



Agenda Item Summary

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Submitted By

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Reviewed By

LKS

Agenda Item Title

Second Reading and Adoption of an Ordinance Amending Chapter 8 ("Business Licensing"), Article 6 ("Comprehensive Regulation of Tobacco Products") of the Oak Park Village Code

Overview

This is a second reading of an ordinance amending Chapter 8 ("Business Licensing") Article 6 ("Comprehensive Regulation of Tobacco Products") of the Oak Park Village Code. The ordinance includes recommendations from the Board of Health from their "Report and Recommendations from the Oak Park Board of Health Commission/The Use of E-Cigarettes Among Youth" and direction from the Village Board from their July 22, 2018 Board of Trustee meeting.

Recommendation

The Board of Health presented 35 recommendations related to e-cigarettes, many recommendations included amendments to Chapter 8 ("Business Licensing") Article 6 ("Comprehensive Regulation of Tobacco Products") of the Oak Park Village Code. In addition to the Board of Health recommendations the Village Board is recommending removing the possession language located in section 8-6-7 of the ordinance.

Fiscal Impact

The ordinance amendment recommendation includes a new provision that fines issued pursuant to the ordinance shall be used to fund compliance checks of tobacco licensees.

Background

On May 7, 2018 the Village Board motioned to refer to the Board of Health for review of Chapter 8 ("Business Licensing") Article 6 ("Comprehensive Regulation of Tobacco Products") of the Oak Park Village Code as it relates to the regulation of electronic cigarettes and vaping.

The Board of Health completed their review and on January 14, 2019 the Village Board received the recommendations of the Board of Health at a regularly scheduled Village Board meeting. The recommendations document titled "Report and Recommendations from the Oak Park Board of Health Commission/The Use of E-Cigarettes Among Youth" was presented by Board of Health Chair Florence Miller and Mike Charley, Public Health Director. This report is attached and contains background information, data and recommendations. At the outcome of the presentation the Village Board voted to approve the recommendations and bring back to the Village Board necessary actions including amending the current

Village Ordinance.

Paul Stephanides, Village Attorney worked closely with the Public Health Department to draft ordinance language in response to the Village Boards direction. Significant recommended amendments to the first version of the ordinance included:

- 1) The ordinance more clearly defines “flavored tobacco product” and included flavored tobacco product throughout the ordinance and prohibits their delivery and sale to those persons under 21 years of age.
- 2) The ordinance prohibits tobacco product advertising to be displayed on any windows, doors and other areas of a licensed establishment that are in public view from the sidewalk.
- 3) No licensee shall give away, barter, exchange or otherwise deal tobacco products at any location that has a property line within 500 feet of the property line of any building or other location used primarily as a school, child care facility, or for the education or recreation of children under twenty-one years of age.
- 4) No person shall give away or distribute any coupon or other price reduction instrument for any free or nominally priced tobacco product, flavored tobacco or tobacco accessory.
- 5) Increases fines for second and subsequent offenses & all fines issued pursuant to the ordinance shall be used to fund compliance checks of licensees.

The first reading of the ordinance was July 22, 2019. At the outcome of the first reading the Village Board directed staff to make additional amendments to the ordinance and provide data on citations issued to youth. The first amendment request was to ban the sale of flavored tobacco products; the second was to remove “Possession of Tobacco Products by Minors” (section 8-6-8 of the ordinance) and the third was to ban the sale of electronic cigarette skins.

Attached you will find two versions of the ordinance. Version one is a Village Board version and version two is a Board of Health version. The Village Board version includes the three requested amendments: 1) Banning the sale of flavored tobacco products and 2) Removes the “Possession of Tobacco Products by Minors” from section 8-6-8 of the ordinance & 3) Banning of the sale of electronic cigarette skins. The Board of Health version includes the banning on the sale of flavored tobacco products and banning the sale of electronic cigarette skins, but does not include the removal of the “Possession of Tobacco Products by Minors” from section 8-6-8 of the ordinance.

Research shows that the Board of Health has not recommended removal of the possession section of the ordinance, therefore staff is providing two versions of the ordinance; one version that includes removal of the possession language and one that does not. On November 15, 2015 the Board of Health submitted recommendations on the Tobacco 21 ordinance and at that time stated that “At this time the issue of possession and fines are not part of the (BOH) recommendations. These areas are left to be addressed by the Village Board.” In addition, the most recent Board of Health recommendations on electronic cigarettes did not contain recommendations on removing the possession language from the ordinance.

