



# CITY COUNCIL STAFF REPORT



**September 27, 2022**

## **ITEM TITLE**

Tobacco Sales: Consider Prohibiting Flavored Tobacco Sales within the City of Chula Vista

**Report Number:** 22-0189

**Location:** No specific geographic location

**Department:** Development Services

**Environmental Notice:** The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act ("CEQA") State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

## **Recommended Action**

Adopt an ordinance amending Chula Vista Municipal Code chapter 5.56, Tobacco Retailer, to prohibit the sale of flavored tobacco products within the City of Chula Vista. **(Second Reading and Adoption)**

## **SUMMARY**

In January 2016, the City of Chula Vista adopted the Healthy Chula Vista Action Plan inclusive of strategies to prevent chronic diseases. In February 2020, an ordinance amending Chula Vista Municipal Code ("CVMC") Chapter 5.56 (Tobacco Retailer) to incorporate additional regulations on tobacco products that address youth access and emerging public health risks was presented for Council consideration. At that time City Council directed staff to collect additional information about the types of stores and youth access to tobacco products within the City of Chula Vista. The proposed amendments to Chapter 5.56 presented tonight incorporate input from the Healthy Chula Vista Advisory Commission after review of the additional data collected since February 2020; and if adopted, would prohibit the sale by any person of all flavored tobacco products (except for shisha and premium cigars) beginning January 1, 2023 within the City of Chula Vista.

## **ENVIRONMENTAL REVIEW**

The Director of Development Services has reviewed the proposed activity for compliance with CEQA. The activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because the proposal will not result in a direct or indirect physical change in the environmental. Therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA.

## **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

The Healthy Chula Vista Advisory Commission provided an advisory recommendation that the City Council adopt the ordinance at their February 3, 2020 and subsequently at their May 12, 2022. At the meeting on May 12, 2022, the commission recommended removing the language in the original draft ordinance specific

to electronic smoking devices “lacking a required food and drug administration marketing order” and mirror the recently adopted provisions within an ordinance recently passed by City of San Diego.

## **DISCUSSION**

On December 19, 2017, City Council approved amendments to CVMC Chapter 8.22 (Regulation of Smoking in Public Places and Places of Employment) to add e-cigarettes, including devices used for vaping, to the definition of “smoking”; prohibit smoking on any portion of City owned property, inclusive of all parks, libraries, City buildings and associated parking lots; and restrict smoking to designated areas in Affordable Housing Projects to align with U.S. Department of Housing and Urban Development (“HUD”) guidelines.

On March 16, 2018, the City Council also adopted CVMC Chapter 5.56 (Tobacco Retailer), establishing a tobacco retailers license program to regulate tobacco businesses and prevent the selling of tobacco and tobacco paraphernalia to individuals under the age of 21.

On February 3, 2020, the Healthy Chula Vista Advisory Commission considered further amendments to CVMC Chapter 5.56 to prohibit the sale of flavored tobacco products and e-cigarette devices lacking marketing orders from the U.S. Food and Drug Administration (“FDA”), who regulate tobacco products throughout the country. Utilizing the Police Department database of potential tobacco retailers in Chula Vista, over 150 stores were notified of the meeting. This included vape only and hookah only, smoke shops selling multiple tobacco products, as well as larger grocery stores. At that time, speakers almost evenly split for and against the proposed amendments. Commissioners expressed that their priorities were:

- Preventing youth from nicotine addiction;
- A belief that flavors are a starter product to lifelong tobacco use;
- Limiting local youth access; and
- The importance of Chula Vista moving forward with these amendments.

The Commission unanimously made an advisory recommendation that City Council adopt the amendments.

On February 25, 2020, City Council considered the First Reading Amending CVMC Chapter 5.56 and directed staff to collect additional data to: (1) identify the types of stores selling tobacco products and proximity to sensitive receptors, such as school and parks, to determine if specific types of stores or locations should be prohibited from selling products; (2) verify where Chula Vista youth are accessing products to determine if national trends related to online sales are consistent with local data; and (3) provide information on whether banning products at a particular nicotine level would help prevent youth addiction to nicotine. Attachment 1 to the staff report provides the staff report dated February 25, 2020, which provides a detailed analysis of the public health risks associated with tobacco consumption, data around flavored products and youth access.

