



ATTACHMENT I

To: Contra Costa Board of Supervisors
From: Daniel Peddycord, RN, MPA, Public Health Director, Contra Costa Health Services
Re: Policy Options and Recommendations to Protect Youth from Tobacco Influences in the Retail Environment
Date: May 24, 2016

I. Background

On July 21, 2015, the Board of Supervisors accepted a Health Services Report on *Policy Options to Protect Youth from Tobacco Influences in the Retail Environment*, which was forwarded from the Family and Human Services Committee for discussion. The report highlighted how the tobacco retail environment influences youth smoking behavior and described a range of fifteen optional policy provisions that would serve to strengthen the County's ordinance to protect youth from tobacco influences and to help prevent youth from initiating tobacco use. Recommendations were made for which policy options were among the most impactful in reducing youth tobacco influences in the retail environment. The report also referenced the results from the **2013 Healthy Stores for a Healthy Community Store Survey**, which was accepted by the he Board at the May 5, 2015 Board of Supervisors meeting.

Based on the recommendations from the Family and Human Services Committee and the subsequent acceptance of the recommendation by the Board of Supervisors on July 21, 2015, the Board directed staff to work with the affected County Departments to evaluate these options as modifications to the County's existing ordinances, and to address fiscal and implementation considerations. Public Health staff met with staff from County Counsel and the Department of Conservation and Development to review all of the options discussed with the Board at the July 21, 2015 meeting. This report provides the requested information as well as policy options deemed to be the most effective to protect youth from tobacco influences in the retail environment, including strengthening the County's Tobacco Retailer Licensing Ordinance.

Since 90% of smokers begin smoking by the age of 18, tobacco use has been determined to be "fundamentally a pediatric disease" by the United States Food and Drug Administration (FDA).¹ In order to protect health and public safety, Health Services has presented the following policy options for consideration as modifications to existing county code to address youth tobacco influences in the retail environment:

Most Impactful Provisions to Reduce Youth Tobacco Influences in the Community

- a) Revise the definition of "tobacco products" in the Tobacco Retailer License Ordinance to be inclusive of newer electronic smoking devices and "liquids" that currently fall outside of the definition.
- b) Prohibit the sale of flavored (non-cigarette) tobacco products
- c) Prohibit the sale of menthol flavored cigarettes at least within 500 feet of schools
- d) Require a minimum pack size of ten (10) for little cigars and cigarillos.
- e) Prohibit new tobacco retailers from operating within 1000 feet of schools, parks, playgrounds and libraries

¹ Hilts, Philip J. "FDA Head Calls Smoking a Pediatric Disease." The New York Times 9 Mar 1995.



- f) Prohibit new tobacco retailers from operating within 500 feet of new or existing tobacco retailers.
- g) Prohibit the sale of tobacco products in pharmacies

Condition of License Suspension if a Violation of the Law Occurs

- h) Require tobacco retailers who have their license suspended to remove tobacco advertising during license suspension periods
- i) Expand the time period reviewed for prior violations of the license (the “look-back” period) from 24 months (2 years) to 60 months (5 years) when considering the length of a license suspension for retailers found to be in violation of the law.

Other Policy Considerations:

- j) Prohibit new “Significant Tobacco Retailers”, including “vape” shops, hookah bars or smoke shops
- k) Require tobacco retailers to comply with state and local storefront signage laws
- l) Require tobacco retailers to comply with drug paraphernalia sales laws
- m) Require tobacco retailers to check ID of customers who appear younger than 27
- n) Limit or “cap” the number of retailers that can sell tobacco products at current number of licenses issued by the County
- o) Prepare a board order at a later date to adjust Tobacco Retailer Licensing fees to better capture and recover updated and real costs associated with education, enforcement and monitoring of implementing the ordinance.

The summary table on ***Policy Options for Addressing Youth Tobacco Influences in the Retail Environment*** (Attachment II) has been updated to reflect CA jurisdictions that have adopted similar provisions in the interim period since our last report. Those provisions that were recommended by the department as the most impactful are in shaded boxes. Regulation of menthol cigarettes has been included since the last report among those that are most impactful, since being upheld in the courts. The option to raise Tobacco Retailer Licensing Fees to fully cover law enforcement costs through licensing fees has been deleted as County Counsel reports that it is not allowable under the law. Each provision found in Attachment I, as well as fiscal and implementation issues, are discussed in more detail in this report.

