



## AGENDA REPORT

**Meeting Date:** May 21, 2019  
**Item Number:** E-5  
**To:** Honorable Mayor and City Council  
**From:** Logan Phillippo, Policy & Management Analyst *LP*  
**Subject:** AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING ARTICLE 21 OF CHAPTER 2 OF TITLE 4 OF THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT THE RETAIL SALE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTE PARAPHERNALIA, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

**Attachments:**

1. Ordinance
2. Ordinance (insertions/deletions shown)
3. May 7, 2019 Agenda Report (without attachments)
4. Public letters/input received

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### **RECOMMENDATION**

Staff recommends City Council introduce for first reading an Ordinance of the City of Beverly Hills Amending Article 21 of Chapter 2 of Title 4 of the Beverly Hills Municipal Code to Prohibit the Retail Sale of Tobacco Products and Electronic Cigarette Paraphernalia, and Making a Finding of Exemption under the California Environmental Quality Act ("Ordinance").

### **INTRODUCTION**

On May 7, City Council provided input on a draft ordinance that would prohibit the sale of all tobacco products in Beverly Hills, subject to certain exemptions. The proposed Ordinance incorporates City Council's modifications.

- Attachment 1 includes the Ordinance.
- Attachment 2 includes the Ordinance with insertions/deletions to the Municipal Code indicated in the document.
- Attachment 3 includes the May 7, 2019 Agenda Report (without attachments) that provides a detailed description of the draft ordinance that was presented to City Council on May 7 and the public input process.
- Attachment 4 includes letters from community stakeholders commenting on this topic. Only letters received after May 2 are attached. Letters received prior to May 2 may be found online along with the May 7, 2019 Agenda Report.

## **DISCUSSION**

The key elements of the proposed Ordinance are discussed in Attachment 2 to this report. At the May 7 Formal Session, City Council directed Staff to revise the draft of the Ordinance related to the effective date of the ban and to include an exemption to allow hotels to continue to sell tobacco products to guests.

### **Key Dates**

The Health and Safety Commission recommended a series of dates the ban would apply to various business categories. Under the Commission's recommendation, the ban would have included a January 2020 date for pharmacies and for hotels to sell to guests only, a January 2021 date for gas stations, convenience stores, liquor stores and newsstands, and a January 2022 date for hotels selling to anyone (including guests). City Council directed Staff to apply a consistent date for all businesses and supported January 1, 2021.

### **Hotels**

The second modification relates to a permanent exemption/carve out for hotels. The Health and Safety Commission had recommended that hotels, existing and new, no longer be allowed to sell tobacco products on January 1, 2022. City Council, however, supported allowing hotels to continue selling tobacco products in perpetuity, until such time in the future, if ever, the law were to be changed.

In line with the Commission's recommendation, all hotels will be permitted to only sell tobacco products to guests of the same hotel, provided that sales only take place through a concierge service or room service and are not on display to the public. These requirements will take effect on January 1, 2021.

### **Summary**

In Summary, the key provisions of the Ordinance include:

- A permanent exemption/carve out for existing cigar lounges;
- Effective January 1, 2021, hotels, existing and future, may only sell to guests;
- Effective January 1, 2021, all other businesses shall stop selling tobacco products;
- A hardship exemption provision for retailers that demonstrate the ban would cause undue hardship; and
- City Council review of the impacts on tourism in three years.

## **FISCAL IMPACT**

Revenue from issuing the Tobacco and Electronic Cigarette Retailer permits would be eliminated. The 2018/19 fee for these permits is \$236, paid on an annual basis by each retailer, estimated at \$6,608 in total. This is a cost recovery fee, so Staff time involved in administration and enforcement of the permits could be reallocated to other activities. Community stakeholders have stated that a tobacco sales ban would negatively affect tourism and commerce in Beverly Hills. To Staff's knowledge, there is no reliable data available to accurately measure the extent to which tourism in Beverly Hills could be affected.

Business Impact Mitigation

Several tobacco retailers, including gas stations, convenience stores, cigar lounges and hotels have participated in public meetings and provided various figures as to the extent to which a ban on tobacco sales could impact their business or affect their businesses.

The Commission has discussed various options to assist small businesses in mitigating impact of revenue lost from tobacco sales. On April 29, a representative from the Small Business Development Center ("SBDC") at El Camino College provided a presentation of the services that are offered to local businesses. SBDC offers one-on-one advising with small business experts to help them avoid many of the common problems faced by entrepreneurs. Other services include assistance with locating and applying for small business loans, including financing, and educational workshops and events.

The representative also provided information about the SCORE program. SCORE is the nation's largest volunteer, expert business mentoring program. A resource partner for the Small Business Administration, their business mentorship program gives entrepreneurs a unique opportunity to receive personal counseling by someone with over 20 years of experience in their desired industry. Mentors retain accessibility with clients via email and by scheduling in person appointments to meet with and mentor existing and future business owners. They also have available a large variety of hosted webinars, interactive online training modules, and workshop.

The City, through its partnership with the Chamber of Commerce, already pays a membership fee so that one-on-one advising services may be provided locally in Beverly Hills. Consultants may meet business owners, as many times as necessary, at their place of business or other available locations such as the Chamber of Commerce. Provided that a retailer is showing progress in meeting goals defined by SBDC and the retailer, there is no limit to the number of consultations a business may receive. Staff will connect business owners with these resources.

Pamela Mottice-Muller *PM*

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Approved By

# **Attachment 1**

**ORDINANCE NO. 19-O-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING ARTICLE 21 OF CHAPTER 2 OF TITLE 4 OF  
THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT  
THE RETAIL SALE OF TOBACCO PRODUCTS AND  
ELECTRONIC CIGARETTE PARAPHERNALIA, AND  
MAKING A FINDING OF EXEMPTION UNDER THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million deaths per year.

WHEREAS, according to the Centers for Disease Control and Prevention, cigarette smoking remains the leading cause of preventable death and disability in the United States, despite a significant decline in the number of people who smoke. Over 16 million Americans have at least one disease caused by smoking.

WHEREAS, according to the Centers for Disease Control and Prevention, secondhand smoke causes stroke, lung cancer, and coronary heart disease in adults; in addition, it increases risks for sudden infant death syndrome, middle-ear disease, respiratory symptoms, and slows lung growth in children.

WHEREAS, tobacco use leads to more than \$300 billion in health care and lost worker productivity costs each year.

WHEREAS, the City Council of Beverly Hills recognizes that the use of tobacco products has devastating health and economic consequences.

WHEREAS, the City Council of Beverly Hills recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users.

WHEREAS, an estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change.

WHEREAS, national data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

WHEREAS, in an undercover operation conducted in 2018, close to half of the tobacco retailers that are operating in Beverly Hills sold tobacco products to persons under the age of 21 in violation of both State law and Beverly Hills Municipal Code section 4-2-2109.

WHEREAS, despite the City's ban on smoking tobacco products in certain designated areas of the City, in February 2019, the City's Ambassador Program reported 397 incidents of individuals smoking in prohibited areas in violation of local law. The City Council anticipates that reducing access to tobacco products in the City will lead to less people smoking these products and increased compliance with the City's smoking regulations.

WHEREAS, it is the intent of the City Council of the City of Beverly Hills to provide for the public's health, safety, and welfare in part by protecting youth from commencing the inherently dangerous activity of smoking, and protecting the public health and safety of the general public, while balancing business interests of existing City businesses.

WHEREAS, cigar lounges do not permit persons under the age of 21 to enter the premises and only those persons that want to be exposed to second hand smoke patronize these locations. If cigar lounges were not permitted to sell tobacco products, these businesses would be forced to go out of business.

WHEREAS, the Beverly Hills Conference & Visitors Bureau, Rodeo Drive Committee and the Beverly Hills Chamber of Commerce has informed staff that in the summer of 2018, approximately 80% of the City's guests were from cities outside of the United States, and from countries where smoking is still popular. The City Council therefore needs to balance the public health and safety concerns that warrant banning the sale of tobacco products against the reality that such a ban in hotels could deter prominent dignitaries and other international tourists from staying at the City's hotels, and could greatly impact the tourist industry in the City. The City Council finds that the public health will be protected by ensuring that, after a limited period of time, tobacco products will not be made available to the general public and will not be displayed in a manner that is easily accessible to hotel guests.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 4-2-2101 (PURPOSE) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows:

“The City Council recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health and economic consequences. The City Council further recognizes that tobacco use is the leading cause of preventable illness and death in the United States, and that tobacco product use is started and established primarily during adolescence.

Allowing tobacco products to be sold in the City increases access to these harmful and dangerous products and does not promote the City's image as a healthy city. To that end, no tobacco products shall be sold in the City except as specifically enumerated below.

For those limited number of tobacco and electronic cigarette retailers that will be permitted to operate in the City, the City Council seeks to encourage responsible tobacco and electronic cigarette retailing and to discourage violations of tobacco and electronic cigarette related laws, especially those that discourage the sale or distribution of electronic cigarettes, tobacco and nicotine products to minors.”

Section 2. Section 4-2-2102 (DEFINITIONS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows, with all other provisions of Section 4-2-2102 remaining unchanged:

“CIGAR LOUNGE: a retail or wholesale tobacco shop that (1) contains an enclosed area in or attached to the retail or wholesale tobacco shop that is dedicated to the use of cigars and pipes, (2) does not sell cigarettes, e-cigarettes, vaping products or flavored tobacco products, and (3) only permits patrons who are 21 years of age or older to enter the premises.”

