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To: Family and Human Services Committee, Contra Costa Board of Supervisors
From: Daniel Peddycord, RN, MPA, Public Health Director, Contra Costa Health Services
Re: Tobacco Control Draft Ordinances to Protect Youth from Tobacco Influences in the Retail Environment
Date: April 24, 2017

I. Background

On May 24, 2016, the Board of Supervisors accepted a Health Services Report on *Policy Options to Protect Youth from Tobacco Influences in the Retail Environment*, (Attachment I) which had been forwarded from the Family and Human Services Committee for discussion. The report highlighted how the 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. The Board of Supervisors approved the staff report and directed staff to work with County Counsel to draft the ordinances that would include all of these policy provisions, including prohibiting the sale of menthol cigarettes in a way that would be consistent with other proposed regulations, and present them to the Board of Supervisors for consideration and to the Planning Commission, if applicable.

II. The Amendments to the Tobacco Retailer Licensing Ordinance and the Zoning Code.

Public Health Department staff worked with County Counsel to develop language amending the County's Secondhand Smoke and Tobacco Product Control Ordinance (Division 445) and with County Counsel and Department of Conservation and Development staff on amendments to County Zoning Code (Chapter 88-26) to reflect the direction of the Board. The amended draft ordinances include all of the policy provisions recommended in the 5/24/16 Staff Report and approved by the full Board at that meeting.

Amendments to Division 445, Secondhand Smoke and Tobacco Product (Tobacco Product and Retail Sales Control, Attachment II) include:

a) The definition of "tobacco products" and "smoke" have been revised to be inclusive of newer electronic smoking devices and "liquids" that fall outside of the current definitions, including all electronic devices that could be used to deliver a dose of nicotine or other substances.
b) The sale of flavored non-cigarette tobacco products is prohibited in the entire jurisdiction.
c) The sale of menthol flavored cigarettes is also prohibited in the entire jurisdiction, making this provision consistent with regulations prohibiting the sale of other flavored tobacco products in the jurisdiction, as well as to reflect current best practices in California.
d) The sale of little cigars and cigarillos is prohibited in pack sizes under ten (10). Premium cigars that sell for $5.00 or more are exempt from this provision.
e) The sale of tobacco products is prohibited in pharmacies.
f) Compliance with state and local storefront signage laws is required in order to maintain a Contra Costa Tobacco Retailer License.
g) Compliance with drug paraphernalia sales laws is required in order to maintain a Contra Costa Tobacco Retailer License.
h) Tobacco retailers are required to check ID of customers who appear younger than 27 years of age.

i) The number of retailers that can sell tobacco products is "capped" at current number of licenses issued by the County.

Recommendation for Tobacco Retailer License capping number. The draft Tobacco Retailing Businesses Ordinance caps the total number of tobacco retail licenses at 98. This number was accurate at the time of the drafting of the ordinance a few months ago, however the list contained some duplicate licenses for single locations due to change of ownership. Accounting for the duplicate licenses, one store that has closed, and 6 pharmacies that will not be selling tobacco products if the draft ordinances are adopted, staff recommends the licensing cap be changed to 90 (ninety), which will more accurately reflect the current number of licenses and allow for 1 or 2 new businesses to secure a license.

Attachment II includes both the draft Tobacco Product and Sales Ordinance and the redline version of Chapter 445 with the Ordinance language inserted.

Condition of License Suspension if a Violation of the Law Occurs

j) Tobacco retailers who have their license suspended due to violations of the law are required to remove tobacco advertising during license suspension periods.

k) The time period reviewed for prior violations of the license (the "look-back" period) is expanded from 24 months (2 years) to 60 months (5 years) when considering the length of time for a license suspension for retailers found to be in violation of the law.

Amendments to the Zoning Code (Tobacco Retailing Business Ordinance, Attachment III)

l) *NEW* retailers operating within 1000 feet of schools, parks, playgrounds and libraries are prohibited from selling tobacco products.

Existing tobacco retailing businesses that do not meet these location standards will become nonconforming uses. A nonconforming use will be allowed to continue operating under the ordinance. However, if a change in ownership in the business occurs more than 10 years after the effective date of the ordinance, or more than 10 years after the date the use becomes nonconforming (i.e. if a school, park playground or library is established within 1000 feet of an existing retailer), then the use (tobacco retailing) must be discontinued.

m) *NEW* retailers within 500 feet of tobacco retailers are prohibited from selling tobacco products.

Existing tobacco retailing businesses that do not meet these location standards will become nonconforming uses. A nonconforming use will be allowed to continue operating under the ordinance. However, if a change in ownership in the business occurs more than 10 years after the effective date of the ordinance, then the use (tobacco retailing) must be discontinued. (i.e. if a change of ownership occurs at a tobacco retailer location more than 10 years after the effective date of the new ordinance, then tobacco products cannot be sold at that location.)

n) No NEW "Significant Tobacco Retailers", including "vape" shops, hookah bars or smoke shops are allowed.

A Summary of the amendments to the Ordinances (Attachment IV) is provided, including a description of the provision and other California jurisdictions with a similar ordinance. Of significant note since the May 2016 report are the new laws adopted by Santa Clara and Yolo Counties that prohibit the sale of all flavored tobacco products, including menthol cigarettes, throughout their entire respective unincorporated counties. These laws close the loophole in the Food and Drug Administration's prohibition on sale of flavored cigarettes, which exempts menthol-flavored cigarettes. Menthol is of particular concern because of its appeal to youth and beginning smokers, and the California Department of Public Health just this month published a new fact sheet on Menthol and Cigarettes (Attachment V) which describes the impact of menthol cigarettes on youth and communities of color.

III. Contra Costa Planning Commission Meeting Action. The amendments to the Zoning Code (Tobacco Retailing Businesses Ordinance) were presented with a Staff Report from the Department of Conservation and Development on December 6, 2016 (Attachment VI), and after hearing public comment, the Commission asked staff to provide additional outreach to tobacco retailers and continued the hearing to February 8, 2017. The Resolution of the County Planning Commission states the recommendation of the Commission to deny the proposed Tobacco Retailing Business Ordinance (Attachment VII).

IV. Tobacco Retailer Education and Input Session. Public Health staff held two Education and Input Sessions for Tobacco Retailers, one prior to the February 8, 2017 Planning Commission Meeting, held on February 2, 2017, and one held on March 2, 2017. Notification of each meeting was mailed to all licensed tobacco retailers in the unincorporated county, however no one attended the first session, and close to 50 people attended the second session. Among those who signed in, thirteen individuals represented a total of eight tobacco retailer stores located in the unincorporated county, and the remaining 29 individuals were tobacco retailers from Contra Costa cities and other counties, corporate office representative, or tobacco/vape industry spokespeople. A Summary of the March 2, 2017 Education and Input Session is included as Attachment VIII.

V. The 2016 Healthy Stores for a Healthy Community Store Survey Results. Family and Human Services Committee first directed staff to develop policy options to address youth tobacco influences in the retail environment after review of the 2013 Healthy Stores for a Healthy Community Store Survey Results. The 2016 Store Survey findings, just released in March, 2017, also confirmed that tobacco products are still being promoted to youth. While most of the Store Survey findings were unchanged since the 2013 Report, the 2016 Survey found that the number of stores in the region and throughout the state selling electronic cigarettes increased from 46% in 2013 to 62% in 2016, and that 77% of stores selling tobacco near schools in Contra Costa sell flavored non-cigarette tobacco products like "watermelon" and "tropical blast" flavored cigarillos and little cigars. Staff are available to make a brief presentation to the Committee on the 2016 Store Survey results at a later date based on direction from the Committee.

VI. Recommendation. Health Services recommends that the draft Tobacco Product and Retail Sales Control Ordinance under 445-10.002(b)(3) be amended to change the total number of tobacco retailer licenses issued in the County from 98 to 90, and that Family and Human Services move the amended Ordinance and the Tobacco Retailing Businesses ordinance to the full Board for the following considerations:

1. Introduce Ordinance No. 2017-01 to establish restrictions on the retail sales of emerging tobacco products such as electronic smoking devices and flavored tobacco products, including menthol cigarettes, prohibit tobacco retailing in pharmacies, and establish a cap on the number of tobacco retailer licenses issued by the County;
2. Adopt Ordinance No. 2017-__ (Tobacco Retailing Businesses) under the Zoning Code to regulate the location of tobacco retailing businesses and prohibit the establishment of hookah lounges, vapor lounges, and significant tobacco retailing businesses; and
3. Report outreach activities and implementation issues on the new ordinances to the Family and Human Services Committee on an annual basis.

Implementation issues are discussed in the May 24, 2016 Report to the Board of Supervisors. However, based on input from retailers at the March 2, 2017 Education and Input Session, 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. The Department recommends that these provisions have an effective date of six months after adoption of the ordinances to 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.

Contra Costa County

To: Board of Supervisors

From: William Walker, M.D., Health Services Director

Date: May 24, 2016

Subject: Accept Staff Report on Policy Options for Protecting Youth from Tobacco Influences in the Retail Environment

RECOMMENDATION(S):

ACCEPT the Health Services Department, Public Health Division, staff report on policy options to protect youth from tobacco influences in the retail environment. DETERMINE which policy options, as recommended in Attachment II, to include in an ordinance regulating tobacco retailers. DIRECT Public Health staff to work with the County Counsel's Office to draft the ordinance and present it to the Board of Supervisors for the Board's consideration and present to the Planning Commission, if applicable.

FISCAL IMPACT:

Should the Board direct the development of a revised ordinance, minimal fiscal impacts associated with staff time costs, including County Counsel and other departments to develop the ordinance itself are expected. 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, education and compliance inspections to tobacco retailers on the ordinance amendments and new requirements. These activities can be conducted with current funded staff.

☑ APPROVE

☑ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ OTHER

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **05/24/2016** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 24, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

Contact: Dan Peddycord, 313-6712

cc: T Scott, M Wilhelm, Tracey Rattray

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). 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
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 modified as County Counsel reports that it was not allowable as proposed. Each provision found in Attachment II, as well as fiscal and implementation issues, are discussed in more detail in Attachment I, Health Services Report on Policy Options and Recommendation for Addressing Youth Tobacco Influences in the Retail Environment.

CONSEQUENCE OF NEGATIVE ACTION:

If this Action is not approved, the public's health may not be protected to the extent possible.

CHILDREN'S IMPACT STATEMENT:

Tobacco products are still being promoted to children through availability of youth-friendly flavored tobacco products and inexpensive small packs of these products; exposure to tobacco marketing in the retail environment; and the sale and marketing of tobacco products near schools and other youth sensitive areas. Policy options exist to amend County Code to address these issues and will discourage youth from tobacco use and promote healthier communities.

ATTACHMENTS

Attachment I

Attachment II

Attachment III

Attachment IV

Attachment V

powerpoint

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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:

<u>Most Impactful Provisions to Reduce Youth Tobacco Influences in the Community</u>

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 year[5] and 3.9 million Californians still smoke[6]. In 2011, the tobacco industry spent $605 million[7] 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 youth[9] 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.

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[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 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 2014[13]. 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:

a) **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 addiction[15]. As such, The Family and Human Services Committee directed staff to revise the definition of "Tobacco Products" at its April 15, 2015 Committee Meeting.

b) **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

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[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]

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[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. 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

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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

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[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)

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[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

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[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 alone[41].

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)

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[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.

Policy Options for Addressing Youth Tobacco Influences in the Retail Environment

Contra Costa Health Services, Public Health Division
For Presentation to Contra Costa Board of Supervisors, May 24, 2016

Most Impactful Policies for Addressing Youth Tobacco Influences in the Retail Environment		
Provision	**Description**	**CA Jurisdictions with Similar Protection**
a. Require a Tobacco Retailer License for all retailers selling traditional and/or emerging tobacco products.	Revises definition of "Tobacco Product" to include all "emerging products" including all electronic smoking devices (whether or not they contain nicotine). Current definition fails to capture a number of vaping products that have emerged since the County tobacco retail ordinance was adopted. If adopted, the new definition would cover all electronic devices which mimic smoking or can be used to deliver a dose of nicotine or other substances, and all components, parts or accessory of a "tobacco product".	El Cerrito, Richmond, Albany, Oakland, San Jose and Santa Clara County for a total of close to 100 jurisdictions in CA. *Family and Human Services Committee directed staff to develop updated definition for current ordinance at 4/13/15 Committee Meeting.*
b. Prohibit the sale of flavored (non-cigarette) tobacco products	Prohibits the sale of flavored (non-cigarette) tobacco products within the entire unincorporated County. The Food and Drug Administration has banned candy, fruit and spice as characterizing flavors for cigarettes only. Other tobacco products (smokeless, little cigars, hookah tobacco, and dissolvable tobacco products) with these flavors are exempt from the federal ban. If adopted, the ban on flavored product would extend to these other non-cigarette tobacco products.	El Cerrito, Berkeley, Santa Clara County, Hayward, Manhattan Beach and Sonoma (Also New York City; Providence Rhode Island, and Chicago.) Under consideration in Yolo County.
c. Prohibit the sale of menthol flavored cigarettes near schools *(added to "most effective" list since the 7/21/15 report based on recent court decision)*	Would prohibit the sale of menthol flavored cigarettes within a certain distance of a school. The Food and Drug Administration has exempted "menthol" flavor from its ban on "characterizing flavors" in cigarettes. Staff recommends a distance no less than 500 feet. If adopted, this provision would affect 19 tobacco retailers across the unincorporated county.	Berkeley (within 600 feet of schools) Also Chicago (within 500 feet of schools)
d. Require minimum pack size for cigars	Although federal and state law ban the sale of individual cigarettes, neither restrict the sale of individual cigars, including cigarillos and little cigars. Options include requiring minimum pack size (current regulation for cigarettes is 20) for all cigars. Staff recommend a package size of 10. Could exempt premium cigars that cost $5 or more.	El Cerrito, Hayward, Sonoma, Huntington Park, Gardena, Union City.
e. Restrict location of <u>new</u> tobacco retailers near schools and other "youth-sensitive" areas such as parks, playgrounds and libraries.	Prohibits a license to **<u>new</u>** tobacco retailers if located within a certain distance (e.g., 500-1500 feet) of a school or other area frequented by youth (e.g., playground, church, recreation center, park, etc.). Staff recommend a distance of 1000 feet, which is consistent with multiple jurisdictions.	Near Schools and other Youth Sensitive Areas: El Cerrito, Antioch, Berkeley, Dublin, Union City, Vallejo, Albany, Oakland, Marin County, and San Rafael (plus 14 other jurisdictions). Near schools only: San Francisco, Santa Barbara County, Sacramento, Santa Clara County, Manhattan Beach, plus 5 other jurisdictions.

f. Prohibit new tobacco retailers from locating within certain proximity of other retailers	This density measure would restrict **new** tobacco retailers from locating within a certain distance (e.g., 500-1500 feet) of another new or existing tobacco retailer. Staff recommends 500 feet, which is consistent with multiple jurisdictions.	El Cerrito, San Francisco, Santa Cruz, Hayward, Dublin, Santa Clara County, Union City, Vallejo, Fairfield, Saratoga, Rohnert Park, Temple City, Westminster, Selma, El Cahon
g. Prohibit sale of tobacco products in pharmacies	Prohibiting the sale of tobacco products in pharmacies is consistent with the public's perception of pharmacies as a place to go for health-related service and advice. Of the 9 pharmacies in the unincorporated county, three have already made corporate decisions to not sell tobacco products (2 CVS stores and Park Rexall).	Richmond, San Francisco, Santa Clara County, Berkeley, Healdsburg, Daly City, Hollister, Marin County
Conditions of License Suspension if violation of law occurs:		
h. Remove tobacco advertising during license suspension	Requires retailers to remove or cover all tobacco-related advertising, in addition to tobacco products, during the period that their tobacco retailer license is suspended. Would also apply to Electronic Smoking Devices and paraphernalia if definition of "tobacco products" is revised.	Richmond, Concord, Albany, Oakland, Pacifica, Santa Clara plus 56 other jurisdictions
i. Expand time period reviewed for prior violations of license	Would expand time period reviewed for prior violations of license from 24 months (2 years) to 60 months (5 years) when considering length of license suspension.	El Cerrito, Richmond, Albany, Oakland plus 64 other jurisdictions
Other Policy Considerations:		
j. Prohibit new "Significant Tobacco Retailers"	Prohibits a **new** "Significant Tobacco Retailer"—a business that primarily sells tobacco products—from obtaining a tobacco retailer license. Definition of "Significant Tobacco Retailer" is based on either amount of floor space or percentage of sales devoted to tobacco products. Would also apply to retailers selling Electronic Smoking Devices and paraphernalia if definition of "tobacco products" is revised, as recommended above. This provision would effectively prohibit any new 'vape' shops, hookah bars, or tobacco shops.	El Cerrito; Huntington Park; Richmond; Carpinteria; Concord (no new hookah shops); Dublin (no vapor lounges or hookah bars); Hayward (no vapor lounges); Union City (no vapor lounges or hookah bars); and Pittsburg (moratorium on any new "smoke shops")
k. Require tobacco retailers to comply with storefront signage laws	Allows for suspension of retailer's license if a retailer violates the state law or local law setting a maximum percentage of window space that can be covered by signs at retail locations. These laws exist for safety purposes, as they provide for more visibility into stores for law enforcement. This would provide a means to bring retailers into compliance with health and safety laws.	Santa Clara County
l. Require tobacco retailers to comply with drug paraphernalia sales laws	Makes violations of state laws regarding drug paraphernalia or controlled substances a violation of a tobacco retailer license. Definition of what constitutes drug paraphernalia would be as defined in state law.	Oakland, Richmond, Union City plus 8 other cities and counties (Firebaugh, Grass Valley, Huntington Park, Montebello, Parlier, Riverbank, Santa Cruz County, and Watsonville) (as of June, 2012)

m. Require tobacco retailers to check ID of customers who appear younger than 27	Requires retailers to check the age of purchasers who appear to be under the age of 27. This measure helps insure that tobacco is not sold to youth and will become even more relevant should the State advance the legal age to purchase tobacco from 18 to 21 years of age.	Concord, Richmond, Albany, Oakland, Santa Clara (age 30) plus 35 other jurisdictions
n. Limit or "cap" the number of retailers that can sell tobacco products.	This density measure, limits the total number of tobacco retailer licenses that are issued. At present time there are 92 tobacco retailers in the Unincorporated area of the county. The Cap recommended by staff is 92.	Sonoma, Orville, Lynwood, Huntington Park, San Francisco
o. Increase the Tobacco Retailer License Fee to fully cover the cost of education, enforcement and monitoring of any new provisions adopted by the County.	The current Tobacco Retailer License was set at $287 in 2010. It reflected the cost at that time related to the administration of the license and some site compliance checks. Staff recommend that a separate board order be presented at a later date adjust the license fee to better capture and recover updated and real cost. 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.	98 of 110 jurisdictions in CA have Tobacco Retailer Licensing enforcement programs, including youth decoy operations, that are fully funded through tobacco retailer licensing fees (as of September, 2013).

