Legislation Text

File #: 2019-1435, **Version:** 1

To: Board of Supervisors of Sonoma County
Department or Agency Name(s): Board of Supervisors
Staff Name and Phone Number: Supervisor Zane, 565-2241
Vote Requirement: 4/5th
Supervisorial District(s): Countywide

Title:
Tobacco Retailer License Ordinance Amendment Minute Order

Recommended Action:

A) Approve a Minute Order Resolution directing the Department of Health Services to draft options for an amendment to the Tobacco Retailer License ordinance that would: (1) halt retail access of electronic nicotine delivery systems until the United States Food and Drug Administration has reviewed and approved electronic nicotine delivery systems as safe for consumers, and (2) ban the sale of flavored tobacco products.

B) Authorize the use of General Fund Contingency in the amount of $16,740 to be transferred to the Department of Health Services through the consolidated budget adjustments process. (4/5th Vote Required)

Executive Summary:
The safety and efficacy of electronic cigarettes (e-cigarettes) have long been a matter of concern for public health officials, but concerns have recently been elevated as the nation is experiencing a surge in a serious health ailment that appears to be related to the use of e-cigarettes as there is no infectious etiology. On September 6, 2019 the Centers for Disease Control and Prevention (CDC) reported they are investigating numerous cases of Severe Acute Pulmonary Disease, including 215 cases formally reported to the Centers for Disease Control and Prevention from 25 states. To date, there have been three suspected deaths. In response, on August 30, 2019, the County of Sonoma issued a Health Alert. The California Department of Public Health and the Centers for Disease Control and Prevention also issued similar alerts in and around that time.

In recent years, the nation has experienced a steep rise in the use of electronic nicotine delivery systems (ENDS) by youth. The State of California categorizes ENDS as a tobacco product. According to the CDC, the number of middle and high school students who reported being current users of tobacco products increased 36 percent - from 3.6 million to 4.9 million students - between 2017 and 2018. This unprecedented increase in youth tobacco use rates has gained the attention of our nation's leading public health experts, with both the U.S. Surgeon General, Jerome Adams M.D., and the former United States Food and Drug Administration (FDA) Commissioner, Scott Gottlieb M.D., acknowledging youth vaping as an "epidemic."

Recently, the Department of Health Services' Impact Sonoma Tobacco-Nicotine Prevention team conducted a comprehensive assessment of youth vaping in Sonoma County. The findings indicate that Sonoma County's prevalence is on par with the nation.

In regards to tobacco products, the job of weighing the public health benefit against harm ultimately rests with the FDA. Under legal pressure, the FDA recently accelerated the timeline for ENDS manufacturers to submit their applications for review; however, final determinations are estimated to take another two years. There is growing concern among local governments and the public that allowing these products to remain on the market without any review may compromise public health.

When an electronic cigarette is used to vape marijuana, the device is considered to be illegal drug paraphernalia. As stated in California's Health and Safety Code, which is aligned with the Federal Controlled Substances Act, it is unlawful to possess such a device for use with a Schedule I drug. Further prohibition of devices used for this purpose would be redundant. Currently, tobacco products are not allowed to be sold where marijuana products are sold in California. Therefore, a proposed ban on ENDS need only apply to tobacco products sold in the retail environment.

The proposed Minute Order directs staff to assess feasibility and options for amending the existing Tobacco Retailer License ordinance to include a flavor ban, and to place a moratorium on the sale of ENDS, pending FDA assessment.

After options are provided to the Board, if the Board were to approve an amendment to the Tobacco Retailer License, staff would draft a proposal to solicit input on the new provisions and subsequently promote community and vendor awareness and compliance with the new provisions. Activities including one-on-one meetings with store owners/operators during Tobacco Retailer License compliance checks, mailings, social media postings, and community/school presentations would be utilized to reach those impacted. The cost of these supports would be estimated at $24,940 for the first year of implementation. There is currently not funding to support this level of compliance work.

Discussion:
The popularization of e-cigarettes among youth largely coincided with the marketing of a new generation of electronic cigarettes. The industry leader, Juul, entered the market in 2015 with their high capacity "closed-system" ENDS product. The latest generation of tobacco products look nothing like their early predecessors that were intended to resemble cigarettes, and were marketed as a "healthier alternative" to combustible cigarettes. The ENDS being used by youth are discreet and easily concealed, they look like flash drives, highlighters and other common products that one would expect to find in a teen's backpack. ENDS can also be used to vape other drugs, including, commonly, cannabis.

