



SUBJECT: Discuss Possible New Tobacco Regulations and Provide Direction to Staff

DEPARTMENT: Community Development

STAFF: Alexis Morris, Director of Community Development

TITLE/RECOMMENDATION

Consider information related to possible new tobacco regulations and provide direction to staff on the options provided in the staff report.

FISCAL IMPACT

If a tobacco retailer licensing (TRL) ordinance is approved, the new license fees would be submitted for approval by the City Council at a future meeting. The amount of revenue collected will depend on the fee amount proposed and the number of businesses required to be licensed and is not expected to have a material impact on General Fund revenues.

License fees and any potential revenue generated by administrative citations for enforcement of an ordinance would be deposited into the General Fund. General Fund legal fees to draft a new TRL ordinance are estimated to be between \$5,000-\$10,000, including approximately \$2,000 in legal fees already incurred, and are expected to be expended in FY 2023/2024 and FY 2024/2025. There is sufficient General Fund budget for the expenditure in both fiscal years.

Finally, staff will pursue any available grant funding from the State of California Department of Justice (DOJ) Tobacco Grant Program that may be used to enforce local ordinances, including a TRL ordinance, if approved.

BACKGROUND

TOBACCO URGENCY ORDINANCE AND COUNCIL REQUESTED INFORMATION

In 2022, the City Council directed staff to regulate new tobacco smoke shops that sell products for off-site consumption. This use is currently (and has historically been) considered to be a general retail use under the Brentwood Municipal Code, and therefore permitted by right in any zoning district that allows general retail uses. On September 27, 2022, the City Council adopted an interim urgency ordinance



implementing a moratorium on new tobacco smoke shops, and extended the interim urgency ordinance one final time on August 22, 2023 (staff report attached). The interim urgency ordinance will expire on September 8, 2024.

At the August 22, 2023, City Council meeting, the Council directed staff to provide additional information on the following items related to potential new tobacco regulations:

1. implementing a local tobacco retail license system, including maximum amount that can be charged, and how those fees will be spent;
2. 100% flavor ban on tobacco sales;
3. prohibiting vaping product sales;
4. maximum distance between tobacco retailers and schools allowed by law;
5. minimum sales sizes (e.g., pack/carton);
6. strictest laws for proximity between retailers;
7. all tobacco sales banned at pharmacies;
8. working with law enforcement on decoy purchasers;
9. any means to retroactively revoke licenses (if applicable);
10. minimum prices on tobacco;
11. prohibit coupons/discounts;
12. cap on smoke shops and tobacco retailers in total;
13. DOJ grants to support code enforcement;
14. require CUP for tobacco sales;
15. potential penalties available; and
16. best practices from other cities for Council consideration.

LAND USE AND DEVELOPMENT COMMITTEE (LUD) RECOMMENDATIONS

On March 18, 2024, staff presented LUD with information on the above 16 items and requested LUD provide recommendations on each item for City Council to consider. LUD provided recommendations on each of the 16 items and requested information be provided to City Council on additional items. All of LUD's recommendations and requests for additional information are summarized in the table attached to the staff report and are included in the staff report discussion below.

PUBLIC HEALTH CONTEXT

Tobacco use is the United States' leading cause of preventable death. Each year, tobacco-related diseases cause the deaths of approximately 40,000 Californians and



nearly half a million individuals in the United States.¹ Further, Centers for Disease Control and Prevention (CDC) estimates suggest that 441,000 Californians under 18 today will die from tobacco-related diseases.²

REGULATORY CONTEXT

There are multiple state and federal laws that regulate the retail sale of tobacco products and the licensing of tobacco retailers. For example, California Penal Code 308 prohibits the selling, giving, or furnishing of tobacco products and tobacco paraphernalia to most individuals under the age of 21.³ The Stop Tobacco Access to Kids Enforcement Act (“STAKE Act”) also prohibits tobacco sales to most individuals under the age of 21, restricts tobacco self-service displays and vending machine sales, and requires retailers to post signs at the point of sale about illegal underage tobacco sales.⁴ The Public Health Law Center publishes a digest titled “Tracking Tobacco Laws: A California Digest” that summarizes the major tobacco-related laws and regulations that affect the State of California⁵.

Business and Professions Code § 22971.3 provides that nothing in the state’s Cigarette and Tobacco Products Licensing Act of 2003 (which sets out the statewide framework for tobacco licensing) “preempts or supersedes” local tobacco control law. This evidences an intent by the state to allow localities to study and legislate with respect to the tobacco regulations that work best for their own jurisdiction. A 2010 appellate case expressly held that a local regulatory scheme requiring tobacco retailers to obtain a city (in addition to state) license to sell tobacco, and authorizing the suspension or revocation of a tobacco retailer license for violations of the local ordinance, was not preempted by state law. (*Prime Gas, Inc. v. City of Sacramento* (2010) 184 Cal.App.4th 967.)

EXISTING ENFORCEMENT EFFORTS AND COSTS

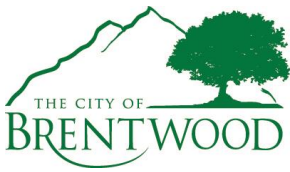
¹ U.S. Department of Health and Human Services. The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

² Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.

³ Cal. Penal Code § 308(a)(1)(A).

⁴ Cal. Bus. & Prof. Code §§ 22950-22964.

⁵ <https://www.publichealthlawcenter.org/sites/default/files/resources/CA-Tracking-Tobacco-Laws-Digest.pdf>



Currently, enforcement of tobacco related laws within the City’s jurisdiction is conducted by the Police Department. Enforcement activities are primarily complaint-driven; however, the Police Department occasionally conducts proactive enforcement operations related to underage tobacco stings using persons between 16-20 years of age (i.e., decoy purchasers). The Department also occasionally works with outside agencies on enforcement operations. Enforcement is conducted as part of normal operations and is funded by the Department budget, therefore, it is difficult to determine the exact costs.

POTENTIAL NEW TOBACCO REGULATIONS

The attached table lists 16 possible new tobacco regulations regarding which the City Council requested additional information. Staff worked with outside counsel and Contra Costa Health to research the 16 items and provide analysis for each, including the regulatory context, implementation strategies, areas where Council direction is needed and staff’s recommendation related to that item. This information is provided in the attached table due to the large volume of information requested and in an attempt to keep the staff report to a reasonable length. The discussion below provides additional analysis of specific items on the list that merit more detailed discussion, as well as LUD’s recommendations on each item.

Model Tobacco Retailer Licensing (“TRL”) Ordinance (#1)

A TRL ordinance requires a local license (in addition to the mandatory state license) in order for any business to sell tobacco products. Contra Costa Environmental Health supports a TRL as an effective tool to ensure compliance with laws and to reduce youth access to tobacco. According to Contra Costa Health, a 2019 California study found that youth in communities with a strong TRL policy were 33% less likely to have initiated cigarette use and 26% less likely to initiate e-cigarette use compared to youth in cities that had no TRL or insufficient compliance checks.⁶

Attached to this staff report is a Model Tobacco Retailer Licensing Ordinance (“Model Ordinance”) prepared by the Public Health Law Center and the American Lung Association of California, who are contracted by the California Tobacco Control Program (“CTCP”) to support commercial tobacco control professionals and advocates in their work to end the commercial tobacco epidemic in California.

⁶ Roe L. Astor, MPH; Robert Urman, PhD; Jessica L. Barrington-Trimis, PhD; et al. Tobacco Retail Licensing and Youth Product Use. *Pediatrics* (2019) 143 (2): e20173536. <https://doi.org/10.1542/peds.2017-3536>



The Model Ordinance requires all businesses that sell tobacco products to obtain a license from the local agency in exchange for the permission to sell these products to consumers. With a TRL, local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities, such as store inspections and compliance checks pertaining to youth purchases. The Model Ordinance also includes: a minimum package size and a minimum price for tobacco products; a prohibition on flavored tobacco sales; a prohibition on tobacco sales in pharmacies; and proximity requirements between “youth-oriented facilities” and other tobacco retailers. The Model Ordinance also contains several blanks where there is opportunity to customize language for the City of Brentwood. Use of this existing vetted template ordinance is strongly recommended to avoid running afoul of any applicable state and/or federal laws. In summary, the attached Model Ordinance would create much stricter regulations related to tobacco sales than currently exist in the City and would address many of the 16 issues regarding which the Council requested information.

Definitions

The attached Model Ordinance defines a tobacco retailer as:

any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

According to this definition, any business in the City that sells “tobacco products” would be considered a tobacco retailer in a TRL ordinance, including grocery stores, pharmacies, convenience stores, and liquor stores. Tobacco products are defined as:

- (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.



“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

- **LUD Recommendation:** LUD recommended that the City Council adopt a TRL program using the model ordinance as a basis for a new City ordinance.

Compliance Monitoring

The Model Ordinance contains requirements for regularly monitoring licensees for compliance with requirements and compliance checks for underage sales using decoy purchasers. If a TRL Ordinance were adopted by the City Council, regular monitoring of licenses would be conducted by Community Enrichment staff and decoy operations would be conducted by the Police Department with the assistance of Community Enrichment staff. Due to limited staff resources, staff recommended to LUD conducting monitoring of licensees for compliance with license requirements once a year and conducting separate compliance checks for underage sales once a year. This would result in a licensee being inspected a minimum of twice a year at different times. Separate inspections would occur if a complaint was received and the Police Department could still conduct occasional underage enforcement operations throughout the year, if necessary. As discussed below, the City may charge tobacco retailers an annual fee to help fund the cost of these enforcement/compliance monitoring efforts.

- **LUD Recommendation:** LUD recommended that the City’s new TRL require three annual compliance checks and one annual decoy operation for each licensee; a total of four annual compliance checks for each licensee.

Penalties (#9, #15)

If a TRL Ordinance is adopted, the City will have stricter and more effective enforcement tools than it currently has. The Model Ordinance includes provisions for the suspension or revocation of a TRL if it is determined that a licensee violated any of the requirements of the ordinance. A license could be suspended for a period of 30-90 days, depending on the number of violations within a five-year period. Alternatively, a license could be revoked after four or more violations within a five year period. Decisions to suspend or revoke a license would be appealable, which is consistent with the City’s existing procedures for other types of Municipal Code violations. Other potential penalties include civil or administrative fines, ineligibility to apply for a new license for a specified period of time, seizure and forfeiture in some cases of products offered for sale in violation of the law, and/or treatment of violations as a public nuisance, allowing for more types of local enforcement.



- **LUD Recommendation:** LUD recommended that the TRL include a maximum limit of three violations after which a TRL license would be revoked, rather than the four violations recommended by the model TRL. LUD also recommended that the new administrative fines established for the TRL program should be as high as possible and, if possible, the administrative fines should be used for providing tobacco education to the community, which is discussed in more detail below.

Drug Paraphernalia

The Model Ordinance does not include a prohibition on the display or sale of drug paraphernalia. If a TRL Ordinance is implemented, staff recommends adding this prohibition along with penalties, such as the revocation of a tobacco retailer license, if it is determined that a retailer sells drug paraphernalia.

- **LUD Recommendation:** LUD recommended that the new TRL include a prohibition on the sale of drug paraphernalia.

Prohibiting Vaping Product Sales (#3)

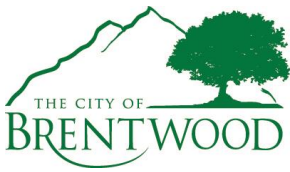
The Model Ordinance does not prohibit sales of electronic smoking devices (“e-cigarettes” or “vapes”) and related products. It does include definitions for electronic smoking devices in the definitions of smoking, tobacco products, etc. If a TRL ordinance is implemented, staff recommends incorporating a prohibition on electronic smoking devices and related products and incorporating a one year “phase-out” period for tobacco retailers to conclude sales.

- **LUD Recommendation:** LUD recommended that the new TRL include a prohibition of the sale of electronic smoking devices. LUD did not directly address whether to implement a phase out period specifically for electronic smoking devices, but did recommend a one year phase-out period for tobacco retailers that would not be compliant with the new regulations once adopted, as discussed below.

Impacts to Existing Businesses

According to the California Department of Tax and Fee Administration⁷, there are approximately 42 state-licensed business selling tobacco in some form in the City. Many of these businesses are permitted by right in their zoning districts – meaning that only a business tax certificate is required to operate. On August 22, 2023, the

⁷ <https://www.cdtfa.ca.gov/taxes-and-fees/cigarette-licensees.htm>



City Council extended an urgency ordinance to stop the establishment of new, stand-alone smoke shops in the City. This ordinance expires September 8, 2024. The City has received no applications for new smoke shops since the adoption of the urgency ordinance.

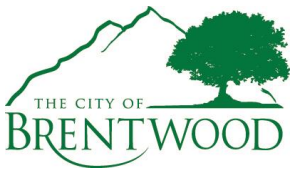
According to the definition of a “tobacco retailer” provided above, any business in the City that sells “tobacco products” would be considered a tobacco retailer in a TRL ordinance; including grocery stores, pharmacies, convenience stores, and liquor stores.

Distance Requirements from Sensitive Uses and Other Retailers (#4, 6)

A separation requirement from sensitive uses (e.g., youth oriented facilities) and from other tobacco retailers can be implemented as part of a TRL Ordinance. The model ordinance suggests a distance requirement of 1,000 feet from youth oriented facilities and other businesses. The model ordinance defines “Youth Oriented Facility” as a parcel in a city that is occupied by:

- (1) a private or public kindergarten, elementary, middle, junior high, or high school;
- (2) a library open to the public;
- (3) a playground open to the public;
- (4) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
- (5) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;
- (6) a park open to the public or to all the residents of a private community;
- (7) a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home, as defined in California Health & Safety Code § 1596.78]

The attached map prepared by Contra Costa Health shows tobacco retailers and their proximity to certain youth sensitive facilities in Brentwood. The map was provided by Contra Costa Health using data from the California Department of Tax and Fee Administration. Also attached for reference is an example of what a 300, 500, and 1,000 foot separation distance from a Youth Oriented Facility would look like, using Liberty High School as an example. The attached “Matrix of Local Ordinances Restricting Tobacco Retailers Near Schools” prepared by the Center for Tobacco Policy and Organizing of the American Lung Association shows that many cities have



separation requirements between tobacco retailers and youth oriented areas and between other retailers with varying distance requirements. As shown on the matrix, the 1,000 foot separation recommend by the Model Ordinance is common in other cities.

- **LUD Recommendation:** LUD recommended a 1,000 foot separation requirement between tobacco retailers and between “youth oriented facilities” as defined in the model ordinance.

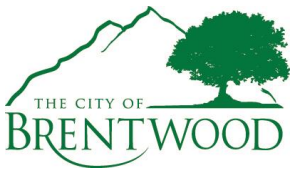
Cap on Number of Tobacco Retailers and Applying Regulations to Existing Retailers (#12)

A numeric cap on the total number of tobacco retailers can be included in a TRL and the cap can be placed city-wide or it can be placed over particular areas of a city. A separation requirement between tobacco retailers, as discussed above, can also effectively limit the number of retailers in the City, whether or not a numeric cap is in place.

The Model Ordinance suggests limiting tobacco retailer licenses by placing a cap on the total number of licenses allowed based on the population of a city. While that may be an effective way to limit tobacco retailers in larger cities, staff does not recommend this approach for Brentwood. Brentwood has relatively few commercially zoned areas compared to its overall population. Therefore, limiting the number of licenses based on population would not effectively address potential over concentration of retailers in commercial areas of the city. Whatever method is used, implementing a numeric cap on licenses would have implications for existing businesses in the city if the chosen cap is lower than the existing number of tobacco retailers and could become complicated to administer.

If a cap were included in a TRL Ordinance, staff would require Council direction on how the cap should be applied (e.g., whether the cap would be applied city-wide or in a specific area of the City) and whether the cap would be calculated based on the overall population or another method. Staff would also need direction on policies to be established in the event applications for licenses exceeded the numeric cap (e.g., through a competitive process or on first-come first-served basis).

- **LUD Recommendation:** LUD recommended not including a numeric cap in a new TRL, but to limit new tobacco retail licenses to only existing tobacco retailers at the time the ordinance takes effect and not allow any retailers not currently operating in the City to be licensed.

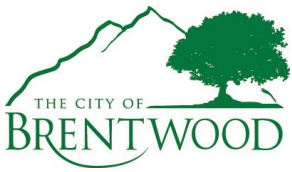


Applying New Regulations to Existing Retailers

Unfortunately, the Model Ordinance does not contain policies related to existing tobacco retailers that are operating lawfully prior to a new TRL Ordinance being adopted, but which would be out of compliance with some or all of the new regulations. For example, it is possible that existing tobacco retailers that are currently legally operating may not meet new requirements for separation from other tobacco retailers and would, through no fault of their own, be out of compliance with the new ordinance as soon as it is adopted and would not be eligible to apply for a license.

If the City Council directs staff to prepare a TRL Ordinance, staff recommends adding policies addressing how the new regulations apply to existing retailers. There are several approaches that could be implemented as part of a TRL Ordinance, detailed below. Each of these methods is allowed; therefore, staff would need City Council's direction on which to implement, or if there is another approach Council would prefer.

- "Grace Period" for existing retailers: This approach would allow tobacco retailers operating lawfully on the date the ordinance is adopted that would become ineligible to receive or renew a Tobacco Retailer's license pursuant to the new ordinance to apply for and receive a one-time, non-renewable license for the location. The length of the grace period would be at the City Council's discretion; although, staff would not recommend a grace period shorter than one year. A one year time frame or longer would allow businesses time to change their operations or seek other locations for their businesses. Retailers would have to cease all tobacco sales once the grace period expired.
- "Grandfather" existing retailers: This option would exempt existing retailers from a TRL ordinance's new requirements, such as the separation requirements, that might otherwise prevent them from qualifying for a license. This option would create two different types of tobacco retailers in the City (e.g., those subject to the ordinance and those exempt from it) and two sets of regulations to enforce. These disparate regulations would be difficult and time intensive for staff to manage over time. It also would make it difficult to enforce a cap on tobacco retailers because it would rely on staff being able to track when grandfathered retailers go out of business.
- "Cap and winnow" existing retailers: If a cap on licenses were implemented, this option would gradually reduce the number of tobacco retailers by, among other things, prohibiting transferring a tobacco business to another party or re-establishing a tobacco business in the same location as one that has closed.



Existing retailers could be licensed under the cap and winnow approach, but would eventually be reduced over time through attrition rather than within the specified time frame that is used by the “grace period” approach.

- **LUD Recommendation:** LUD recommended a combination of the above approaches. Specifically, LUD recommended that businesses that are currently operating but would be out of compliance with new regulations once they were adopted be allowed to obtain a TRL for one year only, after which time they would have to cease selling tobacco products. Further, LUD recommended that licenses not be transferrable to other parties after a location has closed. This approach would significantly reduce the number of tobacco retailers in the City after the initial one year period due to the 1,000 foot separation requirements recommended to be included in the new ordinance.

REQUIRING A CONDITIONAL USE PERMIT FOR TOBACCO RETAILERS (#14)

The City can require new tobacco retailers to obtain a conditional use permit (CUP), which can set restrictions such as limiting amount of storefront signage or banning sale of single cigars (among other things). However, if the City Council implements a TRL Ordinance, it would include many strict operating standards for tobacco retailers and provisions for suspension and revocation of licenses. Many of these license requirements would be similar to conditions of approval for the same uses under a CUP. However, the process for suspending or revoking a TRL would be quicker and simpler than the process for revoking a CUP. Therefore, staff recommends implementing a TRL program rather than a CUP requirement, as the TRL would create operational and locational requirements with which all tobacco retailers would have to comply. If the Council would like to require a CUP for future tobacco retailers, the City Council should direct staff to prepare an amendment to the Zoning Ordinance (Title 17).

- **LUD Recommendation:** LUD recommended that a CUP not be required for tobacco retailers and that a TRL be established instead.

