Legislation Text

File #: 2023-1202, **Version:** 1

To: County of Sonoma 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 Retailer Licensing Ordinance - Chapter 32A of the Sonoma County Code (First Reading)

Recommended Action:
Adopt 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.

Executive Summary:
In October of 2019, the Board of Supervisors directed the Department of Health Services (Department) to draft options for an amendment to the Tobacco Retail License (TRL) ordinance to include eliminating the sale of e-cigarettes and banning flavored tobacco sales. The direction was in response to data showing increasingly high rates of e-cigarette use by youth in Sonoma County.

The Department, in coordination with County Counsel, has reviewed policy options and is recommending to repeal and replace of Sonoma County Code Chapter 32A. The Department is recommending the following major updates to the TRL Ordinance:

1) no sale of e-cigarettes,
2) no sale of flavored tobacco products,
3) ban the acceptance of price promotions (such as discounts or coupons) for tobacco products,
4) minimum package size requirements for little cigars and cigars,
5) increase to the minimum price from $7 to $10,
6) expand the provision that restricts the licensing of new retailers licensed within 1,000 feet of a youth-oriented areas to include parks and preschools, and to limit proximity of retailers to one another (minimum 500 feet between tobacco retailers), and
7) limit retailers to selling tobacco products on-site only (no on-line sales or delivery).

The Department has informed retailers and the community of the proposed changes via letters, community meetings and social media, and has posted information and meeting recordings on the county's website.

This item recommends Board adoption of the proposed ordinance on or after November 7, 2023. If approved, a pre-adoption ordinance summary will be published at least five days prior to the date on which the Board will consider adoption of the ordinance and 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 of 2019, the Board of Supervisors directed the Department of Health Services (Department) to draft options for an amendment to the Tobacco Retail License ordinance to include eliminating the sale of e-cigarettes and banning flavored tobacco sales. The direction was in response to data showing increasingly high rates of e-cigarette use by youth in Sonoma County.

Prevalence and Use Patterns

According to the 2023 Sonoma County Youth Truth survey, 13% of high school 11th graders report use of e-cigarettes, while cigarette use remains lower at 6% (https://youthtruth.surveyresults.org/public/#/reports/65797 <https://youthtruth.surveyresults.org/public/>). Nationally, according to the National Institute on Drug Abuse (NIDA) Monitoring the Future Survey, nicotine vaping is stabilizing among youth with 27% of 12th graders reporting vaping in 2021-2022.
In 2020, Sonoma County's adult "used e-cigarettes in the past 30 days" rate was 4.2%. In California, adult use of e-cigarettes was 3.3% in 2020. Studies show that most adult e-cigarette use is being supplemented with smoking instead of replacing it, commonly referred to as "dual use," with research showing that 55% of current adult e-cigarette users also smoked cigarettes (2016).

E-cigarette Evolution and Toxicity

In 2015, Juul Labs Inc. revolutionized the electronic cigarette market by remaking the first generation "cig-a-likes" into re-usable, slender, discreet, devices. The company was the first to engineer the higher concentrated salt-based nicotine formula that is now the industry norm. This is when youth e-cig use emerged as a problem faced by local schools and parents.

Juuls have been outpaced by "disposable" or single-use, non-refillable e-cigarettes that carry more juice than the earlier pod-based or refillable systems.

E-cigarette disposal involves discarding hazardous, electronic, and plastic waste into landfills. Currently, there is no way to properly dispose of these single-use devices and many end up in the garbage or as litter where chemicals can leach into the environment and batteries pose a fire risk. A 2022 waste characterization study conducted at Sonoma County's central landfill found that e-cigarettes accounted for 70 tons of waste.

Cessation Efficacy and Health Effects of E-Cigarettes

Since being introduced in the mid-2000's e-cigarettes have never met the research threshold to become an FDA approved cessation device. Moreover, there is now ample research on the negative health impacts, safety, and efficacy of these products. First, nicotine is a neurotoxin, and the accompanying propellants and flavors have chemicals that are toxic to lungs. The products are designed for efficiency (battery-activated so they don't burn away like a cigarette) but this feature also facilitates a detrimental pattern of use that involves long inhalations repeated frequently, further increasing nicotine intake and susceptibility for dependence. The salt-based formula, which shuttles more nicotine into the body also mitigates harshness on the throat, allowing for a deeper inhalation into the lungs, which has been shown to cause greater lung damage. A 2019 study found that using e-cigarettes increases one's odds of having a stroke (by 72%), heart attack/angina (by 59%) and coronary heart disease (by 40%).