### **Additional Data Collected Since February 2020**

In response to Council direction in February 2020, staff conducted additional research over the past two years, as detailed below. It should be noted that due to the COVID-19 pandemic and associated school closures, staff encountered delays in data collection surrounding youth, hence the length of time to bring forward a revised proposal.

(1) Retailers and Sensitive Receptors – Exhibit 1 provides greater details on the types of stores that have tobacco retailer and business licenses and identifies that nearly 32% [thirty-nine (39) out of 122] of the stores identifying as selling tobacco were gas stations/convenience stores.

**Exhibit 1**

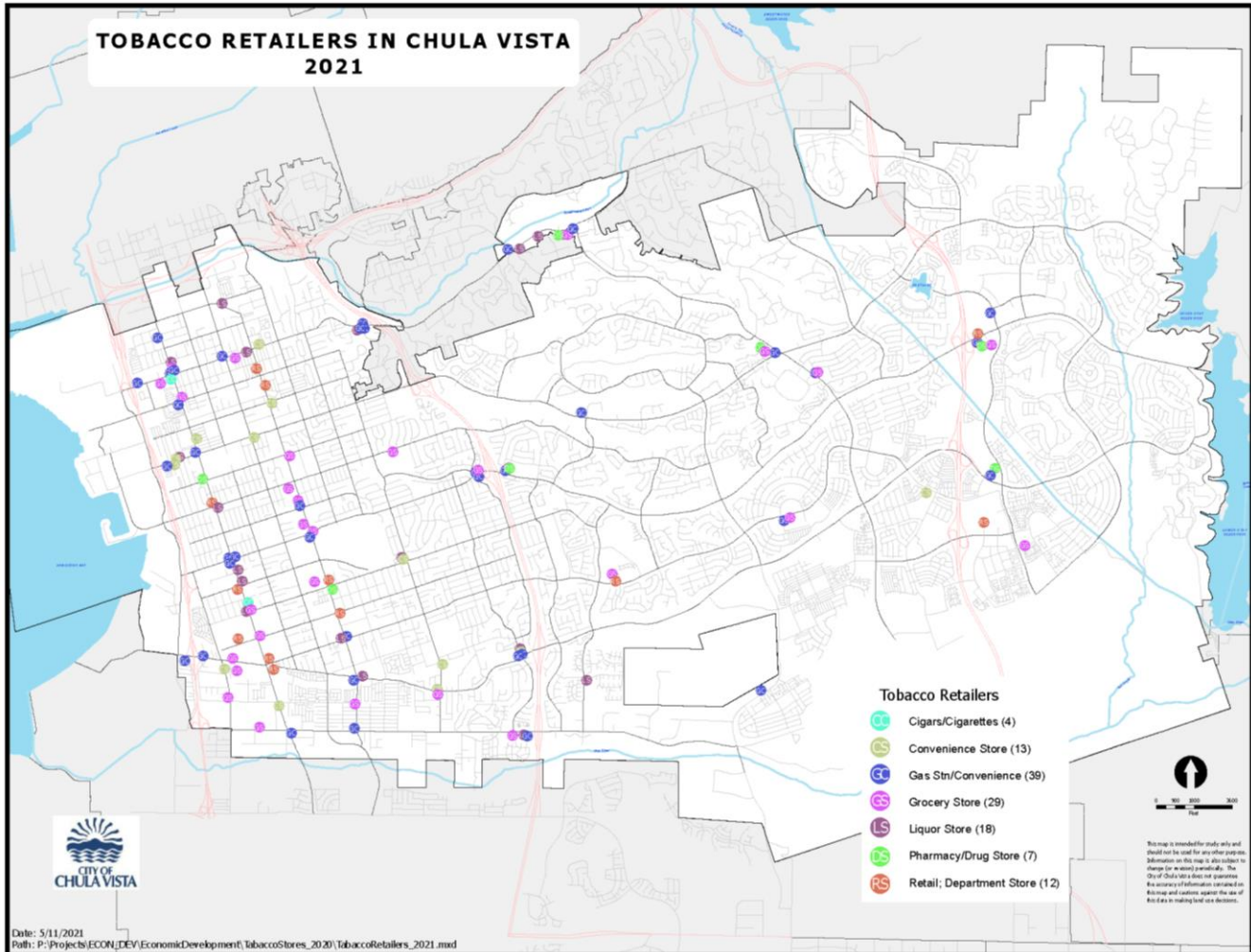
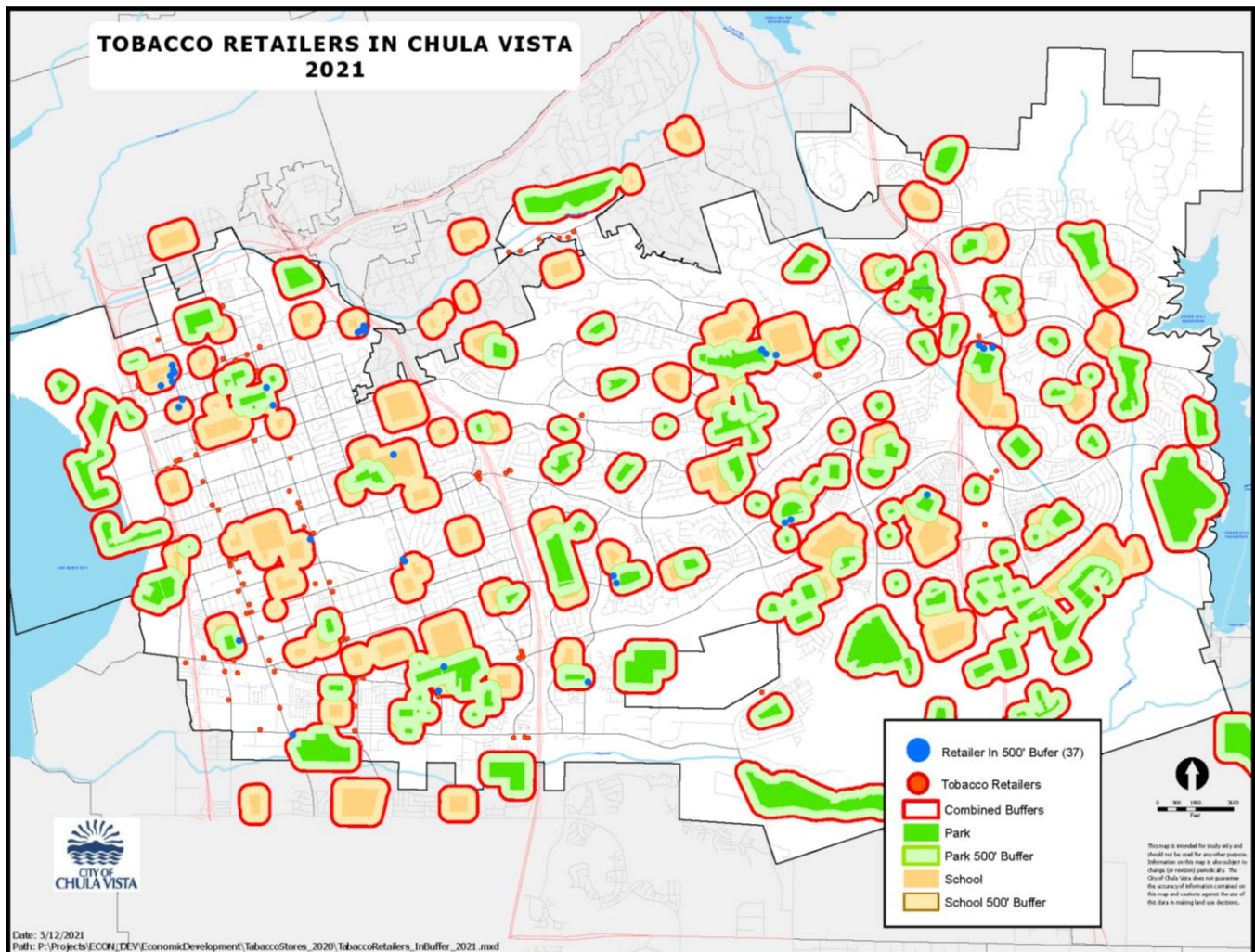




Exhibit 2 maps all retailers proximity to sensitive receptors. At the time of mapping, approximately 30% [thirty-seven (37) retailers out of 122] were located within 500 feet of a school or park where youth are likely to be located. Although Council requested additional information regarding proximity to sensitive receptors, the current policy proposed does not target restrictions based on proximity and rather proposes to prohibit sales at all locations throughout the City.