II. Contra Costa County and Tobacco Prevention Efforts

Contra Costa County has been a leader in protecting the health of its residents, workers and visitors, and youth in particular, from the devastating consequences caused by tobacco use and secondhand smoke exposure. In 2003, the Board adopted what was then a model Tobacco Retailer Licensing Ordinance to address illegal sales of tobacco to minors, requiring all tobacco retailers to purchase a local license in order to sell tobacco products, and allowing for a suspension of the license if tobacco sales laws, such as the no sales to minors law, were violated. In 2006, the Board adopted what was one of the strongest and most comprehensive secondhand smoke protections ordinances at the time, prohibiting smoking in many outdoor areas and in certain areas of multi-unit housing properties. Most recently in 2013 the Board amended the code to require a tobacco retailer license to sell electronic cigarettes and to prohibit the use of these devices where smoking is prohibited.

While we have made good progress in Contra Costa in reducing adult and youth tobacco use^{2,3,4}, youth are still exposed to tobacco industry influences in their communities. The Campaign for Tobacco Free Kids, in their fact sheet on *Key State Specific Tobacco-Related Data and Rankings*, reports that 16,800 youth begin smoking in CA every year⁵ and 3.9 million Californians still smoke⁶. In 2011, the tobacco industry spent \$605 million⁷ advertising and promoting tobacco products in California, with 90% of its marketing budget spent in the retail store environment.⁸ Exposure to tobacco marketing in stores increases tobacco experimentation and use by youth⁹ and has been shown to be more powerful than peer pressure.¹⁰ Research also shows that the number of stores selling tobacco in a community can lead to higher rates of youth smoking. In addition to advertising and marketing influences, some Contra Costa cities have illegal tobacco sales rates to youth that are as high as 26%.¹¹

III. The Problem of Youth Tobacco Use and the Retail Environment

In summer, 2013, in order to get a picture of what tobacco industry influences look like in Contra Costa, Public Health's Tobacco Prevention Project participated in a county-wide tobacco survey. Over 300 stores that sell tobacco throughout the county were part of the randomized sample for the Contra Costa Store Survey, including convenience, supermarket, liquor, tobacco, small market, discount, drug and big box stores. Stores that prohibited youth from entry or that require membership were excluded from the survey. Photos of these products can be found in the accompanying powerpoint. The **Contra Costa Store Survey**¹² findings confirmed that tobacco is still being promoted to youth and that:

- **Over 80% of stores near schools in Contra Costa sell flavored (non-cigarette) tobacco products** like “watermelon” and “tropical blast” flavored cigarillos and little cigars. Many of these products sell for under a dollar, making them very attractive and affordable for youth.
- **Over eight in 10 stores sell packs of 5 or less of cigarillos/little cigars, and close to 70% of stores sell these products as "singles"**. These products are also available very cheaply, making them affordable for youth. Eighty-five percent of tobacco retailers sell the most popular brand of cigarillos for under \$1.

² Gilpin EA, Emery SL, Farkas AJ, Distefan JM, White MM, Pierce JP. The California Tobacco Control Program: A Decade of Progress, Results from the California Tobacco Surveys, 1990-1998. La Jolla, CA: University of California, San Diego; 2001.

³ Max W, Rice DP, Zhang X, Sung H-Y, Miller L. The Cost of Smoking in California, 1999, Sacramento, CA: California Department of Health Services, 2002.

⁴ Max W, Sung H-Y, Shi Y, & Stark B. The Cost of Smoking in California, 2009. San Francisco, CA: Institute for Health & Aging, University of California, San Francisco, 2014.

⁵ Based on the 2011 Federal Trade Commission Report and California state estimate methodology used by Campaign For Tobacco Free Kids: http://www.tobaccofreekids.org/facts_issues/toll_us/california.

⁶ Max W, Sung H-Y, Shi Y, & Stark B. The Cost of Smoking in California, 2009. San Francisco, CA: Institute for Health & Aging, University of California, San Francisco, 2014.

⁷ Based on the 2011 Federal Trade Commission Report and California state estimate methodology used by Campaign For Tobacco Free Kids: http://www.tobaccofreekids.org/facts_issues/toll_us/california

⁸ U.S. Federal Trade Commission (FTC), Cigarette Report for 2007 and 2008, 2011, <http://www.ftc.gov/os/2011/07/110729cigarettereport.pdf>. FTC, Smokeless Tobacco Report for 2007 and 2008, 2011, <http://www.ftc.gov/os/2011/07/110729smokelesstobaccoreport.pdf>. Data for top 6 manufacturers only.