“TOBACCO AND ELECTRONIC CIGARETTE RETAILER (sometimes referred to as RETAILER): Any person or business that operates a store, stand, booth, concession or other place at which the person or business sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco and electronic cigarette paraphernalia.”

“TOBACCO PRODUCT: Includes: a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including, but not limited to, cigarettes, cigars, cigarillo, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco; and b) any electronic cigarette. “Tobacco product” does not include a drug, device, or combination product authorized for sale by the United States Food and Drug Administration as a tobacco use cessation product.”

Section 3. Code Amendment. Section 4-2-2103 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMIT REQUIRED) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows:

A. It shall be unlawful for any person to sell a tobacco product or tobacco and electronic cigarette paraphernalia in the City without first obtaining a tobacco and electronic cigarette retailer permit.

B. It shall be unlawful for any person to act as a tobacco and electronic cigarette retailer without first obtaining and maintaining a valid tobacco and electronic cigarette retailer permit pursuant to this article for each location at which that activity is to occur.

C. Notwithstanding the provisions of chapter 1, article 1 of this title (“general provisions”), the issuance, suspension, and revocation of a tobacco and electronic cigarette retailer permit, and all related procedures, shall be governed solely by this article.

D. Failure to obtain a tobacco and electronic cigarette retailer permit prior to commencing the sale of tobacco products, or tobacco or electronic cigarette paraphernalia, shall constitute a separate violation of this section for each day such business is carried on without a permit.

E. Beginning May 21, 2019, the City shall not issue any new tobacco and electronic cigarette retailer permits except as set forth in Section 4-2-2115 and 4-2-2116.”

Section 4. Code Amendment. Section 4-2-2104 (APPLICATION PROCESS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection “D” to read as follows, with all other provisions of Section 4-2-2104 remaining unchanged:

“D. Beginning May 21, 2019, the City shall not accept or process an application for a tobacco and electronic cigarette retailer permit, except in compliance with Sections 4-2-2115 or 4-2-2116.”

Section 5. Code Amendment. Section 4-2-2106 (ISSUANCE AND RENEWAL OF PERMIT) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows:

“A. Upon receipt of both the application for a tobacco and electronic cigarette retailer permit and the permit fee, the Director of Finance or his or her designee, shall issue a tobacco and electronic cigarette retailer permit to the extent allowed pursuant to Sections 4-2-2115 or 4-2-2116 unless:

1. The application is incomplete or the information presented in the application is inaccurate or false;
2. The application seeks authorization for tobacco and electronic cigarette retailing by a proprietor who has a suspended or revoked tobacco and electronic cigarette retailer permit;
3. The application seeks authorization for tobacco and electronic cigarette retailing that is prohibited pursuant to this article, or that is unlawful pursuant to any other local, State or Federal law;
4. The proprietor has not obtained a valid State tobacco and/or electronic cigarette retailer permit, as applicable, from the California Board of Equalization: If such permits are not issued by the California Board of Equalization for electronic cigarette retailers, then failure to obtain a permit from the California Board of Equalization shall not be grounds for denial of an application to sell electronic cigarettes pursuant to a tobacco and electronic cigarette permit from the City;

5. The City has information that the applicant or his or her agents or employee(s) has violated any local, State or Federal tobacco or electronic cigarette control law at the location for which the permit or renewal of the permit is sought within the preceding thirty (30) day period.

B. A tobacco and electronic cigarette retailer permit shall be valid for one year and must be renewed not later than thirty (30) days prior to the expiration of the permit, but no earlier than sixty (60) days prior to the expiration of the permit. Unless revoked on an earlier date, all permits shall expire one year after the date of issuance, or December 31, 2020, whichever is earliest.

C. A tobacco and electronic cigarette retailer permit that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed, the proprietor must:

1. Submit the permit fee plus a reinstatement fee and the application renewal form; and
2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco and electronic cigarette paraphernalia after the permit expiration date and before the permit is renewed.

D. Where the permit is not approved or renewed, the Director of Finance shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated pursuant to the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.”

Section 6. Section 4-2-2107 (PERMITS NONTRANSFERABLE) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows:

“A. A tobacco and electronic cigarette retailer permit is nontransferable and is valid only for the person(s) and location specified in the permit application. If a permittee changes business location, that permittee must obtain a new permit prior to acting as a tobacco and electronic cigarette retailer at the new location. If a business permitted to conduct tobacco and electronic cigarette retailing is sold, the new owner must obtain a permit for that location before acting as a tobacco and electronic cigarette retailer.

B. Notwithstanding subsection A above, a person may apply for a hardship exemption allowing for the transfer of a permit. Applications shall be submitted to the Finance Department on the form supplied by the City and shall contain, at minimum, the following information:

1. Name of applicant;
2. Relationship of applicant to the permittee (if applicable);
3. Explanation of why the transfer request is being requested;
4. Explanation of why the applicant will suffer undue hardship if the transfer request is denied;
5. Any supporting document;
6. Any additional information requested by the Director of Finance.

The Director of Finance shall approve the transfer request if the applicant can demonstrate the applicability of the non-transferability clause would constitute an undue hardship on the applicant. Examples of undue hardship include, but are not limited to, death of a family member whose name was originally listed on the permit application. The Director of Finance shall act upon the application within thirty days of receipt of the transfer request and shall provide notice to the applicant of the decision. If the request is denied, the Director of Finance shall notify the applicant of the specific grounds for the denial in writing. The Director of Finance's decision on the transfer request shall be final. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated pursuant to the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action."

Section 7. Section 4-2-2112 (DENIAL, SUSPENSION AND REVOCATION; APPEALS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection G, with all other provisions of Section 4-2-2112 remaining unchanged.

"G. After December 31, 2020 this Section shall only apply to cigar lounges and hotels."

Section 8. Section 4-2-2113 (HEARINGS, GENERALLY) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby renamed as "HEARINGS REGARDING DENIAL, SUSPENSION OR REVOCATION OF PERMIT."

Section 9. Section 4-2-2115 (ENFORCEMENT) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby renumbered as Section 4-2-2117.

Section 10. Code Amendment. A new Section 4-2-2115 (EXCEPTIONS AND LIMITATIONS) is hereby added to Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code to read as follows:

“A. Notwithstanding any section to the contrary, a cigar lounge that is operating in compliance with State law and that holds a valid tobacco and electronic cigarette retailer permit on March 25, 2019 may apply annually to renew an existing tobacco and electronic cigarette retailer permit, and said application shall be approved if all criteria set forth in Section 4-2-2106 is satisfied.

B. Notwithstanding any section to the contrary, hotels may apply annually to renew or obtain a tobacco and electronic cigarette retailer permit, and may sell tobacco and electronic cigarette paraphernalia so long as the following requirements are met:

1. Tobacco products and tobacco and electronic cigarette paraphernalia shall only be sold to hotel guests who can present proof of current hotel occupancy;

2. Any sale of tobacco products and tobacco and electronic cigarette paraphernalia shall be conducted through a hotel “service,” such as through concierge services, guest services, room service, and not through a retail location that is open to the public; and

3. The tobacco products and tobacco and electronic cigarette paraphernalia shall not be publicly displayed in the hotel.

C. All other tobacco and electronic cigarette retailers that hold a valid tobacco and electronic cigarette retailer permit on May 21, 2019 shall be permitted to apply annually to obtain a renewal of that permit, and will be permitted to operate as tobacco and electronic cigarette retailers until December 31, 2020.

D. To the extent the City is preempted by State law, a person shall not be prohibited from selling tobacco and electronic cigarette paraphernalia if that paraphernalia will be used for a substance that is not a tobacco product or flavored tobacco product.”

Section 11. A new Section 4-2-2116 (HARDSHIP EXEMPTION) is hereby added to Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code to read as follows:

A. Any permittee, other than cigar lounges and hotels, that wishes to operate a tobacco and electronic cigarette retailer on or after January 1, 2021, may apply for one hardship exemption as provided for in this section.

B. A permittee must submit a complete application for a hardship exemption at least ninety (90) days before the permit is set to expire, but no sooner than six months before the permit is set to expire. Such application shall be made in writing on a form prescribed by the Director of Finance and shall be accompanied by the filing fee established by resolution of the City Council. The permittee shall bear the burden of proof in establishing by a preponderance of the evidence, that the application of Section 4-2-2115 to the permittee's business is unreasonable, and will cause significant hardship to the permittee by not allowing the permittee to recover his or her investment backed expectations. The permittee applying for the exemption shall furthermore be required, in order to meet its burden of proof, to submit the documents set forth in this section.

C. A complete application for a hardship exemption shall include the following:

1. The permittee's name and street address of business;
2. The address to which notice is to be mailed, at the permittee's option, a telephone number and/or email address;
3. The permittee's signature;
4. A declaration, under penalty of perjury, that all the information in the application is true and correct;
5. The term of the requested extension;
6. Documentation relevant to the information requested in subsection (D) of this Section; and
7. The required filing fee.

