

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,iii,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 “sunset” 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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^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.

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- ^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.
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