



To: Family and Human Services Committee, Contra Costa Board of Supervisors  
From: Ori Tzvieli, MD,  
Health Officer, Contra Costa County  
Public Health Director, Contra Costa Health Services  
Re: Annual Report on Implementation of Tobacco Retail Licensing Ordinance 2019-34  
Date: 02/28/22

## **I. Summary**

The Board of Supervisors adopted Ordinance 2019-34 (Sale of Electronic Smoking Devices and E-Liquids Prohibited) in November 2019 which strengthened protections for youth against tobacco influences in the retail environment. The alarming rise of vaping among vulnerable youth who are more susceptible to tobacco addiction, in conjunction with the E-cigarette/Vaping Associated Lung Injury (EVALI) epidemic made addressing this public health concern through policies such as Ordinance 2019-34 even more necessary and timely.

In addition to the above, the ordinance expanded restrictions on the sale of flavored tobacco in all unincorporated areas of the County, as opposed to only within 1,000 feet of youth-sensitive areas. Contra Costa Health Services' Tobacco Prevention Program facilitates implementation of this ordinance through programmatic activities and by supporting the Contra Costa Sheriff's Department with enforcement. This report will provide details of implementation of the Ordinance 2019-34, specifically activities conducted since the last report made to this committee in October 2020, notwithstanding the challenges presented by the COVID-19 pandemic.

## **II. Tobacco Retailer License Ordinance Background**

On September 10, 2019, the Board of Supervisors directed Public Health staff to prepare policy options that would address mounting concerns related to the rapid increase of use with electronic cigarettes by minors as well as the co-occurring epidemic of serious lung disease that has been linked to the use of vaping devices.

On November 19, 2019, Public Health staff provided the policy recommendations listed below:

1. Revise Division 445 (Secondhand Smoke and Tobacco Product Control) of the County Ordinance Code to prohibit the sale of any electronic smoking device or e-liquid that is required to obtain, but has not yet obtained, a premarket review order from the U.S. Food and Drug Administration pursuant to the federal Family Smoking Prevention and Tobacco Control Act.
2. Revise Section 445-6.006 of the County Ordinance Code to prohibit the sale of flavored tobacco products and menthol cigarettes expanding this prohibition to the entirety of the unincorporated county. Previously, the sale of these products was only prohibited within 1,000 feet of a public or private school, playground, park, or library.



3. Amend Section 413-4.608 (Retail sale standards - Commercial Cannabis Health Permits) of the County Ordinance Code to prohibit the sale or delivery of any e-liquid that contains tetrahydrocannabinol or any other cannabinoid, and to prohibit the sale or delivery of any electronic smoking device that can be used to deliver tetrahydrocannabinol or any other cannabinoid in aerosolized or vaporized form.

Public Health’s Tobacco Prevention Program (TPP) Staff partnered with Contra Costa County’s Department of Conservation and Development, Alcohol and Other Drugs Services (AODS), the Contra Costa County Office of Education Tobacco Use Prevention Education Program (TUPE) and community partners to inform community members about the upcoming policy. The Tobacco Prevention Coalition (TPC) and partners educated members of the community, especially the youth, on the positive impact of the proposed policy recommendations. More than 25 community members provided public testimony or wrote letters of support for the expansion of restrictions of the tobacco retailer license ordinance, most of which were youth who experienced the negative health effects of vaping amongst their friends and classmates. Ordinance 2019-34 was adopted by the Board of Supervisors unanimously on November 19, 2019. Implementation of the amended ordinance began April 1, 2020.

### **III. Implementation efforts since October 2020 report to the FHS Committee**

#### **Implementation of Ordinance 2019-34**

TPP Staff created a comprehensive strategy to inform the retailers and the public of the upcoming changes on the sale of flavored tobacco and vaping devices in the unincorporated areas of the County. The strategy included community presentations, social media posts on the Tobacco Coalition’s (TPC) Facebook and Instagram, and informational mailers that were sent to all retailers in the unincorporated County.

In February 2021, TPP along with CCHS’s Nutrition and Physical Activity Promotion Project, HIV/STD Prevention Program, Alcohol and Other Drugs Services Program hosted a “*State of The Retail Environment In Contra Costa County*” to share the California Department of Public Health’s Healthy Stores For A Healthy Community (HSHC) campaign results. TPP implemented the HSHC survey tool with 383 of the 666 tobacco retailers in Contra Costa. Of those surveys collected, 183 were analyzed by the CCHS Epidemiology, Planning and Evaluation team and California Tobacco Control Program.

Following the Town Hall of February 2021, the HSHC Taskforce continues to meet monthly and based on community engagement and needs assessment, further analyzed data from 13 of the Bay Point tobacco retailers. The following were the results for Bay Point tobacco retailers:



- More than 75% sell flavored tobacco products compared to 23% of tobacco retailers surveyed sell fresh fruits and vegetables
- Nearly 77% sell alcohol while 15% sell non- or low-fat milk
- 100% sell unhealthy items such as chips and sodas
- Only 31% have storefront advertising for healthy products, but 2x more (62%) have advertising for unhealthy products including tobacco products, alcohol or sugary drinks
- Nearly 23% have ads for tobacco products in kid-friendly locations (either within 3 feet of candy or below 3 feet)

Additional data collection from the 13 Bay Point tobacco retailers, and other stores in Bay Point and close to the border (total of 27), is expected to occur between March and May 2022 to engage Bay Point residents and retailers to gather information on the items above and increase collaboration with store owners. The HSHC Taskforce is expected to hold 'Bay Point Town Hall' to share the findings in May 2022.