REGULATING SIGNAGE AND ADVERTISING (#17)

LUD requested that staff provide additional information and recommendations related to how the City can regulate the content of tobacco retailers’ signs and also comply with various laws related to signage. In general, the City’s sign regulations must be consistent with First Amendment principles of free speech; however, the City does have more leeway to regulate commercial speech, as would be the case for tobacco



CITY COUNCIL AGENDA ITEM NO. C.1
04/30/2024

retailer signage. The City could continue to enforce its existing Sign Ordinance (BMC Chapter 17.640) against tobacco retailers, which requires retailers to obtain sign permits or comply with the regulations for exempt signs. There are also various state laws affecting tobacco retailer signage; for instance, under a Master Settlement Agreement between California and the major tobacco companies, signs advertising cigarettes and smokeless tobacco that are displayed outside a retail store or in an outward-facing window may not be more than 14 square feet. The Master Settlement Agreement also prohibits the settling manufacturers from targeting youth with their ads, using cartoons, using brand-name merchandise, sponsoring youth-oriented events, and paying for product placement in the media. Further, state law currently prohibits any person, company, or organization to advertise any tobacco products on an outdoor billboard located within 1,000 feet of schools or public playgrounds, and specifies that cities *may* adopt local standards that impose a more restrictive or complete ban on tobacco-related billboard advertising. And state law also states that no more than 33% of the square footage of windows and glass doors of alcohol retailers may have advertising signs of any sort, including tobacco.

From the local perspective, as long as the City limits its sign regulations to size, height, number, location, and physical attributes (these being content-neutral considerations), the City has strong legal authority to enforce its own regulations. To go further in regulating tobacco-specific advertisements, the City would first have to analyze the regulations in the context of First Amendment protections for “commercial speech,” meaning the right of corporations to advertise and promote their products and services. Recognizing these limitations, the same organization that developed the model tobacco retailer license ordinance used by staff here has also developed a model ordinance for reducing storefront window signage, in compliance with state and federal law.

To avoid running afoul of First Amendment principles relating to commercial speech, staff recommends that (1) the City continue to enforce its existing Sign Ordinance against all tobacco retailers; (2) the City continue to enforce state laws that control certain elements of tobacco advertising, as discussed herein; and (3) the City Council consider whether it wants to adopt a “storefront window signage” ordinance to supplement and bolster its existing Sign Ordinance. If Council directs staff to adopt a “storefront window signage” ordinance, staff could bring that ordinance to City Council for consideration at the same time as a TRL ordinance.



STAFF TIME AND COSTS

If a TRL ordinance is approved, the new license fees would be submitted for approval by the City Council at a future meeting. The amount of revenue collected will depend on the fee amount proposed and the number of businesses required to be licensed and is not expected to have a material impact on General Fund revenues. License fees and any revenue generated by administrative citations for enforcement of the proposed ordinance would be deposited in the General Fund.

TRL Fees and Fines

The California Constitution places some limits on how much a jurisdiction can charge in a fee, deeming excessive fees to be taxes that require a vote of the people. Nonetheless, without a referendum, it is lawful to impose a fee on applicants in an amount sufficient to offset the reasonable regulatory cost of the entire tobacco retailer enforcement program of a locality⁸.

A successful TRL program depends on vigorous enforcement. The cost of enforcement will depend on the scope of the TRL program, which department administers the TRL program, and the number of annual inspections/compliance checks, etc. A new TRL program would also require extensive outreach to existing businesses initially. The Public Health Law Center created a Tobacco Retail Licensing Calculator that staff can use to help calculate what fee to charge to cover the costs of running the TRL program. For reference, the City of San Pablo and Contra Costa County have TRL programs – San Pablo charges an annual TRL fee of \$197 and Contra Costa County charges a \$287 annual fee for its TRL. It is unlikely that fees this low would cover the cost of issuing licenses and conducting compliance checks in Brentwood.

A new TRL fee can incorporate the cost of enforcing all tobacco laws related to tobacco retailing because a violation of any tobacco-related law is a basis for suspension of a license. If Council directs staff to prepare a TRL Ordinance, staff would calculate a fee that would cover the costs of tobacco retailer license issuance and renewal, tobacco control inspections, including youth decoy stings, ongoing maintenance of the TRL system, and enforcement, including processing citations and handling hearing requests or cases in court. Staff would also create fines and penalties that could act as financial deterrents to violators. The Council would consider the new fee at a future meeting when considering updates to the City's Cost Allocation Plan.

⁸ *Sinclair Paint Co. v. Board of Equalization* (1997) 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz* (2012) 207 Cal. App. 4th 982.



Any revenue generated by administrative citations for enforcement of the proposed ordinances would be deposited in the General Fund. The fee could not be used for purposes other than covering the cost of the enforcement program. Even with a new fee in place, full cost recovery is not likely to be achieved, as it is possible there will be enforcement actions against businesses that never applied for a TRL or paid the fee or there will be some enforcement actions that exceed the time estimates used to develop the fee.

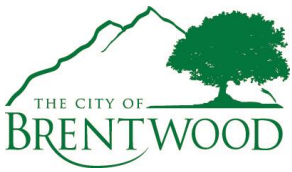
- **LUD Recommendation:** LUD recommended that new administrative fines established for the TRL program should be as high as possible.

Use of TRL Fines

As discussed above, LUD requested information regarding whether fines related to the TRL could be used for educational purposes. Any fine amounts collected will be deposited into the General Fund, and may thereafter be used by the City to focus on education outreach efforts (or, more generally, to continue to work towards a tobacco-free community in whatever manner the City deems fit). The guiding principle is to ensure any funds earmarked specifically for tobacco education or related purposes bears a "public purpose," which is a determination specifically left up to the City's discretion and requires only a "reasonable basis." Staff requests the City Council provide direction on whether TRL related fines should be used for the "public purpose" of tobacco prevention education. If this is Council's direction, staff recommends partnering with Contra Costa Health's Tobacco Prevention Project (TPP). The TPP's purpose is to reduce and ultimately eliminate tobacco use and exposure in the entire County. Leveraging Contra Costa Health's extensive expertise and public education resources related to tobacco prevention would allow tobacco education in Brentwood to happen more frequently and reach a much wider audience than the amount of money received through tobacco fines would.

Staff Resources

Contra Costa County has a dedicated Tobacco Prevention Project (TPP) that reviews TRL applications and the applications are issued by the County's Business License Tax Division. San Pablo has a tobacco enforcement unit made up of one Police Officer and one Police Services Technician, which operate under the City's Code Enforcement Unit. San Pablo has received DOJ grants to fund the program in the past. A TRL program in Brentwood would likely be administered by the Community Development Department and Community Enrichment staff with the additional involvement of the Police Department and the Finance Department.



As discussed above, LUD recommended the new TRL program require three annual compliance checks and one annual decoy operation for each licensee; a total of four annual compliance checks for each licensee. If there are 42 initial licensees in the program, then that would total 168 compliance checks a year, or an average of three compliance checks a week. This volume of compliance checks combined with preparing required documentation and processing possible appeals would take up a significant amount of Community Enrichment staff's time in the early years of the program. The amount of time would decrease as the number of licensees decreased through attrition. There is currently no capacity to absorb that work with current staffing levels.

The Community Development Department will be requesting one new full-time Community Enrichment Officer at the 2024/25 – 2025/26 Operating Budget Workshop in May of 2024 to assist with the Division's current and anticipated future workload. If approved, the funding for this position would be from the General Fund. The estimated annual cost of the additional Community Enrichment Officer would be \$156,800, plus one-time vehicle and equipment costs of \$43,500. If approved, this position would provide the Community Enrichment division with additional resources to enforce new tobacco regulations, among other things. If a TRL program is created but a new FTE is not funded, then significant adjustments would need to be made to re-prioritize Community Enrichment staff's current workload in order to absorb the work associated with a new TRL program.

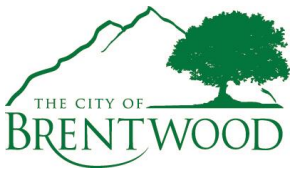
Outside Legal Assistance

Because of limited staff resources, outside legal assistance will be required if the City Council directs staff to draft a new Tobacco Retailer Licensing (TRL) ordinance. General Fund legal fees to draft the ordinance are estimated to be between \$5,000-\$10,000, including approximately \$2,000 in fees already incurred.

Department of Justice Grants (#13)

Local agencies (including local law enforcement and school districts) are eligible to apply for grants through the State of California Department of Justice (DOJ) Tobacco Grant Program⁹ that may be used to enforce local ordinances and/or state laws relating to sale or marketing of tobacco products, including e-cigarettes. Supported enforcement efforts may include (but are not limited to) retailer compliance checks, public education outreach, and retailer license inspections. According to the DOJ, approximately \$170 million in grant funding has been distributed through a competitive process.

⁹ <https://oag.ca.gov/tobaccogrants>



Contra Costa Health provided the attached information on the DOJ grant program that they created specifically for the City of Brentwood. Contra Costa agencies that have received the DOJ grant in the past include Contra Costa County and the cities of Martinez, Pinole, Pittsburg, and San Pablo in various amounts as shown in the attachment.

It is likely that having a TRL in place would make a jurisdiction more competitive in the grant process, although the grant guidelines do not explicitly state that. The DOJ grant must be applied for annually and it is a competitive process, therefore, receipt of funds is not guaranteed. Application and funding information for the upcoming fiscal year has not yet been posted on the program's website but it is likely information will be posted in April with an application deadline sometime in June. Staff will stay informed on additional funding opportunities that may arise.

BEST PRACTICES FROM OTHER CITIES (#16)

Many cities in the state have local regulations related to tobacco sales and the laws vary greatly in subject and scope. For example, the attached "Matrix of Local Ordinances Restricting Tobacco Retailers Near Schools" prepared by the Center for Tobacco Policy and Organizing of the American Lung Association shows that many cities have separation requirements between tobacco retailers and youth-oriented areas and between other retailers, but the distance requirements vary.

In Contra Costa County, San Pablo¹⁰ and Contra Costa County¹¹ have robust TRL programs that are similar to the Model Ordinance; although San Pablo's ordinance is not up to date in terms of new flavored tobacco regulations. Contra Costa County also bans the sale of electronic smoking devices and "e-liquids." Santa Clara County adopted strict tobacco retail requirements in 2022¹². Recently, the cities of Beverly Hills¹³ and Manhattan Beach¹⁴ adopted ordinances that ban the issuance of any new tobacco retailer licenses in those cities, with a way to apply for a hardship exemption from the ban and timelines to phase-out existing retailers. The Beverly Hills ban may be the first of its kind in the United States. Both of these ordinances are relatively new and have not faced legal challenges.

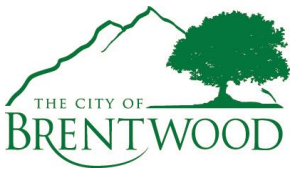
¹⁰ <https://www.codepublishing.com/CA/SanPablo/html/SanPablo05/SanPablo0506.html>

¹¹ https://library.municode.com/ca/contra_costa_county/codes/ordinance_code?nodeId=TIT4HESA_DIV445SESMTOPRCO_CH445-10TORELI

¹² https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITBRE_DIVB11ENHE_CHXXIIPERETOPR

¹³ <https://codelibrary.amlegal.com/codes/beverlyhillscalatest/beverlyhillscalatest/0-0-0-3174>

¹⁴ https://library.municode.com/ca/manhattan_beach/codes/code_of_ordinances?nodeId=TIT4PUWEMOCO_CH4.118PRRESATOPRELSMDE

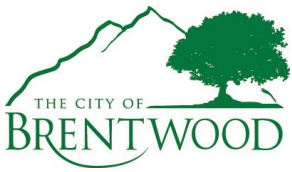


SUMMARY OF LUD RECOMMENDATIONS AND COUNCIL DIRECTION NEEDED

The table below lists each of the 16 items City Council requested additional information on and lists the Council direction needed for each item along with staff’s and LUD’s recommendations. A TRL ordinance based on the Model Ordinance and incorporating LUD’s recommendations would create much stricter regulations than the City currently has and would result in a significant decrease in the number of businesses selling tobacco in the City. If the City Council directs staff to prepare a TRL ordinance, staff would work with outside legal to draft the Ordinance with the goal of bringing it back to City Council for consideration before the Tobacco urgency ordinance expires September 8.

Table 1: Council Requested Tobacco Items

#	Information Requested by City Council	Council Direction Needed	Staff Recommendation	LUD Recommendation
1	Implementing a local tobacco retail license (TRL) system, including maximum amount that can be charged, and how those fees will be spent	Whether to implement a TRL Ordinance?	If TRL is implemented, require two annual inspections of licensees-one inspection for compliance and one decoy operation. Utilize outside counsel to draft new ordinance.	Yes, fee to cover implementation, 3 compliance checks and 1 decoy, revocation after 3 violations.
2	100% flavor ban on tobacco sales	Whether to implement TRL Ordinance? Alternatively, whether to implement a stand-alone ban on flavored tobacco?	If TRL is implemented, incorporate language suggested by Model Ordinance (p. 10)	Yes, include in TRL.
3	Prohibiting vaping product sales	-Whether to prohibit ESDs. -What length of phase out period?	The Model Ordinance does not prohibit sales of ESDs. If Council would like to prohibit ESDs, staff recommends including the prohibition in a TRL ordinance drafted by outside counsel. Include a minimum one year phase out period.	Yes.



CITY COUNCIL AGENDA ITEM NO. C.1
04/30/2024

#	Information Requested by City Council	Council Direction Needed	Staff Recommendation	LUD Recommendation
4	Maximum distance between tobacco retailers and schools that's allowed by law	Whether to create a buffer and if so, how large?	Include a maximum 1,000 ft. buffer in a new TRL ordinance. Expand the separation requirements to other "youth-oriented facility" in addition to schools per the suggestions in model ordinance (p. 12) which is more consistent with Council's previous direction related to alcohol sales.	1,000 ft. separation and no renewal of license after one year if business is non-compliant with new regulations.
5	Minimum sales sizes (e.g. pack/carton)	Whether to restrict pack size and if so, to what sizes?	Incorporate minimum pack sizes suggested by Model Ordinance (p. 10).	Require minimum pack size of 20 cigars/cigarettes.
6	Strictest laws for proximity between retailers	-Whether to adopt proximity regulations and if so, what distance? -Whether to grandfather existing retailers or phase them out?	Incorporate maximum 1,000 ft. proximity regulations between retailers and add policies for existing retailers, to be drafted by outside counsel based on Council direction.	1,000 ft. separation and no renewal of license after one year if business is non-compliant with new regulations.
7	All tobacco sales banned at pharmacies	Whether tobacco sales should be banned at all pharmacies?	IF TRL is implemented, include prohibition of sales at pharmacies suggested by Model TRL Ordinance (p. 11).	Yes, ban tobacco sales at all pharmacies.
8	Working with law enforcement on decoy purchasers	How often to monitor licensees for compliance?	If TRL is implemented, recommend 1 annual inspection for compliance with license requirements and 1 additional annual compliance check related to underage sales.	TRL should include 3 compliance checks and a minimum of 1 decoy operation per year.



CITY COUNCIL AGENDA ITEM NO. C.1
04/30/2024

#	Information Requested by City Council	Council Direction Needed	Staff Recommendation	LUD Recommendation
9	Any way to retroactively revoke licenses (if applicable)	See direction need for #1 above.	The City does not currently have tobacco licenses it can revoke. If TRL is implemented, staff recommends revocation provisions suggested by Model TRL Ordinance (p. 17)	TRL should include a limit of 3 violations before a license is revoked.
10	Minimum prices on tobacco	Whether to incorporate minimum prices as suggested by Model TRL Ordinance?	Include minimum price regulations suggested by Model TRL Ordinance. Staff recommends working with Contra Costa Health's Tobacco Prevention program to determine a minimum price that is consistent with others in the County and escalates by CPI.	Require a minimum price of \$10.00 and add language to escalate the price annually per the CPI.
11	Prohibit coupons/discounts	Whether to prohibit discounts/coupons/promotions as suggested by Model TRL Ordinance?	IF TRL is implemented, include suggested discount prohibition in the Model TRL Ordinance (p. 10).	Yes, prohibit coupons/discounts in TRL Ordinance.
12	Cap on smoke shops and tobacco retailers in total	-Whether to create a cap on tobacco retailers? -Whether to grandfather existing retailers or phase-out existing?	IF TRL is implemented, implement a cap on total number of tobacco retailers/licenses with requirements for existing retailers.	Cap and winnow-no more than current 42 licenses should be issued; licenses should be non-transferrable; include a 1 year grace period for non-compliant businesses.
13	DOJ grants to support code enforcement	None.	Staff will apply for future DOJ grants if the program is funded. Funds could be used for enforcement whether or not the City has a TRL.	Yes, staff should apply for DOJ grants.



**CITY COUNCIL AGENDA ITEM NO. C.1
04/30/2024**

#	Information Requested by City Council	Council Direction Needed	Staff Recommendation	LUD Recommendation
14	Require CUP for tobacco sales	Whether to require a CUP for new tobacco retailers?	Do not require a CUP, only a TRL. A TRL has strict operating standards and can be more easily revoked than a CUP.	No separate CUP requirement. Implement TRL instead.
15	Potential penalties available	None.	Adoption of any new ordinances as detailed above would include language related to license suspension, seizure of products, penalties, fines etc. as appropriate.	Fines should be as high as possible. Research if it is possible to repurpose fines for education or alternative purposes.
16	Bring other best practices from other cities for Council consideration	SEE DISCUSSION IN STAFF REPORT		
ADDITIONAL INFORMATION REQUESTED BY LUD ON 3/18				
17	N/A	Whether to adopt additional regulations restricting tobacco advertisements and prohibiting the sale of drug paraphernalia?	Utilize outside legal to draft a TRL ordinance and update applicable sign regulations.	Provide recommendations on how to regulate sign content within the law. Prohibit the sale of drug paraphernalia in TRL.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.

DATE OF NOTICE

Not Applicable.

ENVIRONMENTAL DETERMINATION

Not Applicable.



ALTERNATIVE OPTION(S)

Alternative Options to the Staff Recommendation:

1. Direct staff not to develop new tobacco regulations for the City.
2. Continue the item with direction for staff to return with additional information.

ATTACHMENT(S)

1. Previous Action
2. August 22, 2023, City Council Staff Report
3. Council Requested Tobacco Items LUD March 18, 2024
4. Model TRL Ordinance
5. Brentwood Tobacco Retailers and Youth Sensitive Areas
6. Map of Separation Distances from Liberty HS
7. Matrix of Ordinances Restricting Retailers Near Schools
8. Contra Costa Health DOJ Tobacco Grant Presentation

PREVIOUS ACTION

Previous actions related to this agenda item that were taken by the City Council are listed below. To view prior actions and materials, and Brentwood Municipal Code references in the staff report, as applicable:

Visit www.brentwoodca.gov/meetings, and select the meeting date(s) desired to see the reference materials and videos.

Visit www.brentwoodca.gov/municipalcode to research references to the Brentwood Municipal Code and search by the code section(s) cited.

- On June 1, 2022, the City Council unanimously voted to direct staff to spend time and resources on updating zoning regulations to limit or prohibit sales of tobacco.
- On September 27, 2022, the City Council unanimously adopted Interim Urgency Ordinance No. 1046 implementing a moratorium on the issuance of any new permit, license, or entitlement for any new tobacco smoke shop.
- On October 25, 2022, the City Council unanimously adopted Interim Urgency Ordinance No. 1050 extending the original interim urgency ordinance for a period of 10 months and 15 days, in accordance with Government Code section 65858(a).
- On August 22, 2023, the City Council unanimously adopted Interim Urgency Ordinance No. 1061 extending the original interim urgency ordinance for a period of 12 months, in accordance with Government Code section 65858(a).
- On August 22, 2023, the City Council directed staff to provide additional information on 16 items related to potential new tobacco regulations.



SUBJECT: Discussion regarding smoke shops and an interim urgency ordinance extending a moratorium on any new tobacco smoke shop

DEPARTMENT: Community Development Department

STAFF: Alexis Morris, Director of Community Development
Erik Nolthenius, Planning Manager

TITLE/RECOMMENDATION

It is recommended that the City Council adopt an ordinance extending the interim urgency ordinance that implemented a moratorium on new tobacco smoke shops in the city of Brentwood for an additional period of one year, to September 8, 2024 and provide staff with feedback regarding smoke shop rules and enforcement.