Experts believe that the ubiquity of ENDS on social media has contributed to their popularity among youth. A Stanford study found that Juul makers marketed to youth on social media using youth-oriented images in the launch of their products. Use among youth has also been fueled by the characterizing candy and fruit flavors. In 2009, the FDA banned flavored cigarettes (with the exception of menthol), but they could not have anticipated the evolution of electronic cigarettes, and their policies have not kept pace with the market. Research from 2018 shows that flavors are now the number one reason why young adults use ENDS.

Laws that limit where people can smoke, attitudes about the odor of combustible cigarettes, and over 50 years of evidence regarding the toxicity and health impacts of combustible cigarettes have driven use rates down overall. Not surprisingly then, use of combustible cigarettes remains relatively unpopular with youth. For youth living in Sonoma County, 3.8% of 11th graders reported past 30 day use of combustible cigarettes in 2017-2018.

Current rates for ENDS use now far exceed any other tobacco product. In 2017-2018, 27% of Sonoma County

11th graders, and nearly 50% of alternative high students, reported using an ENDS in the past 30 days. Unfortunately, not all youth appear to understand they are using a tobacco product when they are vaping. A 2018 study showed that a majority of youth surveyed did not realize that the Juul they were using always contained nicotine.

The issue has overwhelmed local schools. Sonoma County high schools report vaping as their #1 or #2 discipline issue. About half of middle and high schools report that the vaping situation has gotten worse when comparing the school year that just ended last June to the prior year. ENDS use has resulted in a rapidly increasing number of suspensions for schools. Last school year alone, schools report that, on average, they confiscated approximately 450 vaping products a month. The number confiscated by all comprehensive high schools in Sonoma County is equal to about the same number of 12th graders who graduated this past June (4,500 devices).

Though it has been asserted that ENDS have the potential for being an effective tobacco use cessation device, there is scant evidence to support the claims commonly made by manufacturers, and ENDS are not an FDA approved cessation device. The U.S. Preventive Services Task Force has determined that there is insufficient evidence to recommend their use as a cessation device. According to research, most adults who vape are dual users. Dr. Stanton Glantz, from the Center for Tobacco Control and Research at the University of California San Francisco, reports that, “Rather than stimulating smokers to switch from conventional cigarettes to less dangerous e-cigarettes or quitting altogether, e-cigarettes are reducing smoking cessation rates and expanding the nicotine market by attracting youth.”

While the harmful health effects of tobacco use are well-established, including an array of cardiovascular and pulmonary diseases and cancers, research on ENDS is emerging, and long-term impacts are still being assessed. Current research on ENDS continues to reveal the concerning health effects of nicotine, as well as the flavorings and propellants used. Research shows that nicotine poses many negative impacts to a developing brain and body, including having a priming effect for addiction to other substances due to it interfering with neuronal signaling and cognitive function. Of particular concern with nicotine is the fact that many new generation closed-system devices and e-juice manufacturers are utilizing a “salt” based nicotine formula. This formula is unique to ENDS and it buffers the harshness that is normally a barrier to tobacco initiation, for example with traditional cigarettes, and also facilitates the inhalation of a higher dose of nicotine. Both the salt formula and the technology of having a battery device that efficiently regulates the flow of e-juice (as opposed to traditional cigarettes that burn whether or not inhalation is occurring) results in an increased uptake of nicotine.

Flavorings and humectants used in e-liquids are also noted as a concern by experts. Chemicals such as formaldehyde and lead, found on the Proposition 65 list of cancer causing drugs, are also found in e-liquids. While many of the chemicals used in ENDS have been approved by the FDA for oral consumption, the research is lacking in regards to the safety of these compounds when inhaled.

The FDA is the regulatory body tasked with determining the risks and benefits of ENDS to the population as a whole, including users and nonusers of the product. In 2016 the FDA guidance stated “manufacturers of newly regulated tobacco products that were not on the market as of February 15, 2007, are to show that products meet the applicable public health standard set by the law. And those manufacturers will have to receive marketing authorization from the FDA.” According to the FDA, “the review process allows the FDA to evaluate important factors such as ingredients, product design and health risks, as well as products’ appeal to youth and non-users.” Originally, the FDA granted ENDS manufacturers until 2022 to submit their premarket application, but the FDA, in a recent court filing (responding to a lawsuit), proposed a 10-month deadline for

ENDS makers to submit applications for government clearance to continue selling their products. Companies would be able to sell their products for one year while under review.

