

Attachment 5: Summary of Proposed Updates to the County of Sonoma Tobacco Retail License Policy, 2024

Below are the proposed changes to the County of Sonoma’s tobacco retail license (TRL). They draw from, and conform with, model policy language prepared by the [Public Health Law Center](#)*, state and federal laws, and best practices in public health policy, while also factoring in the practicality of implementation for local governments in California. In the chart below, proposed changes are noted in the following categories: major, minor, and administrative. Each provision includes information on which local jurisdictions have similar policies and whether State or Federal policy exists in this area. Also provided is the public health basis, including research and prevalence data, and other findings.

Policy Element Code Section	Policy Alignment Public Health Basis
Major Changes	
1. ADD: No sale of flavored tobacco products. SC Code Section 32A-4 (a)	<p>This provision establishes policy alignment with Petaluma, Sebastopol, and Windsor. The proposed language establishes a local means of enforcement by aligning with state law and covers products exempted by state law.</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> ● Laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following study findings: <ul style="list-style-type: none"> ○ New York City’s law, which prohibits the sale of all flavored tobacco (excluding menthol at the time of the study) resulted in youth having 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco. ○ Providence, Rhode Island’s law, which prohibits the sale of all flavored tobacco (excluding menthol at the time of the study), resulted in a decline in <i>current use</i> of any tobacco product among high school youth from 22% to 12% and electronic

	<p>smoking device use declined from 13.3% to 6.6%, even as statewide electronic smoking device use among high schoolers increased to more than 20%.</p> <ul style="list-style-type: none"> ● The 2022 California Youth Tobacco Survey found 86.3% of youth who use tobacco products used a flavored product. ● Adding the inability to sell flavored tobacco products locally increases enforcement capacity by setting additional penalties, including a suspension of the retail license to sell all tobacco products, a punishment significantly harsher than California’s \$250 fine. In addition, if a tobacco retailer receives more than four citations in a five-year period, they will lose their license. These are a meaningful deterrents and support compliance.
<p>2. ADD: No sale of electronic smoking devices (ESD) in tobacco retail locations.</p> <p>SC Code Section: 32A-4 (b)</p>	<p>This provision establishes policy alignment with Petaluma, Sebastopol, and Windsor.</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> ● Minors can access electronic smoking devices (ESDs), as evidenced by: <ul style="list-style-type: none"> ○ In Sonoma County (2024), 13% of high schoolers report ESD use in the past week at least or more than once. ○ In Sonoma County, 46% of 11th graders have used an ESD and 29% report use in the past thirty (30) days (2017-2019). ○ In Sonoma County, 76% of 11th graders report that it is “fairly” or “very” easy to obtain ESDs (2017-19). ● There are over 100 studies that document the associations between ESD use and higher disease prevalence. A 2023 epidemiological study concludes that ESDs pose similar levels of risk to cigarette use for cardiovascular disease, stroke, and metabolic disorder. The risk, when compared to cigarettes, is slightly lower for respiratory and oral disease. However, dual use of ESD and cigarettes is riskier than smoking alone for all outcomes measured in the study. ● The above study provides a clear explanation for why ESDs are not a tool for harm-reduction to aide quitting cigarettes: “E-cigarettes expose users to a different toxic chemical mix than cigarettes, including compounds formed during heating and

aerosolization that are not present in the e-liquid itself. Although there is some overlap, dual use of e-cigarettes and cigarettes together delivers a wider range of toxins than either does alone.”