This proposed ordinance is intended to preserve the status quo while the City considers further regulations on tobacco sales and distribution. The ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a "project" under the California Environmental Quality Act (CEQA), and it is exempt from CEQA. (Public Resources Code § 21065, State CEQA Guidelines §§ 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), and 15378(a).)

FISCAL IMPACT

Thus far, only minor legal expenses of approximately \$1,000 have been incurred. There is no anticipated direct fiscal impact as a result of this proposed moratorium, because there are no pending applications for permits or other land use entitlements for new tobacco smoke shops that will be affected by its adoption.

There may be an indirect fiscal impact in the future, if the City moves forward with permanent bans and/or other regulatory measures regarding tobacco retailers in the city, but those impacts (if any) will be separately analyzed and addressed as appropriate at a later date, including future legal expenses of up to \$20,000. Legal expenditures related to the ordinance are funded by the General Fund.

BACKGROUND



**CITY COUNCIL AGENDA ITEM NO. F.1
08/22/2023**

This action extends the interim urgency ordinance originally adopted by the City Council on September 27, 2022, which was subsequently extended on October 25, 2022, and is set to expire on September 8, 2023. By the end of the ordinance's term, the City Council must vote to extend the urgency ordinance again, let it expire, or adopt a regular ordinance to repeal and replace it.

Pursuant to Section 17.505.008, the Brentwood Municipal Code (BMC) presently authorizes tobacco and cigar lounges with smoking on-site in certain areas of the PD-55 zone (generally located east of the Sand Creek Road and Brentwood Boulevard intersection), and there only upon issuance of a conditional use permit. The City Council directed staff to regulate new tobacco smoke shops that sell products for off-site consumption. This use is currently (and has historically been) considered to be a general retail use under the Brentwood Municipal Code, and therefore permitted by right in any zoning district that allows general retail uses. There are currently no pending applications for tobacco or cigar smoke shop permits or associated land use entitlements in the city.

California Business and Professions Code Section 22971.3 authorizes cities to implement local tobacco licensing laws. The City Council recognized in its June 1, 2022 meeting that there are significant environmental and health effects to the community associated with tobacco that can only adequately be addressed by suspending approvals of new tobacco smoke shops within City limits. Doing so would provide staff time to study and analyze additional regulatory measures for a long-term solution, such as (but not limited to) measures that may extend up to a full prohibition on all retail tobacco smoke shops.

As used in this staff report and the attached draft ordinance, the term "tobacco smoke shop" is defined as:

a retailer whose main purpose is the sale of smoking and/or tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories for off-premises consumption at a retail establishment that either devotes more than (a) fifteen (15%) percent of its total floor area to smoking, drug, electronic cigarettes, electronic vapor devices, and/or tobacco paraphernalia, or (b) a two foot by four (2' by 4') foot (two (2'0") feet in depth maximum) section of shelf space for display of for-sale tobacco products and the sale of smoking and/or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store, gas station, or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall



**CITY COUNCIL AGENDA ITEM NO. F.1
08/22/2023**

not be defined as a “tobacco smoke shop” and shall not be subject to the restrictions in this chapter.

Currently, there are approximately 10 permitted tobacco smoke shops operating within city limits. In order to properly study, analyze, and make recommendations concerning such permanent regulatory measures and a potential ban on tobacco retailers generally within City limits, the City Council unanimously adopted an interim urgency ordinance on September 27, 2022, to place a moratorium on the issuance of any permits, entitlements, or other approvals of new tobacco smoke shops within the city during the time the moratorium is in effect.

No new permit, license, or entitlement for any new tobacco smoke shop within the city is allowed during the moratorium. Existing tobacco smoke shops are permitted to apply for renewals of existing entitlements during the moratorium, which would be subject to approval or denial under existing standards. The City also reserves the right to suspend or revoke any existing permit, license, or entitlement of tobacco smoke shops under existing standards. The interim urgency ordinance was originally effective for 45 days, but was extended by the City Council on October 25, 2022 for an additional 10 months and 15 days, which is set to expire on September 8, 2023.

This action would extend the urgency ordinance adopted by the City Council for an additional one year, to September 8, 2024. This urgency ordinance will be followed by a regular ordinance sometime in the summer of 2024. The regular ordinance would be subject to review by both the Planning Commission and City Council, as it will be part of the zoning ordinance. The regular ordinance would take effect 30 days after adoption and would repeal and replace the urgency ordinance.

A permanent tobacco regulation will be included as part of the City’s focused zoning code update.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.



**CITY COUNCIL AGENDA ITEM NO. F.1
08/22/2023**

DATE OF NOTICE

The City of Brentwood published a notice of public hearing in the Brentwood Press on August 11, 2023.

ENVIRONMENTAL DETERMINATION

As noted above, the proposed ordinance is intended to preserve the status quo while the City considers further regulations on tobacco sales and distribution. The ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a "project" under CEQA, and it is exempt from CEQA. (Public Resources Code § 21065, State CEQA Guidelines §§ 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), and 15378(a).)

ATTACHMENT(S)

1. Previous Action
2. Proposed Interim Urgency Ordinance

PREVIOUS ACTION

Previous actions related to this agenda item that were taken by the City Council are listed below. To view prior actions and materials, and Brentwood Municipal Code references in the staff report, as applicable:

- Visit www.brentwoodca.gov/meetings, and select the meeting date(s) desired to see the reference materials and videos.
- Visit www.brentwoodca.gov/municipalcode to research references to the Brentwood Municipal Code and search by the code section(s) cited.
- On June 1, 2022, the City Council unanimously voted to direct staff to spend time and resources on updating zoning regulations to limit or prohibit sales of tobacco.
- On September 27, 2022, the City Council unanimously adopted Interim Urgency Ordinance No. 1046 implementing a moratorium on the issuance of any new permit, license, or entitlement for any new tobacco smoke shop.
- On October 25, 2022, the City Council unanimously adopted Interim Urgency Ordinance No. 1050 extending the original interim urgency ordinance for a period of 10 months and 15 days, in accordance with Government Code section 65858(a).

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD EXTENDING THE INTERIM URGENCY ORDINANCE IMPLEMENTING A MORATORIUM ON THE ISSUANCE OF ANY NEW PERMIT, LICENSE, OR ENTITLEMENT FOR ANY NEW TOBACCO SMOKE SHOP IN THE CITY OF BRENTWOOD, PENDING COMPLETION OF A COMPREHENSIVE REVIEW OF THE CITY'S ZONING ORDINANCE, AND FINDING THE ACTION EXEMPT FROM CEQA

WHEREAS, the City of Brentwood ("City") presently regulates tobacco smoke shops within the city as a general retail use as governed by various sections of the Brentwood Municipal Code ("BMC"), but the City now wishes to examine the desirability and feasibility of a more robust set of regulations and/or prohibitions concerning the establishment of new tobacco smoke shops within the city; and

WHEREAS, the City wishes to allow currently permitted and existing tobacco smoke shops to remain in operation, while also extending this interim urgency moratorium on new entitlements for tobacco smoke shops, in order to balance existing property rights against its consideration of the potential impacts that tobacco smoke shops may have on the public health, safety, and welfare, and evaluation of what City regulations and restrictions, if any, should be imposed on such activities; and

WHEREAS, for purposes of this interim urgency moratorium, the term 'tobacco smoke shop' shall be defined as:

"a retailer whose main purpose is the sale of smoking and/or tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories for off-premises consumption at a retail establishment that either devotes more than (a) fifteen (15%) percent of its total floor area to for-sale tobacco products and smoking, drug, electronic cigarettes, electronic vapor devices, and/or tobacco paraphernalia, or (b) a two foot by four (2' by 4') foot (two (2' 0") feet in depth maximum) section of shelf space for display of for-sale tobacco products and the sale of smoking and/or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store, gas station, or similar retail use that only sells conventional cigars, cigarettes, or tobacco as an ancillary sale shall not be defined as a 'tobacco smoke shop' and shall not be subject to these restrictions;" and

WHEREAS, this interim urgency moratorium on new tobacco smoke shops in the city will give the City sufficient time to study, analyze, and report on the benefits and detriments of enacting a permanent ban on smoke shops, and to address any necessary modifications to the City's current tobacco regulations in the BMC as appropriate; and

WHEREAS, the City Council of the City of Brentwood is authorized, pursuant to Article 11, Section 7 of the California Constitution, to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 65858 authorizes the City Council to adopt, by a four-fifths vote and without following the procedures otherwise required for the adoption of a zoning ordinance, an interim urgency ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, planning commission, or planning department is considering, or studying, or intending to study within a reasonable time; and

WHEREAS, on September 27, 2022, the City Council adopted an interim ordinance via Urgency Ordinance No. 1046, implementing a 45-day moratorium on the issuance of any new permit, license, or entitlement for any new tobacco smoke shop in the city, pending completion of a comprehensive review of the City's zoning ordinance; and

WHEREAS, on October 25, 2022, the City Council adopted Urgency Ordinance No. 1050, extending the moratorium for an additional 10 months and 15 days, to September 8, 2023; and

WHEREAS, unless the City Council takes further action, Urgency Ordinance No. 1050 will cease to be in effect as of September 8, 2023; and

WHEREAS, City staff is still in the process of studying potential regulatory standards and location requirements for tobacco smoke shops, in order to determine whether and how such standards should be integrated into the Brentwood Municipal Code; and

WHEREAS, the City Council desires to maintain the protections of Urgency Ordinance No. 1050 while staff completes its work.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRENTWOOD does ordain as follows:

SECTION 1. The recitals set forth above are hereby adopted as the findings of the City Council in connection with the adoption of this ordinance. In support of the recitals stated above, the City Council hereby finds and determines that it is necessary to adopt an interim urgency ordinance to prohibit new tobacco smoke shops, while City staff takes a reasonable time to consider and study further regulation and zoning procedures relating to such activities within the city. In addition, the City Council finds that the recitals and findings in Urgency Ordinance No. 1050 remain true and correct, and are incorporated herein by this reference.

SECTION 2. This Urgency Ordinance was noticed pursuant to Government Code section 65090 and the City Council conducted a public hearing pursuant to Government Code section 65858, subdivision (a).

SECTION 3. The interim ordinance adopted by Urgency Ordinance No. 1050 is extended by this Urgency Ordinance for a period of one year, or until September 8, 2024.

SECTION 4. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the City Council finds that this ordinance is exempt under CEQA pursuant to Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this ordinance will not cause a change in any of the physical conditions within the area affected by the ordinance.

SECTION 5. This Urgency Ordinance is necessary to protect the City and its residents, businesses, and visitors from the potential health and safety impacts of tobacco smoke shops under current City regulations, including concerns with neighborhood safety, effects on minors, location near sensitive uses, and other public health impacts, and to preserve the quality of life, health, safety, and welfare of the community.

SECTION 6. This Urgency Ordinance will be published in accordance with Government Code Section 36933 by either posting or publishing the Urgency Ordinance in accordance with that law.

SECTION 7. This Urgency Ordinance is adopted by a four-fifths vote of the Brentwood City Council. Any future extension of this Urgency Ordinance will require a four-fifths vote of the City Council.

SECTION 8. Ten days prior to the expiration of this Urgency Ordinance or any extension, the City Council will issue a written report describing the measures taken to alleviate the condition which led to the adoption of this Urgency Ordinance, as required under Government Code Section 65858, subdivision (d).

THIS FOREGOING URGENCY ORDINANCE was adopted at a regular meeting of the Brentwood City Council on the 22nd day of August, 2023 by the following vote:

AYES:
NOES:
ABSENT:
RECUSE:

APPROVED:

Joel Bryant, Mayor

ATTEST:

Margaret Wimberly, MMC
City Clerk

COUNCIL REQUESTED TOBACCO ITEMS

#	Information Requested by City Council	Regulatory Context	Implementation Strategies	Council Direction Needed	Staff Recommendation	LUD Recommendation
1	Implementing a local tobacco retail license (TRL) system, including maximum amount that can be charged, and how those fees will be spent	Local tobacco retailer licensing laws are specifically authorized by state law, in addition to any required state-level licenses, and City can also suspend/ revoke local license for any violation of local or state tobacco control law. (Cal. Bus. & Prof. Code § 22971.3; <i>Prime Gas, Inc. v. City of Sacramento</i> (2010) 184 Cal.App.4th 967.)	The City can adopt a comprehensive tobacco retail licensing ordinance, using nearby jurisdictions and ChangeLab Solutions/Public Health Law Center templates as examples of permissible scope of regulation. License fees can only cover the cost of administering license program. New fees would be adopted by Council either with adoption of a new ordinance or with other amendments to Cost Allocation Plan.	-Whether to implement a TRL Ordinance?	If TRL is implemented, require two annual inspections of licensees-one inspection for compliance and one decoy operation. Utilize outside counsel to draft new ordinance.	Yes, fee to cover implementation, 3 compliance checks and 1 decoy, revocation after 3 violations.
2	100% flavor ban on tobacco sales	Currently banned by state law. AB 935 (eff. 1/1/24) enacts more stringent penalties, up to \$6,000 per violation. City may impose greater local tobacco controls than the State Law.	The City could opt to adopt an ordinance supplementing the State's enforcement efforts, or opt to let the State enforce the law without additional City regulations.	Whether to implement TRL Ordinance? Alternatively, whether to implement a stand-alone ban on flavored tobacco?	If TRL is implemented, incorporate language suggested by Model Ordinance (p. 10)	Yes, include in TRL
3	Prohibiting vaping product sales	As of 2016, state law prohibits the use of Electronic Smoking Devices (ESDs) anywhere cigarette smoking is prohibited; local ordinance can further prohibit use of ESDs in places not already covered by state law. City can go further and ban the sale of ESDs outright (either along with, or separately from, all "smoking products" generally).	The City could adopt an ordinance defining "e cigarettes" and related paraphernalia, and prohibiting the sale of such products outright (with a phase-out period/hardship exemption process).	-Whether to prohibit ESDs. -What length of phase out period?	The Model Ordinance does not prohibit sales of ESDs. If Council would like to prohibit ESDs, staff recommends including the prohibition in a TRL ordinance drafted by outside counsel. Include a minimum one year phase out period.	Yes
4	Maximum distance between tobacco retailers and schools that's allowed by law	A tobacco retailer ordinance can include "buffer" distance between retailers and schools (and other youth-populated areas). No maximum is defined in law, but 1,000 feet is recommended for defensibility purposes. This approach (albeit with a 500 foot rather than 1,000 foot buffer) has been upheld by a US District Court (<i>Independent Gas & Service Stations Associations, Inc. v. City of Chicago</i> (N.D. Ill. 2015) Case No. 1:2014cv07536.) Other jurisdictions have adopted 1,000 foot buffer requirements since that case. And, these provisions can still apply to existing retailers who might be impacted (i.e., are within the buffer zone) - they can apply for a one-time, non-renewable license to give them time to phase out.	A TRL ordinance can define schools and impose a separation requirement between schools and specific types of tobacco retailers. The City could also go further by expanding this past just "schools" to also include "youth-oriented facilities" more broadly, such as libraries, day care centers, houses of worship that engage in youth activities, all types of educational facilities.	Whether to create a buffer and if so, how large?	Include a maximum 1,000 ft. buffer in a new TRL ordinance. Expand the separation requirements to other "youth-oriented facility" in addition to schools per the suggestions in model ordinance (p. 12).	1,000 ft. separation and no renewal of license after one year if business is non-compliant with new regulations.

COUNCIL REQUESTED TOBACCO ITEMS

#	Information Requested by City Council	Regulatory Context	Implementation Strategies	Council Direction Needed	Staff Recommendation	LUD Recommendation
5	Minimum sales sizes (e.g. pack/carton)	A city is not preempted from enacting a local control on the minimum package size for little cigars or cigars (which might ordinarily be sold as individual units). (Cigarettes are already required to come in packs of at least 20 pursuant to federal law.) This approach has been endorsed by ChangeLab Solutions, the Public Health Law Center, and American Lung Association California.	The City could include this as part of its comprehensive TRL ordinance. This effort would be most successful in conjunction with a minimum <i>pricing</i> strategy (see #10). Because companies often sell cigars and little cigars at very low prices as "loss leaders," regulating pack size and cost through a tobacco retailing ordinance would help curb youth access to low-priced tobacco.	Whether to restrict pack size and if so, to what sizes?	Incorporate minimum pack sizes suggested by Model Ordinance (p. 10).	Require minimum pack size of 20 cigars/cigarettes.
6	Strictest laws for proximity between retailers	A city can enact proximity regulations, such as "no license may issue and no existing license may be renewed to authorize a tobacco retailer to operate within 500 [or more at City's discretion] feet of a tobacco retailer already licensed pursuant to this ordinance." Can either grandfather existing retailers who may violate this buffer, or can provide phase-out window/hardship exemption.	The City could adopt a TRL Ordinance including separation requirements between specific types of tobacco retailers.	-Whether to adopt proximity regulations and if so, what distance? -Whether to grandfather existing retailers or phase them out?	Incorporate maximum 1,000 ft. proximity regulations between retailers and add policies for existing retailers, to be drafted by outside counsel based on Council direction.	1,000 ft. separation and no renewal of license after one year if business is non-compliant with new regulations.
7	All tobacco sales banned at pharmacies	A city can enact a law banning the sale of tobacco in stores that contain pharmacies as long as the law does not treat similar stores containing pharmacies differently from one another	The City could adopt an ordinance banning sales of tobacco in stores containing pharmacies, this could include stand alone pharmacies and any retail outlet that also contains a pharmacy such as grocery stores.	Whether tobacco sales should be banned at all pharmacies?	IF TRL is implemented, include prohibition of sales at pharmacies suggested by Model TRL Ordinance (p. 11).	Yes, ban tobacco sales at all pharmacies.
8	Working with law enforcement on decoy purchasers	Decoy law enforcement operations are legal, and an effective way to reduce impermissible access to tobacco. Under the "Stop Tobacco Access to Kids Enforcement" (STAKE) Act, the state Department of Public Health can conduct these decoy operations, and local governments are also permitted to enforce with local police/youth decoys. Tobacco retailer licensing fees obtained through a local licensing ordinance can also be used to specifically support these types of enforcement efforts.	The Police Department has conducted decoy operations in the past. A TRL Ordinance should contain requirements for regularly monitoring licensees for compliance with requirements. Compliance checks can include monitoring for underage sales using decoy purchasers.	How often to monitor licensees for compliance?	If TRL is implemented, recommend 1 annual inspection for compliance with license requirements and 1 additional annual compliance check related to underage sales.	TRL should include 3 compliance checks and a minimum of 1 decoy operation per year.