A recent cluster of medical events related to vaping demonstrate how an unregulated product can manifest into a serious public health crisis. On August 8th 2019, the California Department of Public Health and Emergency Medical Services Authority activated the Medical and Health Coordination Center at Level 3 in response to multiple reports of "Vaping-Associated Pulmonary Injury" occurrences, instructing operational areas to follow the guidelines and procedures in the Public Health and Medical Emergency Operations Manual for all situation reporting and resource requests.

On September 16, Governor Gavin Newsom signed an executive order directing the Department of Public Health (CDPH) to launch a $20 million statewide digital and social media public awareness campaign to educate youth, young adults and parents about the health risks of vaping nicotine and cannabis products. CDPH is also tasked with developing recommendations to reduce smoking among young adults and teens by establishing warning signs with health risks where vaping products are sold and on product advertisements by October 14, 2019 to the Governor's Office. The Governor also signed Senate Bill 39 which will impose stricter age verification requirements for tobacco products sold online or by mail, and includes increased enforcement regarding sales of vaping products and specifically e-liquid flavors to youth.

Some local governments have also adopted policies that add regulatory protections, including contingent bans on the sale of ENDS, and the banning of flavored tobacco products. To date, the City/County of San Francisco and City of Livermore have banned the sale of ENDS until the FDA determines if they meet their own standard of "being appropriate for public health." And, concerns regarding the influence of flavored products on youth use have resulted in 35 California communities banning the sale of flavored tobacco products in one form or another. Locally, the cities of Sonoma (June 2015), Cloverdale (December 2017), and Town of Windsor (March 2018) have some form of flavor ban. All but one city in Marin County have adopted flavor bans.

The proposed Minute Order directs staff to assess feasibility and options for amending the existing Tobacco Retailer License ordinance to include a flavor ban, and to place a moratorium on the sale of ENDS, pending FDA assessment; and return to the Board before the end of the calendar year with this information.

Prior Board Actions:
On April 19, 2016 the Board adopted an ordinance adding Chapter 32A (Licensure of Tobacco Retailers) to the Sonoma County Code to require the licensure of tobacco retailers within unincorporated Sonoma County.

FISCAL SUMMARY

Expenditures	**FY 19-20 Adopted**	**FY 20-21 Projected**	**FY 21-22 Projected**
Budgeted Expenses	135,525		
Additional Appropriation Requested	16,740		
Total Expenditures	**152,265**		
Funding Sources			
General Fund/WA GF			
State/Federal	135,525		
Fees/Other			

Use of Fund Balance			
Contingencies	16,740		
Total Sources	**152,265**		

Narrative Explanation of Fiscal Impacts:
Staff are currently funded by California Tobacco Prevention Program to support jurisdictions in their exploration and adoption of flavor bans and other tobacco prevention policies. However, should legal guidance and review be required during the exploratory phase, there will be unfunded costs estimated at $16,740.

After options are provided to the Board, if the Board approves an amendment to the Tobacco Retailer License, staff will return to the Board with proposed expenditure and work plans. The expenditure plan may include a request for General Fund Contingency. The work plan proposal will detail efforts to promote community and vendor awareness and compliance with the new provisions. Activities including one-on-one meetings with store owners/operators during Tobacco Retailer License compliance checks, mailings, social media postings, and community/school presentations would be utilized to reach those impacted. The cost of these supports is estimated at $24,940 for the first year of implementation. There is currently not funding to support this level of compliance work. With the passage of the ordinance, it is possible that the Department could accomplish some of this work under the California Tobacco Control Program Prop 99/56 funding and may be competitive for Department of Justice Proposition 56 grant funding to support education and compliance with tobacco related laws.

Staffing Impacts:			
Position Title (Payroll Classification)	**Monthly Salary Range (A-I Step)**	**Additions (Number)**	**Deletions (Number)**

Narrative Explanation of Staffing Impacts (If Required):
N/A

Attachments:
Minute Order Resolution

Related Items “On File” with the Clerk of the Board:
None