⁹ DiFranza, J.R., Wellman, R.J., Sargent, J.D., Weitzman, M., Hipple, B.J., Winickoff, J.P., Tobacco promotion and the initiation of tobacco use: assessing the evidence for causality. *Pediatrics*, 2006. 117(6): p. e1237-1248. [http://pediatrics.aappublications.org/content/117/6/e1237.abstract%20\(25](http://pediatrics.aappublications.org/content/117/6/e1237.abstract%20(25) and National Cancer Institute, The Role of the Media in Promoting and Reducing Tobacco Use: TobaccoControl Monograph No. 19, 2008, U.S. Department of Health and Human Services, National Institutes of Health: Bethesda, MD. <http://cancercontrol.cancer.gov/brp/tcrb/monographs/19/index.html>

¹⁰ Campaign for Tobacco-Free Kids. Toll of Tobacco in the United States of America. 2011. <http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf>.

¹¹ California Department of Public Health, Food and Drug Branch, youth decoy operation results 2009.

¹² 2013 Healthy Stores for a Healthy Community (HSHC) Survey, California Department of Public Health.

- **Close to half of all stores that sell tobacco in Contra Costa sell e-cigarettes.** The number of stores that are selling e-cigarettes statewide has quadrupled, from just over 10% in 2011 to over 45% in 2013. Electronic cigarette use among middle and high school youth tripled between 2013 and 2014¹³. Many of these products are attractive to youth because they are relatively cheap and come in flavors like cherry-limeade and mint.
- **Seven in 10 stores in Contra Costa have exterior advertising for *unhealthy products*** like tobacco, alcohol and sugary drinks. This compares with 1 in 10 stores with exterior advertising for *healthy* items including fruits, vegetables and non-fat/low-fat milk.

Information on the location and density of stores selling tobacco across the county was also collected and mapped. This data revealed that:

- **34% of stores selling tobacco throughout the County are located within 1000 feet of a school.** One-third of youth who buy tobacco purchase these products within 1000 feet of school.¹⁴ Every school day, youth are exposed to tobacco influences such as advertising and product promotions on their way to and from school. Many of the Contra Costa communities with **high numbers of stores selling tobacco near schools** are low-income. Low-income communities have high rates of smoking and tobacco-related diseases like heart disease, cancers and stroke.

The 2013 Contra Costa Store Survey provides concrete, scientific evidence on how the tobacco industry continues to target youth and lower-income communities through the retail environment.

IV. Policy Considerations to Reduce Youth Tobacco Influences

The CA Department of Public Health Tobacco Control Program and the statewide Healthy Stores for a Healthy Community Campaign recommend several effective policies to consider in reducing youth tobacco influences in the community:

- Include Electronic Smoking Devices and other emerging products in the definition of “Tobacco Products”.** In 2013, Contra Costa was among the first in the state to revise its existing definition of tobacco products to include electronic cigarettes, requiring retailers who sell these products to have a license in order to sell them, and prohibiting use where smoking of conventional tobacco products is prohibited. Since then, new products have emerged such as “vape pens”, electronic hookah, and refillable “mods” and “tanks” that fall outside of the current definition and continue to be unregulated and may or may not contain nicotine. These products are attractive to youth, mimic smoking, undermine community norms related to smoking, and serve as “starter products” to a lifetime of addiction¹⁵. As such, The Family and Human Services Committee directed staff to revise the definition of “Tobacco Products” at its April 15, 2015 Committee Meeting.
- Prohibit the sale of flavored (non-cigarette) tobacco products, such as candy, fruit and spice characterizing flavors in little cigars, hookah tobacco and dissolvable tobacco products, as well as in electronic smoking devices and vapor solutions for these devices.** Under the federal Family Smoking Prevention and Tobacco Control Act, it is illegal for manufacturers to make *cigarettes* that contain “characterizing flavors” other than that of tobacco. This includes flavors such as

¹³ Arrazola R, Singh T, Corey C, et al, [Tobacco Use Among Middle and High School Students – United States, 2011-2014](#). MMWR. 4/17/2015; Vol. 64 (#14): pp 381-385.