- Electronic smoking device waste is a toxic environmental threat since they introduce plastic, nicotine salts (considered hazardous waste), heavy metals, lead, mercury, and flammable lithium-ion batteries into waterways, soil and to wildlife.
- A 2022 waste characterization study conducted at Sonoma County’s central landfill found that ESDs accounted for 70 tons of waste.
- Public agencies (schools, government, etc.) are required to have ESD products hauled and incinerated at an estimated cost of \$60 per gallon or \$1 per vape. With this calculation, the cost to incinerate the ESD waste collected in 2022 by Sonoma County’s high- and middle-schools would be an estimated \$3.1 million dollars.
- According to the 2023 National Youth Tobacco Survey, the most popular products are disposable or single-use products. However, 37.2% of ESD brands youth users prefer are Vuse (20.7%) and JUUL (16.5%) devices. Both are considered re-usable devices with prefilled single-use pods.
- While the popularized ESDs came onto the market starting with the launch of JUUL in 2016, the FDA was behind on issuing pre-market approval. ESD products, therefore, remained on the market, gaining in popularity. The lack of FDA oversight made it possible for a flood of products/brands to enter the market. Since that time, the FDA has reviewed most (99%) of the applications, approving only two ESD product brands, VUSE and NJOY, in a variety of nicotine strengths and flavors. Millions of products have been denied market approval. FDA, however, is not monitoring the retail environment, they are concentrating their enforcement efforts on manufacturers, distributors and on stopping the flow of illegal international imports. While not explicitly inconsistent with federal policy, state policy allows unflavored ESD devices, beyond the FDA approval list. It has fallen to local jurisdictions to define and determine the ESD market.

<p>3. ADD: No acceptance of price promotions (discounts/coupons) for tobacco products.</p> <p>SC Code Section: 32A-5 (d)</p>	<p>This provision establishes policy alignment with Petaluma, Sebastopol, and Windsor.</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none">● Studies estimate that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%.● Tobacco companies decrease the price of their products to lure new customers, and to counter state taxes and local tobacco control efforts. This tactic is appealing to price-sensitive consumers and results in increased demand for tobacco products. Billions of dollars are spent on discounting and coupons as a major part of tobacco companies' marketing expenditures. For example, in 2018 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.● The tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adult tobacco users accessing some price minimization strategy. Coupon receipt and redemption appears more prevalent among white, younger, female, sexual minority, and more nicotine-dependent smokers.● Price-discounted sales account for a substantial proportion of overall tobacco product sales.● Price promotions/discounts/coupons degrade the minimum price set by localities making tobacco products more affordable to youth and young adults.
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<p>4. ADD: Minimum pack size: Little Cigars (5).</p> <p>SC Code Section: 32A-5 (e-g)</p>	<p>This provision establishes policy alignment with Petaluma, Sebastopol, and Windsor.</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> ● Although the federal government has banned the sale of individual cigarettes since 2006, neither federal nor California state law restrict the sale of individual little cigars and cigars (full size). ● More than half (56%), of Sonoma County retailers sell little cigars individually, making them more affordable and appealing to youth. ● The tobacco distributors provide retailers with little cigars in single, double and five packs. The proposed provision would eliminate the ability to sell single and double packs. Retailer could continue to sell five packs or larger pack sizes (but each cigar in the pack would need to have a value of at least \$2 so that pack sizes above five would not degrade the minimum price’s intended effect). The reason for the provision is because smaller pack sizes tend to be cheaper and more accessible for youth.
<p>5. ADD: Increase minimum price from \$7 to \$10.</p> <p>SC Code Section: 32A-5 (g)</p>	<p>This provision establishes policy alignment with Petaluma and Sebastopol. Note: Windsor Town Council indicated it would increase the minimum price to \$10 if the County did so first.</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> ● 78.3% of California tobacco retailers sell a brand of cigars popular with youth for less than \$1.00. ● Research on the theoretical impact of a \$10 federal minimum price for cigarettes estimates it 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. Further, 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. ● Among county unincorporated retailers, the lowest (averaged) price of cigarettes is \$8.80 and the lowest (averaged) price of a pack of five little cigars is \$7.65 (data collected in 2021).