Annually TPP works with the Contra Costa County Business License Office and the Tax Collector's Office to send a mailing that includes a reminder to all tobacco retailers to renew their business license and any policy change that affects the retailers. In May 2021, the Business License Office mailed the annual business renewal reminder letters to all 84 tobacco retailers in unincorporated Contra Costa.

### **Enforcement of Ordinance 2019-34**

In previous years, TPP Staff have assisted the Sheriff's Department in completing compliance checks. As the impacts of COVID-19 pandemic continued through much of 2021, TPP Staff delayed in-person activities, such as youth decoy and shoulder tap operations. However, through funding from the California Department of Justice, TPP was able to perform local tobacco control policy enforcement activities complementary to those enforcement activities under the purview of the Sheriff's Department through June 2021.

April 2021 through June 2021, fifty retailers were contacted by phone to participate in pre and post-test surveys and received educational packets by mail. While roughly 1% participated in the pre-test which focused on flavored products, legal age of sale, and electronic smoking devices, 70% of the retailer's responded to the post-test, with half of those scoring 100% demonstrating the effectiveness of this alternative strategy in ensuring that retailers are educated about and understand current tobacco control policies.

A Youth Taskforce was formed through funding from the California Department of Justice and 8 youth/young adults were trained to educate their peers about the negative health effects of the use of tobacco and tobacco products. Five presentations educating youth about the dangers of vaping at Diablo Valley College and with community organizations were conducted between February 2021 and June 2021.



#### IV. Technical Assistance to Contra Costa Cities

TPP Staff continue to offer comprehensive technical assistance to Contra Costa cities interested in considering tobacco control policies that prohibit the sale of flavored tobacco products and e-cigarettes or vaping devices in order to protect youth from the negative health effects associated with the use of these products, such as EVALI.

Over the past year, the following cities have either adopted or are considering expanding their tobacco retail control policies employing the Contra Costa County ordinance as a model:

City	Policy Description	Date adopted/ Date effective
Antioch	Adopt comprehensive tobacco retailer license with a flavors restriction and a minimum pack size requirement	Antioch's City Council directed staff to develop draft ordinance (similar to County's policy) in May 2021/ 1 <sup>st</sup> reading of TRL ordinance pending
Pittsburg	Adopt a comprehensive tobacco retailer license ordinance inclusive of flavored tobacco restrictions and a minimum pack size requirement	Community partners presented to Pittsburg City Council in May 2021/ Staff has been directed to review and update all tobacco policies including SHS and retail in February 2022/ Draft ordinance pending
Danville	Prohibits the sale of vaping devices and electronic smoking devices	February 18, 2020/ March 18, 2020
Concord	Adopt comprehensive tobacco retailer restrictions that are inclusive of flavored tobacco restrictions and a minimum price	Survey of tobacco products in Concord tobacco retailers conducted in December 2021/ Presentation to Concord Council expected Summer 2022
San Ramon	Comprehensive tobacco retail license with vaping sales restrictions, minimum pack size, minimum price, tobacco free pharmacies, no exemptions	San Ramon youth, community partners, and TPP Staff provided education to Policy Standing Committee January 2022/Draft Ordinance pending (possibly March 2022)
Walnut Creek	Adopt tobacco retail license with same exemptions as SB 793 (hookah, pipe tobacco, and roll your own tobacco leaves exempt from flavors restrictions)	Adopted November 9, 2021 Implemented April 9, 2022



Pleasant Hill	Adopt flavored tobacco sales restriction and vaping device sales ban with same exemptions as SB 793 (hookah, pipe tobacco, and roll your own tobacco leaves exempt from flavors restrictions)	Adopted February 7, 2022/ Implemented January 2023, consideration will be given in March 2022 to revise cigar definition.
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**V. Technical Assistance on Vaping Policies**

On June 26, 2018, the Board of Supervisors adopted cannabis land use Ordinance Nos. 2018-18 and 2018-19 to regulate commercial cannabis activities and personal cannabis cultivation in unincorporated Contra Costa County, including requiring land use permits to engage in commercial cannabis activities. Considering the newness of regulating the commercial cannabis industry and the evolving landscape of cannabis regulation, Contra Costa Health Services recommended a cautionary approach to local regulation that emphasizes protections for consumers, the public, and at-risk groups such as youth and individuals challenged with substance use disorders. In November 2019, Ordinance 2019-34 was introduced and subsequently adopted amending three sections of County code to bring alignment between County Tobacco Control Policy and Cannabis regulation. In particular, the provision prohibiting the sale of flavored cannabis products and any electronic smoking device that contains tetrahydrocannabinol or any other cannabinoid.

At the request of the Board of Supervisors, in May 2021 and July 2021 TPP Staff provided reports on the Triangulum between tobacco, cannabis and electronic smoking or vape devices, current trends in use among youth, and the negative health impacts associated with the use of vape devices, in particularly among vulnerable populations such as underage youth.

In August 2020, California became only the second state to ban the sale of flavored tobacco products including flavored electronic cigarettes through SB793. What was expected to be implemented in January 2021, due the tobacco industry filling a referendum, subsequently SB793 will be placed on the ballot for November 2022 to let voters decide whether it is to be implemented. With the support of the Board of Supervisors, the Contra Costa Tobacco Prevention Program continues to advance tobacco prevention policies and responds to various requests to provide technical assistance to other local public health departments for both tobacco and the emerging issue of cannabis, throughout the State, including Alameda, Sonoma, Santa Barbara, Los Angeles, and San Diego Counties. Technical assistance includes sharing best practices on the adoption, implementation, and enforcement of local tobacco prevention ordinances.

**VI. Recommendations**

Direct staff to track SB 793 referendum, and to keep the Committee informed of any changes that result in the November 2022 election.



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.