¹⁴ Lipton R, Banerjee A, Levy D, Manzanilla N, Cochrane M., [The spatial distribution of underage tobacco sales in Los Angeles](#). Subst Use Misuse. 2008;43(11):1594-614.

¹⁵ Ji-Yeun P., Dong-Chul S., and Hsien-Chang L.. E-Cigarette Use and Intention to Initiate or Quit Smoking Among US Youths. American Journal of Public Health: April 2016, Vol. 106, No. 4, pp. 672-678. doi: 10.2105/AJPH.2015.302994

strawberry, grape, orange, clove, cinnamon, pineapple, and vanilla, coconut, licorice, cocoa or chocolate. The Act was adopted in 2009 largely because these flavored products were attractive and marketed to youth and young adults,^{16,17,18,19} and younger smokers were more likely to have tried these products than older smokers.²⁰ (Menthol flavoring in cigarettes was exempted and is discussed in more detail below.)

Though there is a federal ban on flavored cigarettes (excluding menthol) flavored non-cigarette tobacco products are not prohibited under federal law. They have become increasingly common and are available in a variety of flavors that appeal to children and young adults.²¹ The U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products for youth and help establish smoking habits that can lead to long-term addiction.²² Adding flavorings to tobacco products such as little cigars, cigarillos, and smokeless tobacco can mask the natural harshness and taste of tobacco, making these products easier to use and increasing their appeal among youth.²³

The U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students tripled between 2013 and 2014.²⁴ Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum.²⁵ The California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products.²⁶

¹⁶ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610;

¹⁷ Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251.

¹⁸ Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212.

¹⁹ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²⁰ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²¹ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 164, 205, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf; Morris DS and Fiala SC. 2013. “Flavoured, Non-cigarette Tobacco for Sale in the USA: An Inventory Analysis of Internet Retailers.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/08/08/tobaccocontrol-2013-051059.full>.

²² Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²³ King BA, Dube SR, and Tynan MA. 2013. “Flavored Cigar Smoking Among U.S. Adults: Findings from the 2009–2010 National Adult Tobacco Survey.” *Nicotine & Tobacco Research*. 15(2): 608–614; Nelson DE, Mowery P, Tomar S, et al. 2006. “Trends in Smokeless Tobacco Use Among Adults and Adolescents in the United States.” *American Journal of Public Health*. 96(5): 897–905.

²⁴ Arrazola R, Singh T, Corey C, et al. [Tobacco Use Among Middle and High School Students – United States, 2011–2014](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5904a1.htm). *MMWR*. 4/17/2015; Vol. 64 (#14): pp 381–385.

²⁵ Cameron JM, Howell DN, White JR, et al. 2013. “Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²⁶ Press Release, State of California Department of Justice, Office of the Attorney General, Brown Announces Electronic Cigarette

Jurisdictions have the authority to prohibit the sale of these products in the entire jurisdiction, and in the interest of public health and to protect youth from these products, the Department recommends that any flavored tobacco product regulations apply to the entire unincorporated area. In the Bay Area, El Cerrito and Santa Clara County have adopted laws to restrict the sale of flavored (non-cigarette) tobacco products throughout the entire jurisdiction, and Yolo County is currently considering such regulations. Federal district courts outside of California have upheld similar bans, and the cities of New York, Providence, Rhode Island and Manhattan Beach, CA also prohibit the sale of these products throughout the entire city.

- c) **Prohibit the sale of menthol flavored cigarettes within 500 feet of schools.** In a Resolution signed on October 26, 2010, the Contra Costa Board of Supervisors urged the Food and Drug Administration to ban menthol in cigarettes and in other tobacco products, stating the Board's "commitment to the health and well-being of its residents and particular concern about preventing tobacco use among youth and in reducing health disparities." Due to intense lobbying from the tobacco industry, menthol flavored cigarettes were excluded from the federal ban on flavored cigarettes, even though a 2006 study published in the *Journal of Nicotine and Tobacco Research* showed that 50% of youth start smoking with menthol flavored cigarettes, and that these are "starter" cigarettes for many youth to go on to become regular smokers. Youth who smoke menthol cigarettes are significantly more likely to show signs of nicotine addiction than their peers who smoke non-menthol brands.²⁷ The tobacco industry has also targeted African Americans with mentholated tobacco products and as a result nearly 83% of African American smokers smoke menthol, compared with 24% of White smokers^{28,29,30}. The City of Chicago and the City of Berkeley are the two jurisdictions in the country that have adopted ordinances that prohibit the sale of menthol flavored cigarettes within a certain distance of schools (Chicago within 500 feet and Berkeley within 600 feet.) A federal district court has upheld Chicago's ordinance. Berkeley's ordinance has not been challenged. Should the Board wish to prohibit the sale of menthol flavored cigarettes in the unincorporated County, it would be the first County to do so in the nation.