COUNCIL REQUESTED TOBACCO ITEMS

#	Information Requested by City Council	Regulatory Context	Implementation Strategies	Council Direction Needed	Staff Recommendation	LUD Recommendation
9	Any way to retroactively revoke licenses (if applicable)	Business & Professions Code § 22971.3 says local licensing laws can provide for suspension or revocation of a local license for violation of state or local tobacco retailing law. (See also <i>Prime Gas, Inc. v. City of Sacramento</i> (2010) 184 Cal.App.4th 697.)	Once a TRL program is in place, new businesses will have to abide by all local laws, and existing businesses may be grandfathered in to some provisions or there may be a phase-out window, as mentioned in various places throughout this report. In all cases, existing and new businesses will have to prospectively apply with all regulations from their effective date once adopted.	See direction need for #1 above.	The City does not currently have tobacco licenses it can revoke. If TRL is implemented, staff recommends revocation provisions suggested by Model TRL Ordinance (p. 17)	TRL should include a limit of 3 violations before a license is revoked.
10	Minimum prices on tobacco	City can establish minimum tobacco product prices pursuant to their police power; government laws regulating a market and setting a baseline price are generally not preempted, although the law must be carefully crafted to ensure it does not facilitate collusion among tobacco companies. (See <i>Fisher v. City of Berkeley</i> (1986) 475 U.S. 260, 270; <i>Flying J, Inc. v. Hollen</i> (7th Cir. 2010) 621 F.3d 658, 662-663.)	City ordinance can include a minimum price floor for certain tobacco products, such as cigarettes, e-cigarettes, little cigars, and cigars. Staff can rely on examples from Sonoma County, Windsor, and San Leandro (among others) for effective ordinance language. E.g., "No Tobacco Retailer shall sell to a consumer cigarettes at a price that is less than \$X per package of 20 cigarettes, including all applicable taxes and fees."	Whether to incorporate minimum prices as suggested by Model TRL Ordinance?	Include minimum price regulations suggested by Model TRL Ordinance. Staff recommends working with Contra Costa Health's Tobacco Prevention program to determine a minimum price that is consistent with others in the County and escalates by Consumer Price Index (CPI).	Require a minimum price of \$10.00 and add language to escalate the price annually per the CPI.
11	Prohibit coupons/discounts	Prohibitions on discounts/coupons/promotions would be valid for the same reason as the preceding strategy regarding minimum prices. (See also <i>Nat'l Assn of Tobacco Outlets, Inc. v. City of Providence et al.</i> (D.R.I. Dec. 10, 2012) Case No. 12-96-ML; <i>Nat'l Assn of Tobacco Outlets, Inc. v. City of Providence</i> (1st Cir. 2013) 731 F.3d 71.)	Because the tobacco industry focuses heavily on coupons and discounts as a marketing strategy, particularly aimed at youth and underserved communities, prohibiting the redemption of such coupons and discounts through ordinance can have a large impact on the behaviors of populations particularly affected by price increases. There is sample language from ChangeLabs and local jurisdictions that staff can rely on.	Whether to prohibit discounts/coupons/promotions as suggested by Model TRL Ordinance?	IF TRL is implemented, include suggested discount prohibition in the Model TRL Ordinance (p. 10).	Yes, prohibit coupons/discounts in TRL Ordinance.
12	Cap on smoke shops and tobacco retailers in total	This is permissible under the City's police power, and is also analogous to state law limiting the number of retailers licensed to sell alcohol for off-site consumption. Can either grandfather existing retailers who may exceed the cap when it is enacted, or can provide phase-out window/hardship exemption.	The City can adopt an ordinance implementing a cap on certain types of tobacco retailers. The City can also address overconcentration in certain areas, not just overall # of stores. E.g., establish a cap on total number of tobacco retail licenses for specific "districts" within the City, set out in a map.	-Whether to create a cap on tobacco retailers? -Whether to grandfather existing retailers or phase-out existing?	IF TRL is implemented, implement a cap on total number of tobacco retailers/licenses with requirements for existing retailers.	Cap and winnow-no more than current 42 licenses should be issued; licenses should be non-transferrable; include a 1 year grace period for non-compliant businesses.

COUNCIL REQUESTED TOBACCO ITEMS

#	Information Requested by City Council	Regulatory Context	Implementation Strategies	Council Direction Needed	Staff Recommendation	LUD Recommendation
13	DOJ grants to support code enforcement	Cities are eligible to apply for Department of Justice (DOJ) grants that may be used to enforce local ordinances and/or state laws relating to sale or marketing of tobacco products, including e-cigarettes. Supported enforcement efforts may include (but are not limited to) retailer compliance checks, public education outreach, and retailer license inspections.	The earlier DOJ grant is no longer open for new applications this fiscal year and it is not clear that it has been funded for the next fiscal year. Staff will stay informed on additional funding opportunities that may arise.	None.	Staff will apply for future DOJ grants if the program is funded. Funds could be used for enforcement whether or not the City has a TRL.	Yes, staff should apply for DOJ grants.
14	Require CUP for tobacco sales	City can require new tobacco retailers to obtain a CUP, which can set restrictions such as limiting amount of storefront signage or banning sale of single cigars (among other things). (See California Constitution art. 20, § 22; Bus. & Prof. Code § 23790; <i>City of Oakland v. Superior Court</i> (1996) 45 Cal.App.4th 740.)	The City could amend the Zoning Ordinance Land Use Table to require a CUP for any type of tobacco sales. Or, amend the Zoning Ordinance to require a CUP for stand-alone "smoke shops" only.	Whether to require a CUP for new tobacco retailers?	Do not require a CUP, only a TRL. A TRL has strict operating standards and can be more easily revoked than a CUP.	No separate CUP requirement. Implement TRL instead.
15	Potential penalties available	Penalties can include civil or administrative fines, license suspension and revocation (subject to due process), ineligibility to apply for a new retailer license for specified periods of time, seizure and forfeiture of products offered for sale in violation of state or local law (subject to due process), treatment as public nuisance (allowing enforcement via nuisance abatement in local code).	City ordinance can include a program for monitoring compliance, plus establishment of whichever combination of penalties (listed in the "regulatory" column) Council deems appropriate.	None.	Adoption of any new ordinances as detailed above would include language related to license suspension, seizure of products, penalties, fines etc. as appropriate.	Fines should be as high as possible. Research if it is possible to repurpose fines for education or alternative purposes.
16	Bring other best practices from other cities for Council consideration	See staff report discussion of other cities' regulations				
ADDITIONAL INFORMATION REQUESTED BY LUD ON 3/18						
17	N/A	Whether to adopt additional regulations restricting tobacco advertisements and prohibiting the sale of drug paraphernalia?			Utilize outside legal to draft a TRL ordinance and update applicable sign regulations.	Provide recommendations on how to regulate sign content within the law. Prohibit the sale of drug paraphernalia in TRL.

COMPREHENSIVE TOBACCO RETAILER LICENSING ORDINANCE

Introduction

This Comprehensive Tobacco Retailer Licensing Ordinance was prepared to assist California cities and counties interested in establishing or strengthening a local tobacco retailer licensing (“TRL”) program and further regulating the tobacco retail environment. Communities adopt TRL laws to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative public health and equity impacts associated with tobacco use, and enforce local, state, and federal tobacco control laws.

The Public Health Law Center revised and updated this 2020 model ordinance, which was originally developed by ChangeLab Solutions and released in 2018. The Center acknowledges the excellent work done by ChangeLab Solutions in creating the original ordinance. This revised model ordinance takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment. It builds on core provisions such



as requiring a local tobacco retailer license by incorporating several innovative policy options. It also reflects changes to state and federal tobacco control laws such as Tobacco 21 and the federal Food and Drug Administration’s (“FDA”) Deeming Rule that expands the FDA’s regulatory

authority to all tobacco products. The model ordinance offers cities and counties a variety of options to tailor this policy to meet the needs of their communities.*

The model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data. Readers should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdiction.

Customizing the Ordinance

Context boxes are included throughout the ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [_____]) prompt you to customize the language to fit your community's needs. In other instances, the ordinance offers you a choice of options (such as [choice one/choice two]). Some options are followed by a comment that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and engender health equity.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use.† Communities differ on their readiness and willingness to adopt certain tobacco control policies that are intended to help make that world a reality. Accordingly, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in California. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements.

* This model ordinance uses "community" as shorthand for a group of people who will be impacted, either directly or indirectly, by a proposed changemaking strategy. People in a community (1) are in a particular geographic area, like a neighborhood or jurisdiction, and/or (2) share a common identity or characteristic.

† The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.KeepItSacred.itcml.org>. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide assistance through our publications and referrals to experts in the field. Education, stakeholder and community engagement, and a strong advocacy plan are key steps in the adoption of effective tobacco control policies. If a community is unaware of the resources available to it for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, please contact the Public Health Law Center. If you have any questions about this ordinance, you can reach us at www.publichealthlawcenter.org.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice. This model ordinance was made possible by funds received from Grant Number 19-10229 with the California Department of Public Health, California Tobacco Control Program, and the American Lung Association in California.

AN ORDINANCE OF THE [city/county] OF
[insert jurisdiction name] REGULATING TOBACCO PRODUCT
SALES, REQUIRING THE LICENSURE OF TOBACCO RETAILERS, AND
AMENDING THE [Insert Jurisdiction Name] MUNICIPAL CODE

The [city council of the city/board of supervisors of the county] of [insert jurisdiction name]
does ordain as follows:

Note

This is introductory boilerplate language that should be adapted to the conventional form used in
the jurisdiction.

SECTION I. [See Appendix A: Findings]

Note

The findings section is part of the ordinance and legislative record, but it usually does not become
codified in the municipal code. An ordinance based on this model ordinance should include
findings of fact — data, statistics, relevant epidemiological information, for instance — that support
the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance.
In addition to serving an educational purpose and building support for the ordinance, the findings
can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible
record of the factual determinations made by the legislative body when considering the ordinance.
Courts will generally defer to legislative determinations of factual issues, which often influence legal
conclusions. A list of findings supporting this model ordinance appears in “Appendix A: Findings.”
Jurisdictions may select findings from that list to insert here, along with additional findings on local
or regional conditions, outcomes, and issues that help make the case for the law.

SECTION II. [article/section] of the County/City Code is hereby
amended to read as follows:

Sec. [____ (*1)]. **DEFINITIONS.** The following words and phrases, whenever used in this
[article/chapter], shall have the meanings defined in this section unless the context clearly
requires otherwise:

- (A) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.
- (B) “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (C) “Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (D) “Cannabis Retailer” means any retail establishment in which cannabis or cannabis products are sold or offered for sale to persons that do not hold a license to engage in commercial cannabis activity issued by the State of California in accordance with the Business and Professions Code Section 26000 et seq., as that section may be amended from time to time.
- (E) “Child-Resistant Packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- (F) “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand.
- (G) “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- (H) “Compliance checks” means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this [article/ chapter]. Compliance checks may involve the use of persons between the ages of 18 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.
- (I) “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

- (J) “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.
- (K) “Department” means [insert department name] and any agency or person designated by the Department to enforce or administer the provisions of this [article/chapter].
- (L) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- (M) “Flavored Tobacco Product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.
- (N) “Full Retail Price” means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
- (O) “Little Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. “Little Cigar” includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.
- (P) “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- (Q) “Moveable place of business” means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

- (R) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (S) "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- (T) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.
- (U) "Recreation Facility" means an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes, and includes but is not limited to a gymnasium, playing court, playing field, and swimming pool.
- (V) "Sale" or "Sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- (W) "Self-Service Display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
- (X) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.
- (Y) "Tobacco Product" means:
- (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

- (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Note

Both the definition of “electronic smoking device” and “tobacco product” in this model include substances that go into an electronic smoking device regardless of whether they contain nicotine. In a jurisdiction that already regulates the commercial sale of cannabis products, these definitions might result in an overlapping and possibly confusing regulatory regime where certain products are covered by both the tobacco and cannabis laws. The Center can provide additional language to exclude regulated cannabis products under a TRL.

- (Z) “Tobacco Retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.
- (AA) “Tobacco Retailing” means engaging in the activities of a tobacco retailer.
- (AB) “Youth-Oriented Facility” means a parcel in the [city/county] that is occupied by:
- (1) a private or public kindergarten, elementary, middle, junior high, or high school;
 - (2) a library open to the public;
 - (3) a playground open to the public;
 - (4) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
 - (5) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;

- (6) a park open to the public or to all the residents of a private community;
- (7) a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home [as defined in California Health & Safety Code § 1596.78]];

Sec. [____ (*2)]. GENERAL REQUIREMENTS AND PROHIBITIONS.

- (A) TOBACCO RETAILER'S LICENSE REQUIRED. It shall be unlawful for any person to engage in tobacco retailing in the [city/county] without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- (B) LAWFUL BUSINESS OPERATION. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article/chapter] for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.
- (C) SMOKING PROHIBITED. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this chapter. Smoking also prohibited outdoors within 25 feet of any retail establishment licensed under this [article/chapter].
- (D) MINIMUM LEGAL SALES AGE. No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- (E) DISPLAY OF LICENSE. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (F) POSITIVE IDENTIFICATION REQUIRED. No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government-issued photographic identification that the recipient is at least 21 years of age.
- (G) SELF-SERVICE DISPLAYS PROHIBITED. Tobacco retailing by means of a self-service display is prohibited.
- (H) ON-SITE SALES. All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this [article/chapter] for any tobacco retailer or any of the tobacco retailer's agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in the [city/county].

Sec. [____ (*3)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

- (A) FLAVORED TOBACCO PRODUCT SALES PROHIBITED. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.
- (B) PRESUMPTIVE FLAVORED TOBACCO PRODUCT. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Sec. [_____ (*4)]. TOBACCO PRODUCT PRICING AND PACKAGING.

- (A) PACKAGING AND LABELING. No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.
- (B) DISPLAY OF PRICE. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- (C) DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS. It is unlawful for any person to distribute free or nominally priced tobacco products.
- (D) PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No tobacco retailer shall:
 - (1) honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
 - (2) sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
 - (3) provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
- (E) MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS. No tobacco retailer shall sell:
 - (1) any little cigar unless it is sold in a package of at least [20] little cigars; or

- (2) any cigar unless it is sold in a package of at least at least [6] cigars ; provided, however, that this subsection shall not apply to a cigar that has a price of at least [\$X.00] per cigar, including all applicable taxes and fees.

(F) MINIMUM PRICES FOR CIGARETTES, LITTLE CIGARS, AND CIGARS. No tobacco retailer shall sell:

- (1) Cigarettes at a price that is less than [\$X.00] per package of 20 cigarettes, including all applicable taxes and fees;
- (2) Little cigars at a price that is less than [\$X.00] per package of little cigars, including all applicable taxes and fees; or
- (3) Cigars at a price that is less [\$X.00] per cigar, including all applicable taxes and fees.

The minimum prices established in this section shall be adjusted annually by the Department in proportion with the Consumer Price Index, using a system established by the Department.

Note

Indexing minimum prices to inflation is an efficient policy that does not require decision-makers to amend the TRL annually to keep up with prevailing prices. Jurisdictions in California have pegged the prices to the nearest U.S. Bureau of Labor Statistics statistical area, and the language here is broad enough that a jurisdiction can take that approach or determine another effective way to adjust the prices over time.

Sec. [____ (*5)]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

- (A) MOBILE VENDING. No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- (B) LICENSED CANNABIS BUSINESSES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.
- (C) PHARMACIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

- (D) PROXIMITY TO YOUTH-ORIENTED FACILITIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a youth-oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.
- (E) PROXIMITY TO OTHER TOBACCO RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a tobacco retailer location already licensed pursuant to this [article/chapter] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.
- (F) PROXIMITY TO CANNABIS RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer is located.

Note

The three proximity limitations above would prohibit tobacco retailing within a certain distance of relevant businesses and facilities with no grandfathering of existing licensed retailers. As a result, retail licenses for locations that do not meet these proximity limitations would not be renewable after expiring. Issuing a tobacco retail license is a privilege, not a right, and jurisdictions have the authority to grant or deny tobacco retailer licenses. Accordingly, it would be unlikely for a tobacco retailer to successfully argue that refusing to renew their license is a violation of the constitutional guarantee against taking property without due process. To deal with potential "takings" claims, some jurisdictions have created a hearing process for affected businesses where they can make hardship arguments and ask for additional time to sell prohibited products, allowing for some more flexibility on a case-by-case basis and under extraordinary circumstances.

- (G) POPULATION AND DENSITY. The issuing of tobacco retailer licenses is limited as follows:
- (1) The total number of tobacco retailer licenses within the [city/county] shall be limited to one for each [2,500] inhabitants of the [city/county].

- (2) For the purposes of this subsection, the total population of the [city/county] shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.
- (3) No new license may issue to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).

Sec. [____ (*6)]. APPLICATION PROCEDURE.

- (A) An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.
- (B) A license issued contrary to this [article/chapter], contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section [____ (*13) (c)] of this [article/chapter]. Nothing in this [article/chapter] shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- (C) Applicant submissions shall contain the following information:
 - (1) The name, address, and telephone number of each proprietor of the business seeking a license.
 - (2) The business name, address, and telephone number of the location for which a license is sought.
 - (3) The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this [article/chapter].
 - (4) Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 - (5) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this [article/chapter] or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.

- (6) A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this [article/chapter].
 - (7) Such other information as the Department deems necessary for the administration or enforcement of this [article/chapter] as specified on the application form required by this section.
- (D) A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within [10] business days of a change.

Sec. [____ (*7)]. LICENSE ISSUANCE OR DENIAL.

- (A) ISSUANCE OF LICENSE. Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this [article/chapter], the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
- (B) DENIAL OF APPLICATION. The department may deny an application for a tobacco retailer's license based on any of the following:
- (1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article/chapter];
 - (2) The application seeks authorization for tobacco retailing at a location for which this [article/chapter] prohibits a license to be issued;
 - (3) The application seeks authorization for tobacco retailing for a proprietor to whom this [article/chapter] prohibits a license to be issued; or
 - (4) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this [article/chapter], that is unlawful pursuant to any other [article/chapter] of this Code, or that is unlawful pursuant to any other law.
 - (5) Any other any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this [article/chapter] and other laws relating to the sale of tobacco products.

Sec. [____ (*8)]. LICENSE RENEWAL AND EXPIRATION.

(A) RENEWAL OF LICENSE. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is [1 year]. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than [30] days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section [____ (*6)].

Sec. [____ (*9)]. LICENSES NOT TRANSFERABLE, PAST VIOLATIONS AT RETAIL LOCATION.

- (A) LICENSES NOT TRANSFERRABLE. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors.
- (B) PAST VIOLATIONS. Notwithstanding any other provision of this [article/chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
- (1) the location has been transferred to new proprietor(s) in an arm's length transaction; and
 - (2) the new proprietor(s) provide the [city/county] with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm's length transaction.

Sec. [____ (*10)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article/chapter] shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the [City/County] identified on the face of the permit. Nothing in this [article/chapter] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

Sec. [____ (*11)]. FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the [city council/board of supervisors]. The fee shall be calculated so as to recover the total cost of administration and enforcement of this [article/chapter], including, but not limited to, issuing a license, administering the license program, retailer education,

retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [article/ chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Note

The California Constitution places some limits on how much a jurisdiction can charge in a fee, deeming excessive fees to be taxes that require a vote of the people. Nonetheless, without a referendum, it is lawful to impose a fee on applicants in an amount sufficient to offset the reasonable regulatory cost of the entire tobacco retailer enforcement program of the locality. *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012).

The license fee can incorporate the cost of enforcing all tobacco laws related to tobacco retailing because a violation of any tobacco-related law is a basis for suspension of a license. The Public Health Law Center can provide further information on some of the factors to consider when calculating a reasonable license fee.

Sec. [____ (*12)]. COMPLIANCE MONITORING.

- (A) Compliance with this [article/chapter] shall be monitored by the Department. In addition, the [City/County] may designate additional persons to monitor compliance with this [article/chapter]. All licensed premises must be open to inspection by [city/ county] staff or designated persons during regular business hours.
- (B) The Department shall inspect each tobacco retailer at least [3] times per 12 month period to ensure compliance with this [article/chapter].

Note

Subsection (b) allows for the inspection of licensed premises to check for any violations of this ordinance or other tobacco control laws. For example, some inspections might focus on pricing or flavored product violations, but preferably inspectors would be able to review compliance with all applicable laws during the inspections. For more information on challenges and case studies in enforcing TRL requirements please contact the Center.

- (C) The [city/county] will conduct at least [one] compliance check per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.

Note

This underage sales compliance provision requires a minimum of one check per year, but jurisdictions might choose to require more frequent compliance checks to ensure consistent compliance.

- (D) Nothing in this section shall create a right of action in any licensee or other person against the [city/county] or its agents.

Sec. [____ (*13)]. SUSPENSION OR REVOCATION OF LICENSE.