STORES SELLING TOBACCO IN CONTRA COSTA, 2015

	Place	Total Number of Stores Selling Tobacco	Stores within 500 feet of Schools
			#
1	Alamo	7	-
2	Bay Point	15	4
3	Bethel Island	4	-
4	Blackhawk	1	-
5	Byron	2	-
6	Contra Costa Centre	2	1
7	Crockett	2	1
8	Diablo	1	-
9	Discovery Bay	4	-
10	East Richmond Heights	1	-
11	El Sobrante	18	5
12	Kensington	3	-
13	Knightsen	2	-
14	Montalvin Manor	1	1
15	Mountain View	4	-
16	North Richmond	2	-
17	Pacheco	3	-
18	Rodeo	5	3
19	Saranap	3	-
20	Tara Hills	1	1
21	Vine Hill	5	3
	Other Unincorporated	6	-
	Unincorporated Subtotal*	92	19
	Contra Costa Total	744	145

*NOTE: The following CDPs do not have any stores licensed by the BoE to sell tobacco: Acalanes Ridge, Alhambra Valley, Bayview, Camino Tassajara, Castle Hill, Clyde, Norris Canyon, North Gate, Port Costa, Reliez Valley, Rollingwood, San Miguel, and Shell Ridge.

Distance calculated in ArcGIS from store parcel to school parcel.

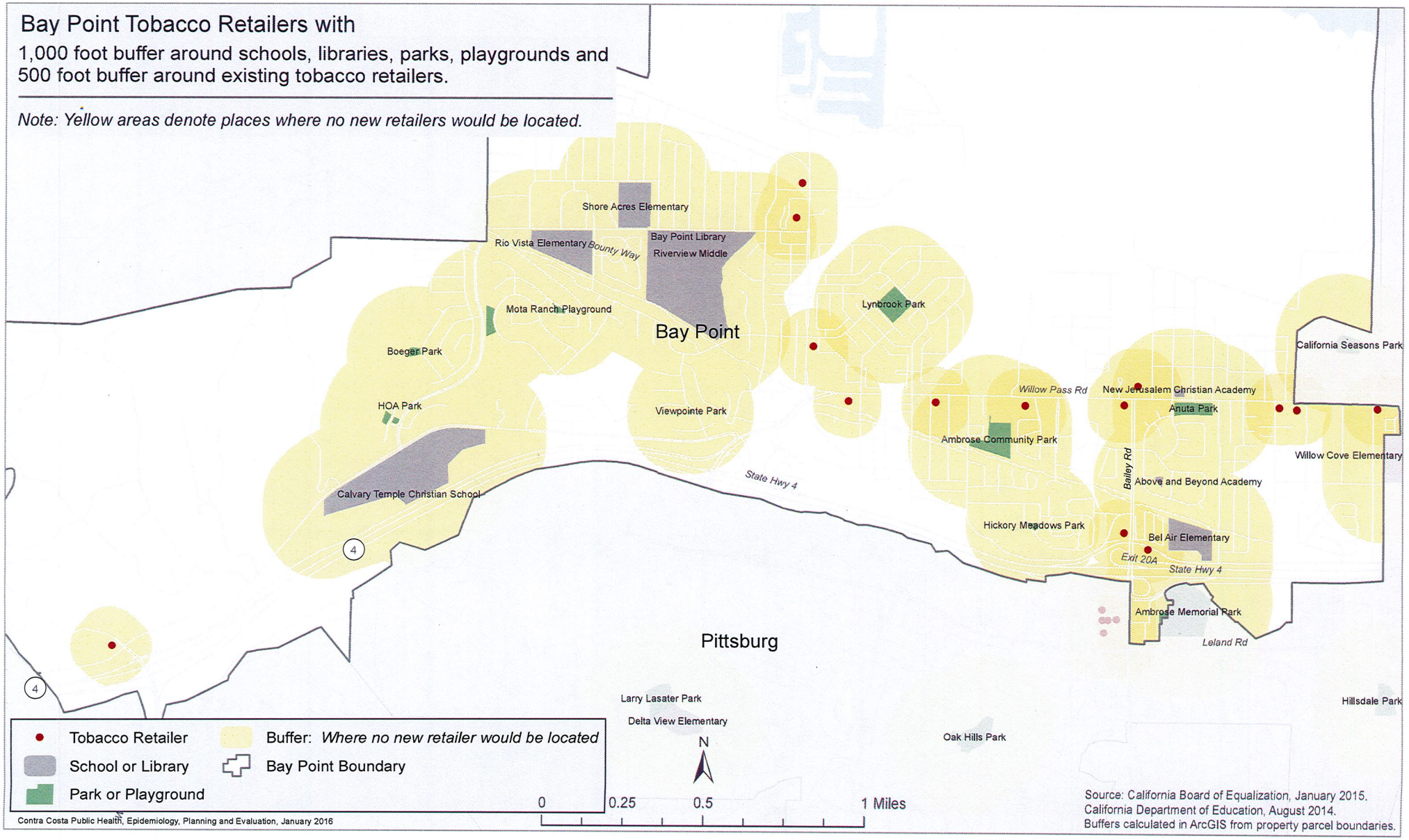
Sources: California Board of Equalization, January 2015. California Department of Education, August 2014.

Contra Costa Public Health, Epidemiology, Planning & Evaluation, 2.29.16.

Bay Point Tobacco Retailers with

1,000 foot buffer around schools, libraries, parks, playgrounds and 500 foot buffer around existing tobacco retailers.

Note: Yellow areas denote places where no new retailers would be located.



Source: California Board of Equalization, January 2015.
California Department of Education, August 2014.
Buffers calculated in ArcGIS from property parcel boundaries.

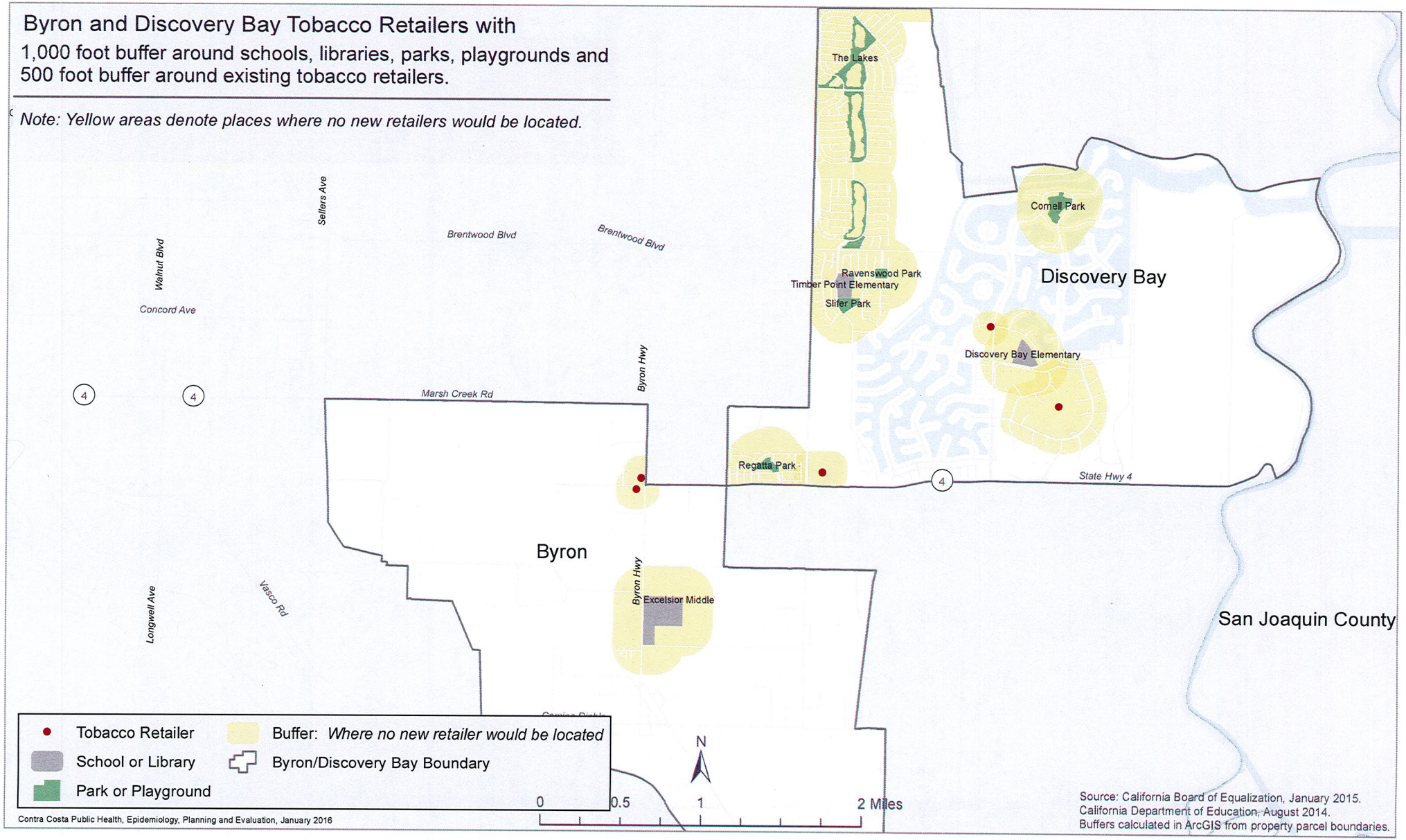
Contra Costa Public Health, Epidemiology, Planning and Evaluation, January 2016

01.26.16

Byron and Discovery Bay Tobacco Retailers with

1,000 foot buffer around schools, libraries, parks, playgrounds and 500 foot buffer around existing tobacco retailers.

Note: Yellow areas denote places where no new retailers would be located.



Source: California Board of Equalization, January 2015.
California Department of Education, August 2014.
Buffers calculated in ArcGIS from property parcel boundaries.

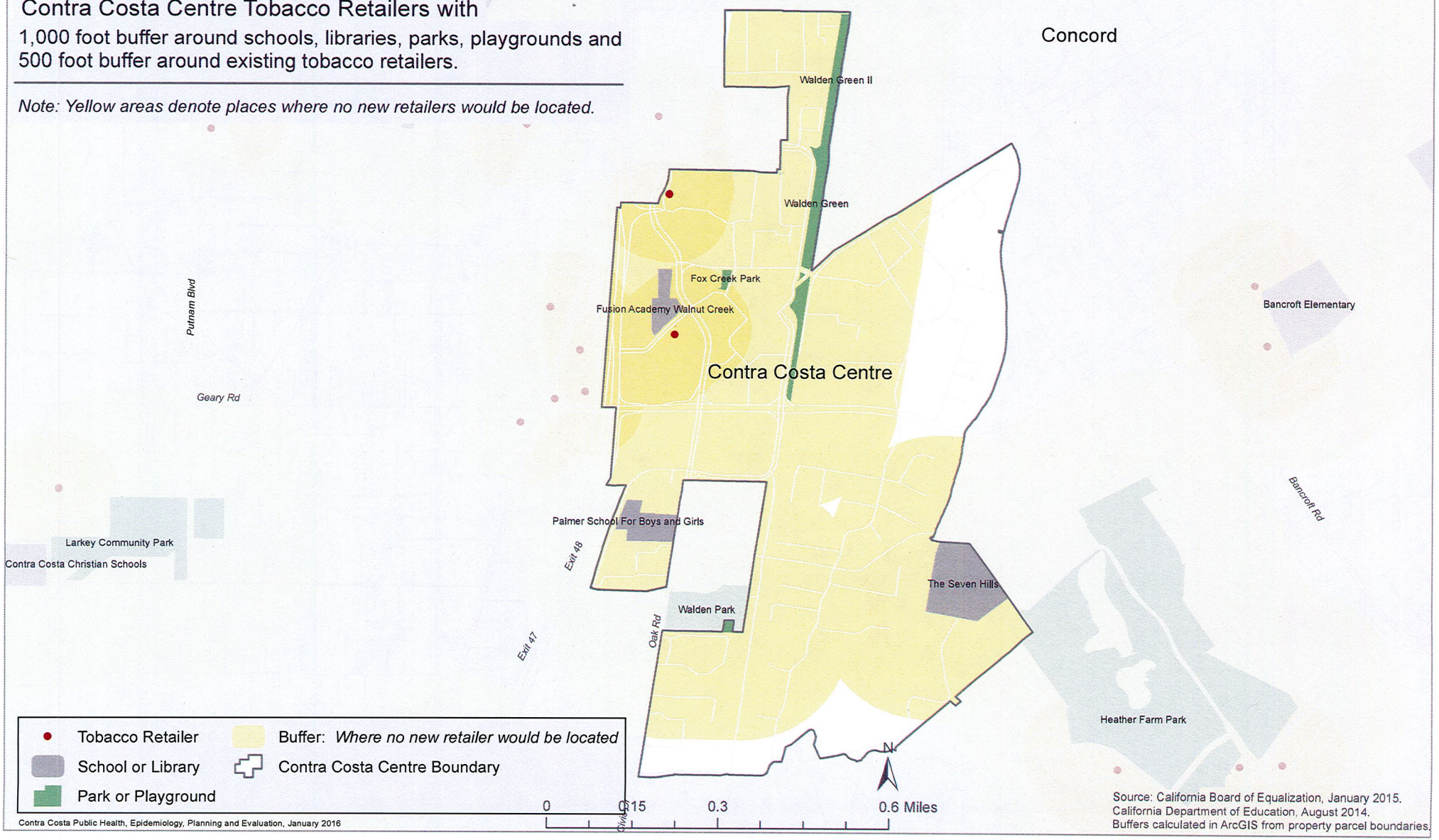
Contra Costa Public Health, Epidemiology, Planning and Evaluation, January 2016

01.26.16

Contra Costa Centre Tobacco Retailers with

1,000 foot buffer around schools, libraries, parks, playgrounds and 500 foot buffer around existing tobacco retailers.

Note: Yellow areas denote places where no new retailers would be located.



Source: California Board of Equalization, January 2015.
California Department of Education, August 2014.
Buffers calculated in ArcGIS from property parcel boundaries.

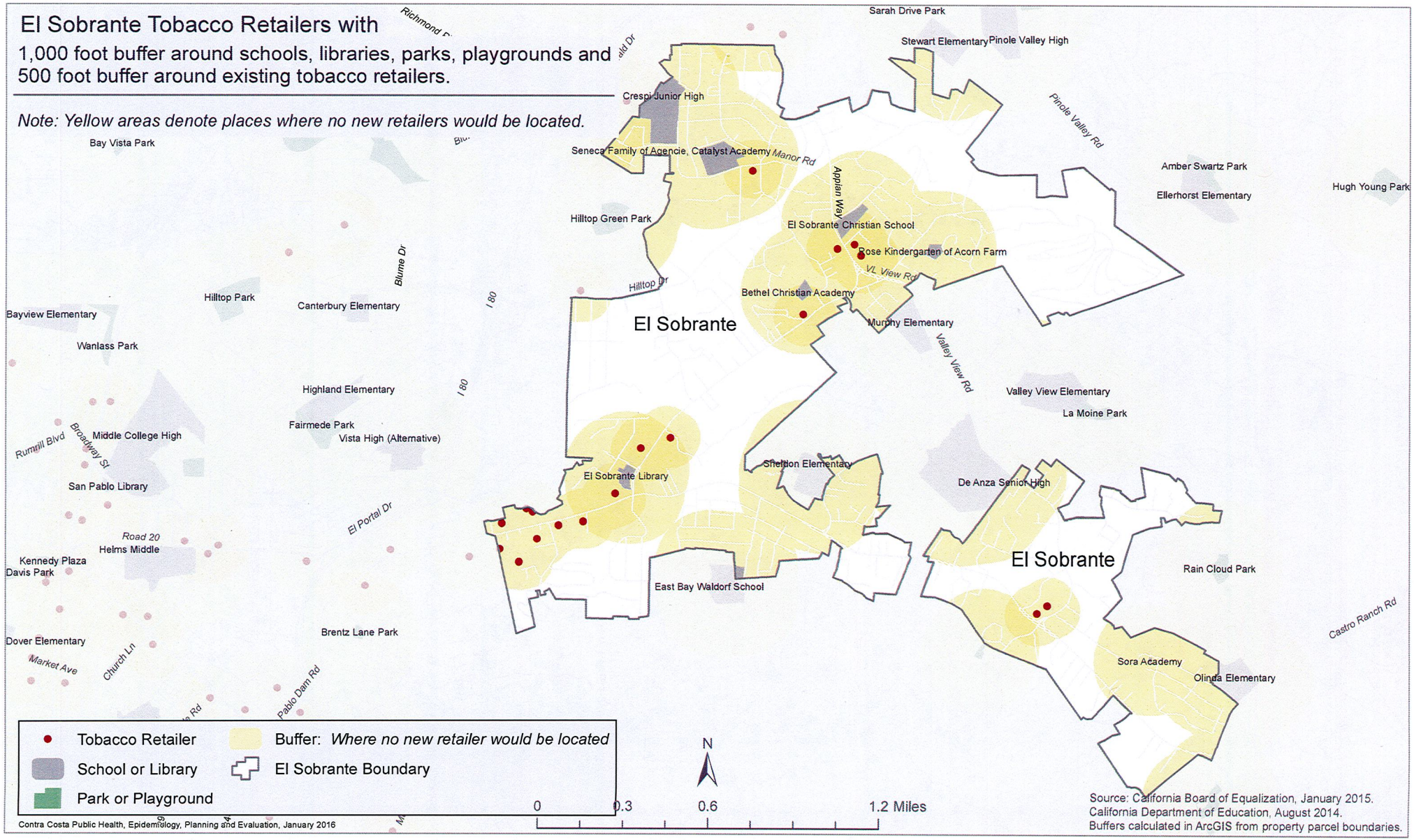
Contra Costa Public Health, Epidemiology, Planning and Evaluation, January 2016

01.26.16

El Sobrante Tobacco Retailers with

1,000 foot buffer around schools, libraries, parks, playgrounds and 500 foot buffer around existing tobacco retailers.

Note: Yellow areas denote places where no new retailers would be located.



Source: California Board of Equalization, January 2015.
California Department of Education, August 2014.
Buffers calculated in ArcGIS from property parcel boundaries.