County counsel reports that the county's police power appears to authorize the County to prohibit the sale of menthol cigarettes in the entire unincorporated County, or to regulate the sale of these products within a certain distance of schools, following similar actions taken by Chicago and Berkeley. Currently, there are a total of 93 licensed tobacco retailers in the unincorporated county, and nineteen of these stores lay within 500 feet of a school. The table on **Stores Selling Tobacco in Contra Costa, 2015** (Attachment III) provides information on the number of stores selling tobacco products that are within 500 feet of schools for each of the unincorporated communities.

- d) **Require a 10/pack minimum pack size for sale of cigars, including cigarillos and little cigars.** Small packages of tobacco products make these products more affordable and therefore more

Maker's Agreement to Stop Deceptive Marketing and Sales to Minors (Aug. 3, 2010), oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing.

²⁷ Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine & Tobacco Research*. 2006;8:403-413.

²⁸ Moolchan E. Adolescent menthol smokers: Will they be a harder target for cessation? *Nicotine Tob Res* (2004) 6(Suppl 1): S93-S95 doi:10.1080/14622203310001649522.

²⁹ The National African American Tobacco Prevention Network. Blacks and Menthol Fact Sheet. <http://naatpn.org/resources/Blacks%20&%20Menthol.pdf>. Accessed September 1, 2010.

³⁰ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *The NSDUH Report: Use of Menthol Cigarettes*. Rockville, MD. November 19, 2009.

accessible to youth. Youth are generally price-sensitive to the purchase of tobacco products. Although federal and state law ban the sale of individual cigarettes, neither restrict the sale of individual little cigars, cigarillos and cigars. These products are typically sold individually, making them more affordable and appealing to youth.³¹ Health Services recommends exempting premium cigars (those that retail for \$5 or more each) from a minimum pack size ordinance. The cities of El Cerrito, Hayward, Huntington Park and Sonoma currently require a minimum pack size of 5/pack, however since cigarillos and little cigars currently sell for as low as “3 for 99 cents”, a 10/pack minimum pack size may be a consideration if the Board decides to adopt this provision.

- e) **Prohibit any new tobacco retailers to be located within 1000 feet of schools, parks, playgrounds, and libraries.** Research has demonstrated that youth are more likely to experiment with tobacco products when retailers are located near schools, and that the number of tobacco retailers in a community affects youth smoking behaviors.³² The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates.³³ Restricting the location of all tobacco retailers near schools and other youth sensitive areas, as well as within a certain distance to each other, creates tobacco-free zones and reduces tobacco influences in the community. Twenty-five California cities and counties have adopted similar laws, including El Cerrito, Santa Clara County and Union City.

Other youth sensitive areas, such as youth centers, could be added to this provision. Maps illustrating a 1000 foot buffer around schools, parks, playgrounds and libraries were developed for one community in each of the Supervisorial districts (Attachment IV).

District I: El Sobrante

District II: Saranap

District III: Byron and Discovery Bay*

District IV: Contra Costa Centre

District V: Bay Point

*As requested at the 7/21/15 meeting, the two retailers selling tobacco products at the intersection of Byron Highway and Route 4 are approximately 3500 feet from Excelsior Middle School.

The maps also illustrate boundary areas within 500 feet of existing retailers, which is discussed below as another policy option.

- f) **Reduce the density of tobacco retailers by prohibiting the location of new tobacco retailers within 500 feet of existing tobacco retailers** (density relative to other retailers). High density of tobacco retailers has been associated with increased smoking rates, particularly among youth.³⁴ A study of California neighborhoods found that the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day.³⁵ Of additional concern, widespread presence of tobacco in retail settings normalizes the use of tobacco products and triggers

³¹ California Department of Public Health. (2012). *Tobacco in the Retail Environment*, www.cdph.ca.gov/programs/tobacco/Documents/Tobacco%20Retail%20Environment%20Fact%20Sheet_Easy%20Print.pdf

³² McCarthy, W.J., Mistry, R., Lu, Y., Patel, M., Zheng, H., Dietsch, B., Density of tobacco retailers near schools: effects on tobacco use among students. *American Journal of Public Health*, 2009. 99(11): p. 2006-2013.