- (A) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if the Department finds, based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, have violated any of the requirements, conditions, or prohibitions of this [article/chapter]; such violation is determined by any court of competent jurisdiction; or the licensee has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section [____ (*2)] above.
- (1) Upon a finding by the Department of a first violation of this [article/chapter] at a location, the license shall be suspended for [30] days.
 - (2) Upon a finding by the Department of a second violation of this [article/chapter] at a location within any [5]-year period, the license shall be suspended for [90] days.
 - (3) Upon a finding by the Department of a third violation of this [article/chapter] at a location within any [5] year period, the license shall be suspended for [1] year.
 - (4) Upon a finding by the Department of four or more violations of this [article/chapter] at a location within any [5] year period, the license shall be revoked.
- (B) APPEAL OF SUSPENSION OR REVOCATION. A decision of the Department to suspend or revoke a license is appealable to [the name of appellate agency, panel, or person (for

example, Board of Supervisors, city manager, or director of the health department)] and any appeal must be filed in writing with [the name of the agency, panel, or person to receive the notice (for example, Board of Supervisors)] within 10 days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (c) below.

- (C) REVOCATION OF LICENSE WRONGFULLY ISSUED. A tobacco retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section [____ (*7)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [city/county].

Sec. [____ (*14)]. TOBACCO RETAILING WITHOUT A VALID LICENSE.

- (A) INELIGIBLE FOR LICENSE. In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, based on a preponderance of evidence after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

- (1) After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until [30] days have passed from the date of the violation.
- (2) After a second violation of this section at a location within any [5 year] period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until [90] days have passed from the date of the violation.
- (3) After of a third or subsequent violation of this section at a location within any [5 year] period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until [5] years have passed from the date of the violation.

Sec. [____ (*15)]. ADDITIONAL REMEDIES.

- (A) The remedies provided by this [article/chapter] are cumulative and in addition to any other remedies available at law or in equity.

- (B) Whenever evidence of a violation of this [article/chapter] is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this [article/chapter] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (C) Violations of this [article/chapter] are subject to a civil action brought by the [district attorney] or the [county counsel], punishable by a civil fine not less than [\$250] and not exceeding [\$1,000] per violation.
- (D) Violations of this [article/chapter] may, in the discretion of the [district attorney/county counsel], be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (E) Violations of this [article/chapter] are hereby declared to be public nuisances.
- (F) In addition to other remedies provided by this [article/chapter] or by other law, any violation of this [article/chapter] may be remedied by a civil action brought by the [district attorney/county counsel], including administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- (G) Tobacco products offered for sale in violation of this [article/chapter] are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this [article/chapter]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [____(*13)(b)]. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.
- (H) For the purposes of the civil remedies provided in this [article/chapter]:
- (1) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter]; and
 - (2) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter].

- (I) All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

Sec. [____ (*16)]. EXCEPTIONS.

- (A) Nothing in this [article/chapter] prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.
- (B) Nothing in this [article/chapter] shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

Sec. [____ (*17)]. CONSTRUCTION & SEVERABILITY. It is the intent of the [board of supervisors/city council] of [county/city] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this [article/chapter], or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this [article/chapter], or its application to any other person or circumstance. The [board of supervisors/city council] of [jurisdiction] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Sec. [____ (*18)]. PUBLIC RECORDS. All information provided to the Department by a licensee or license applicant pursuant to this [article/chapter] shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law.

SECTION III. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [30 days after date of enactment]; provided, however, that Section [____(*3)] shall not take effect until [6 months after date of enactment].

Appendix A: Findings.

The [city council of the city/board of supervisors of the county] of [insert jurisdiction name] hereby finds and declares as follows:

WHEREAS, the [city council/board of supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [city council/board of supervisors], to protect the health, safety, and welfare of our residents;

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;²

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills 8 million people and causes over 1.4 trillion dollars in economic damage each year;¹³⁶

WHEREAS, 5.6 million of today's Americans who are younger than 18 years of age are projected to die prematurely from a smoking-related illness;²

WHEREAS, tobacco use is the number one cause of preventable death in California¹³⁷ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;¹
- More than 25% of all adult cancer deaths in California are attributable to smoking;¹³⁸
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;¹³⁹
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;²

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20.4%), Asian or Pacific Islander (11.4%), and Hispanic (15.2%) males all report a higher smoking prevalence than the statewide average among all adults (11.0%);⁹
- American Indian/Alaska Native Californians have the highest smoking prevalence (19.1%) among all reported adult demographic populations;⁹

- Smoking is more prevalent among rural (14.9%) compared to urban (10.6%) Californians;⁹
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;⁹
- Adults who identify as lesbian, gay, bisexual, or transgender report smoking at a higher rate (17.4%) than the statewide average (11.0%);⁹
- Those who reported experiencing psychological distress in the past month smoke at rates (26.7%) higher than the statewide average (11.0%);⁹

[insert local data if available]

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, research indicates over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;¹⁴⁰
- In California, from 2017 to 2018, approximately 13% of high school students reported using tobacco;⁹
- Disparities in tobacco use exist among California high school students, with higher rates found among LGBTQ, American Indian, and Pacific Islander youth;⁹
- Unless smoking rates decline, an estimated 441,000 of all California youth who are alive today will die prematurely from smoking-related diseases;²
- In 2017, 22.8% of high school students in California had tried cigarette smoking;¹⁴¹
- Between 2014 and 2018, electronic smoking device use among California youth increased from 14.1% to 46.2%;⁸

[insert local data if available]

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,¹¹ as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;⁶⁶
- Tobacco industry documents state that if "a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one",¹⁴²

- The tobacco industry spends an estimated \$496 million annually to market tobacco products to California residents;¹³⁹

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;¹⁴¹
- 19.1% of California tobacco retailers unlawfully sold tobacco products to underage persons in 2018;⁹

[insert local data if available]

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the [city council/board of supervisors] to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

- Tobacco products are the number one seller in U.S. convenience stores, and in 2018, they generated an average of \$523,084 in sales per store;¹⁴³
- Systematic scientific reviews indicate that merchant compliance with youth tobacco sales laws reduces the rate of tobacco use among adolescents;^{26,27}
- Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;^{144,145}
- A review of 41 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 40 of these communities after the ordinances were enacted, with an average 69% decrease in the youth sales rate;²⁵

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,²⁸ largely because these flavored products are marketed to youth and young adults,^{26,35,145} and younger smokers were more likely than older smokers to have tried these products;²⁶

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

WHEREAS, in 2018, more than 86% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 91% of tobacco retailers sold menthol cigarettes,⁸⁰ and, as of 2016, 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products,¹⁴⁷

WHEREAS, flavored tobacco products are used by the majority of youth and young adult tobacco users (86.4% and 57.7%, respectively) in California;⁹

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{26,148,149} and that these products help establish tobacco habits that can lead to long-term addiction;^{26,150,151}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);³⁰

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation,^{11,26,152,153}

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;¹⁵⁴

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,³³ and possibly Hispanic and Latino individuals;³⁴ and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American menthol smokers;³³

WHEREAS, research indicates that the FDA ban in 2009 on all flavored cigarette products (except menthol) led to a 6% decrease in youth tobacco use and a 17% decrease in the likelihood of a youth becoming a cigarette smoker;¹⁵⁵

WHEREAS, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following:

- An evaluation of New York City's law, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco;¹⁵⁶
- An evaluation of a law in Providence, Rhode Island, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, current use of any tobacco product among high school youth declined from 22% to 12% and e-cigarette use declined from 13.3% to 6.6%, even as statewide e-cigarette use among high school increased to more than 20%;¹⁵⁷

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;¹⁵⁸⁻¹⁶⁴

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has increased among California youth;⁹

WHEREAS, 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;^{2,48-51,53-58}

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;¹⁶⁵

WHEREAS, a systematic review by the U.S. Community Preventive Services Task Force found that a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;⁴⁹

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{56,58}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{26,52,54,166} and evidence suggests that tobacco companies deliberately target youth with price reductions;^{26,51,64-66,167}

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,^{118,168} Newport menthol cigarettes cost less in areas with higher proportions of African Americans,¹¹⁸ and underserved communities are targeted with price discounts and coupons;¹⁶⁹⁻¹⁷¹

WHEREAS, tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their cigarette marketing budgets on price discounts, accounting for nearly \$6.2 billion of \$8.6 billion advertising and promotional expenditures in 2018;^{50,51,62}

WHEREAS, the tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy.⁷⁰ Coupon receipt and redemption appears more prevalent among white, younger, female, sexual minority, and more nicotine dependent smokers.¹⁷² In California, individuals who used price minimization strategies saved an average \$1.04 per pack (or 18.6% off the total) in 2010;⁷⁰

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;⁶³

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{78,173} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.⁷⁹ Additionally:

- 78.3% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;⁷⁹
- Between 2012 and 2016, annual sales of cigarillos increased by 78% overall and by 155% for "concept-flavored" (e.g., Jazz) cigarillos;¹⁷⁴

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales^{175,176} and may significantly reduce cigar use among youth;¹⁷⁷

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;⁸²

WHEREAS, studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%;⁶⁸ the impact of a \$10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt more than 10 million smokers to quit;⁵⁵ and that a state-level minimum floor price law designed to raise the average price of cigarette

packs by just under \$2.00 could decrease the prevalence of cigarette use and consumption by more than 4% and reduce income-based smoking disparities in California;⁸⁶

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;^{178,179}

WHEREAS, pharmacies sell cigarettes cheaper than other stores¹¹⁸ and advertise tobacco product discounts more than other stores in California;⁸⁰

WHEREAS, tobacco-free pharmacy sales policies decrease the availability of tobacco products by reducing tobacco retailer density by up to three times compared with communities that do not have such policies,¹¹⁹ and immediately after the nationwide CVS policy change to not sell tobacco products, cigarette purchases declined and smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely;¹²⁰

WHEREAS, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day,⁹⁰ particularly in neighborhoods experiencing poverty;^{90,180-182}

WHEREAS, the density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates¹⁰¹ and initiation of noncigarette tobacco product use;¹⁸³

WHEREAS, adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer¹⁰⁷ and density is higher;¹⁸⁴⁻¹⁸⁶

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;⁹³⁻⁹⁸

WHEREAS, tobacco retailer density is higher in urban compared to rural areas, except for low-income communities, which have higher tobacco retailer densities regardless of geography, and Hispanic communities, which are associated with variable retailer densities across geography;^{97,187}

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective^{103,104,188,189} and can reduce or eliminate inequities in the location and distribution of tobacco retailers;^{103,104}

WHEREAS, six out of 10 tobacco retailers in California sold cigar products using cannabis-related flavor descriptors and these retailers were more prevalent in school neighborhoods with lower median income;¹⁹⁰

WHEREAS, both youth and adult tobacco users are more likely to also use cannabis;^{191,192}

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{26,27}

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales;^{193,194}

WHEREAS, the Institute of Medicine recognizes that retailers are not likely to comply with youth tobacco access laws unless such laws are actively enforced through retailer compliance checks paired with meaningful penalties on business owners for violations;¹⁹⁵

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, California courts have affirmed the power of the [city council/board of supervisors] to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010);

WHEREAS, over 180 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco;⁹

WHEREAS, the [city council/board of supervisors] has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the [city council/board of supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [Insert jurisdiction name] in order to protect the health, safety, and welfare of our residents;

NOW THEREFORE, it is the intent of the [city council/board of supervisors], in enacting this ordinance, to ensure compliance with the business standards and practices of the [city/county] and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to youth, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

References

- 1 Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.
- 2 U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.
- 3 Family Smoking Prevention and Tobacco Control Act § 3(1), Pub. L. No. 111-31, 123 Stat. 1776-1858 (2009).
- 4 National Academies of Sciences, Engineering, and Medicine. *Public Health Consequences of E-Cigarettes*. 2018. Washington, DC: The National Academies Press. doi: <https://doi.org/10.17226/24952>.
- 5 Fowles J, Barreau T, Wu N. Cancer and Non-Cancer Risk Concerns from Metals in Electronic Cigarette Liquids and Aerosols. *Int J Environ Res Public Health*. 2020;17(6):2146. doi: 10.3390/ijerph17062146.
- 6 Romberg AR, Miller Lo EJ, Cuccia AF, et al. Patterns of nicotine concentrations in electronic cigarettes sold in the United States, 2013-2018. *Drug Alcohol Depend*. 2019;201:1-7. doi: 10.1016/j.drugalcdep.2019.05.029.
- 7 Wang TW, Coats EM, Gammon DG et al. National and State-Specific Unit Sales and Prices for Electronic Cigarettes, United States, 2012-2016. *Prev Chroni Dis*. 2018;15:E99. doi: 10.5888/pcd15.170555.
- 8 Lin C, Baiocchi M, Halpern-Felsher B. Longitudinal trends in e-cigarette devices used by Californian youth, 2014-2018. *Addict Behav*. 2020;108:106459. doi: 10.1016/j.addbeh.2020.106459.
- 9 California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>.
- 10 U.S. National Cancer Institute. *A Socioecological Approach to Addressing Tobacco-Related Health Disparities*. National Cancer Institute Tobacco Control Monograph 22. NIH Publication No. 17-CA-8035A. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. 2017.
- 11 United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), aff'd in part, vacated in part, 566 F.3d 1095 (D.C. Cir. 2009), and order clarified, 778 F. Supp. 2d 8 (D.D.C. 2011).
- 12 California Tobacco Control Program. *California Tobacco Facts and Figures 2018*. Sacramento, CA: California Department of Public Health. 2018. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsFigures2018.pdf>.
- 13 California Tobacco Education and Research Oversight Committee. *New Challenges — New Promise for All: Toward a Tobacco-Free California Master Plan 2018-2020*. Sacramento, CA: California Tobacco Education and Research Oversight Committee. 2018. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/TEROC/MasterPlan/TEROCMasterPlan2018-2020.pdf>.
- 14 California Tobacco Control Program. Story of Inequity. 2019; <http://tobaccofreeca.com/story-of-inequity>. Accessed May 22, 2020.
- 15 Cal. Bus. & Prof. Code § 22972(a).

- 16 Cal. Bus. & Prof. Code § 22970.1 (Finding that state tobacco excise tax revenues “have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products,” and that “the licensing of ... retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.”).
- 17 Cal. Rev. & Tax Code § 30111 (providing that state tobacco taxes “are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.”); Cal. Bus. & Prof. Code § 22964 (providing that the Stop Tobacco Access to Kids Act does not “preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products.”).
- 18 Cal. Bus. & Prof. Code § 22971.3 (“Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”).
- 19 Cal. Penal Code § 308(a)(1)(A).
- 20 Cal. Bus. & Prof. Code §§ 22950-22964.
- 21 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b).
- 22 21 C.F.R. § 1140.14(a)(2), (b)(2).
- 23 The American Lung Association in California, Center for Tobacco Policy and Organizing. *Matrix of Strong Local Tobacco Retailer Licensing Ordinances*. 2018.
- 24 The American Lung Association in California Center for Tobacco Policy and Organizing. *Local Tobacco Policies in the Retail Environment*. 2017.
- 25 The American Lung Association in California Center for Tobacco Policy and Organizing. *Tobacco Retailer Licensing is Effective*. 2018.
- 26 U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.
- 27 DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control*. 2012;21:436-442. doi: 10.1136/tobaccocontrol-2011-050145.
- 28 21 U.S.C. § 387g(a)(1)(A).
- 29 Villanti AC, Johnson AL, Glasser AM. Association of Flavored Tobacco Use With Tobacco Initiation and Subsequent Use Among US Youth and Adults, 2013-2015. *JAMA Netw Open*. 2019;2(10):e1913804. doi: 10.1001/jamanetworkopen.2019.13804.
- 30 Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016;25(Suppl 2):ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.
- 31 King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: findings from the 2009-2010 National Adult Tobacco Survey. *Nicotine Tob Res*. 2013;15(2):608-614. doi: 10.1093/ntr/nts178.
- 32 D’Silva J, Cohn AM, Johnson AL, Villanti AC. Differences in Subjective Experiences to First Use of Menthol and Non-menthol Cigarettes in a National Sample of Young Adult Cigarette Smokers. *Nicotine Tob Res*. 2018;20(9):1062-1068. doi: 10.1093/ntr/ntx181.

- 33 Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. Available at: <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.
- 34 Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. Available at: <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- 35 Villanti AC, Collins LK, Niaura RS, Gagosian SY, Abrams DB. Menthol cigarettes and the public health standard: a systematic review. *BMC Public Health*. 2017;17(1):983. doi: 10.1186/s12889-017-4987-z.
- 36 Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med*. 2015;48(1):93-97. doi: 10.1016/j.amepre.2014.07.044.
- 37 Cohn AM, Johnson AL, Hair E, Rath JM, Villanti AC. Menthol tobacco use is correlated with mental health symptoms in a national sample of young adults: implications for future health risks and policy recommendations. *Tob Induc Dis*. 2016;14:1. doi: 10.1186/s12971-015-0066-3.
- 38 Chen C, Isabelle LM, Pickworth WB, Pankow JF. Levels of mint and wintergreen flavorants: smokeless tobacco products vs. confectionery products. *Food Chem Toxicol*. 2010;48(2):755-763. doi: 10.1016/j.fct.2009.12.015.
- 39 Morris DS, Fiala SC, Pawlak R. Opportunities for policy interventions to reduce youth hookah smoking in the United States. *Prev Chronic Dis*. 2012;9:120082. doi: 10.5888/pcd9.120082.
- 40 Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control*. 2014;23(1):77-78. doi: 10.1136/tobaccocontrol-2012-050604.
- 41 Tsai J, Walton K, Coleman BN, et al. Reasons for Electronic Cigarette Use Among Middle and High School Students - National Youth Tobacco Survey, United States, 2016. *MMWR Morb Mortal Wkly Rep*. 2018;67(6):196-200. doi: 10.15585/mmwr.mm6706a5.
- 42 Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students - United States, 2019. *MMWR Surveill Summ*. 2019;68(12):1-22. doi: 10.15585/mmwr.ss6812a1.
- 43 Kuiper NM, Gammon D, Loomis B, et al. Trends in Sales of Flavored and Menthol Tobacco Products in the United States during 2011-2015. *Nicotine Tob Res*. 2018;20(6):698-706. doi: 10.1093/ntr/ntx123.
- 44 Cullen KA, Ambrose BK, Gentzke AS, et al. Notes from the field: use of electronic cigarettes and any tobacco product among middle and high school students—United States, 2011-2018. *MMWR Morb Mortal Wkly Rep*. 2018;67(45):1276-1277. doi: 10.15585/mmwr.mm6745a5.
- 45 Cullen KA, Gentzke AS, Sawdey MD, et al. e-Cigarette Use Among Youth in the United States, 2019. *JAMA*. 2019;322(21):2095-2103. doi: 10.1001/jama.2019.18387.
- 46 Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA*. 2015;314(17):1871-1873. doi: 10.1001/jama.2015.13802.
- 47 Bonhomme MG, Holder-Hayes E, Ambrose BK, et al. Flavoured non-cigarette tobacco product use among US adults: 2013-2014. *Tob Control*. 2016;25(Suppl 2):ii4-ii13. doi: 10.1136/tobaccocontrol-2016-053373.
- 48 Institute of Medicine. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC. 2007. Available at: <https://www.nap.edu/catalog/11795/ending-the-tobacco-problem-a-blueprint-for-the-nation>.
- 49 Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012. Available at: <https://www.thecommunityguide.org/findings/tobacco-use-interventions-increase-unit-price-tobacco>.

