



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 the Implementation of Tobacco Retail Licensing Ordinance 2019-34  
and Recommendations for Cannabis Youth Education and Outreach Campaigns

Date: 02/27/2023

## I. Summary

This report provides details of tobacco enforcement of the Ordinance 2019-34, specifically activities conducted since the last report made to this committee in February 2022. The report includes the support provided to the surrounding cities within Contra Costa during the past year. Lastly, it presents the program and media campaign options as directed by the Board of Supervisors when they discussed and passed the resolution to repeal the Cannabis Vaping Prohibitions on December 3, 2022, and January 10, 2023.

## II. Background and Emerging Issues on Tobacco Policy National, State, and Local level

In 2009, the Family Smoking Prevention and Tobacco Control Act prohibited the sale of all flavored cigarettes except for Menthol. In 2017 and 2019, Contra Costa's Board of Supervisors strengthened protections for youth against tobacco influences in the retail environment by restricting the sale of all flavored tobacco products and vaping devices not approved by the FDA. In 2022, the FDA began the rulemaking process to prohibit on a national level the sale and manufacture of menthol cigarettes and flavored cigars (See Table 1. Background on Flavored

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<sup>1</sup> Tobacco Retailer License Ordinance Background: On September 12, 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 18, 2019, Public Health staff provided the policy recommendations listed below:

1. Revise Division 445-6.006 (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 (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.



Tobacco Policy). Most recently, in November 2022, California voters upheld the State law prohibiting tobacco retailers from selling most flavored tobacco products (See Table 2. California Prohibited Flavored Tobacco Products). The FDA has reviewed close to 1 million ‘new tobacco product’ applications (application per product rather than per company) to assess risk and benefits to population health. As of November 2022, the FDA issued 44 authorizations and thousands of denial marketing orders. Additionally, the FDA is also reviewing public comments that were submitted in August 2022 in response to the federal ban on menthol cigarettes and flavored cigars. Lastly, due to product safety concerns and youth consumption, the FDA issued a moratorium on the sale of all synthetic nicotine products (including Puff Bars, disposable vapes, etc.) until further notice. In response to the Statewide flavor tobacco ban in California, since, December 2022, there has been an increase in the retailing of “nonmenthol products.”

Year	Level	Prohibited Tobacco Products
2009	Federal	Flavored cigarettes, except for menthol
2017	County	All flavored tobacco products, including menthol, within 1,000 ft of any school, playground, park or library; small pack cigar sales (no packs less than 10, unless cigar is over \$5)
2019	County	All flavored tobacco regardless of location; all e-cigs or e-liquids pending FDA approval
2020	Federal	Flavored cartridge-based e-cigarettes (menthol flavor exempt)
2021	Federal	FDA <i>proposes</i> to prohibit menthol cigarettes and flavored cigars
2022	State	Most flavored tobacco products (flavored hookah/shisha, pipe tobacco, and premium cigars are exempt).

*\*In November 2022, The Department of Cannabis Control (DCC) issued a ban on all vaping additives including flavors that are not natural of the cannabis flower.*

### III. Implementation of Ordinance 2019-34 Since February 2022 Report

The Tobacco Prevention Program (TPP) facilitates the implementation of the unincorporated County’s tobacco retail license ordinance and collaborates with the Contra Costa Sheriff’s Department for the enforcement of commercial tobacco sales. Additionally, TPP supports all Contra Costa jurisdictions with education to support decisionmakers with information about the public health framework and understanding of best practices in tobacco control. This support is by provided through tailored technical assistance, tobacco educational packets and materials, public health law resources.

TPP partners with the Contra Costa County Business License Office and Tax Collectors Office to educate all retailers on how to renew their tobacco business license and update them annually on any policy changes that affect them. In May 2022, the Business License Office mailed the annual business renewal reminder letters to 85 tobacco retailers in unincorporated Contra Costa.