**Exhibit 2**



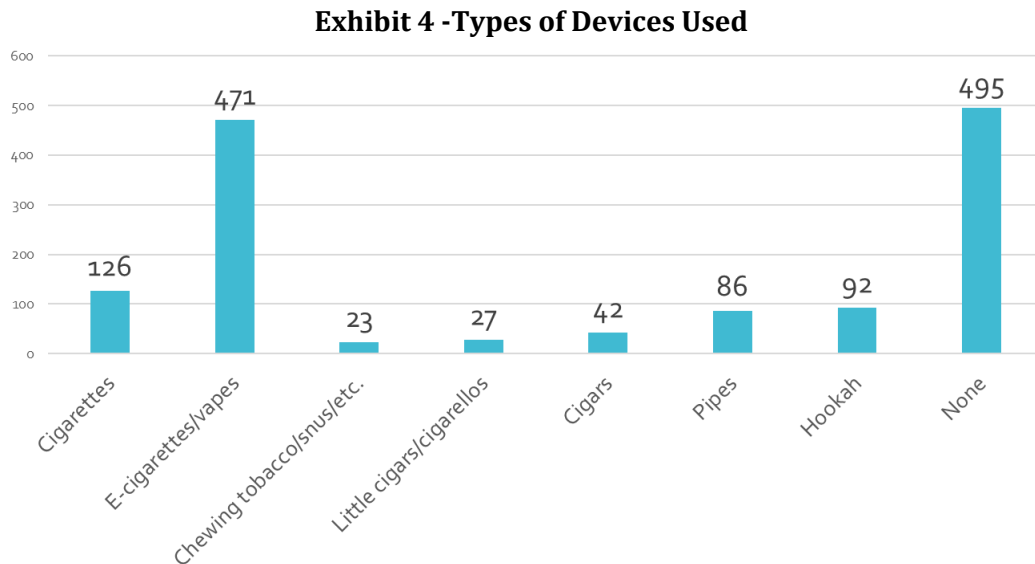
(2) Local Youth Access - During March and April 2021, in collaboration with faculty at the Sweetwater Union High School District, staff conducted a survey of students, grades 9-12, to gather local data on usage and access to vaping devices. 2,404 students responded to the survey at 14 different schools as identified in Exhibit 3. Attachment 2 to the staff report provides a full report of all data collected with this survey of students.

### Exhibit 3

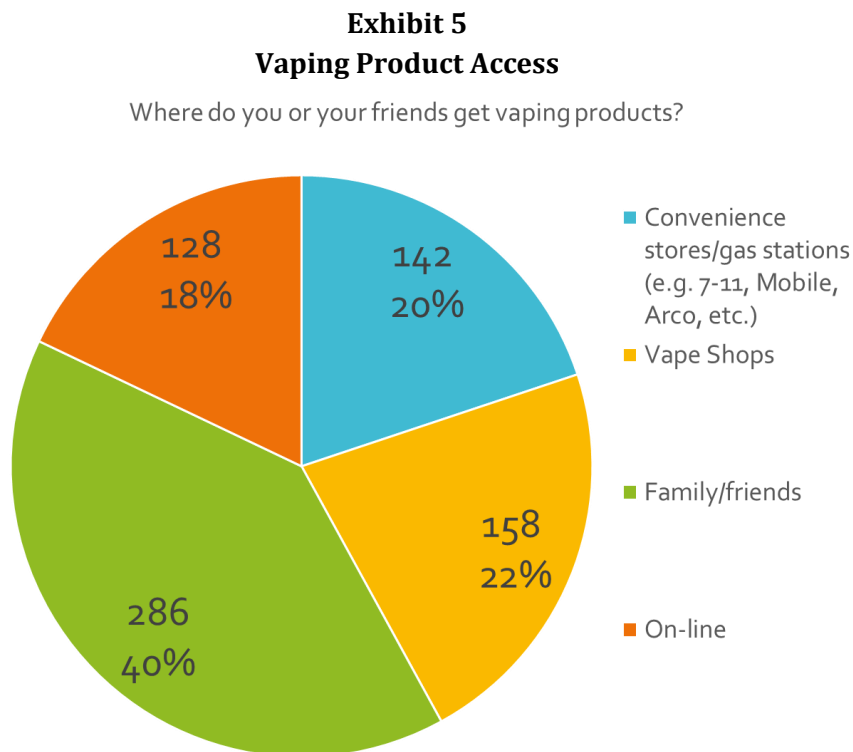
#### Sweetwater Union High School District Student Participation



