

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: 10/7/19

## **I. Summary**

In July 2017, the Board of Supervisors adopted two tobacco control ordinances to protect youth from tobacco influences in the retail environment. The first being a zoning ordinance and the second a retailer licensing ordinance. The goal of these ordinances is to regulate the marketing and availability of youth-friendly flavored tobacco products, small pack sizes of cigars and cigarillos, and density and location of tobacco retailers, as these contribute largely to youth exposure to tobacco influences and tobacco use. The tobacco retailer licensing ordinance required tobacco retailers to be compliant by January 1, 2018. At the request of the Board of Supervisors, Contra Costa Public Health staff provided reports in March 2018 on preliminary implementation of the ordinances with a follow up report to the Family and Human Services Committee being made in October of 2018. This report is a brief overview of implementation activities that have taken place since October 2018, as well as next steps.

## **II. Ordinance Provisions**

Zoning 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.

Licensing 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 (92) 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. Implementation efforts from October 2018 report to the Board of Supervisors

The Public Health staff worked with the Business License Office to include information about tobacco retail ordinance and resources in the annual mailing to all business owners. In May 2019, the Business License Office mailed the annual business renewal reminder letters to all 88 unincorporated tobacco retailers, who also received a flyer on compliance with Ordinance 2017-10 Tobacco Retailer Businesses and Ordinance 2017-01 Tobacco Product and Retail Sales Control.

The Tobacco Retailer Businesses zoning ordinance prohibits new tobacco retailers from locating within 1,000 feet of schools, parks, playgrounds and libraries, and within 500 feet of another tobacco retailer. The 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 interacts with tobacco retailers requesting zoning verification.

Public Health staff in partnership with a team of 15 adults from the following agencies: Contra Costa County Office of Education; Tobacco Use Prevention Education (TUPE); Contra Costa County Health Services’ Alcohol and Other Drugs Prevention Program and Nutrition and Physical Activity Promotion Program; and Bay Area Community Resources to conduct the Statewide Health Stores for a Healthy Community survey. Over 380 stores were surveyed, and the findings will provide information about the marketing of tobacco products that are attractive and affordable to youth and include measures to make tobacco products easily accessible through store discounts and online coupons. Surveys will be sent to the California Department of Public Health’s California Tobacco Control Prevention Program to be analyzed and the findings will be shared with Public Health. Public Health will utilize this data when conducting compliance checks in early 2020.



## **B. Next Steps for Increased Compliance**

In 2018, Public Health staff provided technical assistance to the Sheriff's Office on applying for and funds from the California Department of Justice to combat youth use of and access to tobacco products and enforce the tobacco sales to minors. The Sheriff's Department was awarded these funds and Public Health staff will continue to work with the Sheriff's Office to conduct tobacco retail compliance inspections, including youth decoy and shoulder tap operations for enforcement of sales to minors.

The Public Health staff also applied for and was awarded funding (\$838,379.00) offered by the California Department of Justice to fund local tobacco enforcement activities complementary to those enforcement activities charged to the Sheriff's Office from November 2018 through June 2021. As a designated enforcement agency for tobacco retailer licensing laws, Public Health staff will conduct tobacco retail compliance inspections in partnership with the Sheriff's Department, 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.

Through the new funding from the California Department of Justice, Public Health will:

1. Conduct enforcement activities with licensed tobacco retailers which include updating protocols for conducting compliance inspections with local retailers; developing a list of tobacco retailers to target enforcement actions based on data from the California Department of Tax and Fee Administration and the local Business License Office; conduct 100 tobacco retail compliance inspections; cite violations of tobacco retail laws and conduct follow-up inspections.
2. Conduct tobacco retailer education classes on an annual basis with emphasis on tobacco laws meant to reduce youth tobacco influence.
3. Maintain tobacco retailer information and complaint hub (i.e., hotline and website) to provide technical assistance to tobacco retailers as well as the general public about tobacco retail issues and accept reports of any violations of local tobacco retail laws.

The capacity of both the Sheriff's Department and Public Health to respond to planned activities leading to the completion of tobacco retailer compliance inspections, including youth decoy and shoulder tap operations have been significantly impacted as staff at the Sheriff's Department have been reassigned, and Public Health has encountered challenges in hiring staff for this new funding source. The above activities continue to be a priority and activities are expected to begin early 2020.

## **C. Technical Assistance to Contra Costa Cities**

On June 8, 2018, Public Health staff conducted a presentation about local tobacco retail implementation efforts at the Contra Costa Mayors Conference and offered technical assistance to Contra Costa cities that were interested in considering similar laws. As a result of this presentation several cities have requested and have been provided with technical assistance from Public Health staff (i.e., Concord, San Ramon, Danville, and Antioch). Within the past year, the following cities have adopted tobacco retail control policies utilizing the Contra Costa County ordinance as a model:



City	Policy Description	Date adopted/ Date effective
San Pablo	Prohibits sale of all flavored tobacco products, including menthol within city limits	Dec 2018/ Mar 2019
Lafayette	Prohibits sale of all flavored tobacco products, including menthol within city limits	May 2019/ Aug 2019
Richmond	Prohibits sale of all flavored tobacco products, including menthol within city limits	July 2018/ Sept 2019
Oakley	Future Tobacco Retailers businesses would be prohibited from being located within 500 feet of existing tobacco retailers or 1,000 feet of youth-sensitive areas: parks, playgrounds, libraries, schools and bus stops servicing schools. Retailers already inside that 1,000-foot buffer are exempt.  TRL with a high cap of number of tobacco retailer licenses (25)	Dec 2018/ Jan 2019

In April 2019, Tobacco Prevention Program disseminated a Request for Proposal for community-based organizations to work with communities in Pittsburg and Antioch to educate the community on the importance and benefits of protective tobacco measures to reduce the influence and use of tobacco and tobacco products in environments that are youth sensitive. Two agencies have been identified: Bay Area Community Resources and Community Health for Asians and execution of their projects will begin in Fall of 2019.

In August and September 2019, Tobacco Program staff, the Health Officer and Public Health Director provided technical assistance and public testimony to the City of Richmond related to the development and subsequent adoption of policy to suspend the sale of vaping products. This action was taken in the wake of growing national concerns related to the incidents of severe pulmonary illness triggered by the use of vaping products.

In addition, Public Health staff has been instructed by the Board of Supervisors to develop a proposed vaping sales moratorium for consideration in response to the epidemic of teen vaping and the incidence of severe pulmonary illness related to the use of vaping products. As of September 27<sup>th</sup>, the Centers for Disease Prevention and Control (CDC) reports over 800 cases across 46 states and 12 deaths. In California there have been 90 cases reported and 2 deaths, as of September 24<sup>th</sup>, 2019. Public Health staff is currently working in partnership with Contra Costa County Counsel to draft language for the proposed ordinance that is tentatively scheduled to be presented to the Board of Supervisors in late October or early November 2019.

#### **D. Technical Assistance to Nationwide Tobacco Control**

Public Health staff was selected by the National Association of Attorneys General (NAAG) to present at their 2019 Tobacco Policy and Responsible Retailing Conference in Tampa, Florida in May 2019. Staff was invited to provide best practices on the successful implementation of local tobacco retailer licensing laws.



**III. 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.

