



**SAN BENITO COUNTY
AGENDA ITEM
TRANSMITTAL FORM**

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Chair

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Item Number: 2.2

MEETING DATE: 08/09/2022

DEPARTMENT: HEALTH AND HUMAN SERVICES AGENCY

AGENDA ITEM PREPARER: Nicholas Calvin

DEPT HEAD/DIRECTOR: Tracey Belton

SUBJECT:

HEALTH AND HUMAN SERVICES AGENCY - T. BELTON

Introduce and waive first reading of Ordinance adding Chapter "Tobacco Sale Prohibition" to Title 7 of the San Benito County Code to prohibit the sale of flavored tobacco products and single use electronic cigarettes countywide and continue the matter to August 23, 2022 for the final adoption of the proposed ordinance.

SBC FILE NUMBER: 420

ORDINANCE NO.: 1044

AGENDA SECTION:

REGULAR AGENDA

BACKGROUND/SUMMARY:

The ban on flavored tobacco products has been an ongoing goal for organizations wishing to ensure that tobacco products other than cigarettes are included in the flavored tobacco ban. The San Benito County Health Department has prioritized the ban of flavored tobacco and single use electronic cigarettes in their state strategic plans.

The intergovernmental committee has been in the forefront of enacting legislation that controls the impact of tobacco use in the community. Intergovernmental members have been supportive of passing a countywide flavored tobacco ban with no exemptions. Ordinances previously enacted by local jurisdictions include flavor bans, tobacco retail license requirements, tobacco-free pharmacies, and smoke-free outdoor dining. The ordinance being proposed would ban all flavored tobacco products as well as single use electronic cigarettes.

The average percentage of San Benito County youth who use any tobacco is higher than the state average. According to the 2017-2018 California Healthy Kids Survey, statistics for San Benito County show, 29% of 11th graders have used e-cigarettes and 11% have smoked a cigarette, 16% of 9th graders have used e-cigarettes and 5% have smoked a cigarette, and 53% of continuation and alternative school students have used e-cigarettes and 39% have smoked a cigarette.

Nearly 1 in 3 San Benito County teens, 31.6%, report that they have used an e-cigarette at least once in their lifetime. Most teens obtained their e-cigarettes from "social sources," while around 45% reported purchasing their own e-cigarettes. Over a quarter of this group reported buying them directly from a local store. On June 6, 2022, five 17-18-year-old youth, conducted a youth decoy operation in Hollister through the city and the local health department. Of the 27 stores that sold tobacco products in Hollister, the youth were able to conduct a purchase transaction of tobacco at eight stores (30%) without being asked for identification to determine whether they were of age to purchase the product. Six out of eight of those tobacco sales were flavored tobacco.

In 2009, the FDA implemented a ban on flavored cigarettes, however the ban did not include menthol flavored cigarettes or other flavored tobacco products other than cigarettes. While the Food and Drug Administration (FDA) continues to look at options for regulating menthol cigarettes and other flavored tobacco products, local jurisdictions such as Monterey County, Santa Cruz County, and Santa Clara County have begun to take the lead in banning flavored tobacco products, including menthol in cigarettes.

In January 2020, in response to skyrocketing rates of youths' use of e-cigarettes, the FDA prohibited sales of flavored cartridge-based e-cigarettes not flavored with menthol or tobacco, but did not restrict the sale of disposable e-cigarettes. This ban resulted in an increase in use of disposable e-cigarettes by over 1,000% (from 2.4% to 26.5%) among high school e-cigarette users and more than 400% (from 3% to 15.2%) among middle school e-cigarette users during 2019-2020 nationwide.

One way to combat this is to ban single use e-cigarettes and flavored tobacco. In San Benito County, more than 60% of tobacco retailers sell flavored tobacco products, which can end up in the hands of our youth. In youth who have used tobacco, over 80% were initiated with a flavored tobacco product. By banning flavored tobacco products, this would help prevent youth tobacco use.

One out of seven youth in San Benito County smoke. The prevalence of youth who currently use tobacco within our state region is 6.3% with the majority using e-cigarettes that can contain flavored tobacco. Our surrounding counties have taken action to ban or limit flavored tobacco to combat this problem.

In San Benito County there are currently 38 licensed tobacco retailers, 27 in the City of Hollister, 4 in the City of San Juan Bautista and 7 in the unincorporated County. Approximately 60% of retailers will be impacted by the proposed ordinance.

The following are the key provisions of the proposed ordinance:

- It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, any Single Use Electronic Cigarette within the incorporated and unincorporated areas of San Benito County.
- It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale any Flavored Tobacco Product within the incorporated and unincorporated areas of San Benito County.
- All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products and single use electronic cigarettes at the retail location. The sale of any tobacco product or single use electronic cigarette by an employee shall be considered an act of the tobacco retailer.

RESOLUTION OR ORDINANCE NEEDED FOR THIS ITEM:

Yes

CONTRACT NEEDED FOR THIS ITEM:

N/A

CONTRACT AND RFP HISTORY:

N/A

LAST CONTRACT AMOUNT OR N/A:

N/A

STATE IF THIS IS A NEW CONTRACT/ HOW MANY PAST AMENDED CONTRACTS/ OR N/A:

N/A

STRATEGIC PLAN GOALS: 1. Operational Development & Excellence

No

STRATEGIC PLAN GOALS: 2. Planning And Sustainable Growth

No

STRATEGIC PLAN GOALS: 3. Technology

No

STRATEGIC PLAN GOALS: 4. Community Engagement

Yes

STRATEGIC PLAN GOALS: 5. Health & Safe Community

Yes

BUDGETED:

N/A

BUDGET ADJUSTMENT NEEDED:

N/A

SOURCE OF FUNDING:

N/A

UNFUNDED MANDATE:

N/A

SBC BUDGET LINE ITEM NUMBER:

N/A

CURRENT FY COST:

N/A

STAFF RECOMMENDATION:

- 1) Introduce and waive first reading of Ordinance adding Chapter "Tobacco Sale Prohibition" to Title 7 of the San Benito County Code to prohibit the the sale of flavored tobacco products and single use electronic cigarettes countywide; and
- 2) Continue consideration of the ordinance to August 23, 2022 for final adoption.

ATTACHMENTS:

[Proposed San Benito County Flavored Tobacco Ordinance](#)
[Educational Presentation for BOS](#)