



# City of Culver City

## Staff Report

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Item #: A-2.

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### CC - Introduction of an Ordinance Amending Certain Provisions of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code to Prohibit the Sale of Flavored Tobacco Products, Including Menthol

**Meeting Date:** August 26, 2019

**Contact Person/Dept:** Heather Baker/City Attorney  
**Phone Number:** 310-253-5660

**Fiscal Impact:** Yes  No

**General Fund:** Yes  No

**Public Hearing:**  **Action Item:**  **Attachments:**

**Commission Action Required:** Yes  No  **Date:**

**Public Notification:** (E-Mail) Meetings and Agendas - City Council; Notify Me - Culver City News and Events; Stay Informed - Smoking (07/26/19, 08/13/19 and 08/21/19); (Mail) Culver City Tobacco Retailer Licensees (08/01/19); and (Publication) Culver City News (08/08/19)

**Department Approval:** Carol Schwab (08/21/19)

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### RECOMMENDATION

Staff recommends the City Council introduce an Ordinance amending certain provisions of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code to prohibit the sale of flavored tobacco products, including menthol.

### BACKGROUND

The following is a chronology of the City Council's prior discussion of the regulation of tobacco products:

- **August 10, 2015:** City Council amended Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code (CCMC) to amend the definitions of "tobacco paraphernalia" and "tobacco product" to specifically include electronic smoking devices and electronic smoking device paraphernalia, as it was unclear from the previous definitions as to whether these were subject to a tobacco retailer license. This amendment to CCMC Chapter 11.15 also added new definitions for "electronic smoking device" and "electronic smoking device paraphernalia."

The purpose of the amendment was to make it clear that (1) a retailer engaged in the sale of E-Cigarettes must obtain a tobacco retailer license; and (2) the sale of E-Cigarettes to underaged individuals is unlawful.

- **January 14, 2019:** Vice Mayor (then Council Member) Eriksson requested support to agendize a general discussion of electronic smoking devices (“E-Cigarettes”). Mayor (then Vice Mayor) Sahli-Wells mentioned she had been in discussions with the Los Angeles County Department of Public Health (LADPH) and USC professors regarding a potential ban of flavored E-Cigarettes and requested that a discussion of such a ban be incorporated into the requested agenda item. The City Council supported this request and directed staff to bring this item to a future City Council meeting for discussion.
- **May 28, 2019:** The City Council considered the various policy options with regard to both (1) E-Cigarette usage (identifying areas where it could be prohibited); and (2) regulation of the sale of flavored/menthol tobacco products (including a complete prohibition, an exemption for menthol and an exemption for adults only establishments). After thoroughly discussing these matters, the City Council directed staff to return with (1) a proposed Ordinance prohibiting the sale of flavored/menthol tobacco products within the City; (2) a proposed Ordinance prohibiting the use of E-Cigarettes in all outdoor public places where smoking is prohibited (City parks and recreational areas and outdoor dining areas); and (3) further discussion on whether to prohibit the use of E-cigarettes in multi-unit housing. City Council further directed that these items be considered separately.

For more detailed information, please see the May 28, 2019 staff report (Attachment 1).

This staff report focuses on a proposed Ordinance amending certain provisions of CCMC Chapter 11.15, Tobacco Retailer Licensing, to prohibit the sale of flavored/menthol tobacco products. The proposed Ordinance regarding E-Cigarette usage is tentatively scheduled for the September 23, 2019 City Council meeting.

With regard to the further discussion of an E-Cigarette ban in multi-unit housing, there will be a substantial cost involved in notification to all landlords and tenants of multi-unit housing for this agenda item. Before embarking on this significant outreach process, City staff seeks confirmation of the City Council’s prior direction to return with the item.

## DISCUSSION

### ***Current Regulations***

Chapter 11.15 of the CCMC (Attachment 2) requires every person engaging in the sale of tobacco, tobacco products and tobacco paraphernalia to obtain a tobacco retailer license. Chapter 11.15 also places other requirements and restrictions on tobacco retailers, including, but not limited to:

- Prohibition of the sale of tobacco products to persons who appear to be under 27 years of age without first examining identification confirming the person is the minimum age under state law to purchase tobacco products;
- Prohibition of the sale of tobacco products via self-service displays, including vending

machines; and

- Requirement to keep tobacco products out of public view.