D. In determining whether to grant a hardship exemption to the permittee, and in determining the appropriate length of time that the permittee will be authorized to continue to operate as a retailer, the hearing officer, or City Council on appeal by the applicant, may consider, among other factors:

1. The percentage of the retail sales over the last three years that have been derived from tobacco products and tobacco and electronic cigarette paraphernalia;
2. The amount of investment in the business;
3. The present actual and depreciated value of any business improvements dedicated to the retail sale of tobacco products and tobacco and electronic cigarette paraphernalia;

4. The applicable Internal Revenue Service depreciation schedule or functional non-confidential equivalent;

5. The remaining useful life of the business improvements that are dedicated to the sale of tobacco products and tobacco and electronic cigarette paraphernalia;

6. The remaining lease term of the business, if any;

7. The ability of the tobacco and electronic cigarette retailer to sell other products;

8. The opportunity for relocation of the business and the cost of relocation; and

9. A business plan demonstrating how long the business will need to sell tobacco products and tobacco and electronic cigarette paraphernalia to recoup any investment backed expectations, and a plan for phasing out the sale of those products.

E. The hardship exemption hearing shall be conducted by an Administrative Hearing Officer appointed pursuant to Section 1-3-317 of this Code and shall be conducted pursuant to the procedures set forth in Section 4-2-2113. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to the permittee by the City either by causing a copy of such notice to be delivered to the permittee personally or by mailing a copy thereof, postage prepaid, addressed to the permittee at the address shown on the hardship exemption application.

F. Within forty-five (45) days after a completed application is filed, the hearing officer shall open the hearing on the hardship exemption. The hearing officer shall receive and consider evidence presented by the permittee, and shall determine whether to grant or deny the hardship exemption, and if granting the hardship exemption, the length of time that the tobacco and electronic cigarette retailer will be permitted to operate. The hearing officer shall make written findings in support of the decision. The decision of the hearing officer shall be final and conclusive, unless a timely and complete appeal is filed by the applicant with the City Clerk pursuant to subsection (G) of this Section.

G. Any decision of the hearing officer may be appealed by the applicant by filing a complete notice of appeal with the City Clerk within fifteen (15) days after notice of the decision was mailed to the applicant. To be deemed complete, the notice of appeal shall be signed by the applicant, shall state the grounds for disagreement with the decision of the hearing officer, and shall be accompanied by the filing fee established by resolution of the City Council.

H. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the hardship exemption.

I. A retailer may continue to sell tobacco, tobacco products, or tobacco and electronic cigarette paraphernalia while a hardship exemption application is pending before a hearing officer or on appeal to the City Council.

J. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.”

Section 12. CEQA. The City Council hereby finds that the adoption of this Ordinance is not a project pursuant to CEQA Guidelines Section 15378(b)(2) which provides that a project does include general policy and procedure making. The adoption of this Ordinance is also not a project pursuant to CEQA Guidelines Section 15378(b)(5) which provides that a project does not include organizational and administrative action of government which will not result in direct or indirect physical changes in the environment.

In the alternative, the City Council finds that if the adoption of the Ordinance is a project, it is subject to exemption. It can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance prohibits the sale of tobacco products. The adoption of the this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to CEQA Guidelines Section 15061(b)(3) because the Ordinance is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The adoption of this Ordinance is also exempt from CEQA pursuant to CEQA Guidelines Section 15305 which exempts minor alterations in land use limitations. This Class 5 exemption consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. Here, tobacco products and tobacco and electronic cigarette paraphernalia shall not be permitted to be sold by certain tobacco and electronic cigarette retailers after a specified date, and the areas where these retailers operate have an average slope of less than 20%. Additionally, the adoption of the Ordinance will not change land uses because the permitted use is retail and will be after the Ordinance takes effect. Moreover, the adoption of the Ordinance will not result in any changes in density because it is not altering the uses permitted on the land. Staff is directed to file a Notice of Exemption with the Los Angeles County Clerk.

Section 13. City Council review. Staff is hereby directed that within three years of the effective date of the ordinance, a study session item shall be scheduled whereby the City Council can assess the impacts that the ordinance has had on local businesses and tourism.

Section 14. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 15. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk’s certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

Section 16. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills

ATTEST:

\_\_\_\_\_  
LOURDES SY-RODRIGUEZ (SEAL)  
Assistant City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
GEORGE CHAVEZ  
City Manager

# **Attachment 2**

**ORDINANCE NO. 19-O-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING ARTICLE 21 OF CHAPTER 2 OF TITLE 4 OF  
THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT  
THE RETAIL SALE OF TOBACCO PRODUCTS AND  
ELECTRONIC CIGARETTE PARAPHERNALIA, AND  
MAKING A FINDING OF EXEMPTION UNDER THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million deaths per year.

WHEREAS, according to the Centers for Disease Control and Prevention, cigarette smoking remains the leading cause of preventable death and disability in the United States, despite a significant decline in the number of people who smoke. Over 16 million Americans have at least one disease caused by smoking.

WHEREAS, according to the Centers for Disease Control and Prevention, secondhand smoke causes stroke, lung cancer, and coronary heart disease in adults; in addition, it increases risks for sudden infant death syndrome, middle-ear disease, respiratory symptoms, and slows lung growth in children.

WHEREAS, tobacco use leads to more than \$300 billion in health care and lost worker productivity costs each year.

WHEREAS, the City Council of Beverly Hills recognizes that the use of tobacco products has devastating health and economic consequences.

WHEREAS, the City Council of Beverly Hills recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users.

WHEREAS, an estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change.

WHEREAS, national data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

WHEREAS, in an undercover operation conducted in 2018, close to half of the tobacco retailers that are operating in Beverly Hills sold tobacco products to persons under the age of 21 in violation of both State law and Beverly Hills Municipal Code section 4-2-2109.

WHEREAS, despite the City's ban on smoking tobacco products in certain designated areas of the City, in February 2019, the City's Ambassador Program reported 397 incidents of individuals smoking in prohibited areas in violation of local law. The City Council anticipates that reducing access to tobacco products in the City will lead to less people smoking these products and increased compliance with the City's smoking regulations.

WHEREAS, it is the intent of the City Council of the City of Beverly Hills to provide for the public's health, safety, and welfare in part by protecting youth from commencing the inherently dangerous activity of smoking, and protecting the public health and safety of the general public, while balancing business interests of existing City businesses.

WHEREAS, cigar lounges do not permit persons under the age of 21 to enter the premises and only those persons that want to be exposed to second hand smoke patronize these locations. If cigar lounges were not permitted to sell tobacco products, these businesses would be forced to go out of business.

WHEREAS, the Beverly Hills Conference & Visitors Bureau, Rodeo Drive Committee and the Beverly Hills Chamber of Commerce has informed staff that in the summer of 2018, approximately 80% of the City's guests were from cities outside of the United States, and from countries where smoking is still popular. The City Council therefore needs to balance the public health and safety concerns that warrant banning the sale of tobacco products against the reality that such a ban in hotels could deter prominent dignitaries and other international tourists from staying at the City's hotels, and could greatly impact the tourist industry in the City. The City Council finds that the public health will be protected by ensuring that, after a limited period of time, tobacco products will not be made available to the general public and will not be displayed in a manner that is easily accessible to hotel guests.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 4-2-2101 (PURPOSE) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows (with additions shown in underlined text, and deletions shown in strikethrough text):

“The City Council recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health and economic consequences. The City Council further recognizes that tobacco use is the leading cause of preventable illness and death in the United States, and that tobacco product use is started and established primarily during adolescence.

Allowing tobacco products to be sold in the City increases access to these harmful and dangerous products and does not promote the City's image as a healthy city. To that end, no tobacco products shall be sold in the City except as specifically enumerated below.

For those limited number of tobacco and electronic cigarette retailers that will be permitted to operate in the City, ~~in enacting this article, it is the intent of the City Council to~~ the City Council seeks to encourage responsible tobacco and electronic cigarette retailing and to discourage violations of tobacco and electronic cigarette related laws, especially those that discourage the sale or distribution of electronic cigarettes, tobacco and nicotine products to minors. ~~There is no intent, however, to expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or to alter the penalties provided therein.~~

Section 2. Section 4-2-2102 (DEFINITIONS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows (additions shown in underlined text, deletions shown in strikethrough text), with all other provisions of Section 4-2-2102 remaining unchanged:

“CIGAR LOUNGE: a retail or wholesale tobacco shop that (1) contains an enclosed area in or attached to the retail or wholesale tobacco shop that is dedicated to the use of cigars and pipes, (2) does not sell cigarettes, e-cigarettes, vaping products or flavored tobacco products, and (3) only permits patrons who are 21 years of age or older to enter the premises.”

“TOBACCO AND ELECTRONIC CIGARETTE RETAILER (~~sometimes referred to as~~ RETAILER): Any person or business that operates a store, stand, booth, concession or other place at which the person or business sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco and electronic cigarette paraphernalia.”

“TOBACCO PRODUCT: Includes: a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including, but not limited to, cigarettes, cigars, cigarillo, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco; b) any electronic cigarette; and c) any Tobacco and Electronic Cigarette Paraphernalia.; ~~and e) any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.~~ “Tobacco product” does not include a drug, device, or combination product authorized for sale by the United States Food and Drug Administration as a tobacco use cessation product.”

Section 3. Code Amendment. Section 4-2-2103 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMIT REQUIRED) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows (additions shown in underlined text, deletions shown in strikethrough text):

“A. It shall be unlawful for any person to sell a tobacco product or tobacco and electronic cigarette paraphernalia in the City without first obtaining a tobacco and electronic cigarette retailer permit.”

~~A. B.~~ It shall be unlawful for any person to act as a tobacco and electronic cigarette retailer without first obtaining and maintaining a valid tobacco and electronic cigarette retailer permit pursuant to this article for each location at which that activity is to occur.