In order to sell tobacco in unincorporated Contra Costa, a retailer must apply for a local tobacco retailer license (in addition to state tobacco license). TPP oversees the tobacco retailer license application process. TPP monitors all existing and new tobacco stores and provides education to retailers about the everchanging tobacco policy landscape. The Sheriff's Department distributes retailer education flyers developed by TPP during inspections to store clerks and owners.

#### **IV. Enforcement of Ordinance 2019-34 Since February 2022 Report**

In May 2022, TPP hired one staff member to focus on retailer engagement and enforcement efforts. The Sheriff's Department is the primary enforcer of Ordinance 2019-34, though it is a collaborative effort between the Tobacco Prevention Program staff and the Sheriff's Tobacco Enforcement Unit.

However, during the pandemic, the Sheriff's Department priorities shifted, and tobacco enforcement was based on complaints from the community. During that time, several businesses were identified as non-compliant and were found selling or intending to sell unlawful tobacco products (including, the sale of flavored tobacco, vapes, small packs of 5 cigarillos, and single cigarillos). In 2022 as recovery from the pandemic continued, compliance checks were allowed to begin again. There were five inspection visits conducted in collaboration with the Sheriff's Department. Two compliance visits led by the Sheriff's Department led to a retail license suspension hearing and another compliance visit at a separate location led to an administrative fine. TPP staff identified a need to educate enforcers on the characterization of flavored tobacco and the County's tobacco ordinance. A need was also identified to assist the detectives in providing appropriate resources and education to retailers during inspections visits. TPP plans to address this matter with the development and implementation of a new inspection process to include at minimum annual inspections which will incorporate youth decoy operations as stated in the County's ordinance.

TPP applied for and was awarded funding in November 2022 from the California Department of Justice, in the amount of \$443,000 over three years. Programmatic deliverables include conducting bimonthly trainings on tobacco control laws and facilitating monthly workshops with law enforcement agencies and city staff on implementation and enforcement of tobacco control laws, including education on characterizing flavors and distinguishing what constitutes a flavored tobacco product. For example, there has been a rise in 'concept' flavors in the retail market which has posed challenges to agencies enforcing flavored tobacco laws.

#### **V. 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 vaping devices.

Over the past year, the following cities have either adopted or are considered expanding their tobacco retail control policies:



<b>City</b>	<b>Policy Description</b>	<b>Date adopted/ Date effective</b>
<b>Brentwood</b>	Moratorium on New Tobacco Smoke Shops, June 2022-August 2022	Effective: through August 2023
<b>Moraga</b>	Flavor ban (NO EXEMPTIONS)	Adopted: October 12, 2022 Effective: January 1, 2023
<b>Orinda</b>	Flavor ban (NO EXEMPTIONS)	Adopted: May 3, 2022 Effective: January 1, 2023
Antioch	Adopt comprehensive tobacco retailer license with a flavors restriction and a minimum pack size requirement	<p>Antioch's City Council directed staff to develop draft ordinance (like County's policy) in May 2021/ 1<sup>st</sup> reading of TRL ordinance pending</p> <p>On March 8, 2022, Antioch City Council adopted Ordinance NO. 2206-C-S, a</p> <p>On June 14, 2022, Antioch City Council adopted Ordinance 2215-C-S, officially granting tobacco retailers until December 2022 before the enforcement began. Effective date: December 2022</p>
Pittsburg	Adopt a comprehensive tobacco retailer license ordinance inclusive of flavored tobacco restrictions and a minimum pack size requirement	On December 12, 2022, the Ad-Hoc Committee met and directed the Public Health Policy Consultant to create a draft ordinance and complete a community survey to get resident input on this issue. Council will discuss prioritizing TRL in March.
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	Staff directed to draft ordinance. Draft expected to be presented March 2023.
San Ramon	Comprehensive tobacco retail license with vaping sales restrictions, minimum pack size, minimum price, tobacco free pharmacies, no exemptions	TPP staff provided overview of best practices to San Ramon Teen Council in November 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

Finally, the passing of Prop 31, the statewide flavored tobacco ban, requires all jurisdictions to enforce this new law with or without a local tobacco retail license policy. Given this monumental change in tobacco policy, providing education and support to all agencies through regular workgroup meetings will be crucial to ensure all 19 jurisdictions in the County are well equipped with the understanding needed to carry out enforcement of the state (and local) policies.

