Human Relations Commission Agenda

The Human Relations Commission (HRC) is a citizen commission appointed by the Fremont City Council. Human Relations Commission business is conducted in a public forum and operates within the provisions of the Brown Act. Information on the Brown Act may be obtained from the City Clerk's office at 3300 Capitol Avenue (phone 284-4060).

General Order of Business

1. Secretary Check for Quorum 6. Written Communications 11. Commission Referrals
2. Call to order – 7:00 p.m. 7. Announcements 12. Commission Reports

Order of Discussion

Generally, the order of discussion after introduction of an item by the Chair will include comments and information by staff followed by Human Relations Commissions questions, inquiries or discussion. The applicant, authorized representative, or interested citizens may then speak on the item. At the close of public discussion, the item will be considered by the Commission and action taken.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under Oral Communications. The Human Relations Commission will take no action on an item which does not appear on the agenda. The item will be agendized for the next regular meeting or at a special meeting called in accordance with the terms of the Brown Act. The Human Relations Commission may establish time limits of presentations.

Information

Regular scheduled meetings of the Human Relations Commission are conducted at 3300 Capitol Avenue in City Council Chambers. Meetings are held at 7:00pm on the third Monday of the month. Meetings may be tape recorded at the discretion of the Chair.

Copies of the Agenda are available at the Human Services Department at 3300 Capitol Avenue three days preceding the regularly scheduled meeting.
Assistance will be provided to those requiring accommodations for disabilities in compliance with the American Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting Human Services Department at (510) 574-2050.

Information about the City or items scheduled on the Agenda may be referred to:

Suzanne Shenfil, Director  
Human Services Department  
330C Capitol Ave  
Fremont, CA 94538  
(510) 574-2051

Arquimides Caldera, Deputy Director  
Human Services Department  
3300 Capitol Ave.  
Fremont, CA 94538  
(510) 574-2056

Your interest in the conduct of your City's business is appreciated.

<table>
<thead>
<tr>
<th>Human Relations Commission</th>
<th>City Staff</th>
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<tbody>
<tr>
<td>Dharminder Dewan</td>
<td>Suzanne Shenfil, Human Services Director</td>
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<tr>
<td>Tejinder Dhami</td>
<td>Arquimides Caldera, Deputy Human Services Director</td>
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<tr>
<td>Feda Almaliti</td>
<td>Laurie Flores, Recording Secretary</td>
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<td>Dr. Sonia Khan-Vice Chair</td>
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<tr>
<td>Lance Kwan</td>
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<td>Patricia Montejano</td>
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<td>Julie Moceri-Chair</td>
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<tr>
<td>Cullen Tiernan</td>
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<td>Shobana Ramamurthi</td>
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**Mission Statement**

The City of Fremont’s Human Relations Commission (HRC) strives to prevent discrimination and ensure that the rights of all individuals and groups in Fremont are protected under the law. The HRC promotes, supports, and helps create a compassionate community environment where diversity is honored and respected, neighbors reach out and support each other, and the most vulnerable receive services; to allow all a high quality of life in a community where we live, learn, work, and play in peace and harmony.

Agenda * Human Relations Commission Special Meeting  
April 29, 2019
AGENDA
HUMAN RELATIONS COMMISSION
SPECIAL MEETING
MONDAY, APRIL 29, 2019
TRAINING ROOM
3300 CAPITOL AVE., BUILDING B
FREMONT, CALIFORNIA
7:00 P.M.

1. SECRETARY CALL FOR QUORUM

2. CALL TO ORDER

3. ROLL CALL

4. APPROVAL OF MINUTES Postpone to regularly scheduled May meeting.

5. ORAL COMMUNICATIONS

6. WRITTEN COMMUNICATIONS

7. ANNOUNCEMENTS

8. CONSENT ITEMS

9. OLD BUSINESS


BACKGROUND: At the May 21, 2018 HRC meeting, Commissioners received a presentation from the Tri City Health Center (TCHC) Youth Advisory Group, on youth-targeted tobacco marketing and how it disproportionately affects vulnerable communities such as LGBTQ youth. The HRC voted to endorse the TCHC education campaign and directed staff to research and develop ordinance language to make it more difficult for youth to purchase tobacco products.

Approximately 144 California municipalities have implemented a City Tobacco Retail License (TRL) program. A city TRL does not replace the State of California’s Cigarette and Tobacco Products Retailer’s License, which is required of all tobacco retailers, including approximately 128 retailers in Fremont. The primary purpose of the state license is to administer excise taxes, and does not have penalties or enforcement for the sale of tobacco products to minors. A City TRL program would require this same pool of retailers to annually apply for a City TRL and pay an annual fee to the City to be able to sell tobacco products. If a business is caught selling to a minor, or violating any policy related to selling tobacco products, then the retailer is
penalized by City license revocation or suspension of tobacco sale privileges, and is required to pay additional fees.