~~B. C.~~ Notwithstanding the provisions of chapter 1, article 1 of this title (“general provisions”), the issuance, suspension, and revocation of a tobacco and electronic cigarette retailer permit, and all related procedures, shall be governed solely by this article.

~~C. D.~~ Failure to obtain a tobacco and electronic cigarette retailer permit prior to commencing the sale of tobacco products, or tobacco or electronic cigarette paraphernalia, shall constitute a separate violation of this section for each day such business is carried on without a permit.

E. Beginning May 21, 2019, the City shall not issue any new tobacco and electronic cigarette retailer permits except as set forth in Section 4-2-2115 and 4-2-2116.”

Section 4. Code Amendment. Section 4-2-2104 (APPLICATION PROCESS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection “D” to read as follows, with all other provisions of Section 4-2-2104 remaining unchanged:

“D. Beginning May 21, 2019, the City shall not accept or process an application for a tobacco and electronic cigarette retailer permit, except in compliance with Sections 4-2-2115 or 4-2-2116.”

Section 5. Code Amendment. Section 4-2-2106 (ISSUANCE AND RENEWAL OF PERMIT) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows (with additions shown in underlined text and deletions shown in strikethrough text):

“A. Upon receipt of both the application for a tobacco and electronic cigarette retailer permit and the permit fee, the Director of Finance or his or her designee, shall issue a tobacco and electronic cigarette retailer permit to the extent allowed pursuant to Sections 4-2-2115 or 4-2-2116 unless:

1. The application is incomplete or the information presented in the application is inaccurate or false;

2. The application seeks authorization for tobacco and electronic cigarette retailing by a proprietor who has a suspended or revoked tobacco and electronic cigarette retailer permit;

3. The application seeks authorization for tobacco and electronic cigarette retailing that is prohibited pursuant to this article, or that is unlawful pursuant to any other local, State or Federal law;

4. The proprietor has not obtained a valid State tobacco and/or electronic cigarette retailer permit, as applicable, from the California Board of Equalization: If such permits are not issued by the California Board of Equalization for electronic cigarette retailers, then failure to obtain a permit from the California Board of Equalization shall not be grounds for denial of an application to sell electronic cigarettes pursuant to a tobacco and electronic cigarette permit from the City;

5. The City has information that the applicant or his or her agents or employee(s) has violated any local, State or Federal tobacco or electronic cigarette control law at the location for which the permit or renewal of the permit is sought within the preceding thirty (30) day period.

B. A tobacco and electronic cigarette retailer permit shall be valid for one year and must be renewed not later than thirty (30) days prior to the expiration of the permit, but no earlier than sixty (60) days prior to the expiration of the permit. Unless revoked on an earlier date, all permits shall expire one year after the date of issuance, or December 31, 2020, whichever is earliest.

C. A tobacco and electronic cigarette retailer permit that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed, the proprietor must:

1. Submit the permit fee plus a reinstatement fee and the application renewal form; and
2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco and electronic cigarette paraphernalia after the permit expiration date and before the permit is renewed.

D. Where the permit is not approved or renewed, the Director of Finance shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated pursuant to the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.”

Section 6. Section 4-2-2107 (PERMITS NONTRANSFERABLE) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to read as follows (with additions shown in underlined text):

A. A tobacco and electronic cigarette retailer permit is nontransferable and is valid only for the person(s) and location specified in the permit application. If a permittee changes business location, that permittee must obtain a new permit prior to acting as a tobacco and electronic cigarette retailer at the new location. If a business permitted to conduct tobacco and electronic cigarette retailing is sold, the new owner must obtain a permit for that location before acting as a tobacco and electronic cigarette retailer.

B. Notwithstanding subsection A above, a person may apply for a hardship exemption allowing for the transfer of a permit. Applications shall be submitted to the Finance Department on the form supplied by the City and shall contain, at minimum, the following information:

1. Name of applicant;
2. Relationship of applicant to the permittee (if applicable);
3. Explanation of why the transfer request is being requested;
4. Explanation of why the applicant will suffer undue hardship if the transfer request is denied;
5. Any supporting document;
6. Any additional information requested by the Director of Finance.

The Director of Finance shall approve the transfer request if the applicant can demonstrate the applicability of the non-transferability clause would constitute an undue hardship on the applicant. Examples of undue hardship include, but are not limited to, death of a family member whose name was originally listed on the permit application. The Director of Finance shall act upon the application within thirty days of receipt of the transfer request and shall provide notice to the applicant of the decision. If the request is denied, the Director of Finance shall notify the applicant of the specific grounds for the denial in writing. The Director of Finance's decision on the transfer request shall be final. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated pursuant to the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action."

Section 7. Section 4-2-2112 (DENIAL, SUSPENSION AND REVOCATION; APPEALS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the

Beverly Hills Municipal Code is hereby amended to add a new subsection G, with all other provisions of Section 4-2-2112 remaining unchanged.

“G. After December 31, 2020 this Section shall only apply to cigar lounges and hotels.”

Section 8. Section 4-2-2113 (HEARINGS, GENERALLY) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby renamed as “HEARINGS REGARDING DENIAL, SUSPENSION OR REVOCATION OF PERMIT.”

Section 9. Section 4-2-2115 (ENFORCEMENT) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby renumbered as Section 4-2-2117.

Section 10. Code Amendment. A new Section 4-2-2115 (EXCEPTIONS AND LIMITATIONS) is hereby added to Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code to read as follows:

“A. Notwithstanding any section to the contrary, a cigar lounge that is operating in compliance with State law and that holds a valid tobacco and electronic cigarette retailer permit on March 25, 2019 may apply annually to renew an existing tobacco and electronic cigarette retailer permit, and said application shall be approved if all criteria set forth in Section 4-2-2106 is satisfied.

B. Notwithstanding any section to the contrary, hotels may apply annually to renew or obtain a tobacco and electronic cigarette retailer permit, and may sell tobacco and electronic cigarette paraphernalia so long as the following requirements are met:

1. Tobacco products and tobacco and electronic cigarette paraphernalia shall only be sold to hotel guests who can present proof of current hotel occupancy;

2. Any sale of tobacco products and tobacco and electronic cigarette paraphernalia shall be conducted through a hotel “service,” such as through concierge services, guest services, room service, and not through a retail location that is open to the public; and

3. The tobacco products and tobacco and electronic cigarette paraphernalia shall not be publicly displayed in the hotel.

C. All other tobacco and electronic cigarette retailers that hold a valid tobacco and electronic cigarette retailer permit on May 21, 2019 shall be permitted to apply annually to

obtain a renewal of that permit, and will be permitted to operate as tobacco and electronic cigarette retailers until December 31, 2020.

D. To the extent the City is preempted by State law, a person shall not be prohibited from selling tobacco and electronic cigarette paraphernalia if that paraphernalia will be used for a substance that is not a tobacco product or flavored tobacco product.”

Section 11. A new Section 4-2-2116 (HARDSHIP EXEMPTION) is hereby added to Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code to read as follows:

A. Any permittee, other than cigar lounges and hotels, that wishes to operate a tobacco and electronic cigarette retailer on or after January 1, 2021, may apply for one hardship exemption as provided for in this section.

B. A permittee must submit a complete application for a hardship exemption at least ninety (90) days before the permit is set to expire, but no sooner than six months before the permit is set to expire. Such application shall be made in writing on a form prescribed by the Director of Finance and shall be accompanied by the filing fee established by resolution of the City Council. The permittee shall bear the burden of proof in establishing by a preponderance of the evidence, that the application of Section 4-2-2115 to the permittee’s business is unreasonable, and will cause significant hardship to the permittee by not allowing the permittee to recover his or her investment backed expectations. The permittee applying for the exemption shall furthermore be required, in order to meet its burden of proof, to submit the documents set forth in this section.

C. A complete application for a hardship exemption shall include the following:

1. The permittee’s name and street address of business;
2. The address to which notice is to be mailed, at the permittee’s option, a telephone number and/or email address;
3. The permittee’s signature;
4. A declaration, under penalty of perjury, that all the information in the application is true and correct;
5. The term of the requested extension;
6. Documentation relevant to the information requested in subsection (D) of this Section; and
7. The required filing fee.

D. In determining whether to grant a hardship exemption to the permittee, and in determining the appropriate length of time that the permittee will be authorized to continue to operate as a retailer, the hearing officer, or City Council on appeal by the applicant, may consider, among other factors:

1. The percentage of the retail sales over the last three years that have been derived from tobacco products and tobacco and electronic cigarette paraphernalia;
2. The amount of investment in the business;
3. The present actual and depreciated value of any business improvements dedicated to the retail sale of tobacco products and tobacco and electronic cigarette paraphernalia;
4. The applicable Internal Revenue Service depreciation schedule or functional non-confidential equivalent;
5. The remaining useful life of the business improvements that are dedicated to the sale of tobacco products and tobacco and electronic cigarette paraphernalia;
6. The remaining lease term of the business, if any;
7. The ability of the tobacco and electronic cigarette retailer to sell other products;
8. The opportunity for relocation of the business and the cost of relocation; and
9. A business plan demonstrating how long the business will need to sell tobacco products and tobacco and electronic cigarette paraphernalia to recoup any investment backed expectations, and a plan for phasing out the sale of those products.

E. The hardship exemption hearing shall be conducted by an Administrative Hearing Officer appointed pursuant to Section 1-3-317 of this Code and shall be conducted pursuant to the procedures set forth in Section 4-2-2113. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to the permittee by the City either by causing a copy of such notice to be delivered to the permittee personally or by mailing a copy thereof, postage prepaid, addressed to the permittee at the address shown on the hardship exemption application.

