



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 5/14/2024

To: Sonoma County Board of Supervisors
Department or Agency Name(s): Department of Health Services
Staff Name and Phone Number: Tina Rivera, 707-565-4774
Vote Requirement: Majority
Supervisorial District(s): Countywide

Title:

Tobacco Retail License Ordinance - Second Reading

Recommended Action:

Adopt an Ordinance entitled “An Ordinance of the Board of Supervisors of the County of Sonoma, State of California, Repealing and Replacing Chapter 32A of the Sonoma County Code Pertaining to Licensure of Tobacco Retailers.”

Executive Summary:

On April 30, 2024, at a regular meeting, the Board of Supervisors introduced a proposed ordinance to repeal and replace Chapter 32A of the Sonoma County Code pertaining to Licensure of Tobacco Retailers.

The Department of Health Services (hereinafter, “DHS” or “the Department”), in coordination with County Counsel, has reviewed policy options and recommends the repeal and replace of Sonoma County Code Chapter 32A. The Department is recommending the following major updates to the Tobacco Retail License (TRL) Ordinance:

1. no sale of electronic smoking devices*,
2. no sale of flavored tobacco products,
3. no price promotions (such as discounts or coupons) for tobacco products,
4. minimum package size requirements for cigars, and smokeless tobacco**,
5. increase the minimum price from \$7 to \$10,
6. expanded restrictions on licensing new retailers within 1,000 feet of youth-oriented areas to include parks and preschools, and limit proximity of retailers to one another,
7. limit retailers to selling tobacco products on-site only (no on-line sales or delivery),
8. remove transfer limitations,
9. increase the density ratio from 1 per 2,000 residents to 1 per 2,500 residents, and
10. increase penalties for unlicensed retailers selling tobacco products without a license.

* “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 electronic smoking device, e-cigar, e-pipe, vape pen, e-hookah or other electronic nicotine delivery system. Electronic smoking device

includes any component, part, or accessory of the device, and 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, as amended from time to time.

** Little Cigars would need to be sold in a pack of five (5) or more. A package of smokeless tobacco could not be less than ten dollars (\$10.00).

The Department has notified retailers and the community of the proposed changes through mailed correspondence, through virtual and in-person meetings, and by posting information on the County's website.

This item recommends Board adoption of the ordinance on May 14, 2024. A pre-adoption summary was published in the Press Democrat on May 8, 2024. A post-adoption ordinance summary will be published within fifteen days of ordinance adoption. The ordinance will be effective thirty days after adoption.

Discussion:

In October 2019, the Board of Supervisors directed the Department to draft options for an amendment to the Tobacco Retail License (TRL) ordinance to include eliminating the sale of electronic smoking devices (vapes) and banning flavored tobacco sales. The direction was in response to data showing increasingly high rates of vape use by youth in Sonoma County. In October 2023, the Board heard a first read of an ordinance that would update the existing ordinance to include prevailing public health policy, provide consistency with new state laws, and to align with surrounding cities' TRL policies. At a second read, the Board directed the Department to further consult with retailers and community stakeholders about several provisions in the ordinance and to come back with their feedback or proposed adjustments to accommodate retailer needs. This item reflects modifications made to the local TRL ordinance that advance the public's health interests while addressing the items of greatest concern to the commercial sector.

Health and Environmental Impacts

Sonoma County faces persistently high tobacco use among youth, with 13% of local 11th graders reporting recent electronic smoking device (ESD) use, surpassing traditional tobacco products. In 2021-22, adult ESD use declined to 3.4%, while cigarettes remained at 5.9%. ESD health risks include highly concentrated nicotine, harmful chemicals, and toxicity inhaled by users and bystanders. Research suggests dual use increases toxin exposure. ESDs contribute to detrimental inhalation patterns, and studies indicate heightened risks, especially for youth's developing brains. Disposal poses environmental challenges, as non-recyclable, toxic devices, and hazardous waste components contribute to landfill pollution and potential fire hazards. A 2022 study identified vapes accounting for 70 tons of waste in Sonoma County's landfill.

Current Profile of Unincorporated Licensed Tobacco Retailers

The unincorporated area of Sonoma County has 78 licensed tobacco retailers, down from approximately 125 when the County's tobacco ordinance passed in 2016. The majority (54%) of retailers are convenience stores (with or without a gas station), 28% are grocery/markets, 12% are liquor stores, and 5% are other types of retailers (hotels, golf courses, restaurant/only made to order foods). The decline in tobacco retail in the county provides an indication of the success that public health initiatives are having on the reducing the availability of tobacco products and thereby improving population health.

