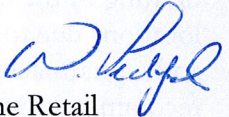


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To: Family and Human Services Committee, Contra Costa Board of Supervisors  
From: Daniel Peddycord, RN, MPA, Public Health Director, Contra Costa Health Services   
Re: Tobacco Control Draft Ordinances to Protect Youth from Tobacco Influences in the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