Part and parcel to the City TRL program are policies that further limit access to tobacco, including a ban on flavored tobacco products and a set minimum price on packs of little cigars or cigarettes. Staff also consulted internally to understand how a TRL program or stand-alone tobacco control policies would be woven into the Municipal Code.

**Tobacco Policies Previously considered by the HRC on January 28, 2019:** At the January 28, 2019 HRC meeting, staff presented two sets of tobacco policies: 1) a set of policies advocated by Tri-City Health Center, and 2) a similar set of policies supported by staff:

Advocates proposed the following set of policies:

1. **Set Minimum Price or Pack Sizes for Tobacco Products** to $7.00 minimum for: pack of 20 cigarettes, 20 little cigars, or 5 cigars (including all taxes and fees)

2. **Require Tobacco Retailers to have City Tobacco Retail Licenses (TRL) and renew the license annually.**

3. **Restrict or Ban the Sale of Flavored Tobacco Products for all Retailers in Fremont.**

   **Note:** A tobacco product is currently defined in Fremont’s Municipal Code as, “cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, electronic cigarettes or electronic cigarette products. “Tobacco product” does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.” Any flavored variation of the products defined above would be banned from sale. TCHC proposed to include menthol as a flavored tobacco product.

   Advocates requested for this policy to be applied to all tobacco retailers, including adult-only retailers, due to the concern that non-adult tobacco retailers might carve out adult-only spaces within their stores (as they have in other cities), thereby circumventing the ban on flavored products.

Staff proposed the following set of policies:

1. **Set Minimum Price or Pack Sizes for Tobacco Products:** Staff proposed to make changes, administratively, to the existing smoking ordinance chapter of the Municipal Code to include setting a minimum price of $8.00 per pack of 20 cigarettes, 20 little cigars, or 5 cigars.
2. **Utilize Municipal Code Changes in Lieu of Requiring Tobacco Retailers to have City Tobacco Retail Licenses (TRL):** Staff proposed to meet enforcement interest of advocacy groups by strengthening existing Smoking Ordinance language in Section 8.55.115 (Sale of Tobacco Products) of the Fremont Municipal Code (FMC) as opposed to implementing a new Municipal (TRL) program. The existing language and proposed changes to the Smoking Ordinance would be enforced by Code Enforcement.

   Note: The Police Department had indicated it would resume sting operations to ensure vendors are not selling to youth under age 18, when their staffing levels are sufficient.

3. **Restrict the Sale of Flavored Tobacco Products:** Staff proposed to restrict the sale of flavored tobacco products, including menthol flavored products. Existing adult-only retailers in Fremont would be exempt.

   **Note:** The City previously placed a moratorium on adding additional Adult-only tobacco retailers in Fremont. The eight current adult-only retailers are “grandfathered” in and are exempted from the moratorium. In effect, this moratorium prohibits non-adult stores from carving out “Adult-only” sections, thus nullifying the concerns of advocates. The sale of flavored tobacco products would be banned from all other retailers.

**Public Comments:** The Commission heard 13 public comments, including two from Fremont Unified School District School Board Members speaking as private residents. Many of the comments were personal testminies on experience with being targeted as a youth to start smoking or vaping. Students commented that their fellow students are vaping highly addictive nicotine/tobacco products. All speakers advocated for Fremont to implement a TRL program. They argued the TRL would provide a continuous revenue stream for enforcement of tobacco policies, and give the City the ability to revoke or suspend a license, which would be a strong deterrent from selling to minors and violating tobacco retail regulations. Speakers cited other local cities, including Alameda, Hayward and Union City, which have already implemented a TRL program.

HRC Commissioners discussed the item and agreed with staff recommendations, except for the omission of a TRL. The Commissioners agreed a TRL provides a stronger way to integrate all of the different policies for deterring tobacco use by minors than only adding a flavor ban and setting minimum price and pack sizes in the City’s existing Smoking ordinance. Commissioners also believed current penalties within the Municipal Code were not enough of a deterrent for current or future violations.
**Current HRC Recommendation:** The HRC voted to recommend the following policy changes to the City Council:

1. **Set Minimum Price or Pack Sizes for Tobacco Products:** Make changes to the existing smoking ordinance chapter of the Municipal Code to include setting a minimum price of $8.00 per pack of 20 cigarettes, 20 little cigars, or 5 cigars.

2. **Require Tobacco Retailers to have City Tobacco Retail Licenses (TRL) and renew the license annually.** The TRL should include the following components:
   a. A fee of sufficient size to cover the cost of enforcement.
   b. A penalty for violating the ordinance, of significant severity to deter future violations, including financial penalties and suspension or revocation of the TRL.

3. **Restrict the Sale of Flavored Tobacco Products:** Make changes to the existing smoking ordinance chapter of the Municipal Code to restrict the sale of flavored tobacco products, including menthol flavored products. Existing adult-only retailers in Fremont will be exempt. The City previously placed a moratorium on additional Adult-only tobacco retailers in Fremont. The eight current adult-only retailers are “grandfathered” in and are exempted from the moratorium. In effect, this moratorium prohibits non-adult stores from carving out “Adult-only” sections. The sale of flavored tobacco products will be banned from all other retailers.

