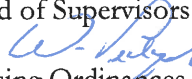


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To: Family and Human Services Committee, Contra Costa Board of Supervisors
From: Daniel Peddycord, RN, MPA/HA, Director, Public Health 
Re: Annual Report on Implementation of Tobacco Retail Licensing Ordinances
Date: 10/22/18

I. Summary

The Board of Supervisors approved two tobacco control ordinances in July 2017 to protect youth from tobacco influences in the retail environment: a zoning ordinance and a tobacco retailer licensing ordinance. 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 tobacco retailer licensing ordinance required extensive preparation for implementation, and tobacco retailers were required to be compliant with the new provisions by January 1, 2018. As requested, Contra Costa Public Health staff provided a report to the Board of Supervisors in March 2018 on preliminary implementation efforts. This report provides a brief recap of those implementation efforts up to March 2018, with information on continued implementation since March as well as next steps.

II. Ordinance Provisions

Ordinance 2017-10 Tobacco Retailer Businesses (effective 8/11/17) states:

- a) NEW retailers operating within 1000 feet of schools, parks, playgrounds and libraries are prohibited from selling tobacco products. Existing tobacco retailing businesses operating within 1000 feet of these areas are nonconforming uses. A nonconforming use will be allowed to continue operating under the ordinance.
- b) NEW retailers within 500 feet of tobacco retailers are prohibited from selling tobacco products. Existing tobacco retailing businesses operating within 500 feet of another tobacco retailer will become nonconforming uses. A nonconforming use will be allowed to continue operating under the ordinance.
- c) No NEW “Significant Tobacco Retailers”, including vape shops, hookah bars or smoke shops are allowed. A “Significant Tobacco Retailer” is defined as having more than 20% of retail sales space dedicated to tobacco retailing use.

Ordinance 2017-01 Tobacco Product and Retail Sales Control (effective 1/1/18) states:

- a) The definition of “tobacco products” and “smoke” includes all electronic smoking devices and liquids, including all electronic devices that could be used to deliver a dose of nicotine or other substances.
- b) The sale of flavored tobacco products, including menthol cigarettes, is prohibited within 1,000 feet of schools, parks, playgrounds, and libraries.
- c) The sale of cigars, including little cigars and cigarillos, is prohibited in pack sizes under ten (10). Premium cigars that sell for \$5.00 (including taxes and fees) or more are exempt from this provision.
- d) No tobacco retailer’s license will be issued that authorizes tobacco retailing in a pharmacy.
- e) Compliance with state and local storefront signage and drug paraphernalia sales laws is required in order to maintain a Contra Costa Tobacco Retailer License.

- f) Tobacco retailers are required to check identification (ID) of customers who appear younger than 27 years of age.
- g) The number of retailers that can sell tobacco products is “capped” at current number of licenses issued by the County. (effective 8/17/17)

Condition of License Suspension if a Violation of the Law Occurs:

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

Retailers found to be in violation of the law can be fined up to \$500 for each day that they are in violation, per County Code 14-12.006, “Administrative fines,” and may face suspension or revocation of their tobacco retailer license.

III. Implementation

A. Recap of implementation efforts from July 2017 adoption through March 2018 report to the Board of Supervisors. Extensive outreach efforts were made from September to December 2017 to notify and educate tobacco retailers about new tobacco control laws. This included a notification letter sent in September, phone calls to retailers in November, and educational site visits to retailers in December leading up to the January 1, 2018 compliance date. These site visits included review and provision of newly developed flyers with notice of new laws and visual examples of restricted products. Staff responded to 95 requests for technical assistance to tobacco retailers through email, phone calls, and office visits in January 2018 to clarify location of stores, what laws applied based on location, and what products were restricted. Post-compliance visits were made to retailers in February 2018, which found an overall compliance rate of 74% (see table below). Warnings were issued to any retailers found in violation at the time of the visit and staff provided additional education to retailers about measures they could take to remedy the violation (e.g., removing restricted products, explaining what constituted a flavored tobacco product, ensuring no tobacco products were displayed for self-service). A tobacco retailer licensing brochure was developed with information on the new laws, how to apply for a tobacco retailer license, and resources to maintain compliance.