<p>6. ADD: No new retail location licensed within 1,000 ft of a park, 1,000 ft of a preschool, and 500 ft of another retailer.</p> <p>SC Code Section: 32A-6 (e-f)</p>	<p>This provision establishes policy alignment with Sebastopol, Windsor (Parks and Preschools) and Petaluma (Other Tobacco Retailers)</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> • A high density of tobacco retailers has been associated with increased smoking rates, particularly among youth. • A study of California neighborhoods found that the density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day, which increases in higher density areas.
<p>7. ADD: Only allow sales of tobacco products at the physical licensed location through in-person transaction.</p> <p>SC Code Section: 32A-3 (h)</p>	<p>This provision establishes policy alignment with Petaluma and Sebastopol.</p> <p>CA State Law: Flavor Ban Law, SB 793, and the associated bill, SB 935, apply to any type of retailing, which has recently been interpreted to mean on-line, virtual and in-person.</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> • With the passage of the state flavor ban, some retailers shifted sales of flavored products online as the State, early in the implementation, lacked clear guidelines on whether on-line sales were allowed. Some retailers have tried other strategies, such as having in-person customers order from an electronic device (e.g., phone or iPad) then they “pick-up” the product curbside or at the store during the same visit, referred to as “click and brick.” State law, SB 39, does not allow tobacco sales to be picked-up curbside, and there are strict guidelines for delivery of allowed products, age verification at delivery end, and information to be printed on sales receipts and credit card transactions.
<p>8. REMOVE: Remove restrictions on transfer of license</p> <p>SC Code Section: 32A-9</p>	<p>This provision is being proposed to be removed in response to strong retailer objection and statements made by Board members that they don’t want business viability interfered with by limiting tobacco license transfers. Removing the transfer restriction would mean that the nine retailers located within 1,000 ft a k-12 school or that operate as a significant tobacco retailer would no longer be limited to transferring their tobacco retail license to a family member. All licenses will then be able to be transferred freely.</p>

<p>9. MODIFY: Increase ratio from 1 retailer per every 2,000 people to 1 retailer per every 2,500 people. Would not impact existing retailers.</p> <p>SC Code Section: 32A-6 (d) (1)</p>	<p>This provision establishes policy alignment with the City of Petaluma and Santa Rosa (pending passage by City Council, anticipated by June 2024).</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> • Based on current population, this ratio change would decrease allowable licenses from 66 to 53 As of July 2023, 78 retailers are licensed to sell tobacco in unincorporated Sonoma County. • A high density of tobacco retailers has been associated with increased smoking rates, particularly among youth. • The current density ratio was modeled after alcohol licensing and a requirement to check for public convenience and necessity (PCN) when there is oversaturation of more than 1:2,000. Since tobacco use rates are much lower than alcohol use rates, it's reasonable to increase the ratio as fewer stores are needed to meet a universal standard of PCN. • This change provides the county a mechanism to reduce the density of tobacco outlets in the County. • There are comparative standards in the allowance of cannabis dispensaries, for example, in the unincorporated county, nine dispensaries are allowed, and the population equivalent is 1 per 14,500 people.
<p>10. ADD: Increase penalties to unlicensed retailers for selling product without a license, separate and higher than penalties for licensed retailers who violate the ordinance. Penalties: \$2,500 for the first violation, \$5,000 for the second, and \$10,000 for the third.</p>	<p>This provision would establish policy alignment with the City of Santa Rosa (pending passage by City Council anticipated by June 2024).</p> <p>The public health basis for the provision includes the following:</p> <ul style="list-style-type: none"> • Retailers operating without a license are emboldened to do so when the penalties are not high enough to deter this behavior. These retailers do not risk losing a license because they don't have one. This has been experienced from time to time in county unincorporated. • Unlicensed retailers can make a profit of approximately \$15-\$20 per product as many of the more popular ESDs have about an 80% mark-up above costs. This information was gathered during inspections in early 2024 where DHS tobacco program staff accompanied