When youth and young adults use e-cigarettes, the associated problems are worse due to their developing brains and propensity for dependence. Furthermore, studies show that young people who use e-cigarettes have a greater chance of becoming cigarette smokers.

Current Profile of Unincorporated Licensed Tobacco Retailers

The unincorporated area of Sonoma County has 79 licensed tobacco retailers. There is a density limit in the ordinances that is based on the population ratio of 1:2,000. The number of retailers has not dropped below this ratio (73 retailers) thus far, so no new retailers have been added since the passage of the TRL.

The Department has performed regular compliance visits since 2016 as a condition of the TRL policy and fee. Most (54%) 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).

In addition, recently, most tobacco retailers throughout Sonoma County were visited to provide education on federal, state and local tobacco laws. The following are relevant observations from these visits:

- Many retailers are out of compliance with the new state flavor ban, prohibiting tobacco retailers from selling most flavored tobacco products. More local flavor bans that are consistent with one another will help address this situation.
- There are many new tobacco products on the market that require, by law, localities to determine if they are flavored or not. A local law would help facilitate this process of product determination and allow for greater consistency across jurisdictions.
- A growing number of tobacco retailers across the state, including some in Sonoma County, have shifted their flavored tobacco products to online sales as this is permissible under the new state flavor ban. The most effective way to mitigate this loophole is by restricting online sales altogether at the local level.

From time to time, underage decoy operations are conducted (educational only, no citations allowed). The results from recent operations are as follows: December 2021 survey found that 75 of 156 (48%) retailers sold to the underage young adult. Noteworthy is that 41% of retailers did not ask for identification. After these poor results, the Department took concerted efforts to educate and inform retailers on the need to check ID. In 2023, the Department conducted an operation on 100 retailers, focusing on problem retailers. Of the 100 retailers surveyed, 17 sold to the underage decoy.

Discussion of Policy Options

The Department is recommending updates to the TRL ordinance, major updates are listed below.

See Attachment 4 for a summary of all proposed major, minor and administrative changes.

1. No Sale of E-Cigarettes

The first jurisdiction in California to ban e-cigarettes was San Francisco in 2019. Currently, 44 jurisdictions in California have passed policies restricting the sale of e-cigarettes, including three in Sonoma County: Petaluma, Sebastopol, and Windsor.

A scan of local unincorporated retailers found that 30% sold e-cigarettes. Four retailers are categorized by the ordinances as being Significant Tobacco Retailers (where the principal business purpose is to sell tobacco products and paraphernalia) and stand to be most impacted by a ban on e-cigarette sales.

2. No Sale of Flavored Tobacco Products

In December 2022, California's tobacco flavor ban became enforceable. The law has a few minor exemptions for flavors: it allows the sale of flavored loose-leaf tobacco for pipes, flavored premium cigars priced at $12 or higher, and flavored shisha (for hookah). The law does not preempt local jurisdictions from having more restrictive flavor policies.

As of July 2023, 128 jurisdictions in California have implemented some form of local restriction on flavored tobacco products. Sixty-seven (67) of these policies have been passed in the Bay Area and neighboring counties (Alameda, Contra Costa, Lake, Mendocino, Marin, Napa, San Francisco, San Mateo, Santa Clara, Sonoma, Solano, and Santa Cruz). Of these, 78% do not allow the sale of any flavored tobacco products. Notably, all of Marin County's and Santa Cruz's tobacco retailers are subject to a local flavor ban.

3. Discounts Ban

Discounts, or price promotions, are commonly used by retailers and are often a condition of contracts with their distributors. This strategy is known to be effective at attracting non-smokers/vapers to initiate use and to encourage new users to smoke more often, according to seminal research on the topic. The modern face of discounting involves the internet, social media and supporting technology, such as geo-locating and geo-targeting. The portability and on-demand nature of discounts makes them easier to use and remember. All discounts erode the intended effect of minimum pricing, and other taxes passed by voters, by lowering prices. In Sonoma County, three jurisdictions: Petaluma, Sebastopol, and Windsor have incorporated a ban on accepting discounts or coupons in their TRLs.