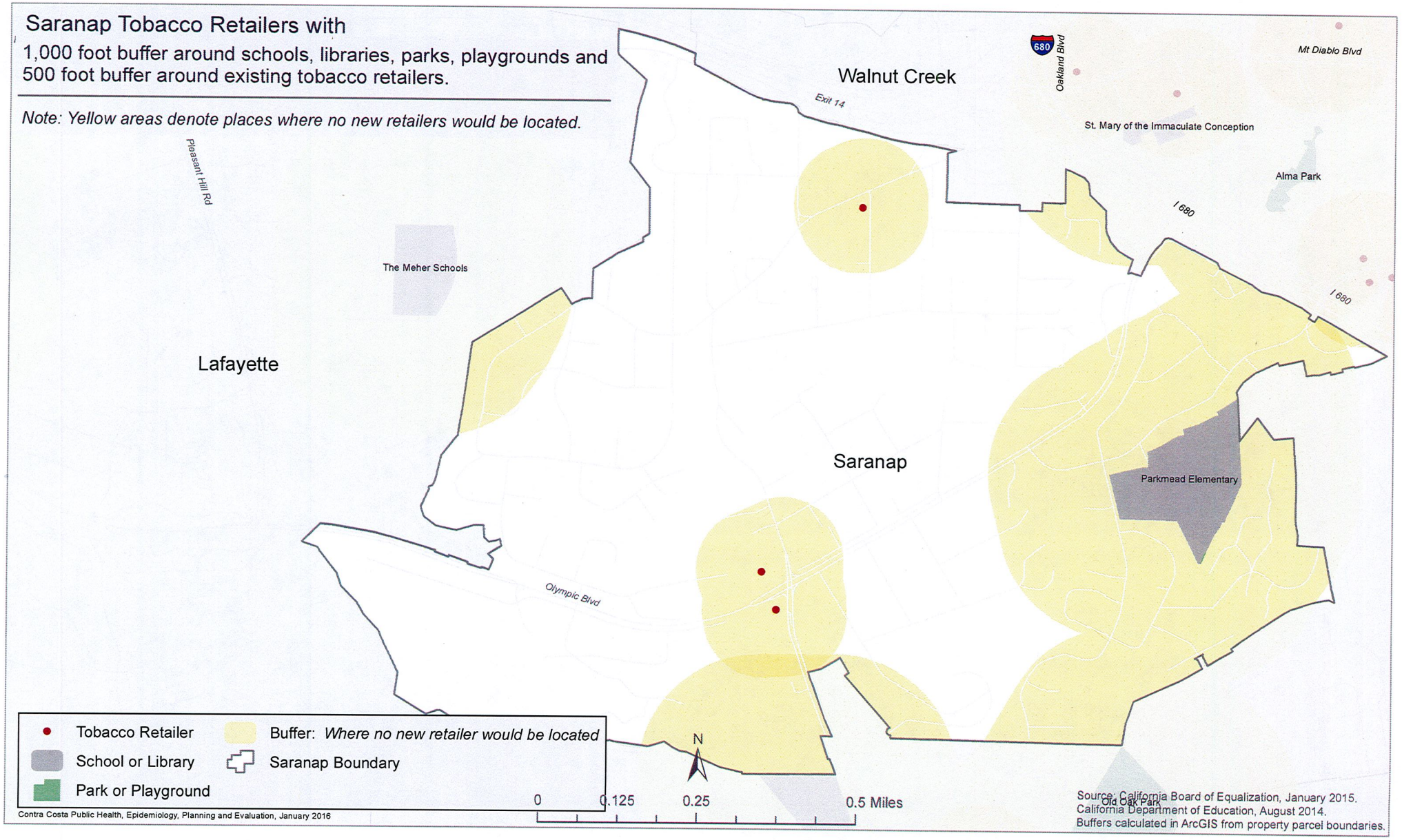
Contra Costa Public Health, Epidemiology, Planning and Evaluation, January 2016

01.26.16

Saranap Tobacco Retailers with

1,000 foot buffer around schools, libraries, parks, playgrounds and 500 foot buffer around existing tobacco retailers.

Note: Yellow areas denote places where no new retailers would be located.



Source: California Board of Equalization, January 2015.
California Department of Education, August 2014.
Buffers calculated in ArcGIS from property parcel boundaries.

Contra Costa Public Health, Epidemiology, Planning and Evaluation, January 2016

01.26.16

ATTACHMENT V

Resources for Small Business Owners in CC County

The following resources are currently available to small business owners in Contra Costa County:

Contra Costa County Small Business Development Center

The Small Business Development Center (SBDC) offers free workshops and advising on a variety of business topics, including:

- Adapting a business practice in response to new laws
- Support in navigating licensing and permit issues
- Accessing loans
- Sales and marketing
- Strategic planning
- Identifying resources

SBDC also provides personalized, one-on-one advising and access to experts in many fields that can help business adapt to changes in the business environment, such as laws restricting sales of certain tobacco products. Services are provided free of charge to all small business owners in Contra Costa County. Contra Costa SBDC is grant funded and assesses each business for eligibility before one-on-one services are offered.

Tobacco retailers interested in the individualized advising services would be assessed for the potential to achieve economic impact (such as job retention) in the next 6-12 months, then a Scope of Work would be developed for individualized services. The expectation is that for every hour the Center invests in a project, the retailer will work approximately 5 hours. For example, the retailer should plan to spend 25 hours working on their goals (such as a business plan to diversify products sold) in exchange for five hours of individual consulting. The Contra Costa County SBDC advising services are available to small businesses, such as businesses with less 500 employees and less than $15M annual revenue.

More information about applying for advising services with Contra Costa SBDC is available on their website: http://contracostasbdc.org/node/20289

"Professional guidance as you grow your business is critical to success. Our team of advisors is at your service to assist with the opportunities and issues related with growing your business. This service is free to all owners of existing businesses and entrepreneurs who are actively launching a business." – SBDC

Contact:
Oscar Dominguez, Contra Costa SBDC Director
Workforce Development Board of Contra Costa
300 Ellinwood Way, Suite 300 Pleasant Hill, California 94523
925-602-6810
odominguez@ehsd.cccounty.us

ATTACHMENT V

Small Business Administration (SBA)
https://www.sba.gov/
The SBA offers general and technical assistance to new and established businesses. Services include loan programs, business counseling, management training, conferences, referrals and reference libraries.

Small Business Information Center:
(800) 827-5722 national answer desk
Email: answerdesk@sba.gov

Service Corps of Retired Executives (SCORE)
Retired business professionals volunteer to provide free counseling to individuals starting small businesses. Counseling and workshops are available at a cost.
(510) 273-6611
http://eastbayscore.org/

Renaissance Entrepreneurship Center
The Renaissance Entrepreneurship Center is a non-profit that works to increase the entrepreneurial capacities of individuals, and thereby strengthen communities through the creation of sustainable new businesses, new jobs, and the promotion of financial self-sufficiency.

They offer classes, workshop and one on one consulting in Richmond. Their beginner class, "Start Smart" is a 4-week program (12 hours) and costs $120 with financially-based scholarships available. Their intermediate class, "Business Prep" is a nine-week program (27 hours) and costs $240 with financially-based scholarships available. They also offer workshops for advanced entrepreneurs (people who have launched their business) ranging from Quickbooks to e-commerce to social media marketing.

Contact:
Bret Alexander Sweet, Program Manager
Renaissance Entrepreneurship Center - Richmond
1500 Macdonald Avenue, Richmond, CA 94801
510-221-2002
bsweet@rencenter.org
www.rencenter.org

Policy Options for Addressing Youth Tobacco Influences in the Retail Environment

Contra Costa Health Services, Public Health Division
For Presentation to Contra Costa Board of Supervisors May 24, 2016

Most Impactful Policies for Addressing Youth Tobacco Influences in the Retail Environment

Provision	Description	CA Jurisdictions with Similar Protection
a. Require a Tobacco Retailer License for all retailers selling traditional and/or emerging tobacco products.	Revises definition of "Tobacco Product" to include all "emerging products" including all electronic smoking devices (whether or not they contain nicotine). Current definition fails to capture a number of vaping products that have emerged since the County tobacco retail ordinance was adopted. If adopted, the new definition would cover all electronic devices which mimic smoking or can be used to deliver a dose of nicotine or other substances, and all components, parts or accessory of a "tobacco product".	El Cerrito, Richmond, Albany, Oakland, San Jose and Santa Clara for a total of 100 other jurisdictions in CA. *Family and Human Services Committee directed staff to develop updated definition for current ordinance at 4/13/15 Committee Meeting.*
b. Prohibit the sale of flavored (non-cigarette) tobacco products	Prohibits the sale of flavored (non-cigarette) tobacco products within the entire unincorporated County. The Food and Drug Administration has banned candy, fruit and spice as characterizing flavors for cigarettes only. Other tobacco products (smokeless, little cigars, hookah tobacco, and dissolvable tobacco products) with these flavors are exempt from the federal ban. If adopted, the ban on flavored product would extend to these other non-cigarette tobacco products.	El Cerrito, Berkeley, Santa Clara County, Hayward, Manhattan Beach and Sonoma (Also New York City; Providence Rhode Island, and Chicago.) Under consideration in Yolo County
c. Prohibit the sale of menthol flavored cigarettes near schools *(added to "most effective" list since the 7/21/15 report based on recent court decision)*	Would prohibit the sale of menthol flavored cigarettes within a certain distance of a school. The Food and Drug Administration has exempted "menthol" flavor from its ban on "characterizing flavors" in cigarettes. Staff recommends a distance no less than 500 feet. If adopted, this provision would affect 19 tobacco retailers across the unincorporated county.	Berkeley (within 600 feet of schools) Also Chicago (within 500 feet of schools)
d. Require minimum pack size for cigars	Although federal and state law ban the sale of individual cigarettes, neither restrict the sale of individual cigars, including cigarillos and little cigars. Options include requiring minimum pack size (current regulation for cigarettes is 20) for all cigars. Staff recommend a package size of 10 . Could exempt premium cigars that cost $5 or more.	El Cerrito, Hayward, Sonoma, Huntington Park, Gardena, Union City.
e. Restrict location of <u>new</u> tobacco retailers near schools and other "youth-sensitive" areas such as parks, playgrounds and libraries.	Prohibits a license to **<u>new</u>** tobacco retailers if located within a certain distance (e.g., 500-1500 feet) of a school or other area frequented by youth (e.g., playground, church, recreation center, park, etc.). Staff recommend a distance of 1000 feet, which is consistent with multiple jurisdictions.	Near Schools and other Youth Sensitive Areas: El Cerrito, Antioch, Berkeley, Dublin, Union City, Vallejo, Albany, Oakland, Marin County, and San Rafael (plus 14 other jurisdictions). Near schools only: San Francisco, Santa Barbara County, Sacramento, Santa Clara County, Manhattan Beach, plus 5 other jurisdictions.

a. Require a Tobacco Retailer License for all retailers selling traditional and/or emerging tobacco products.

E-cigarettes

Includes cigalikes, e-hookah, e-cigars and cartridges

Cigalikes

E-Hookahs

E-cigar

Cartr

Vape pens

Vape pen

Mods/tanks

Mechanical mods

Box mod

E-liquids

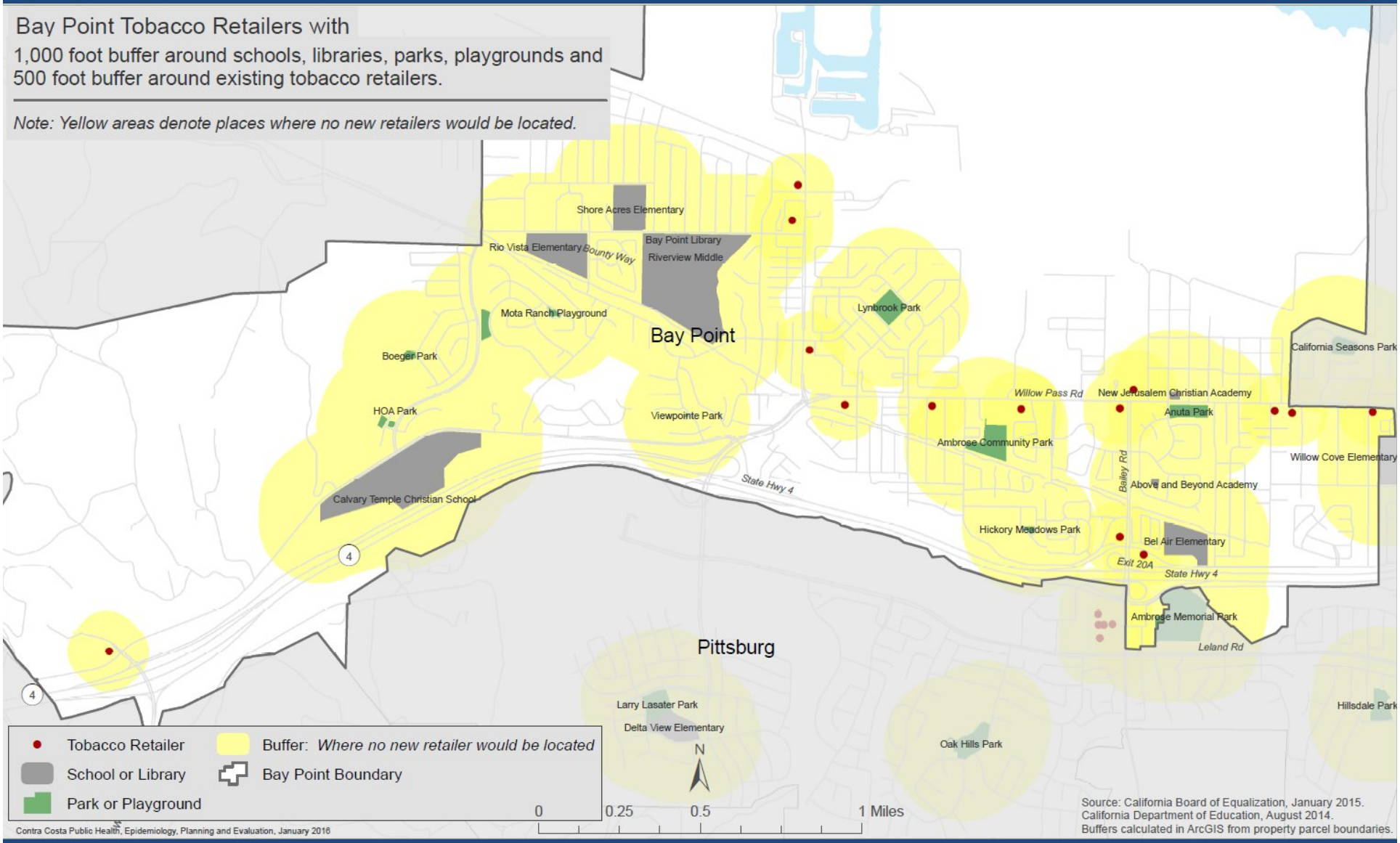
b. Prohibit the sale of flavored (non-cigarette) tobacco products

c. Prohibit the sale of menthol flavored cigarettes near schools

d. Require minimum pack size for cigars

e. Restrict location of tobacco retailers near schools and other youth sensitive areas

f. Prohibit new tobacco retailers from locating within certain proximity of other retailers


Bay Point Tobacco Retailers with
1,000 foot buffer around schools, libraries, parks, playgrounds and 500 foot buffer around existing tobacco retailers.
Note: Yellow areas denote places where no new retailers would be located.
Shore Acres Elementary
Rio Vista Elementary
Bounty Way
Bay Point Library
Riverview Middle
Mota Ranch Playground
Bay Point
Lynbrook Park
Boeger Park
HOA Park
Viewpointe Park
Calvary Temple Christian School
State Hwy 4
Willow Pass Rd
New Jerusalem Christian Academy
Anuta Park
California Seasons Park
Ambrose Community Park
Willow Cove Elementary
Bailey Rd
Above and Beyond Academy
Hickory Meadows Park
Bel Air Elementary
Exit 20A
State Hwy 4
Ambrose Memorial Park
Leland Rd
Pittsburg
Larry Lasater Park
Delta View Elementary
Oak Hills Park
Hillsdale Park
Tobacco Retailer
School or Library
Park or Playground
Buffer: Where no new retailer would be located
Bay Point Boundary
N
0
0.25
0.5
1 Miles
Source: California Board of Equalization, January 2015.
California Department of Education, August 2014.
Buffers calculated in ArcGIS from property parcel boundaries.
Contra Costa Public Health, Epidemiology, Planning and Evaluation, January 2016

ORDINANCE NO. 2017-01

TOBACCO PRODUCT AND RETAIL SALES CONTROL

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance amends Division 445 of the County Ordinance Code to establish restrictions on the retail sales of emerging tobacco products, such as electronic smoking devices and flavored tobacco products, and to reduce the accessability and exposure of tobacco products to minors and the public generally.

SECTION II. Section 445-2.006 of the County Ordinance Code is amended to read:

445-2.006 Definitions. For the purposes of this division, the following words and phrases have the following meanings:

(a) "Characterizing flavor" means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A "characterizing flavor" includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

(b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

(c) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(d) "Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.

(e) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An "electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

(f) "Enclosed" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.

(g) "Flavored tobacco product" means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor.

(h) "Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little cigar" includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "little cigar."

(i) "Package" or "packaging" means a pack, box, carton, or container of any kind, or any wrapping, in which a tobacco product is sold or offered for sale to a consumer.

(j) "Menthol cigarettes" means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.

(k) "Multi-unit residence" means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 of this code is not a multi-unit residence for purposes of this division.

(l) "Multi-unit residence common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.

(m) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; at least 80 percent of the guest rooms in any hotel and motel; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children or patients are present and during business hours. The places specified in subdivisions (e)(1), (2), (6), and (7) of Labor Code section 6404.5 are places

of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.

(n) "Public place" means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.

(o) "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

(p) "Service area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not the service involves the exchange of money. "Service areas" include but are not limited to automatic teller machine waiting areas, bank teller windows, ticket lines, bus stops and taxi stands.

(q) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or illegal substances, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, marijuana smoke, and smoke from any illegal substance.

(r) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.

(s) "Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of tobacco products.

(t) "Tobacco product" means any of the following:

(1) Any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.

(2) Any electronic smoking device.

(3) Any component, part, or accessory of a tobacco product, whether or not it is sold separately.

(4) "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for that approved purpose.

(u) "Tobacco retailer" means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ords. 2017-01 § 2, 2013-10 § II, 4-9-13, 2010-10 § II, 10-12-10, 2006-66 § 4, 98-43 § 2, 91-44 § 2).

SECTION III. The title of Chapter 445-6 is amended to read:

Chapter 445-6
TOBACCO SALES

SECTION IV. Section 445-6.006 is added to the County Ordinance Code, to read:

445-6.006 Flavored tobacco products. It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product. (Ord. 2017-01 § 4).

SECTION V. Section 445-6.008 is added to the County Ordinance Code, to read:

445-6.008 Packaging and labeling. No tobacco retailer may sell any tobacco product to any consumer unless that product is sold in the original manufacturer's packaging intended for sale to consumers and conforms to all applicable federal labeling requirements. (Ord. 2017-01§ 5).