<p>SC Code Section: 32A-14 (b) (v-viii)</p>	<p>CA Department of Tax and Fee staff in completing compliance checks. Tax receipts verified the purchase costs of ESDs for the retailer. Staff recommends the fine be set at a level that would disincentivize retailers from thinking that operating without a license would be profitable.</p> <ul style="list-style-type: none"> • Having a two-tiered fine structure is common in licensing scenarios. This is a newer strategy being adopted by jurisdictions with TRLs where unlicensed operators are becoming more of a problem. This only occurs in jurisdictions that have density limits where licenses are limited or unavailable, so they are finding retailers operating without a license. A few counties and cities with TRLs that limit licenses have recently adopted a two-tiered fine structure (County of Santa Clara and City of San Jose) and more are being proposed. The problem of unlicensed retailers appears to be exacerbated by the state flavor ban. <ul style="list-style-type: none"> ○ The County of Sonoma Health Permit for Cannabis Dispensaries has a two-tiered fine structure; unlicensed retailers are subject to a penalty of \$10,000 for their first offense, \$25,000 for second, and \$50,000 for the third.
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<p><i>Minor Changes</i></p>	
<p>ADD: No product sampling, and no smoking indoors or within 20 ft of any licensed retail establishment.</p> <p>SC Code Section: 32A-3 (c)</p>	<p>This provision establishes policy alignment with Petaluma, Sebastopol, and Windsor.</p> <p>The purpose is to codify existing state law to help avoid confusion.</p> <ul style="list-style-type: none"> • Compliance staff have observed employees vaping indoors during inspections. • Reduces secondhand smoke exposure for neighboring businesses, patrons, and community members in close proximity.
<p>ADD: Set a 30-day limit on payment/application for license renewal.</p> <p>SC Code Section: 32A-10</p>	<p>This provision allows enforcement of timely renewal applications and payment, which has been an issue in the past.</p>

<p>REMOVE: Requirements for youth decoy operations.</p>	<p>Since TRL fees do not cover the cost for staff to conduct youth decoy operations, this requirement is being removed. The Sonoma County Sheriff Department, as sworn peace officers, is the only entity in unincorporated Sonoma County allowed to conduct youth decoy visits that can result in a penal code violation. Staffing and capacity issues have prevented many law enforcement agencies, including Sheriff, from conducting these operations consistently. The program will use other grant funds, when possible, to support youth decoy operation. The program currently has alternative funding to support adult decoy operation to check for the sale of flavored tobacco products.</p>
<p>REMOVE: Healthy Retail Program</p>	<p>Funding for this program was retracted before it got off the ground and is no longer available.</p>
<p>ADD: Requires conspicuous posting of signage on premises indicating sales are being temporarily suspended when a violation is issued.</p> <p>SC Code Section: 32A-14 (b) (5)</p>	<p>This provision establishes policy alignment with Petaluma.</p> <p>This provision supports retailers in informing customers and addressing questions as to why tobacco products are not being sold when there's been a suspension/license revocation.</p>
<p>REMOVE: Settlement Option for retailers outlined in the original policy</p>	<p>This provision does not require a settlement offer, but the option to settle remains between the County and a retailer, should a violation occur.</p>
<p>ADD: Exceptions Section; youth purchase, use, or possession & traditional/sacred tobacco use not punishable.</p> <p>SC Code Section: 32A-15</p>	<p>This provision sets responsibility with the retailer rather than the individual user. The penalty is for selling to an underage person rather than the underage person purchasing the product.</p>

Administrative Changes	
Hearing Officer changes	This provision updates the definition to remove authority from the Health Officer to align with how other enforcement in the County is done, for example with Environmental Health, Permit Sonoma and Animal Services.
Enforcement Officer changes	This provision updates the definition to change from Health Officer to Director of Health Services.
Ensures access to the entire premises during inspections. Not allowing the full inspection could be a violation of the chapter. SC Code Section: 32A-13 (c-d)	DHS has received complaints that tobacco products not allowed to be sold are hidden from view and sold illegally. This would clarify that inspectors are to have full access to the store. Products that are not allowed to be sold are also not allowed to be stored on-site.
Add a new basis for denying a new TRL: if the retailer has violated any local, state, or federal tobacco control law in the last 365 days. SC Code Section: 32A-8 (b)	This provision ensures prospective licensees have not been issued a violation for selling to minors (under 21) or a flavored product (SB 793). It ensures new TRL holders are in good standing and are likely to remain in good standing.
Ensures that local policy is not regulating any preempted state/federal language.	This is standard language added to new TRL policy. It ensures legal compatibility with state and federal laws.
Chapter 1 Enforcement Authority. SC Code Section: 32A-14 (b) (iv) & 32A-15 (b)	This provision would provide consistency should DHS be given clearance to use the administrative citation process rather than being limited to abatement/civil charges for any violations. When the ordinance was passed in 2016, the administrative citation code had not been written.