4. Set Pack Size for Cigars/Little Cigars

Setting pack sizes is a common component of Tobacco Retail Licensing programs (TRLs) across CA. The Town of Windsor, City of Sonoma, City of Petaluma, and City of Sebastopol have all adopted pack size limits in their TRLs. Having a pack size provision, in addition to minimum price, is a combination that increases the effectiveness of each. Currently, because the County Unincorporated TRL does not have a pack size limit, the minimum price can be applied to any pack size of little cigars. Thus, the minimum price effect can be circumvented by having more cigars in a pack.

5. Increase Minimum Price

As the first jurisdiction in California to adopt a minimum price, the County of Sonoma has paved the way for other jurisdictions. There are now 36 jurisdictions across CA 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 New Retail Locations

In 2016, the TRL set a restriction that new retailers could not be within 1,000 ft of a youth-oriented area, defined as a K-12 school, and this proposal would add preschools (large), libraries, and parks. The Town of Windsor, City of Petaluma, and City of Sebastopol have broadened their definitions. The proposed expansion would mean that in addition to the current nine retailers, another 24 retailers would be within the 1,000-foot buffer zone. Because the existing ordinance restricts license transferability for a location within the buffer zone, these retailers would be limited to transferring their tobacco license to immediate family members, as opposed to an arm's length transaction (for retailers outside a buffer zone). More information regarding the specific retail locations can be found in Attachment 5.

The City of Petaluma has restricted new licenses from being within 500 ft of another tobacco retailer.

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

This provision addresses an issue that has grown since the new CA flavor ban, which does not address online sales so retailers are beginning to shift their flavored inventory to online. This provision would limit the sales of tobacco products to in-person sales only at the licensed business location. Customers can continue to order

and pick up in store the products allowed by the law.

This provision sets limits for online sales, sales from app-based delivery, or brick and click store fronts. Brick and click have become more popular due to the passage of SB 793. This provision would also allow online/app -based orders but products would have to be picked up at the physical location.

Stakeholder Outreach

On October 11th and 16th of 2023, the Department hosted two public community engagement meetings via Zoom. Both meetings presented a summary of the current policy, proposed updates, and other policies passed across Sonoma County. Meetings provided an opportunity for participants to ask questions.

- Mailings went out to all current retailers located in unincorporated Sonoma County via email and USPS.
- Information was posted on the Sonoma County website.
- Social Media posts were made and boosted.
- Information was shared with Hearts of Sonoma County, the Maternal, Child, Adolescent Health Advisory Board to the Sonoma County Board of Supervisors, and the Tobacco-Free Sonoma County Community Coalition.
- Staff made themselves available for one-on-one technical assistance.
- Staff were made available for community group presentations (in-person or virtual), as appropriate and as requested.

Strategic Plan:
N/A

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?
No

Prior Board Actions:
On October 8, 2019 a Minute Order was presented and the Board directed the Department to draft options for an amendment to the Tobacco Retailer License ordinance to address electronic nicotine delivery systems and flavored tobacco products to accomplish the following: 1) Halt retail access of electronic nicotine delivery systems until the United States Food and Drug Administration has reviewed and approved electronic nicotine delivery systems as safe for consumers; and 2) Ban the sale of flavored tobacco products.

On August 28, 2018 the Board adopted an ordinance amending Chapter 32A of the Sonoma County Code to lower the minimum age for persons selling tobacco from 21 to 18 years.

On July 10, 2018 the Board adopted an ordinance amending Chapter 32A of the Sonoma County Code to make necessary administrative clean-up clarifications regarding pricing related to packages of cigars and little cigars.

On April 19, 2016 the Board adopted an ordinance adding Chapter 32A (Licensure of Tobacco Retailers) to the Sonoma County Code to require the licensure of tobacco retailers within Unincorporated Sonoma County.

FISCAL SUMMARY

Expenditures	**FY 23-24 Adopted**	**FY 24-25 Projected**	**FY 25-26 Projected**
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	**0**	**0**	**0**
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	**0**	**0**	**0**

Narrative Explanation of Fiscal Impacts:
There are no fiscal impacts 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 - Resolution Introducing and Waiving the Reading of the Proposed Ordinance
Attachment 2 - Proposed Ordinance
Attachment 3 - Pre-Adoption Ordinance Summary
Attachment 4 - Summary of Proposed Updates
Attachment 5 - Youth Oriented Areas

Related Items "On File" with the Clerk of the Board:
None