




To: Contra Costa County Board of Supervisors  
From: Daniel Peddycord, RN, MPA/HA, Public Health Director, Contra Costa Health Services   
Re: Report on Implementation of Tobacco Control Ordinances to Protect Youth from Tobacco Influences adopted in July, 2017  
Date: March 20, 2018

### ***I. Background***

In July, 2017, after a comprehensive review of youth tobacco influences in the retail environment and policy options to address those influences, the Board of Supervisors adopted two ordinances revising County Code to include fourteen 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. Of particular concern were the marketing and availability of youth-friendly flavored tobacco products, small pack sizes of cigars and cigarillos, and density and location of tobacco retailers, since these contribute largely to youth exposure to tobacco influences and tobacco use. The Board of Supervisors directed that the new tobacco ordinances be implemented no later than January 1, 2018, and that staff report back on implementation of the new laws no later than March, 2018.

The newly adopted tobacco control provisions are described below.

Under The Tobacco Product and Retail Sales Control Ordinance (incorporated into Chapter 445-2 of Health and Safety Code):

- a) A Tobacco Retailer License is required for all retailers selling traditional and/or emerging tobacco products, such as newer electronic smoking devices and "liquids" that were not included in the previous ordinance.
- b) The sale of flavored tobacco products, including menthol flavored cigarettes, is prohibited within 1000 feet of schools, parks, playgrounds and libraries. *(These areas are referred to as Youth Sensitive Areas).*
- c) The sale of menthol flavored cigarettes is prohibited within 1000 feet of schools, parks, playgrounds and libraries.
- d) A minimum pack size of ten (10) is required for the sale of cigars, including little cigars and cigarillos. (Cigars priced at \$5 or more, including taxes and fees, are exempt from this provision.)
- e) Pharmacies are not eligible for a Tobacco Retailer License, and hence, the sale of tobacco products is prohibited in pharmacies *(as of 7/1/18)*.
- f) The number of retailers that can sell tobacco products is capped at the current number of licenses issued at the adoption of the ordinance.
- g) Tobacco retailers are required to check the ID of customers who appear younger than 27 prior to the sale of tobacco products.
- h) Tobacco retailers are required to comply with drug paraphernalia sales laws.
- i) Tobacco retailers are required to comply with storefront signage laws.
- j) Tobacco retailers who have their license suspended for violation of County, State or Federal law are required to remove tobacco advertising during the license suspension periods.
- k) During a license suspension hearing, the time period that is reviewed for prior violations of the license is 60 months (5 years) when considering the length of a license suspension period under the law.





Under the Tobacco Retailing Businesses Ordinance (Chapter 88-26 of Zoning Code):

- l) New tobacco retailers are prohibited from operating within 1000 feet of schools, parks, playgrounds and libraries.
- m) New tobacco retailers are prohibited from operating within 500 feet of new or existing tobacco retailers.
- n) New “Significant Tobacco Retailers”, including “vape” shops, hookah bars or smoke shops, are prohibited. (Significant Tobacco Retailers are retailers with 20% or more of floor or display area dedicated to tobacco products and/or tobacco paraphernalia.)

Anticipated implementation activities for the new regulations were reported to the Board of Supervisors when the new regulations were under discussion. Most of proposed new regulations regarding sales of tobacco products are included in the Tobacco Retailer Licensing Ordinance, which is administered and enforced through the County’s Public Health Division. Implementation, including outreach and education activities, was expected to be integrated into ongoing Tobacco Retailer Licensing implementation activities conducted by Tobacco Prevention Program staff. Specifically, implementation would include:

- developing 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.
- collaborating with the Sheriff’s Office to conduct youth decoy operations for compliance with PC308a, the ‘no-sales of tobacco products under 21’ law.
- continuing to coordinate license suspension hearings for those retailers that have been found to be in violation of the law.