As shown on Exhibit 4, nearly 35% of respondents indicated they have tried an E-cigarette/vape device (471/1,362). Of all tobacco products tried by respondents E-cigarettes/vapes accounted for 54% of the use (471/867).

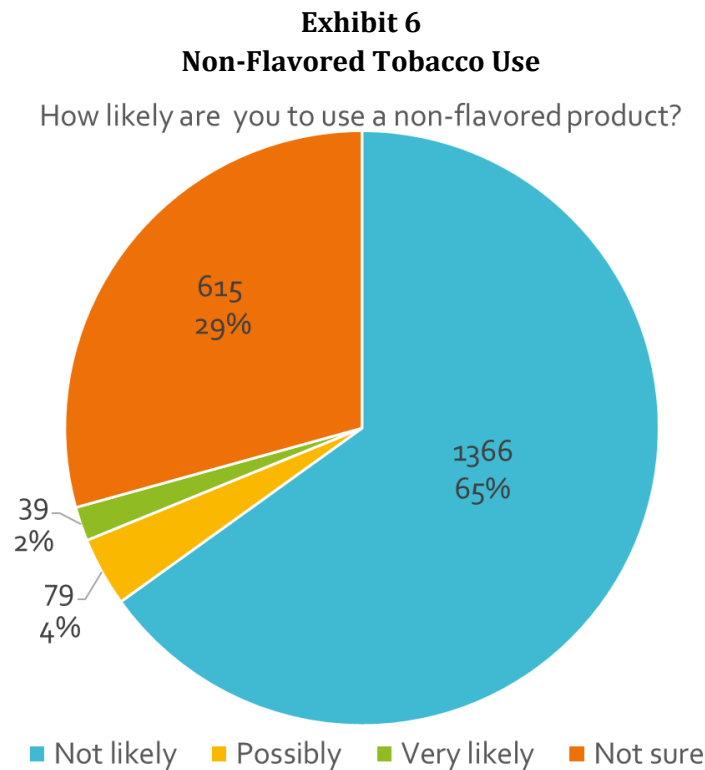


As shown on Exhibit 5, 44% (142+158/714) of respondents indicated youth are accessing vaping products at retail stores (convenience stores/gas stations and vape shops). Another 40% (286/714) indicate youth access them from friends and family, some of which likely purchase them at retail stores as well, making retail locations the most likely way a youth would access tobacco products.





As shown on Exhibit 6, 94% (615+1,366/2,099), the majority of youth respondents, indicated that they are “not sure” if they would or “not likely” to try tobacco products that are not flavored, while only 7% (39+79/2,099) indicated they are “very likely” or would “possibly” use non-flavored products.



(3) Prohibiting Nicotine Content – City Staff conducted research on “high” level nicotine products and concluded that there is not enough data to determine what level of nicotine consumption is “less” addictive. Nicotine delivery and absorption can vary based on concentration, including the delivery system and user-specific characteristics. In addition, there would be difficulty in enforcing nicotine content since evidence shows that in laboratory tests, labeling is not always reflective of nicotine content and vape stores often mix their own products. The labelling of nicotine content varies across e-cigarette products and liquids and may be difficult to interpret if units are not provided. E-cigarette liquid nicotine concentrations may be labelled incorrectly. Additionally, users may mix homemade e-cigarette liquids (i.e., ‘do-it-yourself’ liquids) resulting in unknown nicotine concentrations or inconsistent concentrations between batches.<sup>1</sup> Even if the liquids have the same concentration of nicotine and other compounds, e-cigarette device characteristics across the range of e-cigarettes available vary, which can have dramatically different abilities to aerosolize liquid and affect nicotine absorption.<sup>2</sup> Therefore, tobacco retail enforcement, conducted by the City’s Police Department, would be unable to determine actual nicotine content of products being sold.