F. Within forty-five (45) days after a completed application is filed, the hearing officer shall open the hearing on the hardship exemption. The hearing officer shall receive and consider evidence presented by the permittee, and shall determine whether to grant or deny the hardship exemption, and if granting the hardship exemption, the length of time that the tobacco and electronic cigarette retailer will be permitted to operate. The hearing officer shall make written findings in support of the decision. The decision of the hearing officer shall be final and conclusive, unless a timely and complete appeal is filed by the applicant with the City Clerk pursuant to subsection (G) of this Section.

G. Any decision of the hearing officer may be appealed by the applicant by filing a complete notice of appeal with the City Clerk within fifteen (15) days after notice of the decision was mailed to the applicant. To be deemed complete, the notice of appeal shall be signed by the applicant, shall state the grounds for disagreement with the decision of the hearing officer, and shall be accompanied by the filing fee established by resolution of the City Council.

H. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the hardship exemption.

I. A retailer may continue to sell tobacco, tobacco products, or tobacco and electronic cigarette paraphernalia while a hardship exemption application is pending before a hearing officer or on appeal to the City Council.

J. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.”

Section 12. CEQA. The City Council hereby finds that the adoption of this Ordinance is not a project pursuant to CEQA Guidelines Section 15378(b)(2) which provides that a project does include general policy and procedure making. The adoption of this Ordinance is also not a project pursuant to CEQA Guidelines Section 15378(b)(5) which provides that a project does not include organizational and administrative action of government which will not result in direct or indirect physical changes in the environment.

In the alternative, the City Council finds that if the adoption of the Ordinance is a project, it is subject to exemption. It can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance prohibits the sale of tobacco products. The adoption of the this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to CEQA Guidelines Section 15061(b)(3) because the Ordinance is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The adoption of this Ordinance is also exempt from CEQA pursuant to CEQA Guidelines Section 15305 which exempts minor alterations in land use limitations. This Class 5 exemption consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. Here, tobacco products and tobacco and electronic cigarette paraphernalia shall not be permitted to be sold by certain tobacco and electronic cigarette retailers after a specified date, and the areas where these retailers operate have an average slope of less than 20%. Additionally, the adoption of the Ordinance will not change land uses because the permitted use is retail and will be after the Ordinance takes effect. Moreover, the adoption of the Ordinance will not result in any changes in density because it is not altering the uses permitted on the land. Staff is directed to file a Notice of Exemption with the Los Angeles County Clerk.

Section 13. City Council review. Staff is hereby directed that within three years of the effective date of the ordinance, a study session item shall be scheduled whereby the City Council can assess the impacts that the ordinance has had on local businesses and tourism.

Section 14. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 15. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

Section 16. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills

ATTEST:

\_\_\_\_\_  
(SEAL)  
LOURDES SY-RODRIGUEZ  
Assistant City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
GEORGE CHAVEZ  
City Manager

# **Attachment 3**



## AGENDA REPORT

**Meeting Date:** May 7, 2019  
**Item Number:** F-1  
**To:** Honorable Mayor and City Council  
**From:** Logan Phillippo, Policy & Management Analyst   
**Subject:** HEALTH AND SAFETY COMMISSION RECOMMENDATIONS FOR AN ORDINANCE PROHIBITING THE SALE OF ALL TOBACCO PRODUCTS  
**Attachments:**

1. Draft ordinance
2. Proposed changes to Article 21 the Municipal Code
3. Outreach letters/notices
4. Public letters/input received

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### RECOMMENDATION

Staff has prepared a draft ordinance for City Council review that would prohibit the sale of tobacco products in Beverly Hills. The draft ordinance includes previous City Council direction, recommendations from the Health and Safety Commission and input from the City Council Health and Safety Commission Liaisons. Staff recommends City Council review the Commission's recommendations and provide input on the key policy provisions presented in this report and the draft ordinance.

If City Council supports the proposed ordinance as presented, Staff will incorporate any modifications, as directed, and present a final ordinance for its First Reading on the May 21 Agenda.

If City Council chooses an alternate approach to regulation, City Council may choose to consider other options for a potential ban on the sale of all tobacco products in Beverly Hills.

### INTRODUCTION

At the February 5 Study Session, City Council directed the Health and Safety Commission to study and recommend key policy provisions for an ordinance that would ban the sale of all tobacco products in Beverly Hills. The Health and Safety Commission has discussed key policy provisions and options to assist tobacco retailers mitigate associated impacts of a ban. The City Council Health and Safety Commission Liaisons, consisting of Mayor Mirisch and Councilmember Gold, provided input on April 9.

- Attachment 1 to this report includes a draft ordinance that incorporates policy recommendations from the Health and Safety Commission and City Council Liaisons.
- Attachment 2 includes changes to the Municipal Code as modified by the draft ordinance.
- Attachment 3 includes outreach letters and notices disseminated to community stakeholders regarding various public meetings.
- Attachment 4 includes all public letters/input received prior to submittal of this staff report.

Staff seeks City Council input and direction on the Commission's recommendations and on the proposed draft ordinance.

## **DISCUSSION**

According to a report from the California Department of Public Health, tobacco use is a risk factor for numerous chronic diseases including cancer, cardiovascular disease, emphysema, chronic obstructive pulmonary disease, pneumonia, diabetes, and arthritis. Exposure to tobacco smoke also poses a risk for chronic disease. In 2016, it was estimated that 34,000 people in California died from diseases attributed to smoking. In California, 63.6% of cigarette smokers started by the age of 18. Another study from the Centers for Disease Control and Prevention estimated that over 40,000 annual deaths in California are related to smoking and that 440,600 California youths under age 18 will die prematurely from smoking. According to the Centers for Disease Control and Prevention, the total economic cost of smoking is more than \$300 billion a year, including nearly \$170 billion in direct medical care for adults and more than \$156 billion in lost productivity due to premature death and exposure to secondhand smoke.

### **Background**

Restricting **the sale of tobacco products** differs from restricting **smoking activity**. The following two paragraphs distinguish these two concepts.

**Smoking Activity.** In order to promote healthy living, the City has long supported no-smoking policies. Most recently in 2017, the City prohibited smoking in the public-right-of-way, increased the open air dining no-smoking buffer zone from five feet to 20 feet, and adopted a new ordinance to prohibit smoking in multi-unit residences. These policies address the locations where smoking is prohibited. This includes the smoking of traditional tobacco products, electronic cigarette products and marijuana products.

**Sale of Tobacco Products.** While the City prohibits smoking in many locations, the City does permit the sale of non-flavored tobacco products. On August 21, 2018, the City Council formally adopted an ordinance prohibiting the sale of flavored tobacco products. The ban on the sale of flavored products became effective in-full on December 21, 2018 after two Health and Safety Commission meetings that included a discussion of policy details as well as input from tobacco retailers.

The City currently has a tobacco and electronic cigarette retailer permitting process, which was implemented through an ordinance adopted in 2010. Since then, tobacco retailers have been required to obtain a City-issued Tobacco and Electronic E-cigarette Retailer Permit, in addition to State licensing, in order to sell tobacco products in Beverly Hills.

To Staff's knowledge, no city in the United States has adopted a regulation to ban the sale of all types of tobacco products.

### Legal Context

The City could legally adopt a ban on the sale of all tobacco products. Neither Federal nor California law would preempt a comprehensive ban on tobacco sales. Federal law grants the U.S. Food & Drug Administration authority to regulate all tobacco products and expressly preserves the power of local governments to enact additional or "more stringent" regulations related to or prohibiting tobacco sales. Since the California legislature has not fully occupied the field of tobacco sales, California cities are free to implement any tobacco sales regulation or restriction provided they do not involve the collection of taxes or the penal aspects of tobacco sales to minors.

Courts have not yet reviewed citywide bans on tobacco sales, however, so there is still uncertainty as to whether a court would uphold this type of ban if challenged. Local tobacco sales regulations have been challenged on grounds beyond the lack of state or federal preemption.

Given that no other City in the United States has adopted a comprehensive ban on all tobacco products, the City is likely to face legal challenges. The City should be willing to appropriately address these challenges, which could include substantial litigation expenses with the tobacco industry. There may be organizations that could potentially provide legal assistance to the City for addressing legal challenges, however, until the City finalizes a draft ordinance it may be premature to request support.

### Tobacco Product Definition

The Beverly Hills Municipal Code ("BHMC") currently defines a tobacco product as including:

- a) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco;
- b) Any electronic cigarette; and
- c) **Any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.**

The Municipal Code definition of a tobacco product does not include a drug, device, or combination product authorized for sale by the U.S. Food & Drug Administration as a tobacco use cessation product such as nicotine patches, gum or lozenges.

If the City moves forward with a ban on the sale of tobacco products, the inclusion of Subsection C, above, may have some unintended consequences. For example, lighters, ashtrays and cigar papers are all reasonably expected to be used with a tobacco product. However, because these products can come in many various forms (i.e. a cigarette lighter versus a generic lighter), this clause might present several unintended code enforcement complications where it is unclear whether an item being sold constitutes a tobacco product.

As such, Staff recommends replacing Subsection C of the City's definition of tobacco product with "Tobacco and Electronic Cigarette Paraphernalia". The Municipal Code already defines this term, as shown below.