SECTION VI. Section 445-6.010 is added to the County Ordinance Code, to read:

445-6.010 Minimum package size for little cigars and cigars. No tobacco retailer may sell to a consumer any of the following:

(a) Any little cigar unless it is sold in a package of at least ten little cigars.

(b) Any cigar unless it is sold in a package of at least ten cigars. This subsection does not apply to a cigar that has a price of at least $5 per cigar, including all applicable taxes and

fees. (Ord. 2017-01 § 6).

SECTION VII. Section 445-6.012 is added to the County Ordinance Code, to read:

445-6.012 Identification required. No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase the tobacco product or tobacco paraphernalia. (Ord. 2017-01 § 7).

SECTION VIII. Section 445-6.014 is added to the County Ordinance Code, to read:

445-6.014 Menthol cigarettes. It is a violation of this division for any tobacco retailer to sell or offer for sale menthol cigarettes. (Ord. 2017-01 § 8).

SECTION IX. Section 445-10.002 of the County Ordinance Code is amended to read:

445-10.002 License requirement.

(a) It is unlawful for any retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where tobacco retailing is conducted.

(b) No tobacco retailer's license will be issued that:

(1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

(2) Authorizes tobacco retailing in a pharmacy.

(3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding 98.

(c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation. (Ords. 2017-01 § 9, 2003-01 § 3, 98-50 § 2).

SECTION X. Section 445-10.004 of the County Ordinance Code is amended to read:

445-10.004 Enforcement of state law. If a clerk or employee sells a tobacco product or tobacco paraphernalia to any person under the age of 21, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code section 308 for

enforcement under that statute. (Ords. 2017-01 § 10, 2003-01 § 3, 98-50 § 2).

SECTION XI. Section 445-10.006 of the County Ordinance Code is amended to read:

445-10.006 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

(a) "Director" means the director of Contra Costa health services or his or her designee.

(b) "Drug paraphernalia" has the meaning set forth in California Health & Safety Code section 11014.5.

(c) "Licensee" means a tobacco retailer who has been issued a tobacco retailer's license in accordance with Section 445-10.010.

(d) "Pharmacy" means any retail establishment where the profession of pharmacy is practiced by a pharmacist licensed by the State of California under the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

(e) "Public health director" means the public health director of Contra Costa County.

(f) "Tax collector" means the treasurer-tax collector of Contra Costa County.

(g) "Tobacco retailer" has the definition set forth in Section 445-2.006. (Ords. 2017-01 § 11, 2003-01 § 3, 98-50 § 2).

SECTION XII. Section 445-10.018 of the County Ordinance Code is amended to read:

445-10.018 License suspension.

(a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.

(b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:

(1) The date of the violation.

(2) The address or other description of the location where the violation occurred.

(3) The code section(s) violated, or applicable state or federal law violated, and a description of the violation.

(4) The time period of the tobacco retailer's license suspension.

(5) The date of the suspension hearing before the public health director. The notice of suspension hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of suspension hearing is served.

(c) Suspension Hearing. A tobacco retailer's license may be suspended by the public health director after a tobacco retailer's license suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the notice of suspension hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to suspend or not suspend the tobacco retailer's license. The public health director will list in the decision the reason or reasons for the decision and will list the time period of the tobacco retailer's license suspension, if applicable. The written decision will be served as specified in Section 445-10.022.

(d) Time Period of License Suspension.

(1) A tobacco retailer's license suspension may be up to thirty days for a first violation.

(2) A tobacco retailer's license suspension may be up to ninety days for a second violation occurring within five years of the first violation.

(3) A tobacco retailer's license suspension may be up to one year for each subsequent violation occurring within five years of the most recent prior determination.

(e) Suspension Appeal. The decision of the public health director to suspend a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.

(f) Final Order. The tobacco retailer's license suspension becomes a final administrative order at one of the following times:

(1) On the date of the suspension hearing, if a tobacco retailer fails to appear at a scheduled suspension hearing.

(2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified.

(3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors.

(4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors. (Ords. 2017-01 § 12, 2003-01 § 3, 98-50 § 2).

SECTION XIII. Section 445-10.024 is added to the County Ordinance Code, to read:

445-10.024 Display and advertisement without license.

(a) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia while a license is suspended or revoked is a violation of Section 445-10.002.

(b) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, may not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of these products from the tobacco retailer's location or that could lead a reasonable consumer to believe that these products can be obtained at that location. (Ord. 2017-01 § 13).

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SECTION XIV. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator

_____
Board Chair

By: _____
Deputy

[SEAL]

KCK:
H:\Client Matters\2017\HS\Ordinance No. 2017-01 Tobacco Product and Retail Sales Control - final.wpd

DIVISION 445
SECONDHAND SMOKE AND TOBACCO PRODUCT CONTROL

Chapter 445-2
GENERAL PROVISIONS

445-2.002 Title.

This division is known as the secondhand smoke and tobacco product control ordinance of Contra Costa County.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.004 Purpose.

The purposes of this division are to protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco products; and further to maintain a balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, while recognizing that where these conflict, the need to breathe smoke-free air shall have priority.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.006 Definitions.

For the purposes of this division, the following words and phrases have the following meanings:

(a) "Characterizing flavor" means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A "characterizing flavor" includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

(b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

(c) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(d) "Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.

(e) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An "electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

(f) "Enclosed" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.

(g) "Flavored tobacco product" means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor.

(h) "Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little cigar" includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "little cigar."

(i) "Package" or "packaging" means a pack, box, carton, or container of any kind, or any wrapping, in which a tobacco product is sold or offered for sale to a consumer.

(j) "Menthol cigarettes" means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.

(k) "Multi-unit residence" means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached ~~second~~ accessory dwelling unit permitted pursuant to Chapter 82-24 of this code is not a multi-unit residence for purposes of this division.

(l) "Multi-unit residence common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.

(m) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; at least 80 percent of the guest rooms in any hotel and motel; vehicles used for business

purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children or patients are present and during business hours. The places specified in subdivisions (~~d~~e)(1), (2), ~~(3), (4),~~ (6), and (7)~~, (8), (11), (12), (13) and (14)~~ of Labor Code section 6404.5 are places of employment for purposes of this division and are regulated as specified in this division. The places specified in subdivisions (~~d~~e)(3), (4), and (5)~~, (9), and (10)~~ of Labor Code section 6404.5 are not places of employment for purposes of this division.

(n) "Public place" means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.

(o) "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of ~~a~~ the retailer or employee of the retailer. A vending machine is a form of self-service display.

(p) "Service area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not the service involves the exchange of money. "Service areas" include but are not limited to automatic teller machine waiting areas, bank teller windows, ticket lines, bus stops and taxi stands.

(q) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization ~~of a tobacco product,~~ when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the ~~tobacco product~~byproduct, except when the combusting or vaporizing material contains no tobacco or nicotine or illegal substances, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic smoking device ~~cigarette~~ vapors, ~~and~~ marijuana smoke, and smoke from any illegal substance. ~~"Smoke" excludes incense or similar products inhaled solely for olfactory purposes as long as those products do not contain tobacco or nicotine.~~

(r) "Smoking" means ~~engaging in an act that generates smoke. "Smoking" includes~~ inhaling, exhaling, burning, ~~possessing, holding,~~ or carrying any lighted, heated, or ignited cigar, ~~lighted~~ cigarette, cigarillo, ~~lighted~~ pipe, ~~lighted~~ hookah ~~pipe~~, ~~operating~~ electronic ~~cigarette~~smoking device, or any plant product intended for human inhalation~~other smoke inhalation device of any kind. "Smoking" includes smoking marijuana for medical purposes~~.

(s) "Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of tobacco products.

(t) "Tobacco product" means any of the following:

(1) Any ~~substance~~ product containing, made from, or derived from tobacco ~~leaf~~for nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, ~~hookah tobacco,~~and snuff~~, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco~~.

(2) Any electronic smoking device.
~~Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, including but not limited to electronic cigarettes.~~

(3) Any component, part, or accessory of a tobacco product, whether or not it is sold separately.

(4) ~~The term~~ "Tobacco product" does not include any product that has been ~~specifically~~ approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for that approved purpose~~use in treating nicotine dependence or tobacco dependence~~.

(u) "Tobacco retailer" means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(Ords. 2017-01 § 2, 2013-10 § II, 4-9-13, 2010-10 § II, 10-12-10, 2006-66 § 4, 98-43 § 2, 91-44 § 2).

~~(Ord. No. 2013-10, § II, 4-9-13; Ord. No. 2010-10, § II, 10-12-10; Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)~~

Chapter 445-4
SECONDHAND SMOKE

445-4.002 County facilities.

(a) Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by county employees, owned or leased by the county, or otherwise operated by the county.

(b) Smoking is prohibited in all outdoor areas owned or leased by the county, including parking lots, the grounds of the county's hospital and health clinics, and the grounds of all other buildings owned or leased by the county.

(c) Smoking is prohibited on the grounds of the county's jails and county juvenile system facilities to the extent allowed by law.

(Ord. No. 2014-06, § II, 6-17-14; Ords. 2006-66 § 5, 91-44 § 2)

445-4.004 Prohibition of smoking.

Smoking is prohibited in the following places within the unincorporated area of Contra Costa County:

(a) Enclosed places of employment.

(b) Enclosed public places.

(c) Service areas.

(d) All areas within twenty feet of doors, windows, air ducts and ventilation systems of enclosed places of employment, except while passing on the way to another destination.

(e) All areas within twenty feet of doors, windows, air ducts and ventilation systems of enclosed public places, except while passing on the way to another destination.

(f) The following outdoor areas:

(1) Outdoor dining areas at bars and restaurants.

(2) Outdoor lounges and outdoor dining areas at places of employment.

(3) Public trails and public parks.

(4) Public event venues.

(g) All multi-unit residence common areas, except that a landlord may designate a portion of an outdoor common area as a smoking area. A designated smoking area of an outdoor common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total outdoor common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.

(h) All areas within twenty feet of doors, windows, air ducts and ventilation systems of multi-unit residences, except while passing on the way to another destination.

(i) All outdoor balconies, porches, decks, patios, and carports of multi-unit residences.

(j) All dwelling units in any new multi-unit residence that receives a building permit on or after January 1, 2011.

(Ord. No. 2010-10, § III, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.006 Exceptions.

(a) Smoking is permitted at any location within the county unless otherwise prohibited by this code or by state or federal law.

(b) Smoking is permitted in up to twenty percent of guest rooms in any hotel or motel, as long as the hotel or motel permanently designates at least eighty percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms, and permanently removes ashtrays from these rooms. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings or portions of either. Smoking rooms and nonsmoking rooms shall not be interspersed. Nothing in this division requires a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property.

(Ord. No. 2010-10, § IV, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.008 Posting requirements.

(a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), shall be conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place.

(b) Every hotel or motel regulated by this division shall post at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his or her preference.

(Ords. 2006-66 § 5, 91-44 § 2)

445-4.010 Ashtray placement.

No ashtray or other receptacle used for disposing of smoking materials may be placed at any location where smoking is prohibited by this division or otherwise prohibited by law.

(Ord. No. 2009-26, § II, 10-20-09)

445-4.012 Disclosure of non-smoking residential units.

In a multi-unit residence where units are rented or leased to tenants, the owner and manager of the residence shall do all of the following:

(a) Maintain and keep on file at the premises: (1) a list of all designated non-smoking units at the residence; and (2) a floor plan of the residence that identifies the location of all designated non-smoking units, any units where smoking is permitted, and any designated outdoor smoking areas.

(b) Disclose whether a policy for handling smoking complaints is in effect at the multi-unit residence, and if so, the terms of that policy.

(c) Provide a copy of the list and floor plan, and a copy of any policy for addressing smoking complaints in effect at a multi-unit residence, to each tenant along with every new lease or rental agreement for the occupancy of a unit in a multi-unit residence.

(Ord. No. 2009-26, § III, 10-20-09)

445-4.014 Required lease terms.

(a) Commencing January 1, 2011, every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include the terms specified in subsection (b) of this section on the earliest possible date allowed by law after providing any required legal notice.

(b) Required Terms.

(1) For any multi-unit residence where the landlord has designated separate smoking and non-smoking dwelling units, a clause stating that smoking is prohibited in all dwelling units that have been designated as non-smoking units must be included in the written agreements specified in subsection (a) of this section.

(2) For any multi-unit residence where the landlord has prohibited smoking in all dwelling units, a clause stating that smoking is prohibited in all dwelling units must be included in the written agreements specified in subsection (a) of this section.

(3) For any new multi-unit residence that receives a building permit on or after January 1, 2011, a clause stating that smoking is prohibited in all dwelling units must be included in the written agreements specified in subsection (a) of this section.

(4) A clause stating that it is a material breach of the lease or rental agreement to: (i) violate any law regarding smoking while on the premises; (ii) smoke in a non-smoking dwelling unit; or (iii) smoke in any multi-unit residence common area where smoking is prohibited, must be included in the written agreements specified in subsection (a) of this section.

(c) The California Apartment Association's Form 34.0, revised January 2010 and as amended from time to time, may be used to comply with this section.

(d) A landlord's failure to enforce any smoking regulation of a lease or agreement on one or more occasions does not constitute a waiver of the lease or agreement provisions required by this section and does not prevent future enforcement of the lease or agreement provisions required by this section.

(e) A landlord is not liable under this chapter to any person for a tenant's breach of smoking regulations if:

(1) The landlord has fully complied with all provisions of this chapter, and

(2) Upon receiving a signed written complaint regarding prohibited smoking, the landlord provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written complaint against the offending tenant, the landlord may evict the tenant, but is not liable for the failure to do so.

(Ord. No. 2010-10, § V, 10-12-10)

Chapter 445-6
TOBACCO ~~PRODUCTS~~SALES

445-6.002 Self-service displays.

(a) It is unlawful for any person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by means of self-service display, vending machine, rack, counter-top or shelf that allows self-service sales for any tobacco product or tobacco paraphernalia.

(b) All tobacco products and tobacco paraphernalia shall be offered for sale exclusively by means of vendor or employee assistance. Tobacco products and tobacco paraphernalia shall be kept in a locked case that requires employee assistance to retrieve the tobacco products or tobacco paraphernalia.

(Ords. 2006-66 § 6, 98-43 § 2).

445-6.004 Distribution of free samples and coupons.

It is unlawful for any person, agent, or employee of a person in the business of selling or distributing cigarettes or other tobacco or smoking products to distribute, or direct, authorize, or permit any agent or employee to distribute, any of the following to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building:

(a) Any tobacco product;

(b) Coupons, certificates, or other written material that may be redeemed for tobacco products without charge.

(Ords. 2006-66 § 6, 91-44 § 2)

445-6.006 Flavored tobacco products.

It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product.

(Ord. 2017-01 § 4).

445-6.008 Packaging and labeling.

No tobacco retailer may sell any tobacco product to any consumer unless that product is sold in the original manufacturer's packaging intended for sale to consumers and conforms to all applicable federal labeling requirements.

(Ord. 2017-01 § 5).

445-6.010 Minimum package size for little cigars and cigars.

No tobacco retailer may sell to a consumer any of the following:

(a) Any little cigar unless it is sold in a package of at least ten little cigars.

(b) Any cigar unless it is sold in a package of at least ten cigars. This subsection does not apply to a cigar that has a price of at least $5 per cigar, including all applicable taxes and fees.

(Ord. 2017-01 § 6).

445-6.012 Identification required.

No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase the tobacco product or tobacco paraphernalia.

(Ord. 2017-01 § 7).

445-6.014 Menthol cigarettes.

It is a violation of this division for any tobacco retailer to sell or offer for sale menthol cigarettes.

(Ord. 2017-01 § 8).

Chapter 445-8
ENFORCEMENT

445-8.002 Compliance.

(a) A person may not smoke in any place where smoking is prohibited by this division.

(b) A person who owns, manages, operates or otherwise controls the use of any place where smoking is prohibited by this division may not knowingly or intentionally permit smoking in those places. For purposes of this subsection, a person has acted knowingly or

intentionally if he or she has not taken the following actions to prevent smoking by another person: (1) requested that a person who is smoking refrain from smoking; and (2) requested that a person who is smoking leave the place if the person refuses to stop smoking after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.

(c) The presence or absence of the signs required by Section 445-4.008 is not a defense to the violation of any other provision of this division.

(Ords. 2009-26, § IV, 10-20-09, 2006-66 § 7, 91-44 § 2)

445-8.004 Remedies.

The county may seek compliance with this division by any remedy allowed under this code, including but not limited to administrative fines (Chapter 14-12), infraction citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2006-66 § 7, 2003-01 § 4, 98-43 § 2, 91-44 § 2)

445-8.006 Initiation of enforcement.

Any person may initiate enforcement of this division by notifying the director of health services or his or her designee of any violation.

(Ords. 2006-66 § 7, 91-44 § 2)

445-8.008 Liability.

For purposes of determining liability of persons, firms, corporations, or controlling franchises with business operations in multiple locations, each individual business location shall be deemed a separate entity.

(Ords. 2006-66 § 7, 2003-01 § 4, 98-43 § 2).

445-8.010 No retaliation.

No person shall retaliate against any employee or applicant for employment because the employee or applicant exercises any rights afforded by this division.

(Ords. 2006-66 § 7, 91-44 § 2)

445-8.012 Other applicable laws.

This division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ords. 2006-66 § 7, 91-44 § 2)

Chapter 445-10
TOBACCO RETAILER'S LICENSE

445-10.002 License requirement.

(a) It is unlawful for any retailer, individual, or entity to ~~sell or offer for sale any tobacco products~~ conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where ~~these sales are~~ tobacco retailing is conducted. ~~Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited. Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.~~

(b) No tobacco retailer's license will be issued that:

(1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

(2) Authorizes tobacco retailing in a pharmacy.

(3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding 98.

(c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.

(Ords. 2017-01 § 9, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.004 Enforcement of state law.

If a clerk or employee sells a tobacco product or tobacco paraphernalia to ~~a minor~~any person under the age of 21, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code Section 308 for enforcement under that statute.

(Ords. 2017-01 § 10, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.006 Definitions.

For purposes of this chapter, the following words and phrases have the following meanings:

(a) "Director" means the director of Contra Costa health services or his or her designee.

(b) "Drug paraphernalia" has the meaning set forth in California Health & Safety Code section 11014.5.

(c) "Licensee" means a tobacco retailer who has been issued a tobacco retailer's license in accordance with Section 445-10.010.

(d) "Pharmacy" means any retail establishment where the profession of pharmacy is practiced by a pharmacist licensed by the State of California under the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

(e) "Public health director" means the public health director of Contra Costa County.

(f) "Tax collector" means the treasurer-tax collector of Contra Costa County.

(g) "Tobacco retailer" has the definition set forth in Section 445-2.006~~means any retailer, individual, or entity who sells or offers for sale any tobacco products in the unincorporated area of the county~~.

(Ords. 2017-01 § 11, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.008 Application, issuance and renewal procedure.