<sup>1</sup>The nicotine content of a sample of e-cigarette liquid manufactured in the United States. <http://www.ncbi.nlm.nih.gov/pubmed/29280749>

<sup>2</sup> Have combustible cigarettes Met their match? the nicotine delivery profiles and harmful constituent exposures of second-generation and third-generation electronic cigarette users. <http://www.ncbi.nlm.nih.gov/pubmed/27729564>

### **State Legislation Since February 2020**

In August 2020, the California State Legislature passed Senate Bill 793 (SB 793), which Governor Gavin Newsom signed on August 28, 2020. This bill prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.

Three days later, on August 31, 2020, a proposed referendum was submitted to the Attorney General of California and on January 22, 2021, the referendum qualified for the ballot, putting SB 793 on hold until the November 2022 general election. Due to the uncertainty of the statewide prohibitions, many local jurisdictions have moved forward to adopt local restrictions to protect youth in their community from the dangers of tobacco and nicotine addiction.

### **Proposed Amendments to Chapter 5.56**

On May 12, 2022, the Healthy Chula Vista Advisory Commission provided a recommendation to move forward to City Council with the February 2020 proposed ordinance with minor edits to mirror recent prohibitions taken by the City of San Diego and remove language specific to electronic smoking devices "lacking a required Food and Drug Administration marketing order", and instead reference all electronic smoking devices. An ordinance amending CVMC Chapter 5.56 (Tobacco Retailer) to incorporate additional regulations on tobacco products that address youth access and emerging public health risks related to flavored tobacco products, as recommended by the Commission, is being presented for City Council consideration (the "Ordinance") in Attachment 3 to the staff report. The amendments to Chapter 5.56 include to prohibit the sale of all flavored tobacco products, inclusive of menthol, in the City of Chula Vista. The Ordinance does specifically define and exempt two forms of tobacco: shisha used in hookah and premium cigars.

### **Conclusion**

In addition to the ordinance updates that have been made in the past few years to establish a tobacco retailers license and make City facilities smoke/vape free, the Police Department has received two rounds of funding through Tobacco Grant Programs. The first round of funding was granted to assist in providing additional services aimed at the education, compliance and enforcement of tobacco-related issues within the community. To date, the Police Department has spent over 200 staff hours educating the community on the harmful effects of vaping, enforcing tobacco-related violations through undercover operations and conducting compliance checks at retail establishments. The second round of funding will support an additional School Resource Officer with the hopes of bringing much needed education directly into the schools, directly to our youth. Partnerships with the school district, retailers and ongoing education are critical to ensure our community is aware of the potential dangers of tobacco use.

The Healthy Chula Vista Advisory Commission has recommended amendments to CVMC Chapter 5.56 to place a prohibition on the sale of all flavored tobacco products within the City of Chula Vista. While these amendments have been proposed by the Commission based on best practices identified to limit youth access and use of tobacco products to address chronic health issues, as detailed in Attachment 1, jurisdictions throughout the country have taken different approaches to address this issue. If approved, the ordinance would take effect January 1, 2023.



### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code Section 87100, et seq.).

Staff is not independently aware and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in the matter.

### **CURRENT-YEAR FISCAL IMPACT**

No current year fiscal impact to the General Fund or Development Services Fund is anticipated as a result of this action. There may be additional costs associated with the enforcement of the new provision; however, these costs are anticipated to be fully offset by the revenue from the tobacco retail licensing fee program.

### **ONGOING FISCAL IMPACT**

No ongoing fiscal impact to the General Fund or Development Services Fund is anticipated as a result of this action. There may be additional costs associated with the enforcement of the new provision; however, these costs are anticipated to be fully offset by the revenue from the tobacco retail licensing fee program.

### **ATTACHMENTS**

1. City Council Staff Report dated February 25, 2020
2. 2021 Chula Vista Youth Tobacco Use Survey Results
3. Proposed Amendments to CVMC 5.56 (Tobacco Retailers)
4. Correspondence

*Staff Contact: Genevieve Hernandez, Senior Planner, Development Services Department  
Stacey Kurz, Housing Manager, Development Services Department  
Laura C. Black, AICP, Interim Director of Development Services*