



# City of Culver City

## Staff Report

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Item #: C-7.

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**CC - Adoption 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:** October 28, 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 (10/23/19); Notify Me - Culver City News and Events (10/23/19); Stay Informed - Smoking (10/23/19)

**Department Approval:** Carol Schwab (10/22/19)

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### **RECOMMENDATION**

Staff recommends the City Council adopt 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 (Attachment 1).

### **BACKGROUND/DISCUSSION**

On October 14, 2019, the City Council unanimously introduced the proposed Ordinance, inclusive of the following provisions:

- ***Hookah Lounge Exemption:*** The City Council approved an exemption from the flavor ban for the existing hookah lounge located in Culver City. A Hookah Lounge is defined in Section 11.15.010 of the Ordinance as:

**HOOKAH LOUNGE.** An establishment holding a valid Tobacco Retailer License that: (i) exclusively occupies an enclosed indoor space and is primarily engaged

in the retail sale of Hookah Tobacco for consumption by customers on the premises; (ii) generates more than 70% of its gross revenues annually from the sale of Hookah Tobacco and the rental of on-site Hookahs, not including any sales from vending machines; (iii) does not sell food or beverages for consumption on the premises; and (iv) prohibits entry to a person that does not meet the minimum age requirement under state law to purchase and possess tobacco, Tobacco Product or Tobacco Paraphernalia.

In order to further ensure the exemption applies to an existing Hookah Lounge only and that no new Hookah Lounges are permitted, the City Attorney's Office will work with the Current Planning Division to amend the nonconforming use provisions of the Zoning Code. The amendment would establish that a property that operates as a Hookah Lounge may continue to do so until such time as the business is sold or transferred, in any manner, at which time the nonconforming use is extinguished. This would be added to the list of the Current Planning Division's anticipated Zoning Code Amendments for FY 19-20, in order to make the Zoning Code consistent with the Hookah Lounge exemption provided for in the proposed Ordinance. Also, language has been added to the proposed Ordinance to indicate that a Hookah Lounge shall be considered a legal nonconforming use and subject to the nonconforming use provisions set for the in the Zoning Code.

In addition, Finance staff will require the existing Hookah Lounge to update its current Tobacco Retailer License to reflect that it is operating as a Hookah Lounge, as defined in the proposed Ordinance, and provide documentation that the business generates more than 70% of its gross revenues annually from the sale of Hookah Tobacco and the rental of on-site hookahs, not including any sales from vending machines.

Lastly, the City Council directed staff to return to City Council 12 months after the effective date of the Ordinance to report back on compliance monitoring and enforcement efforts regarding the Hookah Lounge to ensure it is operating within the definition of a Hookah Lounge, including, but not limited to, the prohibition on entry to persons under the age of 21. If the proposed Ordinance is adopted, staff will determine an appropriate course of action in this regard.

- *Tobacco Store 12-Month Amortization Period:* The City Council did not approve an exemption for Tobacco Stores; however, it did adopt a 12-month amortization period for existing Tobacco Stores that meet the following definition under Section 11.15.010 of the proposed Ordinance:

**TOBACCO STORE.** A retail establishment that holds a valid Tobacco Retailer License and meets all of the following requirements: (i) primarily sells tobacco products; (ii) generates more than 70% of its gross revenues annually from the sale of Tobacco Products and Tobacco Paraphernalia; (iii) prohibits any person that does not meet the minimum age requirement under state law to purchase and possess tobacco, Tobacco Product or Tobacco Paraphernalia on the premises at any time; and (iv) does not sell food or beverages for consumption on the premises.

Finance staff will require any existing Tobacco Store to update its current Tobacco

Retailer License to reflect that it is operating as a Tobacco Store, as defined in the proposed Ordinance, and provide documentation that the business generates more than 70% of its gross revenues annually from the sale of Tobacco Products and Tobacco Paraphernalia.

- *Effective Date for all Other Tobacco Retailers:* For all other tobacco retailers (exclusive of the existing Hookah Lounge and Tobacco Stores), the effective date of the flavor ban will be 180 days from the effective date of the Ordinance.

Staff recommends the City Council adopt the proposed Ordinance, which includes the above provisions which were incorporated into the Ordinance at its introduction on October 14<sup>th</sup>.

### **FISCAL ANALYSIS**

Except as provided below, it is anticipated there will be minimal fiscal impact with the adoption of the proposed Ordinance. 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. The penalties and administrative fines imposed under the current regulations would also apply to any new regulations adopted by the proposed Ordinance. Since enforcement of these new restrictions generally would be folded into the current level of enforcement pertaining to tobacco retailer licensees, staff does not anticipate a noticeable increase in cost. Any increased enforcement efforts (e.g. additional compliance monitoring and enforcement efforts with regard to the existing Hookah Lounge) would result in an associated cost, which are difficult to predict at this time. Also, any penalties and administrative fines that would be imposed would help to offset any increased cost.

### **ATTACHMENTS**

1. 2019-10-28\_ATT - Proposed Ordinance

### **MOTION**

That the City Council:

Adopt 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.