³³ Henriksen L, Feighery EC, Schleicher NC, et al. 2008. “Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?” *Preventive Medicine* 47: 210-214.

³⁴ Henriksen L, Feighery EC, Schleicher NC, et al. 2008. “Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?” *Preventive Medicine* 47: 210-214.

³⁵ Chuang YC, Cubbin C, Ahn D, et al. 2005. “Effects of Neighbourhood Socioeconomic Status and Convenience Store Concentration on Individual Level Smoking.” *Journal of Epidemiology and Community Health* 59: 568-573.

smoking urges among former smokers and those attempting to quit.³⁶ California law limits alcohol licenses based on density, and this policy applies that same rationale to tobacco retailers. Nine cities and counties in CA have adopted similar laws.³⁷

- g) **Prohibit the sale of tobacco products in Pharmacies.** A recent gallop poll showed Pharmacists are perceived by many as among the most trusted of health care professionals. Research indicates that by selling tobacco products, pharmacies reinforce positive social perceptions and send a message that it is not so dangerous to smoke^{38,39}. Children and young people are particularly influenced by cues suggesting that smoking is acceptable. The American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for state and local laws prohibiting tobacco sales in drugstores and pharmacies because doing so supports the public health and social welfare of the communities in which they practice. In the Bay Area, Richmond, San Francisco, Berkeley, Marin County, Daly City and Santa Clara County prohibit the sale of tobacco products in all pharmacies. A federal district court has upheld San Francisco's ordinance prohibiting the sale of tobacco products in pharmacies. Of the nine (9) licensed pharmacies in the unincorporated county, there are currently six (6) that currently sell tobacco products.

Conditions of License Suspension if violation of the law occurs

- h) **Amend the County's Tobacco Retailer Licensing Ordinance to require retailers to remove tobacco advertising during the license suspension period.** Over 60 jurisdictions, including Richmond, Albany, Oakland, Pacifica, and Santa Clara County, require this provision during license suspension period, when sales of tobacco products are prohibited, and it is now considered a best practice provision to further support prevention of tobacco sales to minors. The adoption of the Tobacco Retailer Licensing program has proved to be a very effective means of reducing illegal sales of tobacco to minors. Sales in the unincorporated area of the County decreased from 37% to 7% within the first year of enforcement.
- i) **Amend the County's Tobacco Retailer Licensing Ordinance to expand the time period reviewed for prior violations of the license from 24 months (2 years) to 60 months (5 years) when considering the length of the license suspension.** Nearly 70 other CA jurisdictions include this provision, as it serves as a strong incentive for retailers to fully comply with tobacco control laws over time.

Other Policy Considerations

- j) **Prohibit new "Significant Tobacco Retailers",** businesses that primarily sell tobacco products, (defined by a certain percentage of gross revenue or floor space dedicated to tobacco products) including hookah lounges, vape shops and tobacco shops, from obtaining a tobacco retailer license. Over 8 percent of all tobacco retailers statewide were witnessed unlawfully selling to minors in 2012, and tobacco stores (defined as businesses in which at least 80 percent of merchandise was tobacco products)

³⁶ McDaniel PA and Malone RE. 2011. "Why California Retailers Stop Selling Tobacco Products, and What Their Customers and Employees Think About It When They Do." *BMC Public Health* 11: 848.

³⁷ "Matrix of Local Ordinances Restricting Tobacco Retailers Near Schools, July 2013", Center for Tobacco Policy and Organizing.

³⁸ Katz MH. 2008. "Banning Tobacco Sales in Pharmacies: The Right Prescription." *Journal of the American Medical Association*, 300(12):1451-1453.

³⁹ Hudmon KS, Fenlon CM, and Corelli RL. 2006. "Tobacco Sales in Pharmacies: Time to Quit." *Tobacco Control*, 15(1): 35-38.

sold to minors at a much higher rate than the statewide average, as high as 20.5 percent.⁴⁰ In the Bay Area, El Cerrito and Richmond prohibit new significant tobacco retailers; Pittsburg has imposed a moratorium on new “smoke shops” or “smoking lounges”; Antioch prohibits new significant tobacco retailers from certain locations; and Concord prohibits new hookah shops.