(a) Application. An application for a tobacco retailer's license shall be submitted to the tax collector in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form available from the tax collector and shall contain the following information:

(1) The name, address, and telephone number of the applicant;

(2) The business name, address, and telephone number of each establishment where tobacco is to be sold.

(b) Issuance and Renewal. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30. Licensees must apply for

renewal before the tobacco retailer's license expires. Applicants for renewal must follow the application procedures set forth in subdivision (a).

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.010 Issuance, display, and transfer of license.

(a) Upon receipt of a completed application for a tobacco retailer's license, including payment of a fee pursuant to Section 445-10.012, the tax collector will issue a tobacco retailer's license, unless any of the following grounds for denial exist:

(1) The application is incomplete or inaccurate;

(2) The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect under Section 445-10.018;

(3) The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to Divisions 82 or 84 of this code.

(4) Failure to pay an outstanding fine.

(b) Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.

(c) The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.012 License fee.

A tobacco retailer's license will not be issued unless a fee is paid. The fee for a tobacco retailer's license shall reflect the reasonable cost of providing services necessary to the licensing activities of this chapter. The fees prescribed by this section are regulatory permit fees and do not constitute a tax for revenue purposes. The fee shall be in the amount established annually by the board of supervisors in the Contra Costa County health services department's fee schedule.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.014 Business license.

If a tobacco retailer's license is denied, revoked, or suspended pursuant to this chapter, the holder of a valid business license issued pursuant to Chapter 64-14 of this code may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale of tobacco products, unless otherwise prohibited.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.016 License revocation.

(a) Grounds for Revocation. A tobacco retailer's license may be revoked on any of the following grounds:

(1) One or more of the grounds for denial of a tobacco retailer's license under Section 445-10.010 existed either when a license application was made or before the tobacco retailer's license was issued;

(2) The tobacco retailer's license fee is unpaid;

(3) The tobacco retailer's license has been transferred in violation of Section 445-10.010.

(b) Notice of Revocation Hearing. If any grounds for revocation exist, the director may issue a notice of revocation hearing. A notice of revocation hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:

(1) The address or a definite description of the location where the tobacco retailer's license is issued;

(2) The grounds for revocation;

(3) The date of the revocation hearing before the public health director. The notice of revocation hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of revocation hearing is served.

(c) Revocation Hearing. A tobacco retailer's license may be revoked by the public health director after a tobacco retailer's license revocation hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the grounds set forth in the notice of revocation hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to revoke or not revoke the license and will list in the decision the reason or reasons for that decision. The written decision will be served as specified in Section 445-10.022. A revocation is without prejudice to the filing of a new application for a tobacco retailer's license.

(d) Revocation Appeal. The decision of the public health director to revoke a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.

(e) Final Order. The tobacco retailer's license revocation becomes a final administrative order at one of the following times:

(1) On the date of the revocation hearing, if a tobacco retailer fails to appear at a scheduled revocation hearing;

(2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;

(3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;

(4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.018 License suspension.

(a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, ~~Division 440 of this code, or~~ any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.

(b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:

(1) The date of the violation;

(2) The address or other description of the location where the violation occurred;

(3) The code section(s) violated, or applicable state or federal law violated, and a description of the violation;

(4) The time period of the tobacco retailer's license suspension;

(5) The date of the suspension hearing before the public health director. The notice of suspension hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of suspension hearing is served.

(c) Suspension Hearing. A tobacco retailer's license may be suspended by the public health director after a tobacco retailer's license suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the notice of suspension hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to suspend or not suspend the tobacco retailer's license. The public health director will list in the decision the reason or reasons for the decision and will list the time period of the tobacco retailer's license suspension, if applicable. The written decision will be served as specified in Section 445-10.022.

(d) Time Period of License Suspension.

(1) A tobacco retailer's license suspension may be up to thirty days for a first violation;

(2) A tobacco retailer's license suspension may be up to ninety days for a second violation occurring within five years ~~twenty-four months~~ of the first violation;

(3) A tobacco retailer's license suspension may be up to one year for each subsequent violation occurring within five years ~~twenty-four months~~ of the most recent prior determination.

(e) Suspension Appeal. The decision of the public health director to suspend a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.

(f) Final Order. The tobacco retailer's license suspension becomes a final administrative order at one of the following times:

(1) On the date of the suspension hearing, if a tobacco retailer fails to appear at a scheduled suspension hearing;

(2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;

(3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;

(4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

~~(g) During a period of license suspension, the tobacco retailer must remove from public view all tobacco products.~~

(Ords. 2017-01 § 12, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.020 Enforcement.

The county may seek compliance with this chapter by any remedy allowed under this code, including, but not limited to, revocation (Section 445-10.016), suspension (Section 445-10.018), administrative fines (Chapter 14-12), criminal citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.022 Service.

All notices or decisions required to be served by this chapter will be served either by the method specified in subsection (a) or by the method specified in subsection (b). The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings.

(a) Certified mail. Certified mail will be addressed to the tobacco retailer at the address shown on the license application. Service is deemed complete upon the deposit of the notice or decision, postage pre-paid, in the United States mail. Simultaneously, the same notice or decision may be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail on the date mailed.

(b) Personal service. Personal service is deemed complete on the date the notice or decision is personally served.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.024 Display and advertisement without license.

(a) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia while a license is suspended or revoked is a violation of Section 445-10.002.

(b) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, may not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of these products from the tobacco retailer's location or that could lead a reasonable consumer to believe that these products can be obtained at that location.

(Ord. 2017-01 § 13).

ORDINANCE NO. 2016-____ **DRAFT**

TOBACCO RETAILING BUSINESSES

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 88-26 to the County Ordinance Code to regulate the location of tobacco retailing businesses and to prohibit the establishment of hookah lounges, vapor lounges, and significant tobacco retailing businesses.

SECTION II. Chapter 88-26 is added to the County Ordinance Code, to read:

Chapter 88-26
TOBACCO RETAILING BUSINESSES

Article 88-26.2
General

88-26.202 Purpose. The primary purposes of this chapter are to restrict the concentration of tobacco retailing businesses in any one area; to minimize the availability of tobacco products to minors by prohibiting tobacco retailing businesses from locating near schools and other youth-sensitive areas; and to prohibit hookah lounges, vapor lounges, and significant tobacco retailing businesses, which have a deleterious effect upon adjacent areas. (Ord. 2016- ___ § 2).

88-26.204 Definitions. For the purposes of this chapter, the following words and phrases have the following meanings:

(a) "Hookah lounge," also referred to as a "hookah bar," means any facility, building, structure, or location where customers smoke tobacco or other substances through one or more hookah pipes (also commonly referred to as a hookah or waterpipe).

(b) "Significant tobacco retailing business" means any tobacco retailing business for which 20 percent or more of floor or display area is devoted to tobacco products, tobacco paraphernalia, or both.

(c) "Tobacco paraphernalia" and "tobacco product" have the definitions set forth in Section 445-2.006.

(d) "Tobacco retailing" means selling, offering for sale, or exchanging or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco

paraphernalia. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(e) "Tobacco retailing business" means any facility, building, structure, or location that is used, whether as a primary use or as an ancillary use, for tobacco retailing.

(f) "Tobacco retailer's license" means a license issued in accordance with Section 445-10.010.

(g) "Vapor lounge," also referred to as a "vape lounge," "vapor bar," "electronic smoking device bar," or "electronic smoking device lounge," means any facility, building, structure, or location where customers use one or more electronic smoking devices, as defined in Section 445-2.006, to deliver an inhaled dose of nicotine or other substance within the establishment. (Ord. 2016- ___ § 2).

Article 88-26.4
Tobacco Retailing Business Locations

88-26.402 Restrictions. In land use districts where tobacco retailing regulated by this chapter would otherwise be a permitted use, it is unlawful to establish or maintain a tobacco retailing business if the location of the business is:

(a) Within 500 feet of any parcel occupied by any other tobacco retailing business; or

(b) Within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.

For the purposes of this section, distance is measured by the shortest line connecting any point on the property line of the parcel on which the tobacco retailing business will be established or maintained to any point on the property line of the other parcel. (Ord. 2016- ___ § 2).

88-26.404 Establishment. For the purposes of this article, the establishment of a tobacco retailing business includes the opening of a tobacco retailing business as a new business, the relocation of an existing tobacco retailing business to a different location, or the conversion of an existing retail business location to a tobacco retailing business. (Ord. 2016- ___ § 2).

88-26.406 Nonconforming tobacco retailing use.

(a) For the purposes of this chapter, each of the following is a nonconforming tobacco retailing use:

(1) Any lawful use of any land or building for tobacco retailing, existing at the time

this chapter becomes effective, that does not conform to the provisions of Section 88-26.402.

(2) Any lawful use of any land or building for tobacco retailing that, after this chapter becomes effective, does not conform to the provisions of Section 88-26.402(b) due to the lawful establishment of a public or private school, playground, park, or library.

(b) A nonconforming tobacco retailing use is not a violation of this chapter, except as otherwise provided in subsection (c). If a nonconforming tobacco retailing use is continued after the effective date of this chapter, all applicable permits and licenses, including a tobacco retailer's license, must be maintained in full force and effect, and the nonconforming tobacco retailing use may not be increased, enlarged, or expanded.

(c) A nonconforming tobacco retailing use must be discontinued if a change of ownership occurs 10 years or more after the date this chapter becomes effective, or 10 years or more after the date the use becomes nonconforming, whichever date is later. For the purposes of this subsection, a "change of ownership" occurs when: 50 percent or more of the ownership interest in the tobacco retailing business is transferred to another person or entity within a 12-month period; or, if the owner of the tobacco retailing business is a corporation, 25 percent or more of the stock interest in the corporate owner of the tobacco retailing business is transferred to another person or entity within a 12-month period. (Ord. 2016- ___ § 2).

88-26.408 Compliance with code provisions. A tobacco retailing business allowed under this chapter may only be established and maintained in full compliance with Division 445 of this code. (Ord. 2016- ___ § 2).

Article 88-26.6
Hookah Lounges, Vapor Lounges, and Significant Tobacco Retailing Businesses

88-26.602 Hookah lounges prohibited. A hookah lounge may not be established in any land use district. (Ord. 2016- ___ § 2).

88-26.604 Vapor lounges prohibited. A vapor lounge may not be established in any land use district. (Ord. 2016- ___ § 2).

88-26.606 Significant tobacco retailing businesses prohibited. A significant tobacco retailing business may not be established in any land use district. (Ord. 2016- ___ § 2).

SECTION III. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for

or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator

_____
Board Chair

By: _____
Deputy

[SEAL]

KCK:
H:\HS\Smoking Zoning Ord - draft10.wpd

SUMMARY OF NEW PROVISONS UNDER THE CHANGES TO THE COUNTY'S SECONDHAND SMOKE AND TOBACCO PRODUCT CONTROL ORDINANCE and ZONING CODE AMENDMENTS

Contra Costa Health Services, Public Health Division
For Presentation to Family and Human Services Committee of the Contra Costa Board of Supervisors, April 24, 2017

Tobacco Product and Retail Sales Control Ordinance (Amendments to Division 445, Secondhand Smoke and Tobacco Product Control)		
Provision	**Description**	**CA Jurisdictions with Similar Protection**
a. Require a Tobacco Retailer License for all retailers selling traditional and/or emerging tobacco products.	Revises definition of "Tobacco Product" to include all "emerging products" including all electronic smoking devices (whether or not they contain nicotine). The new definition covers all electronic devices that can be used to deliver a dose of nicotine or other substances, and all components, parts or accessory of a "tobacco product".	El Cerrito, Richmond, Albany, Oakland, San Jose and Santa Clara County for a total of close to 100 jurisdictions in CA.
b. Prohibit the sale of flavored (non-cigarette) tobacco products	Prohibits the sale of flavored (non-cigarette) tobacco products within the entire unincorporated County. The Food and Drug Administration has banned candy, fruit and spice as characterizing flavors for cigarettes only. Other tobacco products (smokeless, little cigars, hookah tobacco, and dissolvable tobacco products) with these flavors are exempt from the federal ban.	El Cerrito, Berkeley (within 600 feet of schools), Santa Clara County (except adult-only shops), Hayward, Manhattan Beach, Sonoma, and **Yolo County** (Also New York City; Providence Rhode Island, and Chicago.) Under consideration in Oakland (citywide).
c. Prohibit the sale of menthol flavored cigarettes	Would prohibit the sale of menthol flavored cigarettes within the entire unincorporated jurisdiction. The Food and Drug Administration has exempted "menthol" flavor from its ban on "characterizing flavors" in cigarettes.	**Yolo County (county-wide). Santa Clara County (County-wide, except adult-only shops).** Berkeley (within 600 feet of schools) and Chicago (within 500 feet of high schools). Under consideration in Oakland (citywide).
d. Require minimum pack size for cigars	Require minimum pack size of 10 (current regulation for cigarettes is 20). Although federal and state law ban the sale of individual cigarettes, neither restrict the sale of individual cigars, including cigarillos and little cigars that are the same size as cigarettes. Exempts premium cigars that cost $5 or more.	El Cerrito, Hayward, Sonoma, Huntington Park, Gardena, Union City. Under consideration in Oakland.
e. Prohibit sale of tobacco products in pharmacies	Prohibits the sale of tobacco products in pharmacies, consistent with the public's perception of pharmacies as a place to go for health-related service and advice. Of the 9 pharmacies in the unincorporated county, three have already made corporate decisions to not sell tobacco products (2 CVS stores and Park Rexall).	Richmond, San Francisco, Santa Clara County, **Sonoma County**, Berkeley, Healdsburg, Daly City, Hollister, Marin County, **Novato.** Under consideration in Oakland.
f. Require tobacco retailers to comply with storefront signage laws	Allows for suspension of retailer's license if a retailer violates the state law or local law setting a maximum percentage of window space that can be covered by signs at retail locations. These laws exist for safety purposes, as they provide for more visibility into stores for law enforcement. This provides a means to bring retailers into compliance with health and safety laws.	Santa Clara County **and Yolo County.**

g. Require tobacco retailers to comply with drug paraphernalia sales laws	Makes violations of state laws regarding drug paraphernalia or controlled substances a violation of a tobacco retailer license. Definition of what constitutes drug paraphernalia will be consistent with state law.	Oakland, Richmond, Union City plus 8 other cities and counties (Firebaugh, Grass Valley, Huntington Park, Montebello, Parlier, Riverbank, Santa Cruz County, and Watsonville) (as of June, 2012)
h. Require tobacco retailers to check ID of customers who appear younger than 27	Requires retailers to check the age of purchasers who appear to be under the age of 27. This measure helps insure that tobacco is not sold to youth and is even more relevant since the State advanced the legal age to purchase tobacco from 18 to 21 years of age.	Concord, Richmond, Albany, Oakland, Santa Clara (age 30) plus 35 other jurisdictions
i. Limit or "cap" the number of retailers that can sell tobacco products.	This density measure limits the total number of County Tobacco Retailer Licenses that are issued to the current number of licenses.	Sonoma, Orville, Lynwood, Huntington Park, San Francisco
j. Remove tobacco advertising during license suspension	Requires retailers to remove or cover all tobacco product-related advertising, in addition to tobacco products, during the period that their tobacco retailer license is suspended.	Berkeley (remove products), Richmond, Concord, Albany, Oakland, Pacifica, Santa Clara plus 56 other jurisdictions
k. Expand time period reviewed for prior violations of license	Expands time period reviewed for prior violations of license from 24 months (2 years) to 60 months (5 years) when considering length of license suspension.	Berkeley, El Cerrito, Richmond, Albany, Oakland plus 64 other jurisdictions
Tobacco Retailing Businesses (Amendments to Zoning Code Chapter 88-26)		
l. Prohibit location of a <u>new</u> tobacco retailer near schools, parks, playgrounds and libraries.	Prohibits a license to new tobacco retailers if located within a 1000 feet of a school, park, playground, or library. Existing tobacco retailing businesses that do not meet the location standards will become nonconforming uses. A nonconforming use will be allowed to continue operating under the ordinance. However, if a change in ownership in the business occurs more than 10 years after the effective date of the ordinance, or more than 10 years after the date the use becomes nonconforming, then the use (tobacco retailing) must be discontinued.	Near Schools and other Youth Sensitive Areas: El Cerrito, Antioch, Dublin, Hayward, Union City, Vallejo, Albany, Oakland, Marin County, and San Rafael (plus 14 other jurisdictions). Near schools only: Berkeley, San Francisco, Santa Barbara County, Sacramento, Santa Clara County, Manhattan Beach, plus 5 other jurisdictions.
m. Prohibit new tobacco retailers from locating within certain proximity of other retailers	Requires that no new tobacco retailers locate within a certain distance 500 feet of another tobacco retailer. Existing tobacco retailing businesses that do not meet the location standards will become nonconforming uses. A nonconforming use will be allowed to continue operating under the ordinance. However, if a change in ownership in the business occurs more than 10 years after the effective date of the ordinance then the use (tobacco retailing) must be discontinued.	El Cerrito, San Francisco, Santa Cruz, Hayward, Dublin, Santa Clara County, Union City, Vallejo, Fairfield, Saratoga, Rohnert Park, Temple City, Westminster, Selma, El Cajon
n. Prohibit new "Significant Tobacco Retailers"	Prohibits a **<u>new</u>** "Significant Tobacco Retailer" – a business that primarily sells tobacco products – from obtaining a tobacco retailer license. "Significant Tobacco Retailer" means any tobacco retailing business for which 20 percent or more of floor or display area is devoted to tobacco products, tobacco paraphernalia, or both. Prohibits any new 'vape' shops, hookah bars, or tobacco shops.	El Cerrito; Huntington Park; Richmond; Carpinteria; Concord (no new hookah shops); Dublin (no vapor lounges or hookah bars); Hayward (no vapor lounges); Union City (no vapor lounges or hookah bars); and Pittsburg (moratorium on any new "smoke shops")
BOLDED jurisdictions adopted these provisions since the last report to the Board of Supervisors on 5/24/16.		

Menthol and Cigarettes

What is Menthol and How is it Used?