"Tobacco and Electronic Cigarette Paraphernalia Includes cigarette papers or wrappers, pipes, electronic cigarettes and their component parts, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco." (BHMC 4-2-2102)

### Tobacco Retailers in Beverly Hills

There are currently 28 establishments with active City-issued Tobacco and Electronic Cigarette Retailer Permits. Three retailers appear to be cigar lounges. Two are grocery stores, six are gas stations, eight are associated with hotels, and nine consist of convenience stores or pharmacies. The three cigar lounges are that sell primarily tobacco products or allow smoking include the Buena Vista Cigar Club, the Grand Havana Room, and Nazareth's Fine Cigars.

19 of the City's existing tobacco retailers have held permits since 2010, when the City adopted such requirements. One has held a permit one since 2011, two since 2012, four since 2015, one since 2017, and one since 2018.

### **Composition of Existing Retailers**

Category	Number of Retailers
Cigar lounges	3
Grocery stores	2
Gas stations	6*
Associated with hotels (i.e. gift shops)	8
Convenience stores or pharmacies	9
<b>Total</b>	<b>28</b>

\*One gas station has two active permits.

### Summary of Public Outreach and Meetings

Staff has notified retailers multiple times by mail, email, and phone call of upcoming meetings and discussions and has been in contact with several business owners who have participated in public discussions. The City's website has been continually updated with the latest information and multiple notices were disseminated notifying retailers and interested parties of Commission recommendations and schedule updates. Additionally, the following public meetings have taken place:

- February 5, 2019 – City Council Study Session;
- February 25, 2019 – Health and Safety Commission Regular Meeting;
- March 25, 2019 – Health and Safety Commission Regular Meeting;
- April 9, 2019 – City Council Health and Safety Commission Liaisons Meeting;
- April 22, 2019 – Health and Safety Commission Regular Meeting; and
- April 29, 2019 – Health and Safety Commission Special Meeting.

Staff provided multiple updates to the Chamber of Commerce and Conference and Visitors Bureau at various meetings, including speaking at multiple Government Affairs Committee and other Chamber meetings.

On February 25, Staff introduced a framework for policy discussions and provided an introduction of the topic to the Commission. This included a planned series of four Commission meetings ending on May 20 and a presentation of Commission recommendations to City Council at the first Study Session in June. Five individuals or organizations expressed support for a potential ban. Four individuals or organizations expressed opposition to a potential ban. Two individuals or organizations made a public comment without indicating a position.

Following the February 25 meeting, Mayor Mirisch requested Staff present Commission recommendations to City Council at the first Study Session in May. Staff revised the timeline and noticed stakeholders. On March 25, the Commission voted on key policy provisions. More than 140 members of the public attended the Commission meeting and the Commission heard public comment from 57 speakers.

Additional Commission meetings included a discussion specific to mitigating the impact to businesses on April 22 and April 29 and a discussion specific to hotels on April 29.

As of the time of submitting this report, the City has received 170 letters from the public on this topic. 11 letters have expressed general support for tobacco sales ban in concept and 11 letters have expressed general opposition to a ban. 148 of these letters have advocated for an exemption (to any future ban) for all cigar lounges in the city. There are three cigar lounges Staff has identified from a list of active permitted retailers: Grand Havana Room, Buena Vista Cigar Club and Nazareth's Fine Cigars. While there were several individuals who submitted letters or spoke in support of Buena Vista Cigar Club or cigar lounges in general, the vast majority of letters and speakers specifically referenced Grand Havana Room.

#### Health and Safety Commission Key Policy Recommendations

The Commission has voted to recommend several key provisions for a draft ordinance to prohibit the sale of all tobacco products in Beverly Hills. After significant public input and a comprehensive discussion, the Commission approved the following recommendations for City Council's consideration.

- An exemption/carve out for all existing cigar lounges, as of March 25, 2019;
- Effective January 1, 2020:
  - Hotels may only sell to guests of the same hotel, provided that sales only take place through a concierge service or room service and are not on display to the public;
  - Pharmacies shall not sell tobacco products.
- Effective January 1, 2021:
  - Gas stations, convenience stores, liquor stores and newsstands shall not sell tobacco products.
- Effective January 1, 2022:
  - Hotels may no longer sell tobacco products at all (including to hotel guests).
- One year after the effective date of any City Council adopted ordinance:
  - Grocery stores and any other permitted retailer not otherwise enumerated in a category above shall not sell tobacco products; and
- An immediate moratorium on the issuance of new permits.

An "exemption/carve out" means that any business categorized as an existing cigar lounge or an existing or future hotel would be allowed to sell tobacco products.

Businesses subject to an exemption/carve out would be permitted to sell tobacco products in Beverly Hills in perpetuity, until such time in the future, if ever, the law were to be changed.

A majority of the public comment was in support of an exemption/carve out for existing cigar lounges, and the Commission supported an exemption/carve out. Through public dialogue, information was presented that indicated smoking might not be permitted under California state law if food or alcohol is served at the premises of a private smoker's lounge. Staff is currently researching this matter and will follow up as appropriate.

On March 25, the Commission initially supported (by 3-2 vote) a permanent exemption/carve out for hotels from the ban, provided that hotels only sold to guests of the same hotel starting January 1, 2020. On April 22, at the request of Chair Ross, the Commission annulled the two recommendations regarding hotels and set a Special Meeting to discuss the matter again.

At the April 29 Special Meeting, the Commission modified the original recommendations such that during the period starting January 1, 2020 and ending December 31, 2021, hotels can only sell tobacco products to guests of the same hotel through a concierge service or room service. Additionally, tobacco products could not be on display to the public. Effective January 1, 2022 hotels would no longer be permitted to sell tobacco products.

#### City Council Health and Safety Commission Liaison Discussion

On April 9, the City Council Liaisons, Mayor Mirisch and Councilmember Gold, discussed the Commission's recommendations. Chair Ross noted the numerous speakers at public meetings, mentioned the Commission motions that passed and highlighted the key policy recommendations, including a moratorium on the issuance of tobacco retail permits. Chair Ross also stated that he would request the Commission annul its previous recommendations regarding hotels and to discuss the issue again at a Special Meeting on April 29. Due to timing constraints between the April 29 Special Meeting and the May 7 Study Session, the Commission's final recommendations for hotel businesses were not presented to the Liaisons.

At the April 9 meeting, the City Council Liaisons indicated support that if the City were to allow hotels to continue selling tobacco products, that they not be on display to the public and made available to hotel guests only. The Liaisons also requested that the ordinance include a mandated City Council review three years after its adoption so that the City could conduct an economic study and evaluate the business impacts. The draft ordinance incorporates a three-year review. A corresponding provision has been included in the draft ordinance.

#### **ADDITIONAL POLICY ELEMENTS**

Additional policy elements included in the draft ordinance are discussed below.

##### Hardship Exemption

A hardship exemption provision is necessary to mitigate any challenges to a ban and offer businesses an opportunity to demonstrate the extent to which they are affected by an impending ban. At least 90 days prior to the end of the phase-in period, the permitted tobacco retailer/applicant could submit a completed application to the City requesting an

extension of the permit. In determining whether to grant the hardship exemption, the hearing officer would consider, among other factors, the following information:

- (1) The term of the requested extension;
- (2) The percentage of the retail sales over the last three years that have been derived from tobacco products;
- (3) The amount of investment in the business;
- (4) The present actual and depreciated value of any business improvements dedicated to the retail sale of tobacco products;
- (5) The applicable Internal Revenue Service depreciation schedule or functional non-confidential equivalent;
- (6) The remaining useful life of the business improvements that are dedicated to the sale of tobacco products;
- (7) The remaining lease term, if any;
- (8) The ability of the tobacco and electronic cigarette retailer to sell other products;
- (9) The opportunity for relocation of the business and the cost of relocation; and
- (10) A business plan demonstrating how long the business will need to sell tobacco products and tobacco and electronic cigarette paraphernalia to recoup any investment backed expectations, and a plan for phasing out the sale of those products.

The hearing officer would determine whether to approve or deny the request. If granting the request, the hearing officer would also determine the length of time of the hardship exemption (i.e. how long the business would be permitted to continue selling tobacco products). The hearing officer's decision could be appealed to City Council by the applicant. A permit holder would only be permitted to apply for a hardship exemption one time.

#### Permits Non-Transferable

BHMC 4-2-2107 already provides: "a tobacco and electronic cigarette retailer permit is nontransferable and is valid only for the person(s) and location specified in the permit application. If a permittee changes business location, that permittee, prior to the permits expiration, must obtain a new permit prior to acting as a tobacco and electronic cigarette retailer at the new location. If a business permitted to conduct tobacco and electronic cigarette retailing is sold, the new owner must obtain a permit for that location before acting as a tobacco and electronic cigarette retailer."

Because permits are non-transferable and the City would no longer accept new permit applications, staff is recommending that the ordinance also allow for a hardship exemption from this non-transfer provision. As such, the permitted tobacco retailer would be required to demonstrate that the imposition of the non-transferability clause, above, would constitute an undue hardship on their business. For example, the death of a family-member whose name was originally listed on the permit application might constitute an undue hardship. Or, a landlord with knowledge that a permitted tobacco retailer cannot transfer permits to new locations, might attempt to increase rent substantially at a permitted location above fair market value, recognizing that a permitted tobacco retailer would have no options to maintain a permit and seek alternate business locations.