Effectiveness of Tobacco Retail Licenses in Sonoma County

Tobacco retail licenses make several tools available to curb youth use of and access to tobacco products. and County policies have already shown benefits in improving retailer compliance through inspections and education. Retailers that have good training and policies in place that help ensure clerks do not sell to minors (under 21) are less likely to sell illegally. Those jurisdictions with TRLs in Sonoma County have consequences for selling to a minor when the sale occurs under the auspices of a law enforcement agent. With most TRL policies, one can lose their license after four violations, and, after one violation they lose their ability to sell for 30 days, in addition to fines being levied. The most recent educational decoy operation conducted by the Department showed that jurisdictions with TRLs see much lower youth decoy sales rates (3%) compared to those cities without TRLs (14%).

Compliance and Enforcement

Strengthening the County's TRL provides tools to help local retailers come into compliance with new state laws around tobacco sales. The Department has performed annual compliance visits since 2016 as a condition of the TRL policy and license fee. All retailers have been visited in 2024, and while most retailers are compliant with existing local policy provisions, the visits have shown that approximately 30% are out of compliance with the new state flavored tobacco ban.

Proposed revisions establish a level playing field for retailers while providing resources for them to comply with state and local laws. The tobacco industry is repackaging products to be more generic, removing obvious indications of flavor, which makes it more difficult for retailers and authorities to determine if a product can remain on the shelf. Each local enforcement agency must determine which products are flavored, which can lead to inconsistency across jurisdictions. Many tobacco distributors provide guidance to retailers on product sales, and this extends to what products they believe are flavored. However, this advice may be inconsistent with local decisions, and retailers are left confused. The proposed revisions provide the Department and retailers with resources, clarity and consistency regarding which products are allowed to be sold.

The Department conducts periodic underage and adult decoy operations to assess retailer compliance with ID checks and the sale of flavored tobacco products. Recent findings from spot checks and complaints indicate a need for more extensive operations. Over the next two years, the Department will conduct larger-scale operations funded by a grant received to address non-compliance issues.

Policy Options

The following is a list of major updates to the TRL ordinance.

1. No Sale of Electronic Smoking Devices

Currently, 44 jurisdictions in California have policies restricting the sale of electronic smoking devices, including three in Sonoma County: Petaluma, Sebastopol, and Windsor. Compliance checks in unincorporated Sonoma County found that 23 licensed retailers sold electronic smoking devices. Four of these are categorized as Significant Tobacco Retailers and stand to be most impacted by a ban on electronic smoking device sales.

2. No Sale of Flavored Tobacco Products

This provision brings the local policy in line with the state policy and conform to the more restrictive local policies (no exemptions) found in four cities within Sonoma County. Having this provision in local policy provides the enforcement benefits described above, establishing resources and mechanisms to help local retailers comply with existing state and local laws.

3. Discounts Ban

Policies that increase the price of tobacco products are the most proven and effective strategies to discourage tobacco use and encourage quitting. Discounts, or price promotions, are commonly used by retailers and are often a condition of contracts with their distributors. All discounts erode the intended effect of minimum pricing, and other taxes passed by voters, by lowering prices.

4. Set Pack Size for Cigars/Little Cigars

Little cigars are to be sold in a pack of five (5) or more. With this package size, a package of little cigars cannot have a value of less than two dollars per each little cigar (\$2.00) when packaged (i.e., a package of 20 could not be sold for \$10). A single full-size cigar cannot be less than ten dollars (\$10.00). A package of smokeless tobacco cannot be less than ten dollars (\$10.00). Setting pack sizes is a common component of TRLs across the state.

5. Increase Minimum Price

This provision increases the current minimum price of \$7 to \$10. As the first jurisdiction in California to adopt a minimum price, the County of Sonoma paved the way for other jurisdictions. There are now 36 jurisdictions across California with this provision. Locally, this includes the cities of Petaluma (\$10), Sebastopol (\$10), and Windsor (\$7). Windsor Town Council indicated they would increase their minimum price to \$10 if the County did so.

6. Restriction on Retail Locations for New License Holders

This provision expands the definition of youth-oriented areas to include large preschools, libraries, and parks, and would restrict new licenses from being issued within 500 ft of an existing tobacco retailer. In 2016, the TRL set a restriction that new retailers could not be within 1,000 ft of a K-12 school. This provision applies only to new retailers when licenses become available in the unincorporated areas and would not apply to existing license holders. This will reduce the density of tobacco retailers near locations where youth congregate.