**II. Implementation of the Tobacco Product and Retail Sales Control and Tobacco Retailing Businesses Ordinances.**

A number of implementation activities have been conducted related to the new ordinance provisions. These are described below.

- A. Notification Letters.** Letters notifying retailers of the new tobacco retailer regulations were developed and mailed in September 2017 by Public Health Division Tobacco Prevention Program staff to all tobacco retailers in the unincorporated county listed with the County Business License Office (BLO) as of August 2017. Notification letters based on the four specific types of impacts of the new minimum pack size and flavored tobacco product regulations related to store type and proximity to specific Youth Sensitive Areas (YSAs) (i.e., schools, parks, playgrounds and libraries) were developed and tailored to each store (See grid of the four letter types below). The mailing also included a summary of the recently adopted ordinances including consequences of non-compliance and a handout on “Resources for Small Business Owners in Contra Costa County”.



Store type & proximity to specific YSAs	Regulated products (i.e., no sales of the following)
1. <i>Pharmacy</i> within 1000ft of specific YSAs	<ul style="list-style-type: none"> <li>• packs of less than 10 cigars (priced under \$5 per cigar, including taxes and fees) by 1/1/18</li> <li>• flavored tobacco products by 1/1/18</li> <li>• all tobacco products by 7/1/18</li> </ul>
2. <i>Pharmacy</i> NOT within 1000ft of specific YSAs	<ul style="list-style-type: none"> <li>• packs of less than 10 cigars (priced under \$5 per cigar, including taxes and fees) by 1/1/18</li> <li>• all tobacco products by 7/1/18</li> </ul>
3. <i>Other stores</i> within 1000ft of specific YSAs	<ul style="list-style-type: none"> <li>• packs of less than 10 cigars (priced under \$5 per cigar, including taxes and fees) by 1/1/18</li> <li>• flavored tobacco products by 1/1/18</li> </ul>
4. <i>Other stores</i> NOT within 1000ft of specific YSAs	<ul style="list-style-type: none"> <li>• packs of less than 10 cigars (priced under \$5 per cigar, including taxes and fees) by 1/1/18</li> </ul>

**B. Retailer Calls.** Phone calls were made by Public Health's Tobacco Prevention Program staff in November 2017 to all 76 licensed retailers selling tobacco in the unincorporated county with an owner name and phone number listed with the Business License Office as of August, 2017 (i.e., 82% of all 93 licensed retailers selling tobacco jurisdiction-wide.) Owners and/or other designated representatives from 30 retailers (39% of those called) were reached by phone. Those reached by phone participated in a short survey to assess knowledge of the pack size and flavored tobacco product regulations as well as the compliance date and consequences of non-compliance with the new laws. At the end each call, Tobacco Prevention Program staff conducted brief education, and answered questions about, the regulations and provided staff contact information in case future questions arose.

Summary of Retailer Calls. The calls indicated limited retailer knowledge of the regulations, highlighting the need for information sent by mail about the new laws to be reinforced in person, both over the phone and through site visits. The calls also informed the development of user-friendly materials to describe the new regulations to retailers during subsequent site visits and to leave behind to educate owners, retail staff and customers. In addition, these calls also helped staff identify the appropriate person to contact about the new regulations, which in some cases were representatives overseeing regional and/or regulatory issues for the business rather than the owner. Lastly, the calls laid the foundation for future site visits by establishing a relationship and opening the lines of communication with those retailers reached by phone.

**C. Store Visits.** Store visits were conducted by Public Health staff in December 2017 and February 2018, before and after the 1/1/18 compliance date, with most of the 93 licensed tobacco retailers selling tobacco in the unincorporated county.<sup>1</sup> Close to half (46 of 93) of these stores were within 1000 feet of a Youth Sensitive Area.

Visit Dates	Number of stores visited	% of all stores (n=93)	% of all stores near specific YSAs (n=46)
Dec 2017	79 <sup>2</sup>	85%	91%
Feb 2018	86 <sup>3</sup>	92%	98%

<sup>1</sup> Store list based on 8/24/17 BLO list and 10/10/17 Board of Equalization list.