### Enforcement

For existing permitted retailers, BHMC 4-2-2115 already sets forth the enforcement provisions of the existing City's tobacco and electronic cigarette retailer permitting regulations. The proposed ordinance would be subject to these same enforcement provisions. Additionally, the Municipal Code includes a provision for compliance monitoring that allows a "youth decoy" to participate in compliance checks supervised by a peace officer or code enforcement official of the City. On an annual basis, the Police Department conducts sting operations with a youth decoy to monitor compliance for checking photo identification as well as other permit requirements.

The City would continue enforcing existing permits in this manner with already established enforcement mechanisms. This includes escalating fines and civil penalties. A first violation is \$250. A second violation within a five-year period is \$750 and suspends the retailer permit for 90 days. A third violation within a five-year period is \$1,000 and revokes the permit.

If a non-permitted retailer were to sell tobacco products, enforcement would default to the general provisions of the Municipal Code whereby at the discretion of the City Attorney or City Prosecutor, violations could be prosecuted as infractions or misdemeanors. In addition, the City could impose administrative penalties pursuant to BHMC 1-3-3. The City could also seek to declare the property a public nuisance or bring a civil action against the business.

Staff presented the above enforcement information to the Health and Safety Commission. The Commission did briefly discuss the possibility of revoking a permit permanently in the hypothetical context of a hotel selling a tobacco product to a non-guest. The Commission also briefly discussed increasing the number of Police Department sting operations per year. The Commission did not discuss these items in detail due to time constraints. Staff will review conducting additional sting operations and compliance checks as the ban is implemented.

### FISCAL IMPACT

Should City Council choose to adopt a ban on the sales of all tobacco products, the most direct fiscal impact to the City would be the elimination of revenue from issuing the Tobacco and Electronic Cigarette Retailer permits. The 2018/19 fee for these permits is \$236, paid on an annual basis by each retailer. Since there are currently 28 permit holders in the City, Staff estimates the loss of permit revenue to be approximately \$6,608, using FY 2018/19 fee amounts. This is a cost recovery fee, so Staff time involved in administration and enforcement of the permits could be reallocated to other activities.

Community stakeholders have stated that a tobacco sales ban would negatively affect tourism and commerce in Beverly Hills. A joint letter from the Chamber of Commerce, the Conference and Visitors Bureau and the Rodeo Drive Committee, states that approximately 80% of guests/tourists were from cities outside of the United States and that smoking continues to be very popular in many of the international feeder markets that come to Beverly Hills. The letter further states their concern that a ban on tobacco sales will deter such visitors, including prominent dignitaries, from staying in Beverly Hills when they can just as easily go to hotels nearby outside of Beverly Hills where they will be able to get the experience they desire. To Staff's knowledge, there is no reliable data available to accurately measure the extent to which tourism in Beverly Hills could be affected.

Business Impact Mitigation

Several tobacco retailers, including gas stations, convenience stores, cigar lounges and have participated in public meetings and provided various figures as to the extent to which a ban on tobacco sales could impact their business or affect their revenues.

The Commission has discussed various options to assist these small businesses in mitigating impact of revenue lost from tobacco sales. On April 29, a representative from the Small Business Development Center ("SBDC") at El Camino College provided a presentation of the services that are offered to local businesses. SBDC offers one-on-one advising with small business experts to help them avoid many of the common problems faced by entrepreneurs. Other services include assistance with locating and applying for small business loans, including financing, and educational workshops and events.

The representative also provided information about the SCORE program. SCORE is the nation's largest volunteer, expert business mentoring program. A resource partner for the Small Business Administration (SBA), their business mentorship program gives entrepreneurs a unique opportunity to receive personal counseling by someone with over 20 years of experience in their desired industry. Mentors retain accessibility with clients via email and by scheduling in person appointments to meet with and mentor existing and future business owners. They also have available a large variety of hosted webinars, interactive online training modules, and workshop.

The City, through its partnership with the Chamber of Commerce, already pays a membership fee so that one-on-one advising services may be provided locally in Beverly Hills. Consultants may meet business owners, as many times as necessary, at their place of business or other available locations such as the Chamber of Commerce. Provided that a retailer is showing progress in meeting goals defined by SBDC and the retailer, there is no limit to the number of consultations a business may receive. Staff will connect business owners with these resources.

Pamela Mottice-Muller 

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Approved By

# **Attachment 4**

**From:** Timothy Lee Davis  
**Sent:** Wednesday, May 8, 2019 12:11 PM  
**To:** WebCBH MAYORANDCITYCOUNCIL MAYORANDCITYCOUNCIL@beverlyhills.org  
**Subject:** Banning Cigarette Sales! Good stuff!

Dear Mayor Mirisch and Councilmembers:

I'm a cranky, old man, who has fits over the stranglehold that corporations, both for-profit and non-profit, seem to have on local, State and Federal governments here in the U.S. What you're doing in the name of Public Health is standing up against corporate powers who have long dismissed their own customers' health for profits. I see this issue in broad terms. Public Service is what you got into when you ran for election and protecting Public Health is Public Service, without regard to the cries like, "...but you'll hurt JOBS..." (crummy jobs, by the way; no one ever says that, and without regard to the fact that you won't get fundraising support from corporations trying to buy access and your votes, and more importantly, your souls. Taking a stand like you're taking is one step of leadership that other elected leaders should emulate across a wide variety of issues.

There was a ballot initiative that failed in California which would have eliminated sales of single filter cigarettes. I pick up dozens of dangerous (to terrestrial and ocean wildlife) cigarette butts around my house every week. When I see people throw them to the ground, stomp on them and start to walk away, they get a lecture from me starting with: "Who has to pick that up, ME?" While they always apologize and pick up the one butt I caught them mindlessly discarding for animals to eat and die from, I know they think I'm unreasonable AND that it's acceptable behavior for them to do it AND they curse me under their breath. I have a superfluous neighbor who was really polite to my face, who still throws butts down into the street because he can't have smoke in his Lyft/Uber car. I've given him a piece of my mind since then and he doesn't park next to my house anymore.

I'd urge you to also consider banning single filter cigarettes. Let people buy a Vape kit and not throw their waste into our garbage. Butts wind up in our compost. People are going to do bad things to themselves, mindlessly, and addicted. But a day will come when leaders like you will make this stuff unavailable and people won't be able to get tobacco products or nicotine and everyone will feel better and we'll all save money for not having to pay for each others' tobacco caused illnesses. Expensive stuff. A case of lung cancer treated aggressively, gives a patient small odds to live a short time with a very low quality of life at a price tag over \$1 Million today. I'm guessing at that figure; but I read long ago that it was \$600,000 and with the cost of health care rising faster than other costs, I'm probably guessing correctly.

I smoked for 14 years and quit in 1986 on my third attempt. It can be done.

You're doing the right thing. On this issue, you are providing the right leadership and are truly serving the public. Good job.

Thank you!

TIMOTHY LEE DAVIS

Attorney at Law

Practice Areas: Criminal Defense including DUI, VA & Military, Personal Injury, Medical & Legal (and other professional) Malpractice, Claims Against Local, State or Federal Governments, Business Counsel, Lawsuits for Consumers against Debt Collectors, Sexual Harassment, **WILLS, TRUSTS & ESTATES**, Asset Protection.

\*\*\*Former Navy JAGC officer & Special Assistant U.S. Attorney. \*\*\* Admitted: California State & Federal Courts, U.S. Court of Appeals for the Armed Forces, and the United States Supreme Court.

**From:** Joanne Brasch [REDACTED]  
**Sent:** Friday, May 10, 2019 11:36 AM  
**To:** WebCBH MAYORANDCITYCOUNCIL <[MAYORANDCITYCOUNCIL@beverlyhills.org](mailto:MAYORANDCITYCOUNCIL@beverlyhills.org)>  
**Cc:** Heidi Sanborn [REDACTED]  
**Subject:** Tobacco waste reduction- SB 424

Good afternoon Mayor Aluzri and City Council Members for Beverly Hills,

We learned about your vote this week to move forward with a tobacco sales ban in your city and we commend you being leaders in addressing tobacco health and environmental issues. We are the [National Stewardship Action Council](#), a nonprofit advocating for a circular economy and sponsor of [SB 424](#) on tobacco waste by Senator Hannah-Beth Jackson. The bill directly addresses tobacco product waste and the associated human and environmental health risks by banning the sales of any single-use tobacco product (including cigarette filters) and requiring a take-back program for the multi-use components (including electronic smoking devices).

We want to bring the bill (SB 424) to your attention and let you know the momentum you have started is very helpful at the state level. There are other jurisdictions considering introducing a tobacco product waste ordinance to continue to momentum at the State level to address this harmful product at the source.

We ask you to sign on to our letter of support (attached) or submit your own as the bill is in the Committee of Appropriations next week, then the Senate floor shortly thereafter.

Thanks again for your leadership and let us know how we can support you moving forward.

Thanks,  
Joanne

**Joanne Brasch | Special Project Manager**





May 9, 2019

Senator Portantino  
 Chair of the Senate Standing Committee on Appropriations  
 State Capitol, Room 4203  
 Sacramento, California 95814

**RE: Support SB 424 (Jackson) – Tobacco Products: single-use and multi-use as amended**

Dear Senator Portantino:

On behalf of the California Product Stewardship Council (CPSC) and its affiliate, the National Stewardship Action Council (NSAC), the hundreds of local government and private sector partners that the two organizations represent, and the undersigned organizations, we thank you for authoring and urge the support of SB 424 addressing tobacco product waste, a known human and environmental health hazard<sup>1-3</sup>.