4. **Outreach to Businesses Selling Tobacco Products Providing Proposed Changes:** Direct staff to conduct outreach with businesses that sell tobacco products. The outreach would span a 3-month timeframe and include: a letter campaign where all businesses that sell tobacco products will receive a letter explaining the proposed changes to the Municipal Code, a facilitated stakeholder public meeting, and a topic on Open City Hall.

**New Information:** Since the HRC’s decision, Commissioner Khan has gathered additional information from stakeholders, which staff would like to present in order for the Commission to make a fully informed recommendation to the City Council. Enclosure 9.1.1 summarizes the HRC's current recommendation, and proposes language changes to account for the additional information presented to the HRC.

**Enclosures:**
- 9.1.1 – HRC Tobacco Policy Summary
- 9.1.2 – Percent of Retailers Selling to Underage Young Adults

**RECOMMENDATION:** Revise Tobacco Ordinance funding recommendations, as presented in this report.

10. **ADJOURNMENT**
<table>
<thead>
<tr>
<th>HRC Current Recommended Policy (1/28/19)</th>
<th>Proposed Changes (tracked)</th>
<th>Rationale</th>
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<tr>
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<td><strong>a. An annual fee of sufficient to cover the cost of enforcement administration, not to exceed $50 per retailer.</strong></td>
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<td>a. A fee of sufficient size to cover the cost of enforcement.</td>
<td><strong>a. An annual fee of sufficient size to cover the cost of enforcement administration, not to exceed $50 per retailer.</strong></td>
<td>Business stakeholders are prepared to bear a nominal fee in support of the greater effort to reduce tobacco use (including vaping) among young people. City staff have indicated that a nominal fee would not be seen as a tax and would simply offset the cost of administration. Police Department and Code Enforcement staff have consistently indicated that staffing, and not financing has limited enforcement, and since the new ordinance does not impose any new burden on that enforcement and therefore should not be included in the fee.</td>
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<td>b. A penalty for violating the ordinance, of significant severity to deter future violations, including financial penalties and suspension or revocation of the TRL.</td>
<td><strong>b. A penalty for violating the ordinance, of significant severity to deter future violations, including financial penalties and suspension or revocation of the TRL, which would temporarily or permanently remove the ability to sell tobacco products.</strong></td>
<td>Further clarification of impact of revoking TRL.</td>
</tr>
<tr>
<td><strong>3. Restrict the Sale of Flavored Tobacco Products:</strong> Make changes to the existing smoking ordinance chapter of the Municipal Code to restrict the sale of flavored tobacco products, including menthol flavored products. Existing adult-only retailers in Fremont will be exempt. The City previously placed a moratorium on additional Adult-only tobacco retailers in Fremont. Eight current adult-only retailers are &quot;grandfathered&quot; in and are exempted from the moratorium. In effect, this moratorium prohibits non-adult stores from carving out &quot;Adult-only&quot; sections. The sale of flavored tobacco products will be banned from all other retailers.</td>
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<td>As noted in Enclosure 9.1.2, 36% of Tobacco stores in California, which include vape shops, sold tobacco to underage young adults (age 18-19) in 2018. This was the highest percentage among all categories of tobacco retailers and higher than the statewide average or 19.1%.</td>
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<tr>
<td><strong>4. Outreach to Businesses Selling Tobacco Products Providing Proposed Changes:</strong> Direct staff to conduct outreach with businesses that sell tobacco products. The outreach would span a 3-month timeframe and include: a letter campaign where all businesses that sell tobacco products will receive a letter explaining the proposed changes to the Municipal Code, a facilitated stakeholder public meeting, and a topic on Open City Hall.</td>
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Percent of Retailers Selling Tobacco to Underage Young Adults, 2017-2018

Note: In 2017, there was no overall retailer violation rate as the Young Adult E-cigarette Purchase Survey and the Young Adult Tobacco Purchase Survey were two separate surveys. In 2018, the two surveys were combined into one Young Adult Tobacco Purchas Survey. Young adults are defined as ages 18-19.

Percent of Retailers Selling Tobacco to Underage Young Adults by Store Type, 2018

- **Statewide**: 19.1%
- **Drug Stores / Pharmacies**: 6.9%
- **Supermarket**: 12.1%
- **Liquor Store**: 12.6%
- **Convenience Store with Gas**: 14.7%
- **Other**: 22.2%
- **Small Market**: 24.8%
- **Convenience Store without Gas**: 25.3%
- **Vape Shop**: 30.2%
- **Tobacco Store**: 36.0%

Note: Tobacco stores include vape shops/lounges. Store types with small sample sizes were grouped together with the “other” category (e.g. delis, discount stores, gift stores, hotels, car washes, restaurants, cafes, donut shops). Young adults are defined as 18-19 years old. Source: California Department of Public Health, California Tobacco Control Program. Young Adult Tobacco Purchase Survey, 2018. Sacramento, CA: California Department of Public Health; October 2018.