- Menthol is a naturally occurring compound derived from mint plants and is also synthetically produced. [1] Because of its cool, minty candy-like flavor and fresh odor, it is used as an additive in many products including tobacco, lip balm, cough medication, mouthwash, toothpaste, chewing gum, and candy, as well as in beauty products and perfumes. [2]
- Menthol's anesthetizing effect makes the smoke "smooth" and easier to inhale while masking the harshness of tobacco, making menthol cigarettes more appealing to young and beginner smokers. [1]
- Menthol allows smokers to inhale more deeply and for harmful particles to settle deeper inside the lungs. [2] By reducing airway pain and irritation, continuous menthol smoking can mask the early warning symptoms of smoking-induced respiratory problems. [3]
- Menthol decreases the metabolism of nicotine and increases the amount of the addictive substance in the blood, making cigarettes even more dangerous and difficult to quit. [4]
- Many menthol-only smokers underestimate the dangers of menthol in cigarettes and believe that menthol cigarettes are less harmful than regular cigarettes as compared to non-menthol-only smokers. [5]
- Menthol cigarettes are not safer than regular cigarettes. Menthol cigarettes only mask the harshness of tobacco smoke, making it easier for new smokers to start and more challenging to quit. [6]

90%

of all tobacco cigarettes contain some menthol, regardless of being marketed as a mentholated cigarette [12]

- Menthol smokers show greater signs of nicotine dependence and have higher rates of quit attempts, [7] but are less likely to successfully quit smoking than other smokers. [8]
- Menthol cigarettes are not safer than regular cigarettes. Menthol cigarettes have been shown to increase youth initiation, inhibit cessation, and promote relapse. [9] Scientific studies have shown that because of its sensory effects and flavor, menthol may enhance the addictiveness of cigarettes. [10]
- Menthol cigarettes account for approximately 25 percent of all cigarette sales in the U.S. [11] Moreover, more than 90 percent of all tobacco cigarettes contain menthol, regardless of being marketed as a mentholated cigarette. [12]

Menthol smokers

show greater signs of nicotine dependence

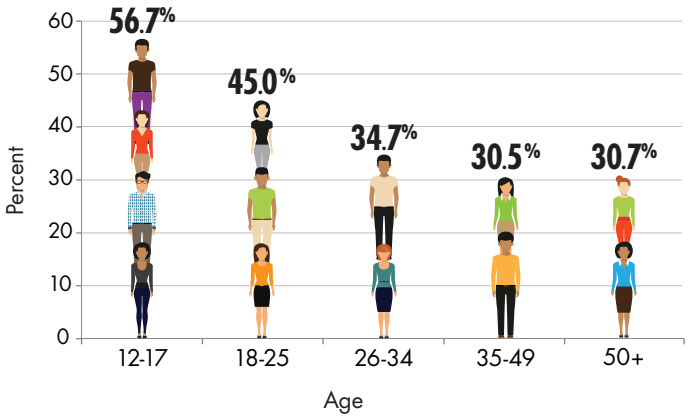
have higher rates of quit attempts

but are less likely to successfully quit smoking than other smokers

[7, 8]

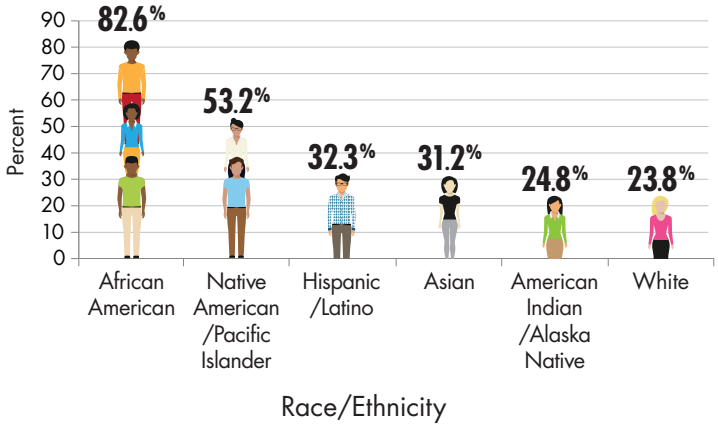
Who Smokes Menthol Cigarettes?

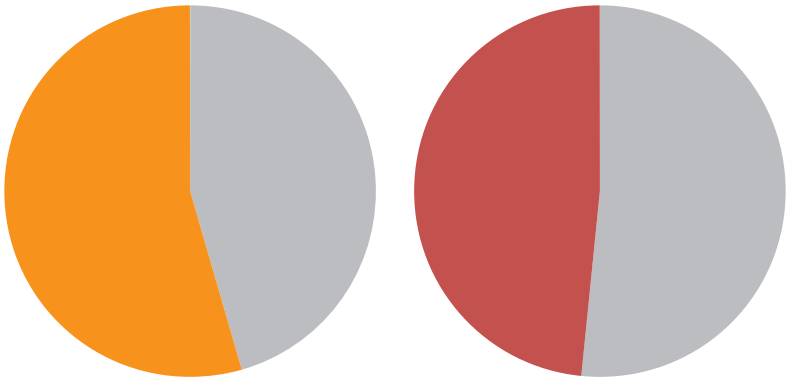
Menthol Cigarette Smoker Use by Age [13]



- A 2013 study found that, among cigarette smokers, menthol cigarette use was more common among 12-17 year olds (56.7 percent) and 18-25 year olds (45 percent) than among older persons (30.5-34.7 percent). [13]
- Approximately 19 million Americans smoke menthol cigarettes, including 1.1 million adolescents. [14]
- More than 50 percent of menthol cigarette smokers are female (52.2 percent) and nearly 30 percent of all menthol smokers are African American (29.4 percent). [15]
- Although the use of cigarettes is declining in the United States (U.S.), sales of menthol cigarettes have steadily increased in recent years, especially among young people and new smokers. [14]
- In a national study conducted in 2009-10, 71 percent of lesbian, gay, bisexual, and transgender young adult smokers (18-25) reported smoking menthol cigarettes. [16]
- Generally, menthol smokers tend to be female, younger, members of ethnic minorities, have only a high school education, and buy packs rather than cartons. [17]
- Menthol cigarettes are used disproportionately in communities of color. In combined 2004 to 2008 data, 82.6 percent of African American, 53.2 percent of Native Hawaiian/Pacific Islander, 32.3 percent of Hispanic/Latino, 31.2 percent of Asian, 24.8 percent of American Indian/Alaska Native, and 23.8 percent of white smokers aged 12 years and older reported using menthol cigarettes in the past month. [14]

Menthol Cigarette Smoker Use by Race/Ethnicity [14]

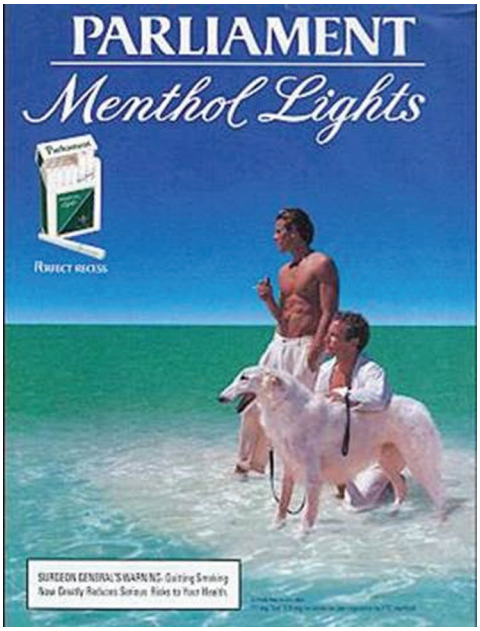




54.5% of high school and **48.4%** of middle school current tobacco users smoked menthol cigarettes. [18]

Predatory Marketing Tactics Target Young, Female, and Minority Populations

- Menthol cigarettes were originally developed for and promoted to women. [20] In order to appeal to women, menthol cigarette advertisements often contain images of romantic couples, flowers, and springtime. [20]
- Cigarette packaging design and color are carefully chosen by the tobacco industry to create specific associations. An example of this is the green packages for mentholated cigarettes which suggest coolness and freshness. [19]
- Tobacco retailers in low income, urban communities having high menthol sales are more likely to place larger exterior tobacco advertisements and have more menthol advertisements on their store fronts. [1]
- Tobacco retailers in low income, urban communities offer higher discount rates on mentholated cigarette brands, including between $1.00 and $1.50 off per pack or buy one (1) get one (1) free promotions, while more affluent white neighborhoods see discounts on menthols of only about $0.50 off per pack or buy two (2) get one (1) free offers. [9]
- Camel brand smokers and menthol smokers (Newport and Kool), who are more often young adults and African Americans, are much more likely to use promotional offers than those who smoke other brands. [21]
- Young adults and African Americans are also less likely to switch from menthol to non-menthol cigarettes regardless of higher product price. [22]



> *Menthol brands like Newport have specifically targeted adolescents and young adults with their marketing messages[20], through "youthful imagery, messages promoting an appealing sensory experience, and peer group acceptance."* [6]

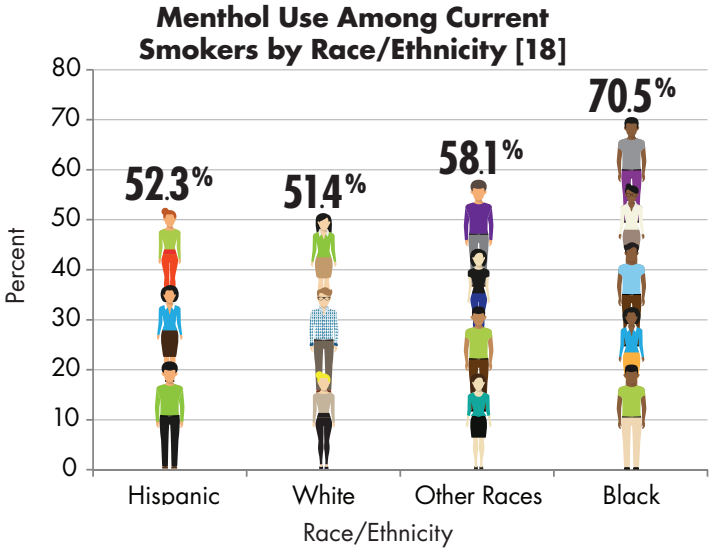
Why Mentholated Tobacco Products Matter to the Health of the African American Community

> *According to the Food and Drug Administration's (FDA) Tobacco Products Scientific Advisory Committee, by 2020 the African American population will have suffered more than 4,700 excess deaths due to menthol in cigarettes, and more than 460,000 more African Americans will have started smoking due to the impact of menthol.* [23]

- African Americans have been one of the main target groups of menthol cigarette advertising. [24] Tobacco industry documents reveal aggressive menthol tobacco product marketing in urban, low-income, African American neighborhoods through marketing; such as advertising more desirable menthol promotions; dedicating a greater store display space for menthol products; and allowing more menthol interior and exterior signage in stores. [25]

- Historically, African Americans have been exposed to hundreds of tobacco advertisements and the tobacco industry has placed proportionately more menthol cigarette advertisements in African American magazines than in mainstream magazines. [26] Many of these targeted advertisements incorporate elements of African American culture, music, and messages related to racial identity and urban nightlife. [32]

- Today, menthol cigarettes are the overwhelming favorite tobacco product among African Americans. A 2015 CDC report found that among current cigarette smokers, 70.5 percent of African Americans reported menthol cigarette use; about 20 percentage points higher than whites and Hispanics. [18]



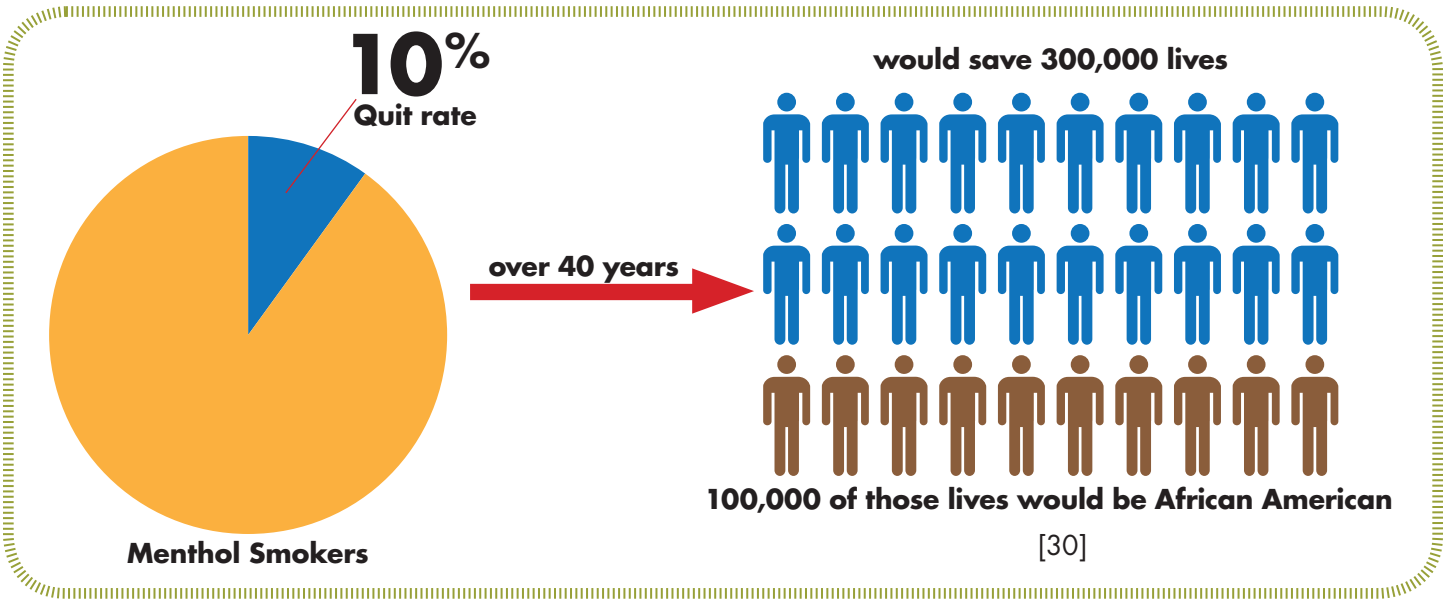
- The tobacco industry has been highly influential in the African American community for decades, providing funding and other resources to community leaders and emphasizing publicly its support for civil rights causes and groups, while ignoring the negative health effects of its products on those it claims to support. Tobacco industry support for African American communities is estimated to be as high as $25 million per year. [27]

- For decades, the tobacco industry has donated generous amounts of money to members of the Congressional Black Caucus Foundation, the National Urban League, the National Association for the Advancement of Colored people and the United Negro College Fund. [28]

- Many African American organizations opposing the ban on menthol in tobacco products continue to receive money from the tobacco industry. In 2014, Lorillard Tobacco donated campaign cash to half of all African American members of Congress, making African American lawmakers (all but one of whom are Democrats) 19 times as likely as their Democratic peers to get a donation. [29]

ACCORDING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION, smoking-related illnesses kill more Black Americans than AIDS, car crashes, murders and drug and alcohol abuse combined.[1]

Menthol and Cessation



- A leading model of smoking in the U.S. predicts that a 10 percent quit rate among menthol smokers would save thousands of lives, preventing more than 4,000 smoking-attributable deaths in the first ten years, and that more than 300,000 lives would be saved in over 40 years. Approximately 100,000 of those lives saved would be African American. [30]

- Another model predicts that if menthol were prohibited, between 2010 and 2020, over 2.2 million people would not start smoking. By 2050, the number of people who would not start smoking would reach 9 million. [6]

- Among African American smokers, menthol cigarette smoking is negatively associated with successful smoking cessation. [31]

- Quitting menthol cigarettes is particularly difficult, because menthol smokers have to get over their dependence on nicotine as well as positive associations with menthol itself such as the minty taste, cooling sensation, and sensory excitation. [9]

- Youth who initiate smoking with menthol cigarettes are more likely to become regular, addicted smokers and are more likely to show higher measures of dependence than youth who initiate with non-menthol cigarettes. [32]

- Menthol smokers in the U.S. who report consuming 6-10 cigarettes per day show greater signs of nicotine dependence (i.e., shorter time to first cigarette in the day) than comparable non-menthol smokers. [33]

- Menthol smokers in general and African American smokers in particular, have a difficult time quitting despite smoking significantly fewer cigarettes per day compared to non-menthol smokers. [26], [34] Compared to non-menthol African American light smokers, menthol smokers are younger and have less confidence to quit smoking. [35]

> *More than half of Americans support a ban on menthol [36], and a national study found that 44.5 percent of African Americans and 44 percent of females would quit smoking if menthol cigarettes were prohibited. [23]*

Food and Drug Administration Regulation of Menthol Tobacco Products

- In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act (FSPTCA) granting the FDA with regulatory authority over tobacco products. [37]

- Effective September 22, 2009, the FSPTCA banned artificial or natural flavorings, as well as herbs or spices, which produce characterizing flavors in cigarettes. This included flavors such as strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, and coffee. Menthol, however, was exempt from the ban. [38]

- The FDA has the ability to prohibit menthol as an ingredient in cigarettes and other tobacco products. Tobacco Products Scientific Advisory Committee (TPSAC) was established and charged with developing a report assessing the impact of the use of menthol in cigarettes on public health and proposing recommendations to the FDA on whether menthol should be regulated or not. [37]

- The TPSAC report and recommendations were submitted to the FDA on March 23, 2011. The TPSAC report found that the availability of menthol cigarettes has an adverse impact on public health in the U.S. and recommended removal of menthol cigarettes from the marketplace. [37]

- On April 12, 2013, 20 leading national organizations and advocates filed a formal Citizen Petition urging the FDA to prohibit menthol as a characterizing flavoring in cigarettes. More than 1,000 public comments were submitted to the FDA. [37]

- In July of 2013, the FDA released a preliminary scientific review that found that menthol made it easier to start smoking and allowed for a faster progression to regular use of cigarette smoking; it also found that menthol made it harder to quit smoking, especially among African American menthol smokers. The FDA solicited public comment on the "potential regulation" of menthol cigarettes. [39]

- In July of 2014, a Federal District Court Judge, Justice Richard Leon, issued a decision requiring the FDA to appoint new members to the TPSAC and to prohibit the agency from using the 2013 scientific review prepared by the TPSAC. The judge ruled that the new TPSAC members must be unbiased and impartial, following a 2011 lawsuit by Lorillard Tobacco Company and R.J. Reynolds Tobacco Company against the FDA. The lawsuit sought a court order to require the FDA to reconstitute the TPSAC's membership, alleging that three TPSAC members had conflicts of interest because of their ongoing work as expert witnesses against tobacco companies in tobacco litigation and due to their consulting fees paid by pharmaceutical companies in connection with certain smoking cessation products. The FDA was ordered to reconstitute the advisory panel's membership and refrain from using the prior advisory panel's report on menthol cigarettes. [39]

- In September of 2014, the U.S. Department of Justice filed an appeals motion on behalf of the FDA in response to Circuit Court Justice Leon's ruling in favor of the Tobacco Industry. [40]

- In January 2016, a panel for the U.S. Court of Appeals for the District of Columbia Circuit overturned the lower Federal District Court ruling, holding that Lorillard and R.J Reynolds Tobacco Companies lacked standing to bring the case to the courts. The court found that the injuries alleged by the plaintiffs were "too remote and uncertain…insufficiently imminent" and that the inclusion of the three members of the TPSAC committee with an alleged conflict of interest "by no means rendered the risk of eventual adverse FDA action substantially probable or imminent." [41]

- The FDA has still not made a recommendation on whether to ban or limit menthol cigarettes. [39]