- 50 Centers for Disease Control and Prevention. State Cigarette Minimum Price Laws — United States, 2009. *MMWR Morb Mortal Wkly Rep.* 2010;59(13):389-392.
- 51 Chaloupka FJ, Cummings KM, Morley C, Horan J. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tob Control.* 2002;11(Supplement 1):i62-i72. doi: 10.1136/tc.11.suppl_1.i62.
- 52 Chaloupka F. *Tobacco Control Lessons Learned: The Impact of State and Local Policies.* ImpacTeen. 2010. Available at: <http://tobaccopolICYcenter.org/wp-content/uploads/2017/11/153.pdf>.
- 53 Chaloupka FJ, Yurekli A, Fong GT. Tobacco taxes as a tobacco control strategy. *Tob Control.* 2012;21(2):172-180. doi: 10.1136/tobaccocontrol-2011-050417.
- 54 Maciosek MV, LaFrance AB, St. Claire AW, et al. The 20-year impact of tobacco price and tobacco control expenditure increases in Minnesota, 1998-2017. *PLoS ONE.* 2020;15(3): e0230364. doi: 10.1371/journal.pone.0230364.
- 55 Doogan NJ, Wewers ME, Berman M. The Impact of a Federal Cigarette Minimum Pack Price Policy on Cigarette Use in the USA. *Tob Control.* 2018;27(2):203-208. doi: 10.1136/tobaccocontrol-2016-053457.
- 56 Huang J, Gwarnicki C, Xu X, Caraballo RS, Wada R, Chaloupka FJ. A comprehensive examination of own- and cross-price elasticities of tobacco and nicotine replacement products in the U.S. *Prev Med.* 2018. doi: 10.1016/j.ypmed.2018.04.024.
- 57 Pesko MF, Huang J, Johnston LD, Chaloupka FJ. E-cigarette price sensitivity among middle- and high-school students: evidence from monitoring the future. *Addiction.* 2018;113(5):896-906. doi: 10.1111/add.14119.
- 58 Jawad M, Lee JT, Glantz S, Millett C. Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis. *Tob Control.* 2018. doi: 10.1136/tobaccocontrol-2017-054056.
- 59 Centers for Disease Control and Prevention. *STATE System Excise Tax Fact Sheet.* <https://www.cdc.gov/statesystem/factsheets/excisetax/ExciseTax.html>. Accessed May 27, 2020.
- 60 Cal. Rev. & Tax. Code § 30111.
- 61 Schleicher NC, Johnson T, Ahmad I, Henriksen L. *Tobacco Marketing in California's Retail Environment (2011-2014).* Palo Alto, CA: Stanford Prevention Research Center, Stanford University School of Medicine. 2015.
- 62 Federal Trade Commission. *Cigarette Report for 2018.* 2019. Available at: <https://www.ftc.gov/reports/federal-trade-commission-cigarette-report-2018-smokeless-tobacco-report-2018>.
- 63 Wang TW, Falvey K, Gammon DG, et al. Sales Trends in Price-Discounted Cigarettes, Large Cigars, Little Cigars, and Cigarillos—United States, 2011-2016. *Nicotine Tob Res.* 2018;20(11):1401-1406. doi: 10.1093/ntr/ntx249.
- 64 White VM, White MM, Freeman K, Gilpin EA, Pierce JP. Cigarette promotional offers: who takes advantage? *Am J Prev Med.* 2006;30(3):225-231. doi: 10.1016/j.amepre.2005.11.001.
- 65 Pierce JP, Gilmer TP, Lee L, Gilpin EA, de Beyer J, Messer K. Tobacco industry price-subsidizing promotions may overcome the downward pressure of higher prices on initiation of regular smoking. *Health Econ.* 2005;14(10):1061-1071. doi: 10.1002/hec.990.
- 66 Ling PM, Glantz SA. Why and How the Tobacco Industry Sells Cigarettes to Young Adults: Evidence From Industry Documents. *Am J Public Health.* 2002;92(6):908-916. doi: 10.2105/ajph.92.6.908.
- 67 Lempert LK, Glantz SA. Tobacco Industry Promotional Strategies Targeting American Indians/Alaska Natives and Exploiting Tribal Sovereignty. *Nicotine Tob Res.* 2019;21(7):940-948. doi: 10.1093/ntr/nty048.
- 68 Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Arch Pediatr Adolesc Med.* 2007;161(5):440-445. doi: 10.1001/archpedi.161.5.440.

- 69 Xu X, Wang X, Caraballo RS. Is Every Smoker Interested in Price Promotions? An Evaluation of Price-Related Discounts by Cigarette Brands. *J Public Health Manag Pract.* 2016;22(1):20-28. doi: 10.1097/PHH.0000000000000223.
- 70 Xu X, Pesko MF, Tynan MA, Gerzoff RB, Malarcher AM, Pechacek TF. Cigarette price-minimization strategies by U.S. smokers. *Am J Prev Med.* 2013;44(5):472-476. doi: 10.1016/j.amepre.2013.01.019.
- 71 Cal. Health & Safety Code § 118950(b)-(c)(1). The California Supreme Court upheld this law, finding that federal law did not preempt the state law. *People v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408 (Cal. 2005).
- 72 Chicago Municipal Code § 4-64-905.
- 73 New York City Administrative Code § 17-176.1.
- 74 Oakland, California, Municipal Code § 5.91.040.
- 75 Providence, Rhode Island Municipal Code § 14-303.
- 76 Nat'l Ass'n of Tobacco Outlets, Inc. v. City of New York, 27 F. Supp. 3d 415 (S.D.N.Y. 2014).
- 77 Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013).
- 78 21 C.F.R. § 1140.16(b).
- 79 Schleicher NC, Johnson T, Rigdon J, et al. *California Tobacco Retail Surveillance Study, 2017*. Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/SurveyInstrumentsTrainingManualsAndProtocols/CaliforniaTobaccoRetailSurveillanceStudy2017-CTRSS%206-4.pdf>.
- 80 Schleicher NC, Johnson T, Vishwakarma M, et al. *California Tobacco Retail Surveillance Study 2018*. Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/CaliforniaTobaccoRetailSurveillanceStudyReport-2018.pdf>.
- 81 Henriksen L, Andersen-Rodgers E, Zhang X, et al. Neighborhood Variation in the Price of Cheap Tobacco Products in California: Results From Healthy Stores for a Healthy Community. *Nicotine Tob Res.* 2017;19(11):1330-1337. doi: 10.1093/ntr/ntx089.
- 82 Huang J, Chiqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS. *Tob Control.* 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.
- 83 Sonoma County, California Municipal Code § 32A-3(k).
- 84 Windsor, California Municipal Code § 3-11-115(l).
- 85 San Leandro Municipal Code § 4-36-150(k).86 Golden SD, Kim K, Kong A, et al. Simulating the Impact of a Cigarette Minimum Floor Price Law on Adult Smoking Prevalence in California. *Nicotine Tob Res.* 2020;ntaa046. doi: 10.1093/ntr/ntaa046.
- 87 Golden SD, Farrelly MC, Luke DA, Ribisl KM. Comparing projected impacts of cigarette floor price and excise tax policies on socioeconomic disparities in smoking. *Tob Control.* 2016;25(Suppl 1):i60-i66. doi: 10.1136/tobaccocontrol-2016-053230.
- 88 Brock B, Carlson SC, Moilanen M, Schillo BA. Effectiveness of Local Policy Efforts to Increase the Price of Cheap Cigars in Minnesota. *Am J Public Health.* 2017;107(1):127-129. doi: 10.2105/AJPH.2016.303517.
- 89 Hill S, Amos A, Clifford D, Platt S. Impact of tobacco control interventions on socioeconomic inequalities in smoking: review of the evidence. *Tob Control.* 2014;23(e2):e89-97. doi: 10.1136/tobaccocontrol-2013-051110.
- 90 Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health.* 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.

- 91 Lipperman-Kreda S, Grube JW, Friend KB, Mair C. Tobacco outlet density, retailer cigarette sales without ID checks and enforcement of underage tobacco laws: associations with youths' cigarette smoking and beliefs. *Addiction*. 2016;111(3):525-532. doi: 10.1111/add.13179.
- 92 Novak SP, Reardon SF, Raudenbush SW, Buka SL. Retail tobacco outlet density and youth cigarette smoking: a propensity-modeling approach. *Am J Public Health*. 2006;96(4):670-676. doi: 10.2105/AJPH.2004.061622.
- 93 Siahpush M, Jones PR, Singh GK, Timsina LR, Martin J. Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods. *Public Health*. 2010;124(9):525-529. doi: 10.1016/j.puhe.2010.04.010.
- 94 Lee JG, Sun DL, Schleicher NM, Ribisl KM, Luke DA, Henriksen L. Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study. *J Epidemiol Community Health*. 2017;71(5):487-492. doi: 10.1136/jech-2016-208475.
- 95 Loomis BR, Kim AE, Goetz JL, Juster HR. Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York. *Public Health*. 2013;127(4):333-338. doi: 10.1016/j.puhe.2013.01.013.
- 96 Yu D, Peterson NA, Sheffer MA, Reid RJ, Schnieder JE. Tobacco outlet density and demographics: analysing the relationships with a spatial regression approach. *Public Health*. 2010;124(7):412-416. doi: 10.1016/j.puhe.2010.03.024.
- 97 Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent JD. Predictors of tobacco outlet density nationwide: a geographic analysis. *Tob Control*. 2013;22(5):349-355. doi: 10.1136/tobaccocontrol-2011-050120.
- 98 Fakunle DO, Curriero FC, Leaf PJ, Furr-Holden DM, Thorpe RJ. Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density. *Ethn Health*. 2019;1-16. doi: 10.1080/13557858.2019.1620178.
- 99 Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tob Control*. 2019;28:27-33. doi: 10.1136/tobaccocontrol-2017-054065.
- 100 Schleicher NC, Johnson TO, Fortmann SP, Henriksen L. Tobacco outlet density near home and school: Associations with smoking and norms among US teens. *Prev Med*. 2016;91:287-293. doi: 10.1016/j.ypmed.2016.08.027.
- 101 Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco Outlet Density and Adolescents' Cigarette Smoking: A Meta-Analysis. *Tob Control*. 2019;28(1):27-33. doi: 10.1136/tobaccocontrol-2017-054065.
- 102 Lovato CY, Hsu HCH, Sabiston CM, Hadd V, Nykiforuk CIJ. Tobacco Point-of-Purchase marketing in school neighbourhoods and school smoking prevalence: a descriptive study. *Can J Public Health*. 2007;98(4):265-270. doi: 10.17269/cjph.98.865.
- 103 Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res*. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.
- 104 HG, Henry KA, Scheeres A, et al. Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019). *Am J Public Health*. 2020;110(4):547-553. doi: 10.2105/AJPH.2019.305512.
- 105 Cantrell J, Pearson JL, Anesetti-Rothermel A, Xiao H, Kirchner TR, Vallone D. Tobacco Retail Outlet Density and Young Adult Tobacco Initiation. *Nicotine Tob Res*. 2016;18(2):130-137. doi: 10.1093/ntr/ntv036.
- 106 Young-Wolff KC, Henriksen L, Delucchi K, Prochaska JJ. Tobacco retailer proximity and density and nicotine dependence among smokers with serious mental illness. *Am J Public Health*. 2014;104(8):1454-1463. doi: 10.2105/AJPH.2014.301917.
- 107 Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.

- 108 Luke DA, Ribisl KM, Smith C, Sorg AA. Family Smoking Prevention And Tobacco Control Act: banning outdoor tobacco advertising near schools and playgrounds. *Am J Prev Med.* 2011;40(3):295-302. doi: 10.1016/j.amepre.2010.11.018.
- 109 Fakunle DO, Milam AJ, Furr-Holden CD, Butler J, 3rd, Thorpe RJ, Jr., LaVeist TA. The inequitable distribution of tobacco outlet density: the role of income in two Black Mid-Atlantic geopolitical areas. *Public Health.* 2016;136:35-40. doi: 10.1016/j.puhe.2016.02.032.
- 110 Galiatsatos P, Kineza C, Hwang S, et al. Neighbourhood characteristics and health outcomes: evaluating the association between socioeconomic status, tobacco store density and health outcomes in Baltimore City. *Tob Control.* 2018;27(e1):e19-e24. doi: 10.1136/tobaccocontrol-2017-053945.
- 111 Berg CJ, Henriksen L, Cavazos-Rehg PA, Haardoefer R, Freisthler B. The emerging marijuana retail environment: Key lessons learned from tobacco and alcohol retail research. *Addict Behav.* 2018;81:26-31. doi: 10.1016/j.addbeh.2018.01.040.
- 112 Feighery EC, Schleicher NC, Boley Cruz T, Unger JB. An examination of trends in amount and type of cigarette advertising and sales promotions in California stores, 2002-2005. *Tob Control.* 2008;17(2):93-98. doi: 10.1136/tc.2007.022046.
- 113 Jernigan DH, Sparks M, Yang E, Schwartz R. Using public health and community partnerships to reduce density of alcohol outlets. *Prev Chronic Dis.* 2013;10:E53. doi: 10.5888/pcd10.120090.
- 114 Cal. Bus. & Prof. Code § 23817.5.
- 115 Bright Research Group for the San Francisco Tobacco-Free Project. *Reducing Tobacco Retail Density in San Francisco: A Case Study.* 2016. Available at: <https://sanfranciscotobaccofreeproject.org/wp-content/uploads/Retail-Density-Case-Study-1.27.16-FINAL-to-TFP.pdf>.
- 116 Center for Public Health Systems Science. *Point-of-Sale Report to the Nation: Realizing the Power of States and Communities to Change the Tobacco Retail and Policy Landscape.* St. Louis, MO: Center for Public Health Systems Science at the Brown School at Washington University in St. Louis and the National Cancer Institute, State and Community Tobacco Control Research Initiative. 2016. Available at: https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/e/1037/files/2017/10/Reporttothenation_2016-2mfepqr.pdf.
- 117 Attorneys General Call on Retail Pharmacies to Stop Selling Tobacco Products [press release]. March 28, 2014. Available at: <https://news.delaware.gov/2014/03/18/attorneys-general-call-on-retail-pharmacies-to-stop-selling-tobacco-products>.
- 118 Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. Prices for Tobacco and Nontobacco Products in Pharmacies Versus Other Stores: Results From Retail Marketing Surveillance in California and in the United States. *Am J Public Health.* 2016;106(10):1858-1864. doi: 10.2105/AJPH.2016.303306.
- 119 Jin Y, Lu B, Klein EG, Berman M, Foraker RE, Ferketich AK. Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *Am J Public Health.* 2016;106(4):679-685. doi: 10.2105/AJPH.2015.303040.
- 120 Polinski JM, Howell B, Gagnon MA, Kymes SM, Brennan TA, Shrank WH. Impact of CVS Pharmacy's Discontinuation of Tobacco Sales on Cigarette Purchasing (2012-2014). *Am J Public Health.* 2017;107(4):556-562. doi: 10.2105/AJPH.2016.303612.
- 121 Cal. Bus. & Prof. Code § 22963.
- 122 Prevent All Cigarettes Trafficking Act of 2009, Pub. L. No. 111-154, 124 Stat. 1087 (2009).
- 123 21 U.S.C. § 387f(d)(4)(A).

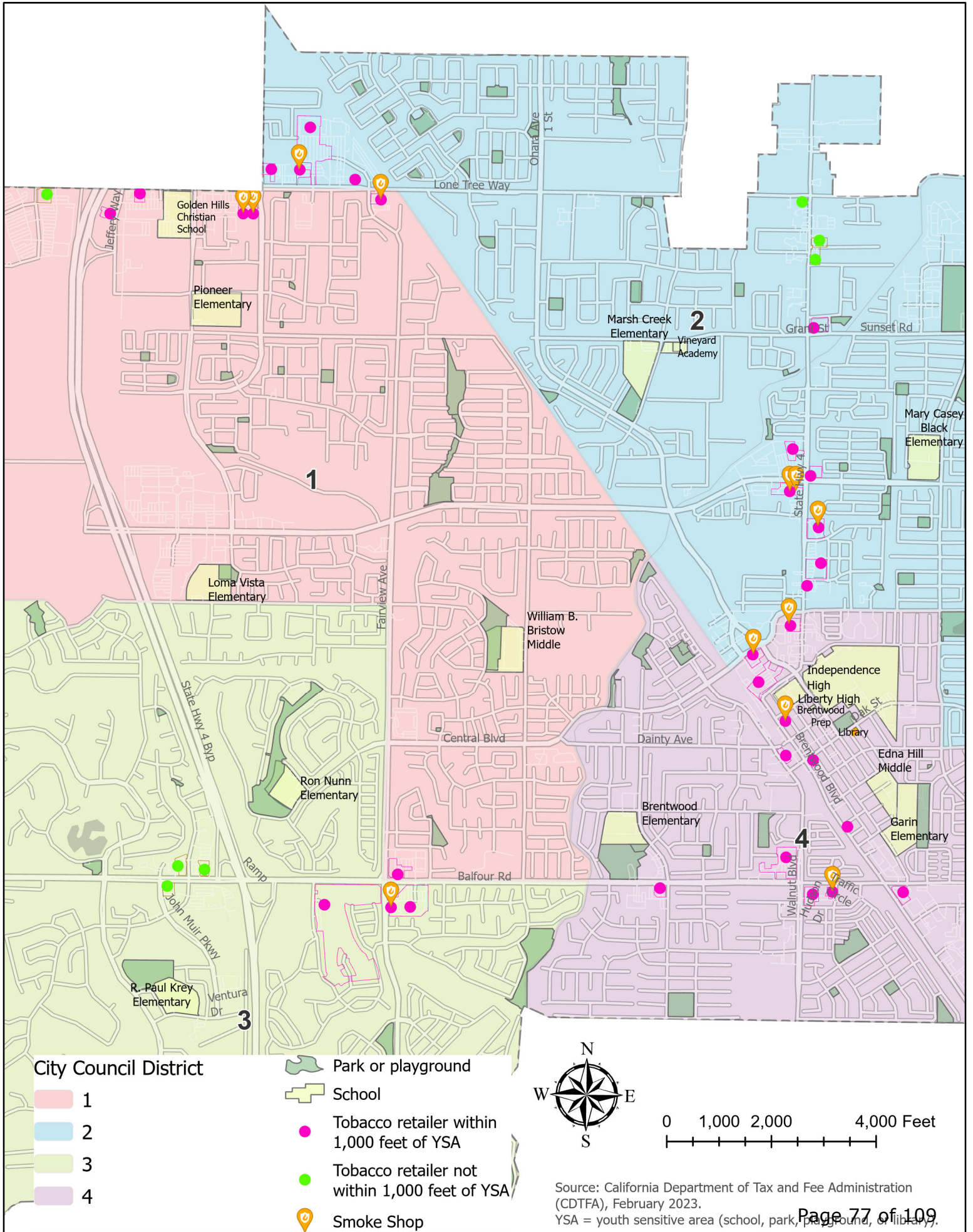
- 124 Food and Drug Administration. *Report to Congress — Progress and Effectiveness of the Implementation of the Family Smoking Prevention and Tobacco Control Act*. U.S. Department of Health and Human Services. 2013. Available at: <https://www.fda.gov/downloads/tobaccoproducts/labeling/rulesregulationsguidance/ucm371271.pdf>.
- 125 Williams RS, Derrick J, Phillips KJ. Cigarette sales to minors via the internet: how the story has changed in the wake of federal regulation. *Tob Control*. 2017;26(4):415-420. doi: 10.1136/tobaccocontrol-2015-052844.
- 126 Williams RS, Derrick J, Liebman AK, LaFleur K, Ribisl KM. Content analysis of age verification, purchase and delivery methods of internet e-cigarette vendors, 2013 and 2014. *Tob Control*. 2018;27(3):287-293. doi: 10.1136/tobaccocontrol-2016-053616.
- 127 Williams RS, Derrick JC. Internet Little Cigar and Cigarillo Vendors: Surveillance of Sales and Marketing Practices via Website Content Analysis. *Prev Med*. 2018;109:51-57. doi: 10.1016/j.ypmed.2018.01.017.
- 128 FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death [press release]. July 28, 2017. Available at: <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm568923.htm>.
- 129 Stebbins KR. Tobacco, politics and economics: Implications for global health. *Social Science & Medicine*. 1991;33(12):1317-1326. doi: 10.1016/0277-9536(91)90275-h.
- 130 Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. Tobacco Product Use Among Middle and High School Students - United States, 2011-2017. *MMWR Morb Mortal Wkly Rep*. 2018;67(22):629-633. doi: 10.15585/mmwr.mm6722a3.
- 131 Pesko MF, Robarats AM. Adolescent Tobacco Use in Urban Versus Rural Areas of the United States: The Influence of Tobacco Control Policy Environments. *J Adolesc Health*. 2017;61(1):70-76. doi: 10.1016/j.jadohealth.2017.01.019.
- 132 Chaffee BW, Couch ET, Urata J, et al. Predictors of Smokeless Tobacco Susceptibility, Initiation, and Progression Over Time Among Adolescents in a Rural Cohort. *Subst Use Misuse*. 2019;54(7):1154-1166. doi: 10.1080/10826084.2018.
- 133 Healthy Retail SF. <https://susanahennessey-lavery.squarespace.com>. Accessed July 13, 2018.
- 134 Davis KC, Grimshaw V, Merriman D, et al. Cigarette trafficking in five northeastern US cities. *Tob Control*. 2014;23(e1):e62-68. doi: 10.1136/tobaccocontrol-2013-051244.
- 135 Kurti MK, von Lampe K, Thompkins DE. The illegal cigarette market in a socioeconomically deprived inner-city area: the case of the South Bronx. *Tob Control*. 2013;22(2):138-140. doi: 10.1136/tobaccocontrol-2011-050412.
- 136 World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2019: Offer Help to Quit Tobacco Use*. 2019. Available at: <https://apps.who.int/iris/handle/10665/326043>.
- 137 California Department of Public Health, California Tobacco Control Program. The #1 Preventable Cause of Death. <https://tobaccofreeca.com/health/tobacco-is-the-number-one-preventable-cause-of-death>. Accessed May 12, 2020.
- 138 Lortet-Tieulent J, Goding Sauer A, Siegel RL, et al. State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States. *JAMA Intern Med*. 2016;176(12):1792-1798. doi: 10.1001/jamainternmed.2016.6530.
- 139 Campaign for Tobacco-Free Kids. The Toll of Tobacco in California. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed May 12, 2020.
- 140 California Tobacco Control Program. *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016.
- 141 Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance — United States, 2017. *MMWR Surveill Summ*. 2018;67(8):1-114 and Supplementary Tables 52-93. doi: 10.15585/mmwr.ss6708a1.
- 142 Burrows, D.S. "Estimated Change in Industry Trend Following Federal Excise Tax Increase." UCSF Library Truth Tobacco Industry Documents. Date Mod. Industry, Apr. 17, 2012: <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084>. Accessed May 12, 2020.