CPSC’s mission is to shift California’s product waste management system from one focused on government-funded and ratepayer financing to one that relies on producer responsibility in order to reduce public costs and drive improvements in product design. CPSC was so successful they created NSAC, a national organization in 2015, to Advocate for a Circular Economy with the vision of achieving a Circular Economy in the United States.

Tobacco waste is extremely costly to local government<sup>4</sup> and those costs will dramatically increase as State water capture requirements are phased-in. We strongly support SB 424 to

reduce tobacco waste at the source and prevent pollution. Pollution prevention is far less expensive than end-of-life capture devices and clean-up, which never capture the chemicals and all the pollution from tobacco waste.

We, the undersigned, strongly support SB 424 and ask for your aye vote.

Respectfully,



Doug Kobold, Executive Director  
California Product Stewardship Council



Heidi Sanborn, Executive Director  
National Stewardship Action Council

**References:**

1. World Health Organization. (2017). [Tobacco and its environmental impact: an overview](#).
2. Novotny, T. E., & Slaughter, E. (2014). Tobacco Product Waste: An Environmental Approach to Reduce Tobacco Consumption. *Current environmental health reports*, 1(3), 208–216. doi:10.1007/s40572-014-0016-x
3. Rossheim, M. E., Livingston, M. D., Soule, E. K., Zeraye, H. A., & Thombs, D. L. (2018). Electronic cigarette explosion and burn injuries, US Emergency Departments 2015–2017. *Tobacco control*.
4. Schneider, J. E., Decker, C. S., Doyle, A., Meinders, K., & Kiss, N. (2009). Estimates of the costs of tobacco litter in San Francisco and Calculations of maximum permissible per-pack fees. Health Economics Consulting Group LLC.

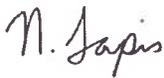
**Organizational Sign-on:**



Nate Miley, County Supervisor District 4  
Alameda County



Lauren Cullum, Policy Advocate  
Sierra Club California



Nick Lapis, Director of Advocacy  
Californians Against Waste



Emily Parker, Coastal and Marine Scientist  
Heal the Bay



Stiv Wilson, Campaigns Director  
The Story of Stuff Project



Angela T. Howe, Esq., Legal Director  
Surfrider Foundation



Ruth Abbe, President  
Zero Waste USA



Katherine O'Dea, Executive Director  
Save Our Shores



Dianna Cohen, Chief Executive Officer  
Plastic Pollution Coalition



Wendy Sommer, Executive Director  
StopWaste



Anna Cummins, Co-Founder and Executive  
Director  
The 5 Gyres Institute



Leslie Mintz Tamminen, Director  
Seventh Generation Advisors



Mati Waiya, Executive Director  
Wishtoyo Chumash Foundation



Christopher Chin, Executive Director  
The Center for Oceanic Awareness,  
Research, and Education (COARE)



Miriam Gordon, Program Director  
UPSTREAM



Beverly Hanstrom, CEO/Owner  
Colorado Medical Waste, Inc



David Stitzhal, President  
Full Circle Environmental



Shell Cleave, Founder  
Sea Hugger



Justin Malan, Executive Director  
California Association Environmental  
Health Administrators



Abbie Beane, Managing Director  
The Offset Project



Steve Devine, Program Manager  
County of Marin, Public Works



Thomas E. Novotny, MD MPH, CEO  
Cigarette Butt Pollution Project



Andria Ventura, Toxics Program Manager  
Clean Water Action/Clean Water Fund



Susan Klassen, Interim Executive Director  
Zero Waste Sonoma



Eric Zetz, Chair  
SWANA California Chapter's Legislative Task Force

**From:** richard kales

**Sent:** Tuesday, May 7, 2019 5:13 PM

**To:** [REDACTED]

**CC:** WebCBH MAYORANDCITYCOUNCIL MAYORANDCITYCOUNCIL@beverlyhills.org

**Subject:** "Cigars are healthy" Beverly Hills. "California is FUBAR" Me.

Beverly Hills is considering outlawing the sale of tobacco products, a move that would make the glamorous California city the first in the nation to enact such a ban. A draft ordinance scheduled to go before the Beverly Hills City Council on Tuesday evening **would exempt only three existing high-end cigar lounges**

**From:** Jack Levy

**Sent:** Tuesday, May 7, 2019 6:27 PM

**To:** WebCBH MAYORANDCITYCOUNCIL MAYORANDCITYCOUNCIL@beverlyhills.org

**Subject:** Tobacco Sale ban

The only real effect of a ban on tobacco sales will be **huge** legal costs to defend the tobacco company litigation and suits. There will be no reduction of smoking whatever. A ban on tobacco sales is a gross waste of taxpayer money and very foolish. with NO positive benefit to our city. Smokers will buy their tobacco elsewhere. Kill this terrible idea.

I am a long term resident of [REDACTED] B H and taxpayer.

**Jack Levy**

[REDACTED]

**From:** John Pouldar [REDACTED]  
**Sent:** Tuesday, May 7, 2019 9:36 PM  
**To:** Lourdes Sy-Rodriguez <lsyrodriquez@beverlyhills.org>  
**Subject:** If you can submit this Into public record that would be great. 2 min is not enough to speak.

Hello city council of Beverly Hills,

My name is John Pouldar, and I am one of the Owners and operators of the 76 gas station located at 9460 w Olympic Blvd. The gas station has been serving the community for well over 60 years. The flavor tobacco ban went into affect Dec 21 2018 and since then we lost 35% in overall sales. It's unfortunate, but I had to decrease my payroll to compensate for the loss the city bestowed on us with the flavor ban. Most people wouldn't believe it but Tobacco is roughly about 25% of our business. If the city decides to take tobacco away we will have no choice but to raise prices on services that everyone uses, such as gas, food, and drinks. Aren't gas prices high enough?

As people we are aware tobacco products are harmful. But controlling the sale of it within the city limits won't stop people from smoking. You are pushing business out of the city to the neighboring city's close by. You're telling any of our customers, you can purchase your gas and store needs but buy your tobacco products outside of the city since we are now anti tobacco. Wait, wouldn't that person just purchase whatever they need at neighboring businesses, outside of the city? Thus decreasing our sales and even the amount of sales tax the city would receive from the sales.

The Health and Safety Commission firstly exempted cigar lounges and hotels because of their economic status. Now the Heath and safety commission changed their votes making cigar lounges the only type of business exempted from the tobacco ban. So now the Health and Safety Commission is discriminative towards other businesses mainly Bc our clients aren't powerful. But isn't cigar lounges, just another restaurant? They serve food and drinks but I thought it's illegal for any restaurant in Beverly Hills to have smoking and food served in the same atmosphere. The only difference is that it's a private members only restaurant. There are many bars/restaurants around that are private members only as well that are not cigar lounges for example, soho house. Yet members can still go there, relax, enjoy themselves and discuss business if they choose to.

I understand what the City wants to accomplish, they want to be a clean smoke free city. They would like to isolate themselves from the rest of the cities. In that case we should build a wall and surround the city That way i think the city would be able to control it more. But no matter what the city decides on doing, people under the age of 21 can still obtain tobacco. Terrible, but they use fake IDs or someone else's IDs. I can speak on behalf of my gas station and the others and say that we do not sell to underage. I've caught many kids trying and in the process I've kept their fake IDs and shred them or handed them to the police. But is that the only way they can get them. Unfortunately no.

They purchase online, their parents buy it and/or their siblings. Shouldn't they be punished Instead? What does the city do to underage kids caught smoking? Why do businesses have to suffer because of decisions that underage people make. What's next? Soda? Energy drinks? Alcohol?

Thank you

John Pouldar

**From:** Martin Karpa

**Sent:** Wednesday, May 8, 2019 1:41 AM

**To:** WebCBH MAYORANDCITYCOUNCIL MAYORANDCITYCOUNCIL@beverlyhills.org

**Subject:** RE: banning tobacco products

Just exactly how is the idiocy of banning tobacco products legitimized when the sale and use of the mind-altering marijuana drug is permissible?? It's about as stupid as banning 32 oz. soft drinks at McDonalds when (1)- an individual can purchase as many 16 oz. soft drinks as desired, and (2)- 40 oz. bottles of beer are readily available at the local corner gas station. Beverly Hills/CA need to rethink the meaning of Government overreach. Something else to consider is how CA looks to the rest of the country....the laughing stock.

**From:** John Pouldar  
**Sent:** Wednesday, May 8, 2019 9:05 AM  
**To:** Gabrielle Ressa; Logan Phillippo  
**Subject:**

Hello,

Please give this to the mayor and the city council as well as the health and safety.

Please let them know, the next time I decide to eat at one of the lovely restaurants in Beverly Hills, I will order my food and my alcohol and light up either a cigar or a cigarette. I mean, if cigar lounges are doing it why can't anyone else? If food is served it's a restaurant. If alcohol or any open glass is served it's a bar/restaurant. So next time I go to masters, I will light a cigar and say that the city of Beverly Hills allows this and since I live and work in the city, I mean I should be allowed to do this as well.

If you want to be fair, you do this. You remove food and drinks from cigar lounges. Then all they have is cigars, that would be the fair decision. But know the new mayor is a dictator who goes against his words and lies about what would occur.

Thank you

Reach me anytime, I'm not hiding. I already contacted the department of health to let them know what "cigar lounges" are doing within the city. And the fact that the city knows about it, well let's see what la county does about it.

Have a nice day.

John Pouldar

Sent from my iPhone