<sup>2</sup> Of the 14 retailers not visited/observed in December 2017, seven were called and educated by phone and/or outside of the store. Two others were called but not reached. The remaining 5 retailers had unclear local license status at the time of the visits (3) or were determined to be closed/not selling tobacco products and/or paraphernalia at the time of the visits but subsequent information indicated they sell tobacco (2) and are included in the list of 93 licensed stores for ongoing implementation efforts. NOTE: Another seven retailers were determined to be closed/no longer selling tobacco and are no longer included on the list of licensed retailers.

<sup>3</sup> Of the 7 retailers not visited/observed in February 2018, one wasn't selling tobacco at the time of the visits and 6 weren't visited due to time constraints and/or perceived safety issues including 4 country clubs/resorts.



During these visits staff observed whether retailers sold packs of less than 10 cigars priced under \$5/cigar including taxes and fees, and/or flavored tobacco products and noted compliance with another state and local law prohibiting self-service displays of tobacco products. In order to create a list of current *Significant Tobacco Retailers*, it was also noted on the survey if the store had 20% or more of its floor or display area dedicated to the sale of tobacco products and/or tobacco paraphernalia. At the end of each store observation, staff provided retailers with a checklist indicating whether the store met the new regulations (i.e., no packs of less than 10 cigars priced under \$5/cigar including taxes and fees (all stores) and no flavored tobacco products (stores near specific YSAs)). The checklist was signed and dated by Tobacco Prevention Program staff and the retail “person in charge” during the visit to confirm receipt, and was left with other educational materials including fact sheets about the regulated products, an overview of the new tobacco retailer licensing laws, required STAKE Act signage and Tobacco Prevention Program staff business cards. If the “person in charge” was not the owner or manager, staff asked that the materials be shared with the owner/manager. The education materials were modified between the December 2017 and February 2018 visits to clarify issues that arose during earlier visits about the pack size regulations, including the allowable number of cigars per pack, the minimum price per cigar for packs of less than 10 cigars, and self-service display ban violations. During the February site visits, Tobacco Prevention Program staff also photographed examples of products for sale that violated the new regulations in order to document non-compliance with the new laws and to inform follow-up letters to retailers.

**Summary of Site Visits.** The findings indicated that BEFORE the compliance date MOST stores visited sold packs of less than 10 priced under \$5/cigar (76% of all stores visited) and flavored tobacco products (95% of stores visited near specific YSAs); FEWER did so AFTER this date (17% of all stores visited and 22% of stores visited near specific YSAs, respectively). The February 2018 compliance checks indicated that overall, 74% of stores visited were compliant with the pack size and flavored product regulations.

A greater percentage of stores visited sold flavored tobacco products before the compliance date versus after (97% vs 58%). This difference was driven by stores near specific YSAs (i.e., those required to cease sales of these products). Self-service displays were also found in more stores visited in December 2017 vs February 2018 (15% vs 9%).

The store site visits were essential to communicating the new regulations to retailers, as many retailers reported that they did not remember receiving the mailing on the new regulations, or that the corporate office contact on file did not communicate the new regulations to the local business.

**D. Tobacco Retailer Density and Location Regulations.** The new law prohibits new tobacco retailers from locating within 1000 feet of schools, parks, playgrounds and libraries, and within 500 feet of another tobacco retailer. While this law is in the Zoning Code, the Public Health Department coordinates 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. Public Health and Department of Conservation and Development staff developed a process for license approval that includes respective departmental responsibilities for mapping and determining applicant distance to schools, parks, playgrounds and libraries; assessing if the applicant is complying with the provisions prohibiting significant tobacco retailing, hookah lounges and smoking lounges; tracking the number of licensed tobacco retailers to ensure implementation of the “capping” provision; conducting a standard zoning check; and reviewing and approving the application for tobacco retailing licensure.



