

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of February 22, 2022

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Ruthann G. Ziegler, Special Counsel

APPROVED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Proposed Ordinance Amending Section 9-5.3843 E of the Antioch Municipal Code to Modify the Distance between New Tobacco Businesses and Specified Uses and to Clarify the Limit on New Tobacco Retailers

RECOMMENDED ACTION

It is recommended that the City Council introduce, waive the first reading, and read by title only the proposed amendment to the City's Municipal Code attached hereto as Attachment A.

The proposed amendment would:

- Require new tobacco businesses to be at least 1000 feet from schools and similar uses
- Clarify the City's existing ban on new tobacco retailers

FISCAL IMPACT

The proposed action will have a minimal, if any, effect on the City's budget.

DISCUSSION

The Council previously considered this topic at its May 25, 2021 meeting during a detailed presentation by YTAPP (Youth Tobacco Advocacy Policy Project). The May 25 staff report and the materials submitted by YTAPP are incorporated herein by reference. The Council's consensus was to bring back an ordinance reflecting much of YTAPP's proposal.

YTAPP had six elements in its proposal. Two elements proposed involved land use restrictions. Therefore, those elements went first to the Planning Commission for review and recommendation and are the subject of this staff report. The other four elements

are reflected in the draft ordinance attached to another staff report on the City Council's agenda tonight.

The draft ordinance refers to a tobacco retailer or business. Under the Antioch Municipal Code, a "tobacco retailer" is an establishment that sells tobacco or tobacco products; however, certain businesses may sell tobacco or tobacco products and *not* be a tobacco retailer. Such businesses are a convenience store when ancillary to a gas station and with less than 20% of its sales area devoted to tobacco products or a retail business larger than 5000 square feet with less than 5% of its sales area devoted to tobacco products.

Below is a discussion of how the draft ordinance would implement the two elements.

1. Requiring new businesses with tobacco sales to be at least 1000 feet from schools and similar uses

The City's municipal code currently requires at least 500 feet between a business selling tobacco and a school, public park, playground, recreational center, or child care center. (Section 9-5.3843 E(2)(c).) YTAPP asked that this distance be increased to 1000 feet.

The Planning Commission made a recommendation in favor of this change and also recommended that the change apply to businesses that sell or otherwise provide vaping products for use with tobacco. Since the existing definition of tobacco product includes any "device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including ... an electronic cigarette, ... vaporizer pen, or hookah..." no additional change is necessary to implement the Planning Commission's direction. In addition, the other ordinance before the Council this evening incorporates YTAPP's request to ban the sale of electronic devices for smoking tobacco or tobacco products.

2. Restricting the number of new tobacco retailers

YTAPP asked the City Council to limit the number of use permits granted to new tobacco retailers. However, in 2017, the Council adopted Ordinance 2125-C-S, which included a ban on new tobacco retailers. In reviewing that ordinance, staff determined that the ordinance should be clarified regarding the ban. The Planning Commission recommended in favor of that clarification, which is reflected in the attached draft ordinance.

ATTACHMENT

A. Proposed ordinance amending Antioch Municipal Code §9-5.3843

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AMENDING SECTION 9-5.3843 E OF THE ANTIOCH MUNICIPAL CODE TO MODIFY
THE DISTANCE BETWEEN NEW TOBACCO BUSINESSES AND SPECIFIED USES
AND TO CLARIFY THE LIMIT ON NEW TOBACCO RETAILERS**

The City Council of the City of Antioch does ordain as follows:

SECTION 1:

The City Council is committed to taking the steps necessary to provide a healthy, safe environment for all City residents. Towards that goal, the City is concerned about the adverse effect of cigarettes and related tobacco products on its residents, especially youth.

SECTION 2:

Over the years, the City Council has adopted various ordinances relating to the use of tobacco to protect the health of its residents. The Council received a detailed presentation from community youth concerned about the effects of tobacco and requesting additional restrictions on tobacco and tobacco products.

SECTION 3:

Consistent with the goal referenced above and the presentation, the Council wishes to take additional steps restricting the location and number of new tobacco retailers in the City.

SECTION 4:

Section 9-5.3843 E is amended as follows:

Section 9-5.3843 TOBACCO AND PARAPHERNALIA RETAILERS.

[Subsections A-D, inclusive, unchanged]

E. Exceptions:

(1) The prohibition described in division (B) above shall not apply to the following:

(a)-(c) [no change]

(d) Any tobacco retailer or drug paraphernalia retailer operating with a valid use permit issued by the city prior to the effective date of Ordinance 2125-C-S. Consistent with Ordinance 2125-C-S, such tobacco retailer or drug paraphernalia retailer shall continue to be a nonconforming use and subject to all provisions of this section and the Municipal Code.

(2) The following business types shall be permitted to sell tobacco products subject to approval of a use permit in zoning districts where such business types are allowed under the Zoning Code:

(a) Convenience stores when ancillary to a gas station and having less than 20% of their sales area devoted to tobacco products.

1. The sale of drug paraphernalia is prohibited.

(b) Retail businesses larger than 5,000 square feet with less than 5% of their sales area devoted to tobacco product.

(c) A new use permit shall not be issued for a business that is located within 1000500 feet of any school, public park, playground, recreational center, or child care center.

SECTION 5: Severability.

If any section, subsection, provision or part of this ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this ordinance, and the application of such provision to other person or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

SECTION 6. CEQA.

The above amendments to the City's Municipal Code are not considered a project under the California Environmental Quality Act under the common sense exemption (CEQA Guidelines §15061(b)(3) because the proposed amendments will not have a direct or reasonably foreseeable indirect physical change or effect on the environment.

SECTION 7:

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I HEREBY CERTIFY that the forgoing ordinance was introduced and adopted at a regular meeting of the City Council of the City of Antioch, held on the ____ of ____ 2022, and passed and adopted at a regular meeting thereof, held on the ____ day of ____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lamar Thorpe, Mayor of the City of Antioch

ATTEST:

Elizabeth Householder
City Clerk of the City of Antioch