- k) **Require compliance with local and state laws regarding storefront signage.** This provision allows for suspension of a **retailer’s** license if a retailer violates the state or local law setting a maximum percentage of window space that can be covered by signs at retail establishments. Maximum allowable signage laws have been enacted as a safety measure, as they may allow for law enforcement to view into an establishment. This provision provides another mechanism for communities to bring retailers into compliance with existing health and safety laws. Santa Clara County has a similar provision.
- l) **Making violations of state laws regarding drug paraphernalia or controlled substances a violation of a tobacco retailer license.** Many cigarette, tobacco, and other shops sell items that are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit drugs, and claim that such items are intended for tobacco use. If adopted, drug paraphernalia would be defined as it is in state law.
- m) **Require tobacco retailers to check ID of customers who appear younger than 27.** Current law requires tobacco retailers and their employees to check the age of purchasers up to the age of 18, the legal age for tobacco product sales. Clerks and/or store owners who sell to minors sometimes appeal a citation based on a claim that the customer “looked like” they were 18 or older. This claim would not be allowable if this provision is adopted.
- n) **Cap the number of Tobacco Retailer Licenses issued at the current number of issued licenses.** In 2003 when the County’s Tobacco Retailer Licensing Ordinance was first instituted, there were 107 tobacco retailers in the unincorporated County. The number of retailers selling tobacco has gradually decreased to 92 licensed tobacco retailers in 2015, with an average of 1-2 new retailers applying for licenses annually. In the Bay Area, the city of Sonoma recently adopted a law that restricts new tobacco retailers to the 15 existing licensed tobacco retailer locations. San Francisco has adopted an ordinance which caps the total number of tobacco retailers at the current level for each of the supervisorial districts.

V. Fiscal Impacts.

Minimum fiscal impacts to the County are expected. Should the Board direct development of a revised ordinance there will be cost in staff time, including County Counsel and other county departments to develop the ordinance itself. A portion of the Prop 99 funding Contra Costa Health Services receives for its Tobacco Prevention Program could be allocated to coordinating and implementing directions provided by the Board of Supervisors. Tobacco Retailer licensing fees, currently \$287 per retailer, can also be used to conduct outreach and education to tobacco retailers on the ordinance amendments and new requirements. These activities can be conducted with current funded staff.

The July 21, 2015 report to the Board included the option to increase the Tobacco Retailer License Fee to fully cover the cost of enforcement and monitoring of all tobacco control laws, including youth decoy

⁴⁰ Chapman R. 2012. *State Health Officer’s Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 8, www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf

operations. The current Tobacco Retailer License fee reflects costs related to administration of the license and site compliance checks. It does not cover the cost of youth decoy operations through the Sheriff's Office for enforcement of the "no sales to minors" law, which are funded at approximately \$18,000 annually with County general funds. County Counsel reports that fees may be charged to recover reasonable regulatory and administrative costs for issuing licenses and performing inspections. Fees may not be charged for general governmental services, including law enforcement services. Given that multiple jurisdictions are funding enforcement efforts through tobacco retailer licensing fees, the Department recommends that a Board Order be presented at a later date adjusting the fee to better capture and recover updated and real costs.

Location and density policy options under consideration restrict new tobacco retail establishments only from locating within a certain distance of schools and other youth sensitive areas and of each other. If location restrictions are adopted, (prohibiting new tobacco retailers to be located within 1000 feet of schools, parks, playgrounds, and libraries; prohibiting new tobacco retailers to be located within 500 feet of an existing tobacco retailer; and/or prohibiting the sale of menthol cigarettes within a certain distance of schools) County Counsel has recommended that these provisions be included in the County's Zoning Code. As such, the County's Department of Conservation and Development will be included in the process of reviewing and approving new tobacco retailers in the County. If any of the location restrictions are adopted, the applicant would need to first get approval through the Department of Conservation and Development, which will also apply an administration fee to the applicant.

Retailer Industry Concerns. Staff were directed to respond to concerns expressed in a letter dated July 16, 2015 to the Board from representatives of the tobacco retail industry, most specifically the American Petroleum and Convenience Store Association (APCA), indicating their concerns over the financial impact of placing restrictions on flavored tobacco products and prohibiting the sale of tobacco products within 1000 feet of youth sensitive areas. Their correspondence cites that, on average, 30% of annual sales come from tobacco.