References

1. Kreslake, J.M., et al., *Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults.* American Journal of Public Health, 2008. **98**(9): p. 1685.
2. Kreslake, J.M. and V.B. Yerger, *Tobacco industry knowledge of the role of menthol in chemosensory perception of tobacco smoke.* Nicotine & Tobacco Research, 2010. **12**: p. 98-101.
3. Garten, S. and R.V. Falkner, *Continual smoking of mentholated cigarettes may mask the early warning symptoms of respiratory disease.* Preventive Medicine, 2003. **37**(4): p. 291-296.
4. Benowitz, N.L., B. Herrera, and P. Jacob, *Mentholated cigarette smoking inhibits nicotine metabolism.* Journal of Pharmacology and Experimental Therapeutics, 2004. **310**(3): p. 1208-1215.
5. Unger, J.B., et al., *Menthol and non–menthol cigarette use among Black smokers in Southern California.* Nicotine & Tobacco Research, 2010.
6. Tobacco Product Scientific Advisory Committee (TPSAC), *Menthol cigarettes and the public health: Review of the scientific evidence and recommendations.*, US Department of Health and Human Services Food and Drug Administration, Editor. 2011: Rockville, MD.
7. Levy, D.T., et al., *Quit attempts and quit rates among menthol and nonmenthol smokers in the United States.* 2011.
8. U.S. Food and Drug Administration, *Preliminary scientific evaluation of the possible public health effects of menthol versus nonmenthol cigarettes.* July 2013.
9. Gardiner, P. and P.I. Clark, *Menthol cigarettes: moving toward a broader definition of harm.* Nicotine & Tobacco Research, 2010. **12**: p. 85-93.
10. Henningfield, J.E., et al., *Does menthol enhance the addictiveness of cigarettes? An agenda for research.* Nicotine & Tobacco Research, 2003.
11. Giovino, G.A., et al., *Epidemiology of menthol cigarette use.* Nicotine & Tobacco Research, 2004. **6**: p. 67-81.
12. Wickham, R., *Focus: Addiction: How Menthol Alters Tobacco-Smoking Behavior: A Biological Perspective.* The Yale Journal of Biology and Medicine, 2015. **88**(3): p. 279.
13. Giovino, G.A., et al., *Differential trends in cigarette smoking in the USA: is menthol slowing progress?* Tobacco Control, 2013.
14. Substance Abuse and Mental Health Services Administration, *The NSDU Report: Use of Menthol Cigarettes.* 2009: Rockville, MD.
15. Rock, V.J., et al., *Menthol cigarette use among racial and ethnic groups in the United States, 2004–2008.* Nicotine & Tobacco Research, 2010. **12**: p. 117-124.
16. National Youth Advocacy Coalition, *Coming Out about Smoking: A Report from the National LGBTQ Young Adult Tobacco Project* 2010: Washington, DC.
17. Fernander, A., et al., *Are age of smoking initiation and purchasing patterns associated with menthol smoking?* Addiction, 2010. **105**(1): p. 39-45.
18. Corey, C.G., et al., *Flavored tobacco product use among middle and high school students—United States, 2014.* Morbitity Mortality Weekly Report, 2015. **64**(38): p. 1066-1070.
19. Davis, R.M., et al., *The role of the media in promoting and reducing tobacco use.* 2008.
20. Sutton, C.D. and R.G. Robinson, *The marketing of menthol cigarettes in the United States: populations, messages, and channels.* Nicotine & Tobacco Research, 2004. **6**(1): p. 83-91.
21. White, V.M., et al., *Cigarette promotional offers: who takes advantage?* American Journal of Preventive Medicine, 2006. **30**(3): p. 225-231.
22. Tauras, J.A., et al., *Menthol and non-menthol smoking: the impact of prices and smoke-free air laws.* Addiction, 2010. **105**(1): p. 115-123.
23. Tobacco Control Legal Consortium et al., *Citizen Petition to Food and Drug Administration, Prohibiting Menthol As A Characterizing Flavor in Cigarettes* (April 12, 2013).
24. Gardiner, P.S., *The African Americanization of menthol cigarette use in the United States.* Nicotine & Tobacco Research, 2004. **6**(1): p. 55-65.
25. Cruz, T.B., L.T. Wright, and G. Crawford, *The menthol marketing mix: targeted promotions for focus communities in the United States.* Nicotine & Tobacco Research, 2010. **12**(suppl 2): p. S147-S153.
26. American Heart Association, *Tobacco industry's targeting of youth, minorities and women.*
27. Yerger, V.B. and R.E. Malone, *African American leadership groups: smoking with the enemy.* Tobacco Control, 2002. **11**(4): p. 336-345.
28. Myron Levin, *Lorillard, other tobacco companies use politics to protect menthol brands*, in *Fairwarning.* November 18, 2015, News and Record: Greensboro, North Carolina.
29. Levin, M., Racial Politics Flavor Debate Over Banning Menthol Cigarettes, in *Fair Warning* November 17, 2015.
30. Pearson, J.L. and K. Blackman, *Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States.* American Journal of Public Health, 2011. **101**(7): p. 1236.
31. Stahre, M., et al., *Racial/ethnic differences in menthol cigarette smoking, population quit ratios and utilization of evidence-based tobacco cessation treatments.* Addiction, 2010. **105**(1): p. 75-83.
32. Nonnemaker, J., et al., *Initiation with menthol cigarettes and youth smoking uptake.* Addiction, 2013. **108**(1): p. 171-178.
33. Fagan, P., et al., *Nicotine dependence and quitting behaviors among menthol and non-menthol smokers with similar consumptive patterns.* Addiction, 2010. **105**(1): p. 55-74.
34. Trinidad, D.R., et al., *Menthol cigarettes and smoking cessation among racial/ethnic groups in the United States.* Addiction, 2010. **105**(1): p. 84-94.
35. Okuyemi, K.S., et al., *Relationship between menthol cigarettes and smoking cessation among African American light smokers.* Addiction, 2007. **102**(12): p. 1979-1986.
36. Hartman, A.M. *What menthol smokers report they would do if menthol cigarettes were no longer sold.* in *FDA Tobacco Products Scientific Advisory Committee Meeting.* 2011.
37. Public Health Law Center. *Federal Regulation of Menthol Tobacco Products.*
38. *Family Smoking Prevention And Tobacco Control Act,*, in *Public Law No. 111-31, 123 Stat. 1776 (codified, in relevant part, at 15 U.S.C.A. §§ 1333-34 and 21 U.S.C.A. § 301 et seq.*). 2009.
39. Sabrina Tavernise, *F.D.A. Closer to Decision About Menthol Cigarettes*, in *The New York Times.* July 23, 2013.
40. *FDA Appeals Court Ruling on TPSAC Conflict of Interest*, in *American Thoracic Society News.* September 22, 2014.
41. Stern, M.B., et al., *R.J. Reynolds Tobacco Company, et al. v. United States Food and Drug Administration, et al., in 14-5226*, United States Court of Appeals for the District of Columbia Circuit, Editor. January 15, 2016.

Department of Conservation and Development

County Planning Commission

Wednesday, February 8, 2017 – 7:00 P.M.

STAFF REPORT **Agenda Item #____**

Project Title:	Adoption of Zoning Text Amendment for Tobacco Retailing Businesses Ordinance
County File:	#ZT16-0003
Applicant/Owner:	County Initiated
Project Location:	Countywide
California Environmental Quality Act (CEQA) Status:	The proposed zoning text amendment is exempt from CEQA per Section 15061(b)(3)
Project Planner:	Ruben Hernandez, Principal Planner (925) 674-7785
Staff Recommendation:	Recommend Approval to the Board of Supervisors (See Section II of December 6, 2016 Staff Report for Complete Recommendation)

I. CONTINUED PUBLIC HEARING

This item was continued from the December 6, 2016 hearing date. At that hearing the Planning Commission continued the public hearing in order to provide staff with additional time to conduct outreach to existing tobacco retailers in the County.

Department of Conservation and Development

County Planning Commission

Tuesday, December 6, 2016 – 7:00 .P.M.

STAFF REPORT **Agenda Item #____**

Project Title:	Adoption of Zoning Text Amendment for Tobacco Retailing Businesses Ordinance
County File:	#ZT16-0003
Applicant/Owner:	County Initiated
Project Location:	Countywide
California Environmental Quality Act (CEQA) Status:	The proposed zoning text amendment is exempt from CEQA per Section 15061(b)(3)
Project Planner:	Ruben Hernandez, Principal Planner (925) 674-7785
Staff Recommendation:	Recommend Approval to the Board of Supervisors (See Section II for Complete Recommendation)

I. INTRODUCTION

This is a hearing on a County initiated zoning text amendment for the adoption of a *Tobacco Retailing Businesses Ordinance* that would restrict the concentration of tobacco retailing businesses in any one area, minimize the availability of tobacco products to minors by prohibiting tobacco retailing businesses from location near schools and other youth-sensitive areas, and prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailing businesses. The proposed zoning text amendment is part of a larger Tobacco prevention program approved by the County Board of Supervisors and developed by the Public Health Department of Contra Costa County addressing youth tobacco influences in the retail environment.

II. RECOMMENDATION

Staff recommends that the County Planning Commission adopt a motion recommending that the Board of Supervisors:

A. FIND, for the purposes of compliance with the California Environmental Act (CEQA) and State and County CEQA Guidelines that the proposed zoning text amendment is exempt from CEQA per Section 15061(b)(3);

B. FIND that the proposed zoning text amendment does not conflict with the County 2005-2020 General Plan;

C. ADOPT the Tobacco Retailing Businesses Ordinance; and

D. DIRECT the Department of Conservation and Development to file a Notice of Exemption with the County Clerk.

III. EXECUTIVE SUMMARY

At the direction of the Board of Supervisors and in conjunction with the County Health Services Department, the Department of Conservation and Development has prepared a zoning text amendment for establishment of a *Tobacco Retailing Businesses* ordinance. Because the proposed ordinance involves new land use regulations, the Department of Conservation and Development would be responsible for implementation of the ordinance through the County Zoning Code (Title 8).

The proposed ordinance would restrict the concentration of tobacco retailing businesses in any one area, minimize the availability and influence of tobacco products to minors by prohibiting tobacco retailing businesses from locating near schools and other youth-sensitive areas, as well as prohibit hookah lounges, vapor lounges and significant tobacco retailers within the unincorporated areas of the County.

Adoption of the Tobacco Retailing Businesses ordinance is one of a number of policy options being pursued by Health Services Department in accordance with the "*...policy options for protecting youth from tobacco influence in the retail environment*"as accepted by the Board of Supervisors on May 24, 2016. The ordinance would include definitions, distance restrictions for the establishment of tobacco retailing businesses, define nonconforming tobacco retailing uses and prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailers as defined in the attached ordinance.

IV. TOBACCO RETAILING ORDINANCE

In order to implement specific land use policy options meant to protect youth from tobacco influences in the retail environment, as adopted by the Board of Supervisors on May 24, 2016, the County Zoning Code (Title 8) will be modified to incorporate the attached Tobacco Retaining Businesses ordinance. The pertinent sections of the proposed ordinance are summarized below:

Definitions: The attached Tobacco Retailing Businesses ordinance provides definitions for the following tobacco related terms:

- *"Hookah lounge";*
- *"Significant tobacco retailing business";*
- *"Tobacco paraphernalia";*
- *"Tobacco retailing"; "*
- *Tobacco retailing business";*
- *"Tobacco retailers license"; and*
- *"Vapor lounge"*

Location Restrictions: The tobacco retailing businesses ordinance will prohibit the establishment of new tobacco retailing businesses in the following locations:

Within 500 feet of any parcel occupied by any other tobacco retailing business;

Within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.

Nonconforming Tobacco Use: Included in the Tobacco Retailing Businesses ordinance are provisions for addressing existing tobacco retailing businesses which will not conform with the location restrictions of the ordinance. The tobacco retailing businesses in operation at the time the ordinance takes effect which do not meet the location requirements of the ordinance will be considered a "nonconforming tobacco retailing use".

Prohibited Uses: The ordinance will prohibit the establishment of hookah lounges, vapor lounges and significant tobacco retailers within the unincorporated areas of the County.

V. IMPLEMENTATION

In order to implement the Tobacco Retailing Businesses Ordinance the current licensing process for establishment of new tobacco retailers in the unincorporated areas of the County will have to be modified. The modified process will be created through coordination between the Public Health Division of the County Health Services Department and the Community Development Division of the Department of Conservation of Development.

Since the proposed Tobacco Retailing Businesses ordinance regulates land use, and will be part of the County Zoning Code, a process where the Department of Conservation and Development confirms compliance with the ordinance *prior* to issuance of a Tobacco Retailing License by the Public Health Division of the Health Services Department will need to be established. It is anticipated that business licenses applicants for new tobacco retailers will be required to obtain zoning verification from the Department of Conservation and Development prior to securing approval for a Tobacco Retailing License from the County Health Services Department. Conformance with the location restrictions for new tobacco retailers will be verified using County GIS data and mapping and may include a site analysis. A small fee may be required by the Department of Conservation and Development to cover the verification process.

VI. ENVIRONMENTAL REVIEW

Staff has determined that there is no possibility that adoption of the proposed Tobacco Retailing Businesses Ordinance will have a significant impact on the environment and is therefore exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of CEQA.

VII. STAFF ANALYSIS

The proposed Tobacco Retailing Business Ordinance has been prepared in cooperation with the County Health Services Department and was crafted in accordance with direction from the Board of Supervisors. On May 24, 2016 the Board of Supervisors accepted a report from the Health Services Department and approved a series of policy options meant to protect youth from tobacco influences in the retail environment. The policy options will be implemented by making changes to various portions of the County Code including changes to the County's Tobacco Retailer Licensing Ordinance Chapter 445, if needed, and the County Zoning Ordinance Code (Title 8).

Utilizing the County Zoning Code the attached Tobacco Retailing Businesses Ordinance will implement a number of land use policy options as directed by the Board including prohibiting the establishment of new tobacco retailing businesses near schools, playgrounds and other youth-sensitive areas as well as prohibiting the establishment of new retailers near existing tobacco retailers. The ordinance would also prohibit the establishment of "hookah lounges", "vapor lounges" and "significant tobacco retailing businesses". The restrictions and limitations on tobacco retailing provided in the ordinance will reduce exposure of tobacco retailing to County youth with the intent of reducing youth and teenage smoking.

VIII. CONCLUSION

The attached Tobacco Retailing Businesses Ordinance will implement specific land use policy options which will *"...protect youth from tobacco influences in the retail environment"* as directed by the Board of Supervisors. Adoption of the Zoning Text amendment will place specific land use restrictions on the location and density of future tobacco retailing businesses and will prohibit the establishment of specific types of businesses such as hookah lounges, vapor lounges and significant tobacco retailing businesses, all with the intent of reducing youth exposure to tobacco retailing and use. By incorporating the tobacco retailing restrictions into the County Zoning Ordinance (Title 8) the specific land use restrictions for new tobacco retailing businesses will be enforced by the Community Development Division (CDD) of the Department of Conservation and Development and will require CDD verification prior to issuance of a tobacco retailers license from the Business License Office after Health Services Department application approval.

Therefore, staff is recommending that the County Planning Commission adopt a motion recommending that the Board of Supervisors adopt the attached Tobacco Retailing Businesses Ordinance.

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Tobacco Retailer 3/2/17 Educational and Input Session: Comment Summary and Public Health Department Responses

Background.

A notice of the tobacco retailer educational and input session was mailed out to licensed tobacco retailers in the unincorporated County on 2/16/17. The session was held on 3/2/17 from 1:00pm to 2:30pm at 597 Center Ave, Room 120, Martinez. Contra Costa Tobacco Prevention Project staff, Denice Dennis and Jennifer Grand, led the session. Staff presented an overview of youth tobacco influences in the retail environment and draft revisions to the County Tobacco Retailer Licensing Ordinance and Zoning Code that staff had been directed to prepare by the Contra Costa County Board of Supervisors.

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 within at least 1000 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
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
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) Cap the number of retailers that can sell tobacco products at current number of licenses issued by the County
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

Staff described the process for review of the proposed changes to county ordinances, and that the Family and Human Services Committee would discuss the proposed ordinances at the April 24, 2017 public meeting. The meeting was then opened up for input from the tobacco retailers. In an effort to delineate concerns from tobacco retailers in the unincorporated County, Staff asked tobacco retailers with businesses in the unincorporated county speak first, and others in attendance save their comments until after all local retailers had spoken. It became clear later on that many individuals who were from outside of the County spoke during the time set aside for local retailers, so it was not possible to separate the input and concerns.

Thirty-seven people signed in on the sign-in sheet, however many people in attendance did not sign-in. Staff estimated over 50 people in attendance. The following individuals signed in at the meeting:

- Thirteen individuals representing 8 tobacco retailing businesses in the unincorporated county.
- Ten other individuals representing tobacco retailers and vape shops from Contra Costa cities.
- Six tobacco retailers and vape shops from other Counties, including 7-Eleven Corporate.
- Representatives from Log Cabin Republicans, other Industry groups (R Street Institute and Not Blowing Smoke), and the Greater Bay Franchise Owners Association.

Overview of Concerns.
Several themes emerged from the concerns voiced by meeting attendees. These are summarized below with responses from Health Services staff.

1) **Why is the County restricting sale of flavored electronic smoking devices which the tobacco and vape industry have stated are "safer products"?**
Research demonstrates that electronic smoking devices are not safe products, and are now known to be a "gateway" product to a lifetime of addiction among youth.[i,ii,iii,iv] A large national study found that the odds of a heart attack increased by 42% among people who used e-cigarettes.[v] Vape liquids contain nicotine and chemicals known to cause cancer and produce an aerosol that can harm the lungs.[vi] Vaping causes as much short-term inflammation in the lungs as regular cigarettes,[vii] and nicotine-free vapor may cause even more.[viii] The proposed prohibition on the sale of flavored tobacco products applies to flavored electronic smoking devices and flavored vape liquids that are used in electronic smoking devices because these flavored products are very attractive to youth. These flavors (e.g., strawberry, chocolate, licorice) are currently banned in cigarettes in the U.S. due to their appeal to youth.[ix] Sale of "tobacco" flavored electronic smoking devices and vape liquids would still be allowed for sale. Electronic smoking devices are the most common tobacco product used among high school and middle school students.[x] Teens that vape are three times more likely than their peers to smoke cigarettes one year later,[xi] and eighth graders who vape are 10 times more likely than their peers to eventually smoke cigarettes.[xii]

In 2013, the Contra Costa Board of Supervisors voted to prohibit the use of electronic smoking devices in areas where smoking of conventional tobacco products is prohibited, because these products were (and still are) unregulated, and have been demonstrated to lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death. In addition to the possible health risk associated with these products, the Board of Supervisors were concerned that use of e-cigarettes in public places and places of employment could increase social acceptance of smoking.