- 143 National Association of Convenience Stores. *U.S. Convenience Store Count*. Available at: <https://www.convenience.org/Research/FactSheets/ScopeofIndustry/IndustryStoreCount>; Statista. *In-store merchandise sales of convenience stores in the United States in 2018, by product category*. Available at: <https://www.statista.com/statistics/308783/us-convenience-stores-in-store-merchandise-sales-by-category> (Cigarettes + Other Tobacco Products Sales = \$81.056 billion).
- National Association of Convenience Stores. *Convenience Stores and Their Communities*. 2019. Available at: <https://www.convenience.org/Topics/CommunityToolkit/How-Stores-Work>.
- 144 McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. Tobacco Control Legal Consortium. 2010. Available at: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.
- 145 Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: The National Academies Press. 2015. Available at: <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.
- 146 Villanti AC, Johnson AL, Ambrose BK, et al. Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014). *Am J Prev Med*. 2017;53(2):139-151. doi: 10.1016/j.amepre.2017.01.026.
- 147 California Department of Public Health, California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties*. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/HSHTechnicalReport2016.pdf>.
- 148 Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res*. 2006;8(3):403-413. doi: 10.1080/14622200600670389.
- 149 Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav*. 2007;32(9):1964-1969. doi: 10.1016/j.addbeh.2006.12.023.
- 150 Oliver AJ, Jensen JA, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res*. 2013;15(1):88-92. doi: 10.1093/ntr/nts093.
- 151 Villanti AC, Johnson AL, Glasser AM, et al. Association of Flavored Tobacco Use With Tobacco Initiation and Subsequent Use Among US Youth and Adults, 2013-2015. *JAMA Netw Open*. 2019;2(10):e1913804. doi: 10.1001/jamanet-workopen.2019.13804.
- 152 Yerger VB, Przewoznik J, Malone RE. Racialized geography, corporate activity, and health disparities: tobacco industry targeting of inner cities. *J Health Care Poor Underserved*. 2007;18(4 Suppl):10-38. doi: 10.1353/hpu.2007.0120.
- 153 Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health*. 2008;98(9):1685-1692. doi: 10.2105/AJPH.2007.125542.
- 154 Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res*. 2012;14(1):116-121. doi: 10.1093/ntr/ntr122.
- 155 Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med*. 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.
- 156 Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418.
- 157 Pearlman DN, Arnold JA, Guardino GA, Boles Welsh E. Advancing Tobacco Control Through Point of Sale Policies, Providence, Rhode Island. *Prev Chronic Dis*. 2019;16:E129. doi: 10.5888/pcd16.180614.
- 158 Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends*. National Cancer Institute; 1998.

- 159 National Cancer Institute. Cigar Smoking and Cancer. 2020; <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cigars-fact-sheet>. Accessed May 12, 2020.
- 160 Waziry R, Jawad M, Ballout RA, Al Akel M, Akl EA. The effects of waterpipe tobacco smoking on health outcomes: an updated systematic review and meta-analysis. *Int J Epidemiol*. 2017;46(1):32-43. doi: 10.1093/ije/dyw021.
- 161 Stepanov I, Biener L, Knezevich A, et al. Monitoring tobacco-specific N-nitrosamines and nicotine in novel Marlboro and Camel smokeless tobacco products: findings from Round 1 of the New Product Watch. *Nicotine Tob Res*. 2012;14(3):274-281. doi: 10.1093/ntr/ntr209.
- 162 National Cancer Institute. *Monograph 2: Smokeless Tobacco or Health: An International Perspective*. 1992.
- 163 Pickworth WB, Rosenberry ZR, Koszowski B. Large Cigars: Smoking Topography and Toxicant Exposure. *Nicotine Tob Res*. 2018;20(2):183-191. doi: 10.1093/ntr/ntw289.
- 164 Pickworth WB, Rosenberry ZR, Yi D, et al. Cigarillo and Little Cigar Mainstream Smoke Constituents from Replicated Human Smoking. *Chem Res Toxicol*. 2018;31(4):251-258. doi: 10.1021/acs.chemrestox.7b00312.
- 165 Yao T, Ong MK, Max W, et al. Responsiveness to cigarette prices by different racial/ethnic groups of US adults. *Tob Control*. 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.
166. Levy DT, Tam J, Kuo C, Fong GT, Chaloupka F. The Impact of Implementing Tobacco Control Policies: The 2017 Tobacco Control Policy Scorecard. *J Public Health Manag Pract*. 2018;24(5):448-457. doi: 10.1097/PHH.0000000000000780.
- 167 Tessman GK, Caraballo RS, Corey CG, Xu X, Chang CM. Exposure to tobacco coupons among U.S. middle and high school students. *Am J Prev Med*. 2014;47(2 Suppl 1):S61-68. doi: 10.1016/j.amepre.2014.05.001.
- 168 Mills SD, Golden SD, Henricksen L. Neighbourhood disparities in the price of the cheapest cigarettes in the USA. *J Epidemiol Community Health*. 2019;73(9):894-896. doi: 10.1136/jech-2018-210998.
- 169 Counter Tobacco. Disparities in Point-of-Sale Advertising and Retailer Density. Available at: <https://countertobacco.org/resources-tools/evidence-summaries/disparities-in-point-of-sale-advertising-and-retailer-density>. Accessed May 18, 2020.
- 170 Lempert LK, Glantz SA. Tobacco Industry Promotional Strategies Targeting American Indians/Alaska Natives and Exploiting Tribal Sovereignty. *Nicotine Tob Res*. 2018. doi: 10.1093/ntr/nty048.
- 171 Henriksen L, Schleicher NC, Johnson TO, Roeseler A, Zhu SH. Retail Tobacco Marketing in Rural Versus Nonrural Counties: Product Availability, Discounts, and Prices. *Health Promot Pract*. 2020;21(1_suppl):275-365. doi: 10.1177/1524839919888652.
- 172 Osman A, Queen T, Choi K, Goldstein AO. Receipt of direct tobacco mail/email coupons and coupon redemption: Demographic and socioeconomic disparities among adult smokers in the United States. *Prev Med*. 2019;126:105778. doi: 10.1016/j.yjmed.2019.105778.
- 173 Cal. Penal Code § 308.3(a).
- 174 Gammon DG, Rogers T, Coats EM, et al. National and state patterns of concept-flavoured cigar sales, USA, 2012-2016. *Tob Control*. 2019;28(4):394-400. doi: 10.1136/tobaccocontrol-2018-054348.
- 175 Gammon DG, Loomis BR, Dench DL, King BA, Fulmer EB, Rogers T. Effect of price changes in little cigars and cigarettes on little cigar sales: USA, Q4 2011-Q4 2013. *Tob Control*. 2016;25(5):538-544. doi: 10.1136/tobaccocontrol-2015-052343.
- 176 Jawad M, Lee JT, Glantz S, Millett C. Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis. *Tob Control*. 2018;27(6):689-695. doi: 10.1136/tobaccocontrol-2017-054056.

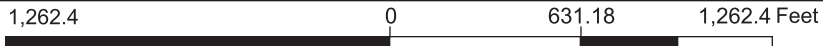
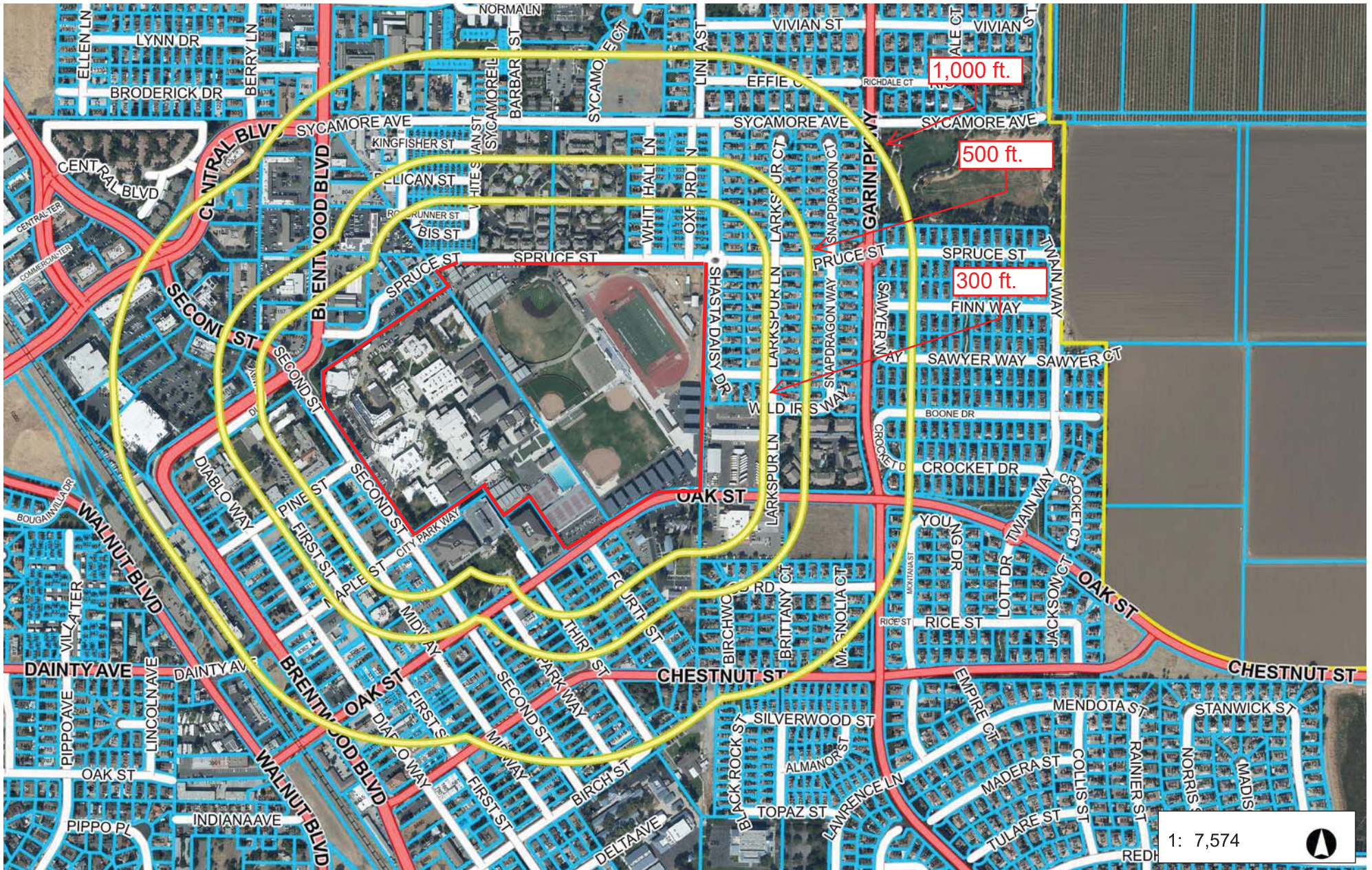
- 177 Ringel JS, Wasserman J, Andreyeva T. Effects of public policy on adolescents' cigar use: evidence from the National Youth Tobacco Survey. *Am J Public Health*. 2005;95(6):995-998. doi: 10.2105/AJPH.2003.030411.178; Katz MH. Banning tobacco sales in pharmacies: the right prescription. *JAMA*. 2008;300(12):1451-1453. doi: 10.1001/jama.300.12.1451.
- 179 Hudmon KS, Fenlon CM, Corelli RL, Prokhorov AV, Schroeder SA. Tobacco sales in pharmacies: time to quit. *Tob Control*. 2006;15(1):35-38. doi: 10.1136/tc.2005.012278.
- 180 Golden SD, K T-M, Kong AY, et al. County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012. *Prev Med Rep*. 2020; Mar:17:101005. doi: 10.1016/j.pmedr.2019.101005.
- 181 Leas EC, Schleicher NC, Prochaska JJ, Henriksen L. Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States. *JAMA Intern Med*. 2019;179(3):442-444. doi: 10.1001/jamainternmed.2018.5990.
- 182 Farley SM, Maroko AR, Suglia SF, Thorpe LE. The Influence of Tobacco Retailer Density and Poverty on Tobacco Use in a Densely Populated Urban Environment. *Public Health Rep*. 2019;134(2):164-171. doi: 10.1177/0033354918824330.
- 183 Abdel Magid HS, Halpern-Felsher B, Ling PM, et al. Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens. *J Adolesc Health*. 2020;66(4):423-430. doi: 10.1016/j.jadohealth.2019.09.004.
- 184 Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.
- 185 Vyas P, Tsoh JY, Gildengorin G, et al. Disentangling individual and neighborhood differences in the intention to quit smoking in Asian American male smokers. *Prev Med Rep*. 2020;18:101064. doi: 10.1016/j.pmedr.2020.101064.
- 186 Shareck M, Datta GD, Vallee J, Kestens Y, Frohlick KL. Is Smoking Cessation in Young Adults Associated With Tobacco Retailer Availability in Their Activity Space? *Nicotine Tob Res*. 2020;22(4):512-521. doi: 10.1093/ntr/nty242.
- 187 Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent J. Retail tobacco exposure: using geographic analysis to identify areas with excessively high retail density. *Nicotine Tob Res*. 2014;16(2):155-165. doi: 10.1093/ntr/ntt126.
- 188 Myers AE, Hall MG, Isgett LF, Ribisl KM. A comparison of three policy approaches for tobacco retailer reduction. *Prev Med*. 2015;74:67-73. doi: 10.1016/j.ypmed.2015.01.025.
- 189 Luke DA, Hammond RA, Combs T, et al. Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *Am J Public Health*. 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.190; Henriksen L, Schleicher NC, Ababseh K, Johnson TO, Fortmann SP. Marijuana as a 'concept' flavour for cigar products: availability and price near California schools. *Tob Control*. 2017. doi: 10.1136/tobaccocontrol-2017-053961.
- 191 Richter L, Pugh BS, Smith PH, Ball SA. The co-occurrence of nicotine and other substance use and addiction among youth and adults in the United States: implications for research, practice, and policy. *Am J Drug Alcohol Abuse*. 2017;43(2):132-145. doi: 10.1080/00952990.2016.1193511.
- 192 Conway KP, Green VR, Kasza KA, et al. Co-occurrence of Tobacco Product Use, Substance Use, and Mental Health Problems Among Youth: Findings From Wave 1 (2013-2014) of the Population Assessment of Tobacco and Health (PATH) Study. *Addict Behav*. 2018;76:208-217. doi: 10.1016/j.addbeh.2017.08.009.
- 193 DiFranza JR. Best Practices for Enforcing State Laws Prohibiting the Sale of Tobacco to Minors. *J Public Health Manag Pract*. 2005;11(6):559-565. doi: 10.1097/00124784-200511000-00014.
- 194 Macinko J, Silver D. Impact of New York City's 2014 Increased Minimum Legal Purchase Age on Youth Tobacco Use. *Am J Public Health*. 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.
- 195 Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: National Academies Press. 2015.

Brentwood Tobacco Retailers and Youth Sensitive Areas





300, 500 and 1,000 ft radius from Liberty High



NAD_1983_StatePlane_California_III_FIPS_0403_Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 7,574



Notes:



SEPTEMBER 2016

In order to reduce illegal sales of tobacco products to minors and prevent youth from getting addicted to tobacco products, many cities and counties in California have restricted the location of tobacco retailers near schools. Studies have shown that the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased smoking rates and that one-third of illegal tobacco sales take place within 1,000 feet of schools.

This matrix lists 51 municipalities in California that have adopted an ordinance to restrict the location of tobacco retailers within a certain distance of schools. The cities and counties are listed in reverse chronological order from the most recently passed. To be included on this matrix, the ordinance must require all tobacco retailers or significant tobacco retailers to be located 500 feet or more away from schools. The definition of significant tobacco retailers varies by ordinance, therefore, the strength of each of these 51 ordinances varies. Policy details are included in this matrix help to highlight these differences.

Type of Ordinance

There are four different ways for local governments to restrict the location of tobacco retailers; the first section of the matrix designates which type of policy each municipality has adopted. While each of these policy options can accomplish the goal of restricting tobacco retailers near schools, using the tobacco retailer licensing ordinance to do this is the best approach for dealing with current tobacco retailers located within the restricted area around a school, it is more efficient to enforce, and therefore it is recommended. For this reason,

the tobacco retailer licensing column is highlighted. Full explanations for each of the four policy types, along with the matrix abbreviation and information about how many municipalities have adopted that type of policy, are listed below.

1. Tobacco Retailer Licensing Ordinance (TRL) – This type of law requires all tobacco retailers to obtain a license in order to sell tobacco products in the municipality and a requirement can be added to the licensing ordinance that a retailer cannot obtain a license if they are located within a certain distance of schools. Because tobacco retailer licenses are only granted for a set period of time (one year) and must be renewed annually, it is more efficient to implement location restrictions through a licensing ordinance by simply not renewing licenses for businesses in prohibited locations. Fifteen municipalities use this type of policy to restrict sales near schools.

2. Zoning Ordinances (Zoning) – Zoning regulations establish what type of uses are allowed for each type of property or district. A zoning ordinance can be used to specifically prohibit a tobacco retailer from operating within a certain distance of schools. Nine municipalities use this policy to restrict sales near schools.

3. Conditional Use Permit (CUP) – The requirement that a business obtain a Conditional Use Permit (CUP) is a requirement typically imposed through a community's zoning code that allows a city or county to make an individualized determination about the use of a property in a specific location. If a proposed use, such as tobacco retailing near schools is not "permitted" by the zoning code or "prohibited," it can be "conditionally permitted" depending on site-specific factors. A retailer would have

to apply for a CUP in order to open a business in a specific location. A restriction on the issuance of a CUP can be that the tobacco retailer is not located within a certain distance of schools. Twenty-three municipalities have adopted this type of policy.

4. Direct Regulation (Reg) – This type of law is enacted under the general police powers of the municipality to protect the health, safety, welfare and morals of their citizens. Unlike TRL, zoning, and CUP ordinances, for this type of law an enforcement mechanism must be specifically created or incorporated by referencing another part of the municipal code (TRL and zoning ordinances already include enforcement procedures that apply to any violation). A regulatory ordinance can be enforced in many ways, for example through civil suit or criminal prosecution, administrative citations, or as a nuisance through administrative, civil or criminal nuisance abatement proceedings. Four cities has adopted this type of ordinance to restrict tobacco retailers near schools.