The density and location policy options discussed in this report apply to **new** retailers only, which appears to address this concern from this retail association. However, there may be associated financial impacts on some retailers, especially on small businesses that rely primarily on sale of flavored non-cigarette tobacco products throughout the county, and possibly for those selling menthol cigarettes within 500 feet of schools. This is balanced against the significant medical cost and human toll that tobacco related disease continues to exact on counties and their corresponding communities, which have resulted in over \$334 million annually in excess healthcare costs in our county alone⁴¹.

Some tobacco retailer associations also point to adults buying flavored products and small pack sizes. This may be true in some cases, however it is also true that these products target youth in Contra Costa communities. While the tobacco industry is prohibited from directly marketing and advertising to young people by the 1998 Master Settlement Agreement, brightly packaged, flavored tobacco products are a way to indirectly appeal and attract youth tobacco and e-cigarette users. Prohibiting flavored cigars and requiring minimum pack size will reduce tobacco use by creating an environment that has fewer tobacco influences and supports a tobacco-free community.

Resources are available to assist small businesses in revising their business plans in order to comply with any new regulations, and County staff will continue to identify additional resources to support small businesses in this transition. (Attachment V)

⁴¹ Max W, Sung H-Y, Shi Y, & Stark B. The Cost of Smoking in California, 2009. San Francisco, CA: Institute for Health & Aging, University of California, San Francisco, 2014.

VI. Implementing new tobacco prevention provisions

If adopted, most of proposed new regulations for sales of tobacco products will be included in the current Tobacco Retailer Licensing Ordinance, which is administered and enforced through the County's Public Health Division. An educational approach to compliance will be prioritized over the first year including a mailing to all affected tobacco retailers following final Board adoption of any new regulations, notifying retailers of the requirements under the new ordinance.

The department recommends that most of the provisions go into effect within 30 days of adoption of an ordinance, with the exception of the provisions prohibiting the sale of flavored tobacco products, menthol cigarettes and small packs of cigars. A longer implementation period of 180 days for these provisions will allow retailers to sell off product that they currently stock, as well as develop any alternative business plans, if necessary to comply with new health and public safety regulations.

Implementation, including outreach and education activities would be integrated into ongoing Tobacco Retailer Licensing implementation activities conducted by Tobacco Prevention Program staff. Specifically, implementation would include:

- developing an educational materials for direct mailing to all existing licensed tobacco retailers, including information on resources available to address business planning to comply with the new regulations.
- working with the affected County departments to develop operational protocols and to assure that any intersecting ordinances requirements are addressed in communications to the public.
- work with the Business License Office to review new license applications for approval and to provide educational materials through the Business License Office application and renewal mechanisms to both current and new retailers.
- updating and maintaining the Tobacco Prevention Program webpages with the new regulations and educational materials, as well as both State and County information on Tobacco Retailer Licensing and requirements.
- conducting site inspections, education and follow-up with owners if stores are not compliant with the new regulations.
- promoting and responding to calls received on the Tobacco Violations Reporting Line--collaborating with the Sheriff's Office to plan retailer compliance inspections. The Sheriff's Office will continue to conduct youth decoy operations through an MOU with Health Services
- continuing to coordinate license suspension hearings for those retailers that have been found to be in violation of the law.

Implementation of Tobacco Retailer Density and Location Restrictions. Public Health staff has met with County Counsel and Department of Conservation and Development staff to discuss options for implementation of the proposed tobacco retailer density and location restrictions. County Counsel reports that State law authorizes the county to establish density and location restrictions in its Zoning Code. Therefore, the Department of Conservation and Development will have a role in license approval through determining distance to schools, other youth sensitive areas, and to other retailers, if these provisions are adopted. However, Health Services staff has recommended that the density and location restrictions be reference in the amended Tobacco Retailer License Ordinance. The Public Health Department will maintain coordination of all aspects of the license approval process to assure that all tobacco related regulations are complied with prior to annual licensing of tobacco retailers and over the annual licensing period.

Communication with the Cities. Members of the Board expressed interest in communications with the cities on these policies. The Public Health Department will make every effort to make a presentation to the

Mayors Conference on any new ordinance provisions that are adopted, and staff will provide information and technical assistance to those cities that are interested in protecting health and public safety through addressing youth tobacco influences in the retail environment.