Store Visit Dates	% of stores visited	% of stores visited sold small packs of cigars	% of stores visited (near YSAs) sold flavored tobacco products	% of stores visited compliant with pack & flavor restrictions
Dec 2017	85%	76%	95%	NA – pre compliance
Feb 2018	92%	17%	22%	74%

B. Implementation efforts with tobacco retailers since March 2018 report to the Board of Supervisors. By June 2018, warning letters were mailed to all retailers who had been found in violation of new tobacco control laws during the February post-compliance visits, while retailers who complied with the new laws were mailed letters thanking them for their compliance. Public Health staff worked with the Business License Office to include information about tobacco retail information and resources in the annual mailing to all business owners. As of July 1, 2018, all pharmacies were prohibited from selling any tobacco products, and staff provided technical assistance to those pharmacies to achieve compliance.

The Tobacco Retailer Businesses Zoning 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 staff 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 protocol for license approval in August 2017 which remains in place. As needed, Public Health Staff provide technical assistance to Department of Conservation and Development front line staff that interact with tobacco retailers requesting zoning verification.

C. Next Steps for Increased Compliance. Public Health staff has been collaborating with the Sheriff's Office to finalize a MOU to conduct tobacco retail compliance inspections, including youth decoy and shoulder tap operations for enforcement of sales to minors, which are planned for later this year. During those discussions, a new funding source was discovered to cover the costs of enforcement that would otherwise be paid out of County general funds. The California Department of Justice released three rounds of Requests for Proposals for law enforcement related agencies and schools to apply for funding to combat youth use of and access to tobacco products. Staff provided technical assistance to the Sheriff's Office to apply for the first round of funding in March to support youth decoy and shoulder tap operations to enforce tobacco sales to minors law. The Sheriff's Office was awarded these funds and is working with the funder to clarify the scope of work.

The second round of funding was offered in May, and the Public Health staff recently applied for the third round of funding offered in October. This would fund local tobacco enforcement activities from November 2018 through June 2021 complementary to those enforcement activities charged to the Sheriff's Office. As a designated enforcement agency for tobacco retailer licensing laws, Public Health staff proposed to conduct tobacco retail compliance inspections, provide retailer education sessions, and conduct outreach and education to K-12 schools, colleges, and youth-serving organizations to combat youth and young adult tobacco use including vaping, among other educational and outreach activities. Public Health staff have been in contact with the Sheriff's Office to coordinate enforcement activities proposed for funding through the California Department of Justice. Once recipients selected for funding are announced from the third round of proposals, Public Health Staff will work with the Sheriff's Office to finalize a MOU outlining activities needed to local tobacco control laws that may fall outside activities funded through the California Department of Justice. Tobacco retailer compliance inspections are a priority and will be conducted at least twice annually moving forward.

Sheriff's Office staff will participate in training on new protocols for enforcement of sales to minors, including protocols for using older young adult decoys now that the minimum sales age

of tobacco has been increased from 18 to 21, and use of new and emerging tobacco products. This training is scheduled for December 2018 in San Pablo and provided by the California Food and Drug Branch, which is charged with the Stop Tobacco Access to Kids Enforcement (STAKE) Act.

- D. Technical Assistance to Contra Costa Cities.** Members of the Board of Supervisors directed staff to communicate with Contra Costa cities on these new tobacco control policies. Public Health staff conducted a presentation about local tobacco retail implementation efforts at the June 8, 2018 Contra Costa Mayors Conference and offered technical assistance to Contra Costa cities that were interested in considering similar laws. Staff continue to respond to requests from Contra Costa cities and have provided technical assistance to the cities of Richmond, San Pablo, Concord, Oakley, Danville, and San Ramon which have considered similar tobacco retail control policies for their jurisdictions based on the model provided by the County.
- E. Technical Assistance to Statewide Tobacco Control.** In June 2018, Public Health staff produced an evaluation report of local tobacco retailer license implementation efforts, which provided a thorough account of materials and methods used to achieve compliance with the newly adopted provisions. Since few jurisdictions across the state had adopted such comprehensive provisions with successful implementation, this report has since been used as a model for tobacco retailer licensing implementation for jurisdictions across the State.

Public Health staff was selected by the California Department of Public Health's Tobacco Control Program to participate in a panel presentation on successful implementation of Contra Costa's local tobacco retailer licensing laws at the statewide tobacco projects meeting in November. The California Youth Advocacy Network has also asked staff to present on Contra Costa's successful efforts to engage youth in local tobacco policy as a model for other jurisdictions at the same statewide tobacco projects meeting in November.

IV. Recommendations

Staff recommends that the Family and Human Services Committee accept the report and direct staff to continue to provide updates on implementation of the ordinance as part of staff's annual report on the County's Tobacco Retail Licensing Ordinance.