



Office of the City Manager

**17b**

ACTION CALENDAR

January 26, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, Interim City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services Department

Subject: Companion Report: Tobacco Minimum Age

RECOMMENDATIONS

Take no action on the Community Health Commission's Tobacco Minimum Age recommendation at this time pending the outcome of proposed State legislation to raise the smoking age to 21 statewide.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Community Health Commission (CHC) recommends that Council amend Berkeley Municipal Code section 9.80.035 to add a subdivision H, stating: "Effective January 1, 2017, no tobacco retailer or person shall sell tobacco-related products, including flavored tobacco products, electronic nicotine delivery systems and e-liquid, to individuals under the age of 21."

The recommendation that the CHC is putting forth is in response to Council's referral from September 15, 2015. Council referred the Community Health Commission to investigate the advisability and impact of raising the minimum age for purchasing tobacco and tobacco products, including electronic cigarettes, to 21 years of age.

BACKGROUND

The City of Healdsburg had adopted a local ordinance in October 2014 to raise the minimum age for purchasing tobacco products to 21. However, under threat of legal action from the National Association of Tobacco Outlets (NATO), Healdsburg has suspended implementation of the Ordinance in order to request a legal opinion from the State Attorney General's Office. Other communities, including Los Angeles and El Cerrito, have not moved forward on proposals to raise the age to purchase tobacco products due to legal considerations.

The legal issue under consideration is whether California law preempts local law on the creation of a minimum age to purchase cigarettes and other tobacco products. Currently, California Penal Code section 308 creates a criminal or civil penalty for selling or otherwise furnishing tobacco products to any person under 18. Section 308(f) specifies that “It is the Legislature’s intent to regulate the subject matter of this section. As a result, a city, county, or city and county shall not adopt any ordinance or regulation inconsistent with this section.”

Separately, a bill to raise the smoking age to 21 statewide is pending in the Assembly (as part of a special legislative session on health care.) ABX2-8, co-authored by Assembly member (and former Healdsburg Mayor) Jim Wood, would also add language addressing the question of preemption by preserving for local agencies the ability to raise the minimum age to purchase tobacco beyond age 21.

#### ENVIRONMENTAL SUSTAINABILITY

These recommendations have no specific environmental sustainability effects.

#### RATIONALE FOR RECOMMENDATION

As indicated above, California Penal Code Section 308(f) may preempt the City from adopting the proposed ordinance. The City of Healdsburg plans to seek an opinion from the California Attorney General’s Office that will clarify whether local jurisdictions may raise the smoking age. Additionally, the aforementioned State Assembly bill that would raise the smoking age to 21 and address the issue of preemption is pending, though staff do not know whether this bill will move successfully through the state Legislature. For these reasons staff recommend that the Council take no action on CHC’s recommendation at this time.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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