## VI. 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 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 2022, TPP had the opportunity to hire an intern temporarily to research cannabis ordinances locally and nationally to determine best practices. As a result of this research the intern developed a document entitled “Protecting Communities from Adverse Health Effects of Cannabis Products” where the following recommendations based on the research was made.

The main finding was that legalization should not imply normalization. This can be achieved by implementing policies that prevent aggressive marketing practices, ensuring health warning are predominantly displayed at checkout, and not allowing consumption of cannabis at public places, including on premises of a cannabis retailer.

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 and work collaboratively with other public health departments on both tobacco and the other aerosolized substances, throughout the State, including San Francisco, 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.

Youth, who are most vulnerable to nicotine addiction and the harmful effects of tobacco, use tobacco at alarming rates. Contra Costa Health Services’ Tobacco Prevention Program is focused on addressing both ongoing and emerging issues that affect youth access to and use of tobacco products. Some of these emerging issues include the increasing co-use of tobacco with aerosolized substances such as hemp and cannabis, the potential increased use among youth of non-menthol cigarettes, and the lack of pro-active enforcement of tobacco policies across the county. Another concern TPP is focused on is countering the tobacco industry’s messaging that inaccurately promotes inhalable harm reduction/modified risk tobacco products as cessation aids. These issues are interconnected and have direct consequences on youth tobacco use and prevention, as well as TPP’s work.

## **VII. Recommendations**

- a. Tobacco retailers in Contra Costa must follow all state and local laws relating to the sale of tobacco, tobacco paraphernalia, drug paraphernalia, and controlled substances. Contra Costa has strong tobacco control policies which incorporates many components of a model Tobacco Retail Licensing Policy. Best practices for tobacco retail license policies also include a minimum price of \$10 (per pack of cigarettes, little cigars, or cigars) and minimum pack size of 20 little cigars/cigarillos; and prohibition of tobacco coupons and discounting and the County’s tobacco policy currently does not include that The availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use (citations 1-9, PHLC 2023). TPP asks that they be directed to further explore the benefits of considering these provisions in Contra Costa.



- b. TPP ask that staff be directed to continue to inform the FHS Committee and Board of Supervisors of the FDA’s final decision on menthol cigarettes and flavored cigars, and to provide updates on emerging trends in tobacco retail environment that have an impact on youth use of vaping.
- c. As has been previously mentioned in this report, TPP Staff was directed by the Board of Supervisors when they discussed and passed the resolution to repeal the Cannabis Vaping Prohibitions on December 3, 2022, and January 10, 2023.

The following recommendations are in response to this directive and offer four options that TPP Staff would like to offer for consideration that support outreach and education efforts to increase the knowledge of youth about the harmful health impacts of youth use of cannabis products.

**1.) Fund Existing Intervention Efforts at School Based Level:**

TPP Staff proposes providing \$300,000 in additional funds for student services to existing programs such as TUPE to continue implementing and expanding their 1-1 brief interventions and YVAPE, an after- school education program that serves as an alternative to suspension, when youth are caught smoking or vaping on school campus. As highlighted through an analysis of California Healthy Kids Survey Data, it has become critical to specifically address the disparities that exist at the intersection of tobacco, cannabis, and youth mental health. This additional funding would ensure all youth’s needs are met by making these services available to all students on campus, along with two student demographics, LGBTQ+ students and Non-traditional students, who have been disproportionately affected by tobacco and cannabis use and are in need these services more.