The Village utilizes the possession of tobacco products by minors ordinance as a positive tool to educate and intervene with youth that possess tobacco products including cigarettes, smoke-less tobacco, smoking devices and electronic cigarettes. The “Possession” of tobacco language was added to the ordinance on June 4, 2012.

The ordinance was amended to include/add the “possession” provision for youth under the age of 18 years of age possessing tobacco. The agenda item (attached) for this ordinance states that “The goal is to create ordinances prohibiting those behaviors and to enforce those ordinances in a manner designed to deter recurrent violations rather than to strictly emphasize punishment. Enforcement strategies include using a combination of warnings, fines, referrals to community based education, counseling and treatment programs, performing community service and referrals to any available mental health or treatment services that become available in the future. The availability of these alternatives will allow the Administrative Law Judges a range of appropriate alternatives depending on the facts of each case.”

The Police Department continues to use primarily education vs enforcement with observed tobacco possession for persons under the age of 21. The Police Department will educate offenders providing the offenders educational literature on the hazards of tobacco use. The Police Department will issue citations for possession, however it is rare, since 2014 the Police Department has issued 13 citations for tobacco possession (violation of 8-6-8). Data on the number of citations issued can be found below. Adjudication continues to use a range of available alternative youth interventions depending on the fact of the case and will refer youth to available treatment programs.

- 2014: 7 citations
- 2015: 2 citations
- 2016: 1 citation
- 2017: 1 citation
- 2018: 2 citations
- 2019: 0 citations through 07-29-2019

In regards to education of retailers, the Health Department and Police Department’s Community Policing unit have provided education and direction on the tobacco ordinance to Tobacco Retailers in the past. Most recently the Health Department distributed in-person the attached “Tobacco 21 - A Retailer’s Guide” to all licensed Tobacco Retailers in 2017 & 2018. The Police Department continues to conduct compliance checks annually to determine compliance with State tobacco sales restriction laws.

On July 26, the Health Department’s summer intern conducted an informal in-person field survey of 26 Oak Park licensed tobacco retailers. The following data was collected during this survey:

1. How many tobacco retailers had tobacco advertisements within public view? Yes = 17; No = 9
2. Are tobacco products stored behind counters? Yes = 26
3. Was tobacco 21 sign posted? Yes = 26
4. Do they sell flavored e-cigarettes? Yes = 20; No = 6

On September 9, 2019 the Village sent all 29 licensed Tobacco Retailers a letter with important information regarding this pending legislation including the fact that the current version of the ordinance will prohibit the sale of flavored tobacco products, excluding cigars, cigarettes and chewing tobacco. In response to the letter, one Tobacco Retailer Tobacco Zone, 6638 Roosevelt Rd contacted the Village with a concern that banning the sale of flavored e-cigarette products would hurt his business, since up to 50% of his business is the sale of flavored e-cigarette products. A second Tobacco Retailer, Family Fresh Foods & Deli, 10 Chicago Ave contacted

the Village to inquire whether cigars, cigarettes and/or chewing tobacco were included in the flavor ban. Health provided a response that those products are excluded from the ban.

The Health Department met with the Police Department on August 27, 2019 and there will be another coordinated education effort to educate tobacco retailers on current and new ordinance amendments. In addition, the Health Department is working with the Village Manager's Office, Communications Department and the Police Department's School Resource Officers to collaborate with both internal and external key stakeholders (Township, Schools) to provide education to Oak Park students, parents and residents on the dangers associated with e-cigarettes and other tobacco products.

Finally note, on September 23, 2019 the River Forest Village Board voted 6-0 to amend the River Forest Village ordinance to prohibit the sale of flavored liquid nicotine products.

The Health Department is recommending that Board of Health version of the ordinance is approved.

Alternatives

The Board can request the ordinance be further amended and/or not approve the ordinance.

Previous Board Action

May 7, 2018: The Village Board motioned to refer to the Board of Health for review of Chapter 8 ("Business Licensing") Article 6 ("Comprehensive Regulation of Tobacco Products") of the Oak Park Village Code as it relates to the regulation of electronic cigarettes and vaping.

January 14, 2019: The Board of Health completed their review and the Village Board received the recommendations of the Board of Health at a regularly scheduled Village Board meeting. At the outcome of the presentation the Village Board voted to approve the recommendations and bring back to the Village Board necessary actions including amending the current Village Ordinance.

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Citizen Advisory Commission Action

The Board of Health presented their recommendations on amending the ordinance at the January 14, 2019 Village Board Meeting.

Anticipated Future Actions/Commitments

N/A

Intergovernmental Cooperation Opportunities

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