2) **Why is the County restricting a product that people use for smoking cessation?**
Electronic smoking devices are not approved by the Federal Drug Administration (FDA) as a smoking cessation product. FDA-approved smoking cessation products are available, and the proposed revisions to this ordinance do not impact sale of those products. While there is anecdotal evidence that some people have successfully used electronic smoking devices to quit smoking cigarettes, research has found that many people who attempt to quit smoking by using electronic smoking devices end up with dual use of both traditional tobacco and electronic smoking devices.[xiii] Recent declines in the prevalence of cigarette smoking among youth have coincided with an increased use of e-cigarettes and hookah tobacco.[xiv]

3) **Minimum pack size of 10 little cigars and cigarillos is unreasonable.**
Although the sale of individual cigarettes is banned by federal and state law,[xv] neither federal nor state laws restrict the sale of small packs of cigars. While cigarette use is decreasing, the use of other tobacco products is increasing.[xvi] Little cigars and cigarillos are sold individually and in small packs for as little as 5 for 99 cents, making them more affordable and appealing to youth.[xvii] 50% of Contra Costa retailers sell these products as singles.[xviii] This proposed ordinance would exempt premium cigars costing $5 or more.

4) **Tobacco 21 already passed, why does the County need new laws?**
The California state Tobacco 21 law addresses *tobacco sales* to youth, while the proposed County ordinance changes address a more comprehensive approach to reducing youth smoking by addressing youth *tobacco influences* in the retail environment. Research shows that teens are more likely to be influenced to use tobacco products by tobacco marketing than by peer pressure,[xix] and the U.S.

Surgeon General reports that "tobacco industry advertising and promotion cause youth and young adults to start smoking, and nicotine addiction keeps people smoking past those ages."[xx] The reasons for prohibiting sale of flavored tobacco products and small packs of little cigars and cigarillos are delineated above. Prohibiting new tobacco retailers from locating near schools, parks, playgrounds and libraries, and close to existing retailers helps reduce the amount of tobacco product marketing and promotions that youth are exposed to throughout our communities.

5) **Why is the County putting the burden on (regulating/penalizing) tobacco retailers when youth are getting tobacco from other sources?**
The intent of the proposed ordinances is to reduce youth tobacco product use through changes in the retail environment. The County Board of Supervisors has the authority to adopt regulations that protect the health and safety of residents in its jurisdiction. Ninety percent of adult smokers begin smoking while in their teens, or earlier; and two-thirds become regular, daily smokers before the age of 19.[xxi] Tobacco advertising and products that youth see in the retail environment have a greater effect on influencing youth to start smoking than peer pressure.[xxii] A study evaluating the effect of the ban on flavored tobacco products in New York City showed a 37% reduction in teens having tried flavored tobacco and a 28% lower chance of teens use of any type of tobacco product, even when surrounding jurisdictions do not also ban flavored tobacco.[xxiii]

6) **The 5-year look-back period for violations of tobacco retailer license is too long, and some corporations may penalize local franchise owners for previous tobacco retailer license violations.**
The term "look-back period" refers to the time period reviewed for prior violations of the *existing* Tobacco Retailer License when considering length of license suspension for a current violation. The draft ordinance increases this period from 2 years to 5 years. A five-year look-back period is well established as the current best practice for tobacco retailer licensing in California. El Cerrito, Richmond, Albany, Berkeley Oakland, and 64 other jurisdictions in California have this provision included in their tobacco retailer licensing ordinance.

7) **The 10-year "sunset" clause affects retirement, hurts tobacco retailers.**
The County's *existing* Tobacco Retailer Licensing Ordinance requires retailers that sell tobacco products to renew their license on an annual basis, and prohibits transfer of the license to any other owner or location. The *draft* Tobacco Retailing Businesses Ordinance that is in the Zoning Code allows existing tobacco retailers that are located within 1000 feet of schools, parks, playgrounds and libraries, (or within 500 feet of an existing retailer) to renew their tobacco retailer license annually into perpetuity, as long as they comply with the County's Tobacco Retailer Licensing Ordinance. Existing retailers, within 1000 feet of schools, parks, playgrounds and libraries (or within 500 feet of another retailer), who wish to sell their business as eligible to apply for a new County tobacco retailer license, must sell within ten years of adoption of the Tobacco Retailing Businesses Ordinance. If a new school, park, playground or library is established within 1000 feet of an existing tobacco retailer, and that existing retailer wishes to sell their business as eligible to apply for a new County Tobacco Retailer License, the business must be sold within ten years of the establishment of the new school, park, playground or library.

Some jurisdictions in the state with similar laws do not allow existing store sites within 1000 feet of schools, parks, playgrounds and/or libraries that are sold to be eligible for a Tobacco Retailer License at all. According to the American Lung Association, nine California jurisdictions enacted similar tobacco retailing density provisions between 2011 and 2015. Three of these jurisdictions prohibit tobacco retailing at the locations after the business is sold (no matter when the sale occurs); one "sunsets" the provision at 5 years; and one has a similar 10-year sunset provision. The other 4 jurisdictions allow the location to be sold as eligible to apply for a tobacco retailer license at any time. The 10-year "sunset" clause in the draft ordinance allows retailers the time to develop an alternative

business plan, and the County Tobacco Prevention Program has developed a list of resources to help with this.

8) **Distance restrictions should be state law, not local county law.**
Local jurisdictions have the authority to create local land use regulations. Additionally, California's successes in reducing youth smoking rates and overall community tobacco use over the past three decades have been built on local tobacco control laws. The Contra Costa Board of Supervisors have been leaders in local tobacco control laws for some 30 years, from smoke-free restaurant sections, to comprehensive outdoor secondhand smoke protections, to requiring a tobacco retailer license for those who sell tobacco products.

9) **Adults use these products, not just youth.**
Ninety percent of adult smokers begin while in their teens, or earlier; and two-thirds become regular, daily smokers before the age of 19.[xxiv] Young people are much more likely to use candy-and-fruit-flavored tobacco products than adults.[xxv] In 2015, 80% of youth age 12-17 who ever-reported experimenting with tobacco started with a flavored tobacco product.[xxvi] The tobacco industry has strategically used flavored little cigars and cigarillos to replace the banned flavored cigarette market, which are the same size and shape as cigarettes and packaged as cheaply as 5 for 99 cents.[xxvii]

10) **Chicago recently rolled back buffer zones for sale of flavored tobacco products because it hurt retailers. Why is the County doing this?**
Chicago was the first city in the country to regulate the sale of flavored tobacco products, and prohibited the sale of these products, including menthol cigarettes, within 500 feet of all schools. Recently, the city decided to change the law to include only high schools, due to pressures from retailers. California has learned a great deal from Chicago's experience, and best practice is now jurisdiction-wide regulations. A study conducted by the Centers for Disease Control and Prevention (CDC) found that 42% of middle and high school students who smoke reported either using flavored little cigars or flavored cigarettes.[xxviii] Prohibiting the sale of flavored tobacco products jurisdiction-wide not only protects all youth from tobacco influences in the retail environment, it provides a level playing field for retailers who choose to sell tobacco products.

11) **Why is the County proposing more restrictions on tobacco retailers when the state has tobacco control laws already?**
The California Board of Equalization requires all tobacco retailers in the state to purchase a license to sell cigarettes and other tobacco products. This license was established to ensure compliance with cigarette and other tobacco product tax laws and the Board of Equalization is only charged with enforcing tax laws.

The State also prohibits the sale of tobacco products to anyone under the age of 21. Local jurisdictions have authority to enact stronger laws in order to protect the health and safety of their residents. The County Board of Supervisors have been leaders in tobacco control for over thirty years, and the draft ordinances apply a comprehensive approach to address youth tobacco influences in the retail environment.

12) **Why is the County proposing more regulations when the FDA already regulates tobacco products including electronic nicotine delivery systems (ENDS), hookah, dissolvables, cigars, and future tobacco products?**
After considerable pressure from national tobacco control advocates across the country, the FDA issued a rule, effective August 2016, to include these non-cigarette products in the definition of "tobacco products" under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act of 2009). The FDA expects that manufacturers will continue selling their products for up to two years while they submit a new tobacco product application and review is expected to be at

least an additional year.[xxix] However, there is still a backlog for regulations enacted in 2009, making any real change in FDA regulation based on the new rule still many years out. The draft ordinances provide the opportunity to protect youth from tobacco influences in the community now, rather than waiting for an unsure future with FDA regulations.

13) **We need education for children, not more restrictions on business.**
Education programs for children about the dangers of tobacco already exist in the statewide Tobacco Use Prevention Education (TUPE) program. Education alone is not enough, and both the Centers for Disease Control and the Tobacco Education and Research and Oversight Committee of California recommend comprehensive approaches for tobacco prevention efforts that include both education and local policy. [xxx,xxxi] The draft provisions are best practices to reduce youth tobacco influences in the retail environment.

14) **Tobacco Retailers are doing a good job complying with the no-sales-to-minors law.**
The ordinances under consideration were written to address a comprehensive approach to addressing youth tobacco influences in our communities, which are linked to youth uptake of smoking, including use of electronic smoking devices. No-sales-to-minors laws are one part of this comprehensive approach. One of the Retailer Association representatives presented information from the American Lung Association that the County's illegal sales rates were very low. Sales rates vary greatly year by year, with sales rates over a 5 year period for the unincorporated county ranging from 7% in 2004 to 16% in 2015. The proposed ordinances are intended to supplement no-sales-to-minors laws with a more comprehensive approach to addressing youth tobacco influences in the community.

Some individual comments included:

- Concern regarding distance being calculated "as the crow flies."
- The provision banning pharmacies from selling tobacco was welcome.
- Tobacco products should be taxed instead of regulated in the ways the proposed provisions suggested.
- Will tobacco retailers be able to sell marijuana?
  Note: California law states that a business cannot sell alcohol or tobacco as well as marijuana[xxxii]

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[i] Cardenas, V. M., Evans, V. L., Balamurugan, A., Faramawi, M. F., Delongchamp, R. R., Wheeler, J. G.. (2016). Use of electronic nicotine delivery systems and recent initiation of smoking among US youth. *International Journal of Public Health*.

[ii] Wills, T. A., Knight, R., Sargent, J. D., Gibbons, F. X., Pagano, I., and Williams, R. J. Longitudinal study of e-cigarette use and onset of cigarette smoking among high school students in Hawaii. Tobacco Control, 2016.

[iii] Leventhal, A. M., Strong, D. R., Kirkpatrick, M. G., Unger, J. B., Sussman, S., Riggs, N. R., Stone, M. D., et al. (2015). Association of Electronic Cigarette Use with Initiation of Combustible Tobacco Product Smoking in Early Adolescence. *The Journal of the American Medical Association, 314*(7):700-707. doi:10.1001/jama.2015.8950.

[iv] Primack, B. A., Soneji, S., Stoolmiller, M. Fine, M. J., and Sargent, J. D. (2015). Progression to Traditional Cigarette Smoking After Electronic Cigarette Use Among US Adolescents and Young Adults. JAMA Pediatrics, 169 (11): 1018-1023. doi:10.1001/jamapediatrics.2015.1742.

[v] Temesgen, N, et al., *A cross sectional study reveals an association between electronic cigarette use and myocardial infarction.* Poster. George Washington University School of Medicine and Health Sciences Poster Presentations. Spring 2017.

[vi] Goniewicz, M. L., et al., *Levels of selected carcinogens and toxicants in vapour from electronic cigarettes.* Tobacco Control, 2014. 23(2): p. 133-139.

[vii] Vardavas, C.I.; Anagnostopoulos, N.; Kougias, M.; Evangelopoulou, V.; Connolly, G.N.; Behrakis, P.K. "Short-term Pulmonary Effects of Using an Electronic Cigarette: Impact on Respiratory Flow Resistance, Impedance, and Exhaled Nitric Oxide." CHEST, June 2012

[viii] Grana, Rachel, et al. "E-Cigarettes: A scientific Review." Circulation (2014): 1,2,5,7,12. US National Library of Medicine.
[ix] US Department of Health and Human Services, US Food and Drug Administration, Family Smoking Prevention and Tobacco Control Act, Section 2 Findings, June 22, 2009, *available at*: https://www.fda.gov.TobaccoProducts/Labeling?RulesRegulationsGuidance?ucm261832.htm.
[x] US Department of Health and Human Services. "E-Cigarette Use Among Youth and Young Adults, A Report of the Surgeon General, 2016" https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Fact_Sheet_508.pdf. Accessed March 2017.
[xi] Cardenas, V. M., Evans, V. L., Balamurugan, A., Faramawi, M. F., Delongchamp, R. R., Wheeler, J. G. (2016). Use of electronic nicotine delivery systems and recent initiation of smoking among US youth. International Journal of Public Health.
[xii] Miech, R. A., et al., *E-cigarettes and the drug use patterns of adolescents, Nicotine and Tobacco Research*, 18(5), 654-659 (2016).
[xiii] Borderud, S. P., Li, Y., Burkhalter, J. E., Sheffer, C. E. and Ostroff, J. S. (2014), Electronic cigarette use among patients with cancer: Characteristics of electronic cigarette users and their smoking cessation outcomes. Cancer, 120: 3527–3535. doi:10.1002/cncr.28811. See Also: Center for Disease Control and Prevention, "Dual Use of Tobacco Products". https://www.cdc.gov/tobacco/campaign/tips/diseases/dual-tobacco-use.html. Accessed March 2017.
[xiv] Arrazola, R. A., et al., *Tobacco use among middle and high school students – United States, 2011-2014.* MMWR Morbidity and Mortality Weekly Report, 2015. 64(14): p. 381-5.
[xv] 21 C.F.R. § 1140.14(d); Cal. Penal Code § 308.2
[xvi] Cullen J, Mowery P, Delnevo C, et al. 2011. "Seven-Year Patterns in US Cigar Use Epidemiology Among Young Adults Aged 18-25 Years: A Focus on Race/Ethnicity and Brand." *American Journal of Public Health* 101(10): 1955-1962.
[xvii] 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
[xviii] Healthy Stores for a Healthy Community. 2016 Contra Costa County Local Data.
[xix] Evans, N, et al., "Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking." *Journal of the National Cancer Institute*, October 1995.
[xx] HHS, *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*, 2014. http://www.surgeongeneral.gov/library/reports/50-years-of-progress/.
[xxi] SAMHSA. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health (NSDUH), 2014.ICPSR36361-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2016-03-22. http://doi.org/10.3886/ICPSR36361.v1.; See also, HHS, Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General, 2012. HHS, Youth and Tobacco: Preventing Tobacco Use among Young People: A Report of the Surgeon General, 1994. http://profiles.nlm.nih.gov/NN/B/C/F/T/_/nnbcft.pdf
[xxii] Pollay, R. et al., "The Last Straw? Cigarette Advertising and Realized Market Shares Among Youths and Adults," *Journal of Marketing* 60(2): 1-16, April 1996.
[xxiii] Farley and Johns, *Tobacco Control*, "New York City flavored tobacco product sales ban evaluation," Jan 26, 2017. 78-84.
[xxiv] SAMHSA. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health (NSDUH), 2014.ICPSR36361-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2016-03-22. http://doi.org/10.3886/ICPSR36361.v1.; See also, HHS, Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General, 2012. HHS, Youth and Tobacco: Preventing Tobacco Use among Young People: A Report of the Surgeon General, 1994. http://profiles.nlm.nih.gov/NN/B/C/F/T/_/nnbcft.pdf
[xxv] King, B.A., et al., *Flavored Cigar Smoking among US Adults; Findings from the 2009-2010 National Adult Tobacco Survey.* Nicotine and Tobacco Research, 2013. 15(2): p. 608-614.
[xxvi] Ambrose, B. K., et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*. JAMA, 2015: p 1-3.

[xxvii] Kostygina et al., MBJ Journals Tobacco Control, Tobacco industry use of flavours to recruit new users of little cigars and cigarillos, 2014, 25(1), abstract available at: http://tobaccocontrol.bmj.com/content/25/1/66.
[xxviii] King, B.A., et al., *Flavored little cigar and flavored cigarette use among US middle and high school students.* Journal of Adolescent Health, 2014. **54**(1): p. 40-46.
[xxix] US Food and Drug Administration, 2016. "FDA takes significant steps to protect Americans from dangers of tobacco through new regulation" https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm499234.htm. Accessed March 2017.
[xxx] Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014.* Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
[xxxi] Tobacco Education and Research Oversight Committee. Changing Landscape: Countering New Threats, 2015-2017. Toward a Tobacco-Free California Master Plan. Sacramento, CA: Tobacco Education and Research Oversight Committee. 2014.
[xxxii] California Health and Safety Code Division 10, Uniform Controlled Substances Act Chapter 6, Article 2. Marijuana (11357-11362.9)

Prepared by the Tobacco Prevention Program, Contra Costa Public Health
4/13/17

RESOLUTION NO. 7-2017

RESOLUTION OF COUNTY PLANNING COMMISSION OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, INCORPORATING FINDINGS AND RECOMMENDATIONS FOR THE TOBACCO RETAILING BUSINESS ORDINANCE.

WHEREAS, The Contra Costa County Department of Conservation and Development in conjunction with the Health Services Department prepared a Tobacco Retailing Business Ordinance for review by the County Planning Commission; and

WHEREAS, for purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and State and County CEQA Guidelines, the zoning text amendment is Categorically Exempt, per Section 15061 (b)(3) of CEQA; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled before the County Planning Commission on Tuesday December 6, 2016, where all persons interested therein appear and be heard; and

WHEREAS, based on testimony provided at the December 6, 2016 hearing, the Planning Commission continued the hearing to the February 8, 2017 hearing date and directed the Health Services Department to provide additional outreach to tobacco retailers prior to the next Planning Commission hearing; and

WHEREAS, after having fully reviewed, considered and evaluated all the public correspondence, testimony, and evidence submitted in this matter;

NOW, THEREFORE, BE IT RESOLVED, that the County Planning Commission:

1. FINDS that the proposed Tobacco Retailing Businesses Ordinance is not necessary and places an undue burden on existing tobacco retailing businesses; and

2. RECOMMENDS to the Board of Supervisors that the proposed Tobacco Retailing Businesses Ordinance be DENIED

NOW BE IT RESOLVED that the secretary of this Commission will sign and attest the certified copy of this resolution and deliver the same to the Board of Supervisors, all in accordance with the Government Code of the State of California.

This Resolution was approved upon motion of the County Planning Commission on Wednesday, February 8, 2017 by the following vote:

AYES: Steele, Terrell, and Wright

NOES: Swenson

ABSENT: Clark and Allen

ABSTAIN: None

DUANE STEELE
Chairman of the County Planning Commission,
County of Contra Costa, State of California

ATTEST: Aruna Bhat

ARUNA BHAT, Secretary
County Planning Commission,
County of Contra Costa,
State of California