**2.) Fund a Restorative Justice After School Program**

TPP Staff proposes (1) providing funding up to \$200,000 to schools to hire (3) Restorative Practice Specialists to implement Restorative Justice Programs that focus on building a sense of school community and resolve conflict by repairing harm and restoring positive relationships through the use of regular coaching and “restorative circles” where students and educators work together to set academic goals, develop core values for the classroom community, and resolve conflicts; and (2) providing additional funding to community-based organizations that focus on providing resources and assistance to schools to implement alternatives to school suspensions for those students caught using or holding vaping products.

Decades of research has shown that suspension is not an effective tool to reduce youth use of substances like tobacco. Students who are suspended are far more likely to drop out and get involved with the juvenile justice system. In 2011, Richmond High School in West Contra Costa Unified School District implemented a Restorative School Discipline Program that resulted in decreasing the school’s nearly 500 suspensions (Jan 2011) in half



by January 2012. Implementing this Restorative Justice Program would ensure the areas of the County with the highest need for additional support are met.

### **3.) Fund a Countywide Cannabis Youth Social Media Program:**

TPP Staff propose piloting a youth-led cannabis social media program. The program would have 25 youth and young adult participants that meet every month virtually and in-person to create personalized social media posts that showcase their daily lives and how they are staying safe from the harmful effects of cannabis. The goal of the program would be to increase knowledge, change attitudes, and increase positive behaviors among young people aged 14 to 24 through peer-to-peer education and leading by example via social media prevention and education messaging. Social media has become the main source of information for many young people. TPP Staff plan to tailor education and prevention efforts to meet the needs of youth in the community by using and meeting youth where they are on social media.

Youth participants would be responsible for (1) attending one Creative Focus Group per month to brainstorm themes, draft social media posts, and create monthly campaigns, (2) attending one monthly meetup per month where they will have the opportunity to connect with their fellow program participants, receive presentations and trainings from experts in the cannabis prevention field, and engage in discussion regarding emerging topics related to cannabis, (3) creating a minimum of 3 social media posts per month, and (4) planning and hosting one workshop for the public on a topic related to cannabis prevention (e.g. cannabis and mental health).

The pilot program would run for one year and each participant would complete a minimum of 35 hours and up to 70 hours and receive a stipend at \$15 per hour rate. A total budget of \$34,225 would be needed to run this program successfully. The budget justification is as follows:

- Youth Stipends (70 hours x \$15.50/hour x 25 YYA): \$27,125
- Social Media Analytics Platform (1 year subscription): \$3,600
- Workshop Venue: ~\$1,000
- Honorariums for Guest Speakers and Trainers: \$1,000
- Food and supplies for workshop: \$500
- Youth Incentives: \$1,000

TPP Staff will utilize (1) Instagram analytics, (2) Creative Focus Group discussions, and (3) monthly feedback sessions with program participants during the Monthly Meet Up to evaluate the effectiveness of the program on a quarterly basis to ensure program goals are being met and changes are being implemented as needed throughout the duration of the program.





#### **4.) Fund Youth Town Hall – "What's Up with Cannabis Vaping?"**

TPP staff propose hosting one town hall in collaboration with local partners to share insight into what cannabis vaping looks like and its effects through the eyes of a doctor, a local community-based organization that works with youth and 2 – 3 young people from throughout Contra Costa County. Local media will be engaged in this effort in order to widen the messaging about the impacts of cannabis vaping.

Youth cannabis vaping continues to be a widespread issue as the 2022 Monitoring the Future report shared that 20.6% of 12<sup>th</sup> graders reported vaping cannabis within the past year compared to 27.3% of 12<sup>th</sup> graders who reported vaping nicotine. Given the high rate of cannabis vape use among youth TPP finds it to be an important time to dispel myths around cannabis vaping and youth and propose doing so in a widely publicized town hall.

A similar town hall was conducted with the Tobacco Prevention Project in collaboration with Full Court Press and Global Media X for \$20,000 focused on elevating the social injustices of the tobacco industry and their marketing of flavored tobacco products in two communities. A significantly larger style campaign of \$100,000 geared towards sharing information about the harms of youth use of cannabis is being proposed with the unique view of working with ethnic media sources.

d. Finally, TPP 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.



## **Citations:**

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