Type of Tobacco Retailers that are Subject to the Ordinance

Another significant distinction for these policies is whether the policy restricts the location of all tobacco retailers or just significant tobacco retailers (those whose sales include a high percentage of tobacco products). The column on the right side contains the information about which type of retailers are subject to the ordinance. The municipalities that contain an “X” in the column are the strongest type of policy and restrict every retailer that sells tobacco products within a certain distance of schools. Twenty-eight municipalities have adopted this type of ordinance.

Other Important Policy Provisions

In addition, the Matrix also contains information about five other policy provisions relevant to restrictions on the sale of tobacco products near schools. For each of these provisions, the full question is listed below along with information on trends and most common responses from the 51 ordinances:

- *Does the policy prohibits tobacco retailers from being located within what distance of schools?* The restrictions range from 500 feet to 1,500 feet, with the majority (29 of 51) restricting sales within 1,000 feet of schools.
- *Does the policy apply to existing retailers (no grandfathering)?* A majority of the policies (42 of 51) do not subject existing retailers to the location restrictions but would only apply to new retailers and grandfather in existing retailers. However, for several of these cities

and counties, there were no existing retailers within that restricted distance from schools.

- *What other youth-oriented areas do the distance requirements apply to other than schools?* In addition to schools, the majority of these policies (32 of 51) also restrict tobacco retailers within a certain distance of other youth-oriented areas. The most popular other location is near parks and/or playgrounds, where 29 cities and counties restrict tobacco retailers.
- *Does the policy restrict tobacco retailers from being located within a certain distance of other tobacco retailers?* In addition to schools and other youth-oriented areas, some of these ordinances contain a density provision that restricts tobacco retailers from being located near other tobacco retailers. Twenty-three ordinances contain this provision and the distance restrictions range from 200 to 1,500 feet.

Resources

The Center has additional resources on restricting tobacco retailers near schools and tobacco retailer licensing ordinances available at <http://center4tobaccopolicy.org> localpolicies-licensing. ChangeLab Solutions has model ordinance language available for tobacco retailer licensing ordinances, conditional use permits and zoning ordinances at <http://changelabsolutions.org>.

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth-oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Manhattan Beach December 2015	X				500	Yes	None	Yes (500 feet)	X
Berkeley September 2015	X				600	No	None	No	X
Costa Mesa September 2015		X			1,000	No	None	Yes (1,500 feet)	X
El Cerrito September 2015	X				500	No	Libraries, recreation areas, and some public parks	Yes (1,000 feet)	X
Rocklin September 2015				X	1,000	Yes	None	Yes (1,000 feet)	X
Crescent City April 2015			X		None Specified	No	Day care centers, playgrounds, parks, recreation centers, libraries, and houses of worship engaged in youth-oriented activities	No	
San Francisco December 2014	X				500	No	None	Yes (500 feet)	X
Gilroy November 2014	X				1,000	No	None	No	X
Temple City October 2014		X			1,000	Yes	Public parks, large childcare center	Yes (1,000 feet)	
Hayward July 2014			X		500	No	Residential, sensitive receptors	Yes (500 feet)	
Westminster July 2014			X		500	No	None	Yes (1,000 feet)	
Goleta May 2014	X				1,000	No	None	No	X
Covina April 2014			X		300	No	Day cares, parks, libraries, recreational areas, community centers and houses of worship engaged in youth-oriented activities	Yes (500 feet)	X
Santa Cruz April 2014	X				1,000	No	None	Yes (600 feet of high risk alcohol outlet)	X
Scotts Valley April 2014				X	500	Yes	None	No	
El Cajon March 2014		X			600	Yes	Residential, religious facility, courthouse, day nursery, public playground/park/ recreation area, vocational/profession- al institution, higher education	Yes (1,000 feet)	
Capitola February 2014				X	1,000	No	Public library	No	X

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth-oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Selma December 2013			X		1,000	No	Playground, recreation center or facility, childcare center or library	Yes (1,000 feet)	
Fairfield October 2013			X		1,000	No	Parks and recreation centers	Yes (1,000 feet)	
Anaheim June 2013			X		1,000	Yes	None	No	X
Carpinteria May 2013		X			1,000	No	None	No	X
Oroville March 2013		X			500	No	Residences, parks, and places of worship	No	X
Dublin December 2012		X			1,000	No	500 feet from playgrounds, parks, libraries, and City owned and operated recreational facilities	Yes (1,000 feet)	X
Lynwood October 2012	X				500	No	Youth-populated areas including parks, playgrounds, youth centers, recreational areas and religious institutions	Yes (200 feet)	X
Sacramento June 2012			X		1,000	No (but retailers are allowed within the restricted area if 10% or less floor space has tobacco products)	None	No	X
Huntington Park December 2011	X				500	No	Library, playground, youth center, recreational facility open to the public, arcade open to the public, parks	Yes (200 feet)	X
West Hollywood March 2011	X				600	No	None	No	
Santa Barbara County November 2010	X				1,000	No	None	No	X
Santa Clara County November 2010	X				1,000	No	None	Yes (500 feet)	X
South Pasadena November 2010	X				500	No (but there were no retailers within restricted area)	None	No	X

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth-oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Riverbank July 2010	X				500	Yes	Playgrounds	No	X
Adelanto May 2010		X			1,000	No	Playground, church, public library or childcare facility	No	X
Calabasas April 2010	X				500	No (but there were no retailers within restricted area)	None	No	X
Palmdale January 2010			X		500	No	Commercial daycare center, hospitals, parks, libraries, recre- ation centers	No	X
Union City January 2010			X		1,000	No	Park, playground, library, recreation center, religious institution, youth-oriented establishment	Yes (1,000 feet)	X
Vallejo December 2009			X		1,000	No	Church, public recreation area	Yes (1,000 feet)	
Windsor November 2009			X		600	No (but there were no retailers within restricted area)	Religious institutions, libraries and parks	No	
Saratoga October 2009			X		1,000	No	Parks	Yes (500 feet)	X
Rohnert Park April 2009			X		500	No	Religious assembly, public facility, multi-unit residential development	Yes (500 feet)	
Albany February 2009			X		500	Yes	Childcare centers, public libraries, public community centers, parks or playgrounds	No	
Oakland April 2008			X		1,000	No	Residential zone, library, park, playground, recreation center, licensed daycare facility	No	X
La Mirada November 2007			X		600	No	Church, temple, park	Yes (500 feet)	
Emeryville March 2007				X	1,000	Yes	Parks, greenways, and playgrounds		

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth-oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Mountain View February 2005			X		1,000	No (if existing retailers are caught selling to minors twice in a 36 month period, they must apply for a CUP)	Childcare facility or preschool other than family daycare, play- ground, youth center, recreational facility	No	
Pasadena February 2004			X		1,000	No	Game arcade, internet access studio, library, licensed childcare facility other than family daycare, park and recreation facility, theater	No	
San Rafael February 2003			X		1,000	No	Parks, libraries, arcades, youth/teen centers, community/ recreation centers, licensed daycare cen- ters, shopping malls, houses of worship with youth programs	No	
Marin County 2002			X		1,000	No	Childcare facility or preschool other than family daycare, playground, youth or teen center, community or recreation center, arcade, park, library, houses of worship with youth activities	No	
Berkeley November 2001			X		1,400	No	Public Park	No	
San Leandro July 2001			X		1,500	No	Park, library, recreational facility	Yes (1,500 feet)	
Novato April 2001		X			1,000	No	Parks or other land use oriented to mi- nors as determined by zoning administrator	No	
Vista June 1997		X			1,000	No	None	No	

California Department of Justice Tobacco Grant

Mayra Lopez, MPH
Program Manager
Tobacco Prevention Program

Monica Marquez, MPH, MSBH
Senior Health Education Specialist
Tobacco Prevention Program

California Department of Justice Tobacco Grant

The **DOJ** provides annual funds to local enforcement agencies over a 2-3 year period.

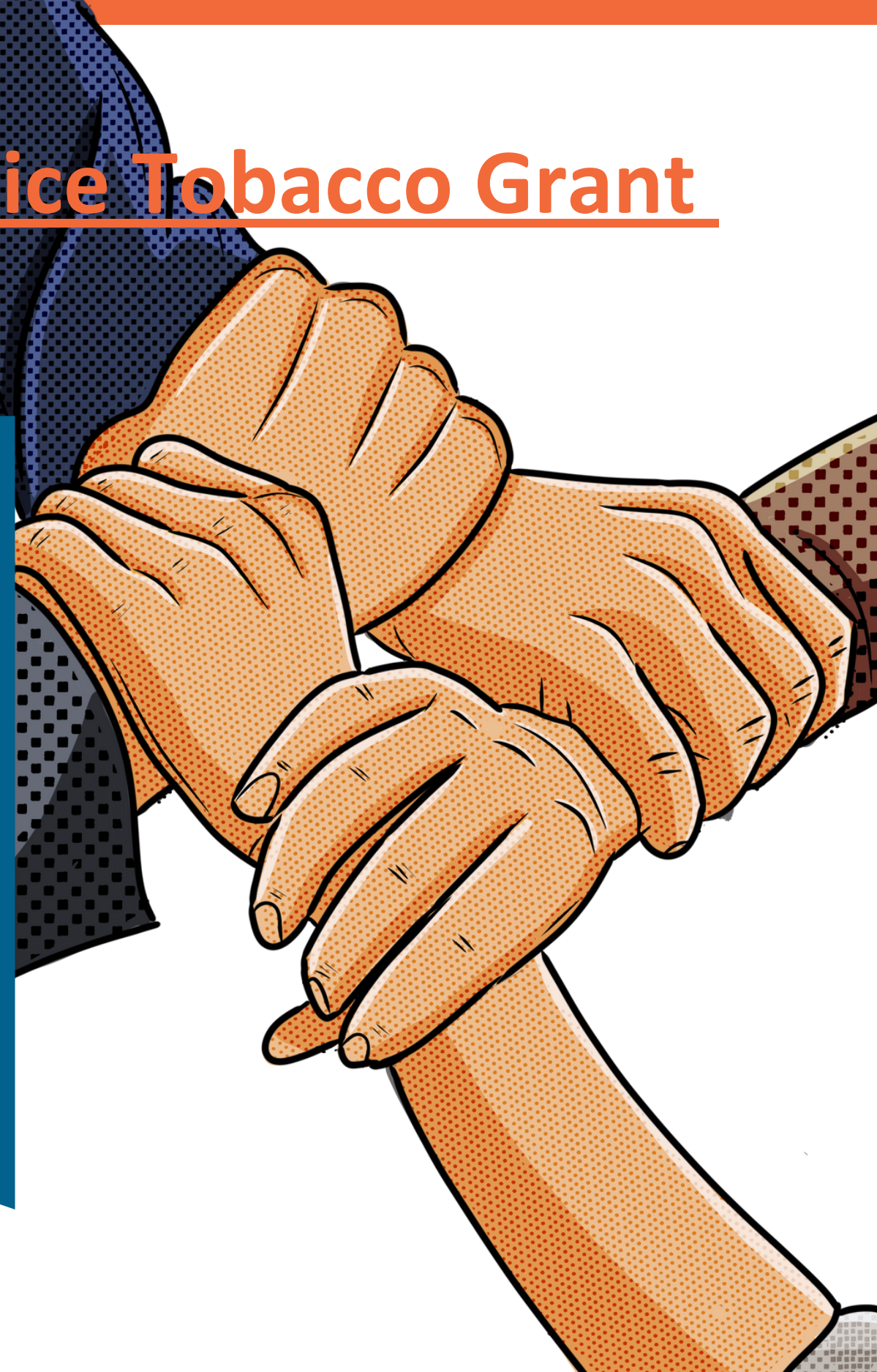
A priority for this funding cycle is **retail education** and **enforcement**.

Who is Eligible?

Any local public agency within the State of California that has authority to enforce tobacco-related state laws or local ordinances.

\$24.6 Million in Grant Funding is Available (2023)!

Application Due Date:
TBD



DOJ Grant Tobacco Enforcement Efforts

Grant funds may be used to enforce a local ordinance or state law related to the illegal sale and marketing of tobacco products.

Retailer Compliance Checks

Enforcement of Flavor Ban Laws and Ordinances

Consumer Protection Enforcement

Illegal Online Sales and Marketing, including use of Door-to-Door Delivery Services

Retailer Training Programs

Public Education Outreach

Tobacco Retailer License Inspections

Examples of Funded Goals for Law Enforcement Agencies



Enforce CA Flavor Ban (SB793/Prop 31) and local tobacco ordinances

Conduct Minor Decoy and Shoulder Tap Operations

Provide Education Classes or Diversion Programs for Tobacco Retailers to Help Ensure that They Understand and Comply with State and Local Tobacco Laws

Investigate Online and Delivery Services

Allowable & Restricted Costs

Personnel

Travel

Training

Equipment

Supplies and Materials

***Subcontractors**

- Ammunition
- Awards
- Award Certificates
- Balloons
- Briefcases
- Calendars (Decorative)
- Cleaning supplies
- Coffee pots and supplies
- Facilities lease/rent
- Facilities renovations
- Firearms and related accessories (scopes, holsters, racks, etc.)
- Food, beverages, and any other consumables (including for meetings/conferences)
- Gift Cards
- Hand sanitizers
- K9
- Kleenex/tissue papers
- Luggage
- Luggage carriers
- Pepper spray
- Personalized products used to advertise an agency and/or programs (e.g., pens, magnets) not specific to anti-smoking/anti-tobacco campaigns. Any products in this category require prior approval from the Tobacco Grant Program
- Picture frames
- Plastic eating utensils
- Portable fans
- Portable heaters
- Refrigerators
- Ribbons
- Uniforms and standard complement items (BDUs, vests, boots, etc.)
- Vehicles and/or vehicle trailer purchases (vehicle usage, leases, fees, and mileage reimbursement are allowable).

2021-2022 Grantees

ALAMEDA COUNTY		
APPLICANT	SUMMARY OF AWARD	AWARD
Berkeley Police Department	Will fund enforcement operations, including shoulder tap operations against problematic tobacco retailers, and refer offenders for prosecution.	\$191,053
BUTTE COUNTY		
APPLICANT	SUMMARY OF AWARD	AWARD
Chico Police Department	Will fund three school resource officers for high school campuses to monitor and enforce student compliance with tobacco laws, shoulder tap operations on tobacco retailers, and tobacco retailer license inspections.	\$1,109,262
CONTRA COSTA COUNTY		
APPLICANT	SUMMARY OF AWARD	AWARD
Martinez Police Department	Will fund minor decoy operations on tobacco retailers.	\$28,165
Moraga Police Department	Will fund police officer to conduct shoulder tap operations on tobacco retailers, conduct tobacco-related enforcement operations at skate park and other locations where minors congregate.	\$470,736
City of Pinole	Will fund program coordinator and youth interns for anti-tobacco youth advocacy program.	\$166,270
Pittsburg Police Department	Will fund tobacco enforcement officer for enforcement operations on tobacco retailers, tobacco education in schools, and development of procedures for safe disposal of electronic cigarette waste.	\$687,963



2022-2023 Grantees

ALAMEDA COUNTY		
APPLICANT	SUMMARY OF AWARD	AWARD
Alameda County Sheriff's Office	Will fund enforcement operations to include retail inspections, shoulder tap and minor decoy operations, and tobacco store enforcement operations. In addition, training and education will be conducted with youth, sworn officers, and business owners to prevent the access and use of tobacco products by minors.	\$351,216
Piedmont Police Department	Will provide funding for tobacco enforcement operations, to conduct retail license and compliance inspections, provide training to local retailers, conduct minor decoy operations in collaboration with other local jurisdictions, provide student and parent education classes on the harms of tobacco use, and assist the local school district to procure on campus vape sensors.	\$410,117
Pleasanton Police Department	Will fund school and community education and enforcement operations, including retail stings and shoulder tap operations.	\$431,459
CONTRA COSTA COUNTY		
APPLICANT	SUMMARY OF AWARD	AWARD
Contra Costa Health Services (Tobacco Prevention Program)	Will fund tobacco-related enforcement operations at all licensed retailers in unincorporated Contra Costa, including compliance inspections, tobacco-related training to enforcement agencies regarding tobacco laws, issues, and products, and provide technical assistance to local enforcement agencies and facilitate a countywide enforcers' workgroup.	\$442,692
San Pablo Police Department	Will fund personnel to provide education to youth regarding tobacco prevention, conduct retail compliance inspections, perform multi-jurisdictional enforcement operations, conduct enforcement operations, including minor decoy and shoulder tap, and to implement procedures to ensure 100% compliance with for smoke-free rental housing tobacco ordinance.	\$936,288

<https://oag.ca.gov/system/files/media/tobacco-grant-2022-2023-grantees.pdf>



GOAL 3: Create and facilitate a countywide enforcers' workgroup that meets quarterly.

Goal Description	Create a space for intra-county collaboration among enforcement agencies, particularly those with tobacco retail license laws. Enforcement workgroup will consist of law enforcement, code enforcement, and city staff. TPP staff will develop agendas based on workgroup's needs and facilitate meetings to allow for sharing of recent policy updates, recognition of enforcement agencies with highest compliance for that quarter, cross county enforcement partnerships, and disseminating information.
Measurable Outcome	After each workgroup meeting, at least 80% of participants will report gaining new information that they can use to more effectively enforce tobacco laws in their jurisdiction.
Timeline	From October 2022 – December 2022 outreach to County enforcement agencies who have recently adopted new tobacco laws such as Antioch, Pleasant Hill, etc. Following the creation of the workgroup, meetings will take place once (1) per quarter, with a minimum of five (5) cities represented in attendance, for a total of twelve (12) meetings throughout the grant period. TPP staff will continue to engage and build upon existing relationships while developing new partnerships across County jurisdictions.
Narrative Description	<p>1. TPP staff will outreach to all enforcement agencies and cities in Contra Costa to offer technical assistance and recruit members for the county-wide enforcement workgroup. Enforcement agents from neighboring counties will be invited to facilitate inter-county collaboration.</p> <p>2. Starting in January 2023, the workgroup will meet on a quarterly basis to discuss what tobacco enforcement looks like in their jurisdiction and learn from each other. Meetings will be in person and held at Contra Costa Health Services, conference call number/and or Zoom will be available to call in. TPP staff will provide an update on inspections conducted as well as provide information on restricted products.</p> <p>3. Staff will evaluate the effectiveness of the workgroup through a post-meeting survey. Changes will be made accordingly to meet the needs of participating enforcement agencies.</p> <p>4. On an annual basis, TPP staff will gather information related to compliance rates from each participating enforcement agency to analyze enforcement efforts and determine how processes could be improved to meet compliance goals.</p> <p>5. TPP staff will provide technical assistance to enforcement agencies throughout the 19 jurisdictions in Contra Costa County as needed on an ongoing basis to ensure wholistic understanding of tobacco laws for more effective enforcement. This includes training and technical assistance to understand the new law if Prop 31 passes in November 2022 banning all flavored tobacco products.</p>

Quarterly Progress Reporting

January 15

April 15

July 15

October 15

**Survey Style - 20mins-30mins*

Benefits of DOJ Grant Funding



Funding for
Personnel and
Departmental Costs
to carry out
enforcement efforts



Retailer
Engagement and
Education



Further protect the
Health and
Wellbeing of the
Community



WHAT IS OUR ROLE AS THE PUBLIC HEALTH DEPT?

Provide Technical Assistance to Brentwood PD: application process, implementation, inspections and reporting PD: application process, implementation, inspections and reporting

Assist Brentwood PD with establishing connections with other Enforcement Agencies; Get connected to resources



Inform Brentwood PD of changes to tobacco laws at the federal, state, and local level

Goal: Annual visits to all retailers to achieve the highest rate of compliance and reduce sales to minors

Our work is linked, we must work together.
TEAMWORK!

CONTRA COSTA
HEALTH



cchealth.org

Thank You