### **Ordinance**

The proposed Ordinance (Attachment 3) amends certain provisions of Chapter 11.15 to prohibit the sale of flavored tobacco products, including menthol.

A summary of the amendments to Chapter 11.15 include:

- Modification to the purpose and intent of the Chapter (Section 11.15.005);
- New definitions (Section 11.15.010) for the following terms: Characterizing Flavor, Consumer, Flavored Tobacco, Little Cigar, Labeling, Manufacturer, Package or Packaging, Person, Sale or Sell;
- Modification or clarifications to the definitions (Section 11.15.010) for the following terms: Electronic Smoking Device, Tobacco Paraphernalia, Tobacco Product, Tobacco Retailer, Tobacco Retailing; and
- Amendments to licensee requirements and prohibitions (Section 11.15.015), including:
  - Addition of a prohibition on the sale of flavored tobacco products, which includes menthol products (Section 11.15.015.D);
  - Standards of evidence (rebuttable presumption) to show a licensee is in violation of the prohibition of flavored tobacco products (Section 11.15.015.D.2 and D.3);
  - Addition to the on-site sales requirement (Section 11.15.015.H);
  - Additional requirement that a tobacco retailer licensee and the licensee's agents and employees must operate in compliance with all applicable tobacco-related local, state and federal laws. (Section 11.15.015.I); and
  - Other minor revisions for clarity.

### **Enforcement**

CCMC Section 11.15.040 (Compliance Monitoring and Enforcement), provides the following:

*Compliance with the provisions of this Chapter shall be monitored by the Finance Department, Police Department and/or Enforcement Services Division, including any authorized designee of such departments and division, and/or by any other person or persons so designated by the City Manager.*

Currently, due to limited resources, enforcement of the tobacco retailer licensees is handled on a complaint basis. If the City receives a complaint that tobacco products are being sold by a retailer that does not have a valid tobacco retailer license, the Finance Department will contact the retailer and require they apply for a Permit. Similarly, if the City receives a complaint that a tobacco retailer is selling to underaged individuals, the Police Department will get involved and issue a citation if warranted. As of this date, the City has not received any complaints of tobacco retailers operating in violation of the City's regulations.

Enforcement of restrictions on the sale of flavored and/or menthol tobacco products would be folded into enforcement of the current regulations pertaining to tobacco retailer licensees. If the City Council introduces, and ultimately adopts, the proposed Ordinance, City staff would work with the Finance

and Police Departments to re-evaluate the tobacco retailer license fee, after the Ordinance has been in effect for a period of time, and return to City Council at a later date if a fee increase is needed.

### **FISCAL ANALYSIS**

There is no fiscal impact involved with the introduction of the proposed Ordinance. Should the City Council introduce, and ultimately adopt, the Ordinance, it is anticipated there will be minimal fiscal impact. Currently, there is a fee established for the issuance and administration of the tobacco retailer license. The added regulations to prohibit the sale of flavored/menthol tobacco products impact the retailer's conduct, but do not add any additional permit requirements. Since enforcement of these new restrictions would be folded into the current level of enforcement pertaining to tobacco retailer licensees, staff does not anticipate a noticeable increase in cost. If, however, enforcement efforts were increased, there would be an associated cost with such efforts, which are difficult to predict at this time.

### **ATTACHMENTS**

1. 2019-08-26\_ATT\_2019-05-28 Staff Report
2. 2019-08-26\_ATT\_CCMC Chapter 11.15
3. 2019-08-26\_ATT\_Proposed Ordinance

### **MOTION**

That the City Council:

1. Introduce an Ordinance amending certain provisions of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code to prohibit the sale of flavored tobacco products, including menthol; and
2. Confirm prior direction to agendize further discussion of E-cigarette usage in multi-unit housing.