7. Limit retailers to selling tobacco products on-site only (no on-line sales or delivery)

This provision allows sales of tobacco products to occur only in-person at the licensed business location, thereby prohibiting all other manner of sales, including but not limited to online sales, sales from app-based delivery, and where a retailer arranges for a customer in the store to make a purchase on-line and then pick-up on-site or in the parking lot. In-person sales are easier for the Department to monitor and regulate consistency with the flavor ban and ID checking practices.

8. Increase the Density Ratio

This provision increases the density ratio to from 1:2,000 to 1:2,500. The density ratio change decreases the number of licenses available to retailers interested in applying for a TRL. At 1 per 2,000 the limit would be reached when the number of retailers drops below 66 (currently there are 78). The new density ration results in a new threshold of 53 retailers before new licenses would be issued).

9. Remove Transferability Restrictions

This provision removes all restrictions on the transfer of a TRL, allowing all retailers, regardless of their proximity to a K-12 school or the nature of their business (i.e., a Significant Tobacco Retailer), to transfer their tobacco retail licenses. Currently, most retailers can transfer their licenses with no restrictions. However, there are limits to transferability for the nine retailers located near a K-12 school and those determined to be a Significant Tobacco Retailer; these retailers can only transfer their license, upon the sale of their store, to a family member. With this adjustment to the ordinance, these nine retailers have the family-only transfer

restriction removed.

10. Increase in Fines

This provision increases penalties to unlicensed retailers for selling tobacco products without a license, separate and higher than penalties for licensed retailers who violate the ordinance. Penalties include: \$2,500 for the first violation, \$5,000 for the second, and \$10,000 for the third. There have recently been several instances of retailers initiating tobacco sales in the county without a license and the Department has encountered limitations in the tools they can use to encourage retailer compliance with the license requirement. SC Code Section: 32A-14 (b) (v-viii).

Additionally, the Department is analyzing the potential for Administrative Citation. A staff report will be presented to the Board for consideration later this year.

Stakeholder Outreach

The Department hosted virtual meetings for unincorporated tobacco retailers on October 11, 2023 and October 16, 2023, prior to the October 24, 2023, Board meeting, and on February 20, 2024. Presentations included a summary of the proposed policy updates, and other policies passed across Sonoma County. Meetings provided an opportunity for participants to ask questions. The October 11, 2023 meeting had zero attendees, and the October 16, 2023 meeting had one unincorporated tobacco retailer in attendance. The February 20, 2024 meeting was attended by 15 individuals, two were lobbyists and others were presumably retailers (participants were asked to identify their names and stores in the chat feature of the meeting, but none chose to do so). Staff were able to confirm that three attendees were unincorporated tobacco retailers by crosschecking their phone numbers with Department records.

- Mailings inviting retailers to the October 2023 meetings were sent via email and US Postal Service to all County TRL holders on September 29, 2023.
- Notice of the Board item was posted on the tobacco program webpage from October 4, 2023 through October 23, 2023 and on social media from October 16, 2023 through October 23, 2023.
- Mailings inviting retailers to the February 2024 meeting were sent via email and US Postal Service to all County TRL holders on February 1, 2024, and February 9, 2024.
- Text message reminders about the February 2024 meeting were sent to retailers who provided cell phone numbers in their tobacco retail license application.
- Information was posted on the Sonoma County website.

In addition, Department staff presented the details of the proposed updates to the Lower Russian River Municipal Advisory Council on December 14, 2023.

Strategic Plan:

N/A

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

Agenda Date: 5/14/2024

On April 30, 2024, the Board adopted a resolution introducing, reading the title of, and waiving further reading of a proposed ordinance repealing and replacing Chapter 32A of the Sonoma County Code pertaining to licensure of tobacco retailers.

On October 24, 2023, the Board adopted a resolution introducing, reading the title of, and waiving further reading of a proposed ordinance repealing and replacing Chapter 32A of the Sonoma County Code pertaining to licensure of tobacco retailers.

FISCAL SUMMARY

Expenditures	FY23-24 Adopted	FY24-25 Projected	FY25-26 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
General Fund Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

There is no fiscal impact associated with this item.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment 1 - Ordinance

Attachment 2 - Post Adoption Summary

Related Items "On File" with the Clerk of the Board:

None