

Public Health Response to Retailers' Concerns about Tobacco Retail License

Licensing will have a significant and disproportionate impact on small, locally owned businesses and on businesses that are already diligently not selling to minors.

- Clackamas County Public Health Division (CCPHD) is grateful for tobacco retailers who responsibly operate their businesses and comply with current tobacco control laws. Unfortunately, fourteen percent (11/79) of retailers in Clackamas County illegally sold tobacco to minors during the inspections conducted by the Oregon Health Authority between November 2017 and March 2018.¹ If tobacco retail licensing is adopted, Clackamas County Public Health Division would be able to follow-up on complaints received of retailers not complying with tobacco-related laws. Businesses in violation of laws would face penalties to be determined by a Rules Advisory Committee.
- An annual license fee of \$500 - \$600 amounts to \$1.37 and \$1.64 per day to sell tobacco and nicotine products. Smaller retailers could raise the price of a pack of cigarettes by \$.12 to offset the cost of the license fee, minimizing the impact of a TRL on store revenue.²

Law enforcement is not effectively enforcing existing age restrictions.

- The *Oregon Health Authority* contracts with the *Oregon State Police Drug Enforcement Section* to conduct unannounced inspections to test retailers' compliance with minimum legal sales age of tobacco products. Due to the State's limited capacity, only a small random sample of retailers are inspected each year. Inspections do not include education, and enforcement for violations is inconsistent.
- A county-wide tobacco retail license would offer consistent and equitable enforcement and inspections for all retailers, augmenting the State's current inspection strategy by visiting every tobacco retailer annually.
- A strong enforcement strategy with graduated penalties for repeated violations is an essential element of an effective tobacco retail license. The threat of a suspended license to sell tobacco motivates retailers to comply with tobacco control laws.

Creating and changing law and policy does not effectively change behaviors.

- Knowing something is bad for us is not often enough to deter behaviors. Despite the education that students receive in school about the harm of tobacco, over 40% of 11th graders have used any form of tobacco.³
Policy does impact behavior change. A recent assessment of 33 communities in California that implemented a tobacco retail license showed dramatic decreased rates of illegal youth sales.⁴

Retailers should not bear the financial burden of a public health effort targeted and changing teen decision-making. Schools are far more influential and efforts focused there would have better results and better outcomes for local economies.

¹ Oregon Tobacco Retail Enforcement Inspection Results 2017 – 2018.

<https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/TOBACCOPREVENTION/Pages/retailcompliance.aspx#inspections>

² Upstream Public Health, Health Equity Impact Analysis

³ Oregon Healthy Teens 2017

https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/SURVEYS/OREGONHEALTHYTEENS/Documents/2017/County/03_Clackamas.pdf

⁴ American Lung Association. (2013). Tobacco retailer licensing is effective. Accessed at <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September2013.pdf>

- In spite of the education students receive in school about the dangers of tobacco, alcohol, and other drugs, more than 40% of 11th graders report using some form of tobacco.⁵ Given the high propensity of students to join their peers in risking taking behaviors, a comprehensive approach that includes policy is necessary to prevent youth from experimenting with substances. A tobacco retail license would complement education by ensuring retailers do their part to keep tobacco and e-cigarettes out of the hands of adolescents.
- Studies show that density of tobacco retailers and proximity of retailers to schools impacts youth tobacco rates. The prevalence of smoking is higher at schools with five or more retailers within the area.⁶ Ensuring that current tobacco laws are being followed is a decision that supports the vitality of Clackamas County.

The structure of the fee would require co-located businesses to obtain multiple licenses. This is a significant issue in rural areas where co-located businesses have much lower sales volume.

- This feedback is valuable and something to consider in developing the rules. A strategy to consider for retailers who have a lower volume of tobacco sales is identifying healthy items to add to store inventories that would be more desirable and profitable than tobacco.

Business owners do not believe they can effectively raise prices to offset the licensing fee because their larger-volume competitors, who also receive volume discounts and other incentives that small retailers do not, will not similarly raise prices.

- Clackamas County Public Health Division acknowledges the challenges small retailers face with large chain stores. The Rules Advisory Committee can explore strategies to equitably address these challenges while supporting a fully funded Tobacco Retail License program.

Retailers report parents buying tobacco for their children.

- Tobacco Retail Licensing will not prevent all minors from accessing tobacco and nicotine products when supplied to them by adults over the age of 21. It does, however, support healthy environments by enforcing all tobacco control laws such as prohibiting sales of single cigarettes.

Is the cost to small businesses worth the expected results?

- The American Lung Association Center for Tobacco Policy and Organizing studied the effects of a strong TRL ordinance in 33 California communities in 2013. They found significant decreases in illegal sales to minors in nearly every community; 14 communities saw decreases of 30% or more in the time since a strong tobacco retail licensing ordinance was adopted.⁷ Tobacco retail licensing is a mechanism to reduce youth access to tobacco and nicotine products by enforcing age restrictions on the purchase of tobacco and nicotine products.⁸
- The Economic Impact study done by NERC demonstrated that the financial impact of Tobacco Retail Licensing amounts to about \$1.50 per day. A separate Health Equity Impact Analysis estimated in 2015 that a small retailer could raise the price of a pack of cigarettes by \$0.12 to offset the cost of a \$500 license.

⁵ Oregon Healthy Teen Survey 2017

⁶ McCarthy, W.J.; Mistry, R., Lu, Y., Patel, M., Zheng, H., & Dietsch, B. (2009). Density of Tobacco Retailers Near Schools: Effects of Tobacco Use Among Students. *American Journal of Public Health*, 99, 2006-2013. doi:10.2105/AJPH.2008.145128

⁷ The Center for Tobacco Policy & Organizing. Tobacco Retailer Licensing is Effective. 2013. <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>

⁸ The Center for Tobacco Policy & Organizing. Reducing Youth Access to Electronic Cigarettes through Tobacco Retailer Licensing. 2015. <http://center4tobaccopolicy.org/wp-content/uploads/2016/11/E-cigarettes-in-TRL-April-2015.pdf>.

- Tobacco Retail Licensing is a recommended and standard practice throughout the United States. Oregon is one of 9 states in the nation that does not have this licensing implemented. Four counties in Oregon have a current tobacco retail licensing policy in place, with many other counties working on implementing similar ordinances. Multnomah and Klamath counties are examples of county-wide policies that have engaged all retailers. As e-cigarette use has become epidemic among youth, it is necessary for Clackamas County to take measures to protect our population.

Is the impact of charging a standard license fee for both (1) high volume large businesses and low volume small businesses and (2) compliant businesses and offending businesses an economically appropriate policy?

- All businesses and communities, large and small will benefit from a Tobacco Retail License. Tobacco remains the number one cause of preventable death in the nation and in Clackamas County. Employee's tobacco use decreases productivity and increases employers' costs. Business communities across the country are addressing this challenge by working with public health to develop and promote tobacco policies that support a healthy future workforce and prosperous communities.
- In order for Tobacco Retail Licensing to be effectively enforced, the licensing fee must cover the cost of administration, education and enforcement. All businesses, regardless of size, will receive the same level of service from Public Health. A flat fee alleviates the administrative burden from businesses to report revenue from tobacco sales.