**E. Technical Assistance to Retailers.** In addition to the mailing, phone calls and site visits, Tobacco Prevention Project staff provided technical assistance to numerous tobacco retailers in response to the new tobacco sales laws. Staff responded to over 95 phone calls, office visits and emails from tobacco retailers to clarify what laws applied to their store. Callers typically asked for clarification on which products could and could not be sold (e.g., what was considered a flavored tobacco product, clarification of the minimum pack-size for cigars). Since the flavored tobacco products regulations are connected to tobacco retailer location, 27 calls resulted in requests to verify the tobacco retailer location with a verification map. Public Health's Epidemiology, Planning, and Evaluation (EPE) staff created the requested maps which were then provided to the store owners who made the request. Requests for information came from owners and employees of tobacco retailing businesses, tobacco company representatives, and a tobacco retailing association representatives. On two occasions, Tobacco Prevention Program staff provided a list of retailers that were affected by the new laws (with public information only) to those that requested it. Over the course of technical assistance and education to retailers during phone calls, site visits, and emails, several retailers expressed concern that the new flavored tobacco product regulations were "unfair" as they did not apply to all tobacco retailers across the unincorporated county, while other retailers expressed appreciation to staff for conducting extensive outreach and education.

### ***III. Update on Collaborations between Health Services and Sheriff's Office on Enforcement of the No-Sales to persons under 21 law.***

A Memorandum of Understanding between Public Health and the Sheriff's Department is underway to conduct regular young adult decoy operations to enforce the no-sales to persons under 21 law. Public Health and Sheriff's Office staff have met with staff from the District Attorney's office to develop a process for handling citations under the County's Tobacco Retailer Licensing Law (Chapter 445-2). The State Food and Drug Branch, CA Department of Public Health and other CA jurisdictions are being consulted to identify best practices for decoy operations since the minimum age of sale law has changed to 21, and to include emerging products as part of the attempted decoy purchases.

### ***IV. Technical Assistance to Cities.***

Members of the Board directed staff to communicate with the cities on these new tobacco control policies. A presentation has been scheduled for the Contra Costa Conference of Mayors for June. Since July, 2017, technical assistance has been provided to the City of Richmond, and the City Council there has directed city staff to write an ordinance that addresses youth tobacco influences, including prohibiting the sale of flavored tobacco products citywide and requiring a minimum pack size of 20 for cigars. Education and information has also been provided to individual city council members in San Pablo and Concord, and the City of San Pablo anticipates a presentation to the full City Council on March 19<sup>th</sup>. The Danville City Council has also discussed options for new youth tobacco protections similar to the County's, and technical assistance has been offered to staff there as well.

### ***V. Next Steps in Implementation and Increasing Compliance.***

Staff has identified a number of next steps to fully implement the new laws and increase compliance by the end of the year. These include:

- A. Letters to retailers are being developed and mailed to owners describing the compliance results of the February site visit at their store location and what needs to be done in order to come into compliance. Retailers who were fully in compliance at the February site visit will also be sent a letter thanking them for compliance with the law. A new brochure describing the new law and illustrating sample products that cannot be sold is in development and will be included in these mailings.



- B. Educational materials that have been developed, including the new brochure, list of new tobacco retailer regulations, and other resources will be posted to the Health Services website and the Business License Office website. Some materials will also be available at the Department of Conservation and Development.
- C. 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.
- D. Pharmacies will be notified again about the new law prohibiting sale of any tobacco products in Pharmacies as of July 1, 2018. Site visits will be conducted in July to confirm compliance with this provision of the ordinance.
- E. Public Health staff will work with the Business License Office to include notice of the new tobacco retailing laws in the Business License Application and Renewal materials.
- F. Compliance Site Visits to all licensed tobacco retailers will be conducted again by the end of the year to check for ongoing compliance with the ordinance.
- G. Report back to the Family and Human Services Committee annually on implementation of the ordinance, including successes and challenges in implementation.