to expand. The ordinance can include location, development, and operation standards. Subsequently, each new tobacco shop or expanding tobacco shop would be subject to closer scrutiny through the conditional use permit process; and
2. Prepare an ordinance to amend the Municipal Code to require new business license criteria to apply to existing and new tobacco shop businesses. New criteria can include specified hours of operation, age limits, display criteria, etc.

Staff estimates that the above amendments to the Zoning Ordinance and Municipal Code would be completed by staff in approximately six (6) months with the assistance of the City Attorney. If the City Council's consensus is to include provisions for amortization of existing uses, staff respectfully requests further direction on the scope of the amortization, such as whether to apply to paraphernalia sales, tobacco shops, or to retail stores that sell paraphernalia. Amortization would require preparation of an economic study by an outside consultant.

If the City Council directs staff to proceed in preparing draft ordinances to regulate tobacco retail sales, public hearings on the ordinance will be scheduled for review by the Planning Commission and City Council.

RECOMMENDATION

Staff respectfully requests the City Council provide non-binding comments and direction to proceed with an ordinance to address the regulation of tobacco retailers.