

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 06/22/09	Item Number: <u>A-3</u>
AGENDA ITEM: 1) Introduction of an Ordinance Amending Title 11, Business Regulations, of the Culver City Municipal Code to Add a New Chapter 11.15 Relating to the Licensing of Tobacco Retailers; and 2) Adoption of a Resolution Establishing a Tobacco Retailer License Fee and Establishing Penalties for Violations of Tobacco Retailer Licensing Regulations.	
Contact Person/Dept.: Jeff Muir, Chief Financial Officer; and Heather Baker, Assistant City Attorney	Phone Number: 310-253-5865; 310-253-5660
Fiscal Impact: Yes ☒ No ☐	General Fund: Yes ☒ No ☐
Public Hearing: ☐	Action Item: ☒ Attachments: ☒
Public Notification: Master E-Mail Notification List (06/17/09); Published in the <i>Culver City News</i> (06/11/09); County of Los Angeles Department of Health Services, Culver City Chamber of Commerce, Downtown Business Association, individuals who spoke at prior Council Meetings (06/____11/09); Coalition for a Tobacco Free LA County (comprised of over 70 organizations including Culver City Youth Against Smoking – this notification was emailed courtesy of the County of Los Angeles Department of Health Services) (06/10/09); Culver City Tobacco Retailers (06/17/09), Culver City businesses with a Cigarette and Tobacco Products Retailer's License from the State	
Department Approval: Jeff Muir (06/17/09) Carol Schwab (by H. Baker) (06/17/09)	City Attorney Approval: Carol Schwab (by H. Baker) (06/17/09)
Chief Financial Officer Approval: Jeff Muir (06/17/09)	City Manager Approval:

RECOMMENDATION:

Staff recommends the City Council (1) introduce an Ordinance amending Title 11, Business Regulations, of the Culver City Municipal Code to add a new Chapter 11.15 relating to the licensing of tobacco retailers; and (2) adopt a Resolution establishing a tobacco retailer license fee and establishing penalties for violations of Tobacco Retailer licensing regulations.

BACKGROUND:

At the City Council meeting of October 27, 2008, several individuals from the Culver City Youth Against Smoking organization spoke before the City Council regarding the need for the City to take further action in preventing youth access to tobacco. The City Council directed staff to return to Council with a proposed ordinance establishing a tobacco retailer licensing program, similar to what other communities have instituted in this regard.

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DISCUSSION:

Tobacco Retailer Licensing Ordinance

The proposed Ordinance (Attachment 1) includes most of the provisions present in similar ordinances in other California cities and counties (see matrix of other cities/counties throughout the state – Attachment 2) and is modeled primarily after the Ordinances adopted by the cities of Inglewood and Santa Monica, as well as the *Model California Ordinance Requiring a Tobacco Retailer License* provided by the Technical Assistance Legal Center, a project of Public Health Law & Policy and the Public Health Institute. (collectively, Attachment 3). The following is a summary of the principal provisions of the proposed Ordinance:

- Requires all sellers of tobacco products and tobacco paraphernalia to have and display a tobacco retailer license.
- Prohibits tobacco product and paraphernalia sales to minors.
- Provides for suspension of the license after the first and second violations within five years; and revocation of the license after the third violation within five years, as well as suspension and revocation on other grounds.
- The administration, enforcement, and education of the program will be funded by the annual license fee.

Although staff has prepared the proposed Ordinance for consideration, there may be certain policy decisions the Council may wish to discuss, including the specific prohibitions to include and how to address repeat violations. For example, the current draft of the proposed Ordinance includes the regulation of the sale of tobacco paraphernalia as well as tobacco products. The Council may consider whether it wishes to solely regulate tobacco products. The prohibitions in the proposed ordinance are fairly standard in relation to the many similar ordinances throughout the State. The remedies for repeat violations vary widely in other cities. Most cities provide for eventual revocation of the license after repeated violations within a prescribed period (typically three to four violations within a five-year period). However, the effects of revocation are diverse. Some cities allow the offending business to re-apply within as little as sixty days. Others appear to impose a permanent ban upon revocation. Other cities allow the business to re-apply, but not until a period of five years or sometimes less has elapsed. Under the proposed Ordinance a licensee whose license has been revoked cannot re-apply for five years.

Staff has consulted with the City Attorney's Office and Police Department regarding the administration and enforcement of the proposed Ordinance. Staff

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recommends that compliance monitoring and enforcement of the proposed Ordinance to be coordinated between the Finance and Police Departments, as well as the Enforcement Services Division of the Community Development Department. The City Attorney's Office would prosecute any criminal citations issued. Staff also recommends the Finance Department oversee the administration of the license application and fee process.

Resolution Establishing Tobacco Retail License Fee and Establishing Penalties for Violations of Tobacco Retail Licensing Regulations

The proposed Ordinance requires a Resolution (Attachment 4) be adopted establishing the annual fee. A survey of other cities with a tobacco retailer licensing fees is attached (Attachment 5). While it is helpful to see where the City's fee is in relation to other communities, it is important to keep in mind that the City must base its fee on its own costs. Based on staff's analysis of the time required by various positions in the Finance Department, Police Department and City Attorney's Office to administer this program, the appropriate fee has been determined to be \$235.

In addition, the proposed Resolution establishes the penalties for criminal violations of the Ordinance. Similar to the fines established for other tobacco-related violations (i.e. smoking in parks and outdoor dining areas), the proposed fine structure is as follows:

Infraction:

1st violation - \$100
2nd violation within 1 year - \$200
3rd & subsequent within 1 year - \$500
\$1,000

Misdemeanor:

1st violation - \$250
2nd violation within 1 year - \$500
3rd & subsequent within 1 year -

FISCAL ANALYSIS:

Adoption of the proposed Ordinance would have minor financial impact. The administrative and enforcement costs of the proposed tobacco retailer licensing program would be borne entirely by fees collected from the covered businesses in the form of the license fee. These fees would be adjusted annually to reflect actual costs. The collection of fines for criminal prosecution would result in a negligible source of revenue, as the court receives a portion of such fines and those funds coming directly to the City would serve to offset costs of the potential increase in enforcement activity by the Police Department. It is not possible at this time to quantify an annual revenue receipt amount or forecast how much

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additional criminal enforcement activity may be expended on this effort. Any fines received in this regard would be deposited into the General Fund.

ATTACHMENTS:

1. Proposed Ordinance
2. Matrix of other cities/counties ordinances
3. Inglewood and Santa Monica ordinances, and Model California Ordinance
4. Proposed Resolution
5. Survey of other cities' license fees

MOTION:

That the City Council:

1. Introduce an Ordinance amending Title 11, Business Regulations, of the Culver City Municipal Code to add a new Chapter 11.15 relating to the licensing of tobacco retailers; and,
2. Adopt a Resolution establishing a tobacco retail license fee, and establishing penalties for violations of tobacco retail licensing regulations.