



MEMO TO: Mayor Vandernail and the Board of Trustees
FROM: Michael Brack, Assistant Town Manager
DATE: February 5, 2020
SUBJECT: **Tobacco and E-Cigarette Regulation Findings**

MATTER BEFORE BOARD:

Discuss findings from other municipalities regulating use of cigarettes, e-cigarettes and retail licensing and determine if regulation is desired in Fraser. If regulation is desired, staff will draft an ordinance based on Town Board guidance.

BACKGROUND:

Currently, the Town of Fraser has no adopted ordinances regarding regulations pertaining to the procurement of tobacco and e-cigarettes. Restrictions can be placed on either e-cigarettes or tobacco products or both.

Several municipalities have taken action to discourage and prevent tobacco use. Increasing the legal minimum age of sale, requiring retailers to hold a license to sell tobacco, increasing the price of tobacco products, and restricting the sale of flavored products have all been shown to significantly reduce youth initiation and overall public use.

Smoking rates have declined in the United States; however, tobacco use remains the most preventable cause of disease, disability, and death in Colorado, killing more than 5,000 Coloradans each year. Although there has been a decline in cigarette smoking statewide, there has been a rapid increase in e-cigarette (vaping) use, especially among youth. Colorado currently has the highest rate of vaping teenagers in the nation at 27% which is double the national average. Many e-cigarette users have never even tried cigarettes or view e-cigarettes as a safer alternative. Flavored tobacco is one root cause of the substantial increase in e-cigarette use that makes it more appealing to users with flavors such as watermelon, strawberry and cotton candy.

One method to reduce the use of e-cigarettes is to outright ban the use of flavored nicotine products. This has been done in several municipalities to lower the availability of flavored nicotine products and, as a result, lower its use. Municipalities such as Boulder, Aspen and Carbondale have imposed this ban on flavored nicotine.

The current sales tax for the purchase of tobacco products at checkout in Fraser is currently 2.9% for state tax. The Town of Fraser does have the option to replace the Colorado state sales

tax of 2.9% by adopting a new tax rate on e-cigarette products and/or a tax per pack of cigarettes. Municipalities like Crested Butte, New Castle, Vail, Summit County, Pitkin County, and Eagle County have adopted a \$3-\$4 tax per pack of cigarettes and a 40% tax in replacement of the 2.9% state sales tax. A proposed Fraser tax on tobacco products would have to be listed on the regular ballot in the upcoming November 2020 election for voter approval. If passed, the new tax would be imposed on January 1, 2020.

On December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended which raised the federal minimum age of sale of tobacco products from 18 to 21 years. The minimum age to purchase tobacco products can be further restricted by the Town of Fraser if desired. At this time, no other municipalities have shown interest in raising the age above 21.

There are currently no licensing requirements for retailers to sell tobacco products in Fraser. The Town of Fraser could require a tobacco license for retailers to sell tobacco products in town limits and impose larger fines for illegal sales to customers under the age of 21. If approved, this licensing would be administrated by Town staff. The City of Pines has imposed a tobacco license requirement for tobacco retailers and a 500' distance restriction to schools, youth-centered facilities, and parks. The cost of a tobacco license is \$50 per year.

The City of Glenwood Springs imposed some of the most restrictive tobacco and e-cigarette requirements seen in the state of Colorado that was met with significant local disagreement. Below is a summary of their adopted tobacco requirements.

- Ban of sale of flavored nicotine products.
- Raise in age to purchase to 21.
- An imposed tax of \$0.20 per cigarette or \$4 per pack of 20.
- An imposed 40% sales tax e-cigarette devices and products.
- Tobacco license requirement for all retailers.
- All tobacco and e-cigarette tax revenues go toward drug, alcohol, and tobacco prevention, cessation, treatment, enforcement, youth mental and physical health, detox facilities and other related city expenses.

ALTERNATIVES:

- Direct staff to draft an ordinance for tobacco and/or e-cigarette regulations.
- Direct staff to conduct more research and community engagement to determine if this is something worth pursuing.
- Do nothing, do not move forward with restricting the purchase and sale of tobacco or e-cigarette products.

RECOMMENDATION:

Given the new federal age restrictions, the small number of tobacco and e-cigarette retailers in Town, and administration requirements for a program, Staff recommends not regulating the purchase and/or sale of tobacco or e-cigarette products.

Town of Fraser

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