

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Sitting/Acting as the Board of Health

## Policy Session Worksheet

**Presentation Date:** 2/26/2019

**Approx. Start Time:** 3:45pm

**Approx. Length:** 30 minutes

**Presentation Title:** Protecting Youth through Tobacco Retail Licensing: Draft Ordinance Overview

**Department:** Health, Housing & Human Services, Public Health Division

**Presenters:** Dr. Sarah Present and Bentley Moses

**Other Invitees:** Richard Swift

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

At the direction of the Board of County Commissioners (BCC), staff from Health, Housing & Human Services (H3S) are presenting a draft ordinance for a countywide Tobacco Retail License (TRL). The draft ordinance and other supporting materials are included as attachments.

Staff are requesting the BCC's support to proceed with presenting the ordinance at the Business Meetings on March 14 and 28, 2019.

### EXECUTIVE SUMMARY:

Public Health Staff from Health, Housing & Human Services (H3S) have presented TRL-related progress during three previous policy sessions

- January 30, 2018 - Information
- October 2, 2018 - Information
- January 8, 2019 - On January 8, 2019, the BCC directed County Counsel to develop a draft TRL resolution and TRL ordinance.
- January 24, 2019 - the BCC approved the resolution, which outlined the County's support of a TRL and detailed harms associated with tobacco and nicotine use, as well as the overall effectiveness of a TRL in enforcing existing tobacco-related laws and reducing youth access to tobacco and other nicotine products.

County Counsel and staff from H3S are presenting the draft TRL ordinance today and request the BCC's support in presenting the ordinance during the March 14 and 28, 2019, Business Meetings.

### FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget?  YES  NO

What is the cost? N/A

What is the funding source? In fall 2018, Clackamas County Public Health Division received nearly \$300,000 through a competitive grant from the Oregon Health Authority to further the County's work in reducing youth access to tobacco and nicotine products. Public Health is using this funding to develop a TRL to enforce all tobacco-related laws. This has involved extensive community outreach, stakeholder engagement, and program development research.

### STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
  - Sustaining public health and wellness.

- How does this item align with the County's Performance Clackamas goals?
  - Ensuring safe, healthy, and secure communities.

**LEGAL/POLICY REQUIREMENTS:** NA

**PUBLIC/GOVERNMENTAL PARTICIPATION:** Public and Government Affairs is an instrumental partner in this project and is providing public engagement and government relations support.

**OPTIONS:**

For the BCC's consideration, options include the following:

1. Direct County Counsel and staff from H3S to present the ordinance on March 14 and 28, 2019.
2. Direct County Counsel and staff from H3S to take different actions.

**RECOMMENDATION:**

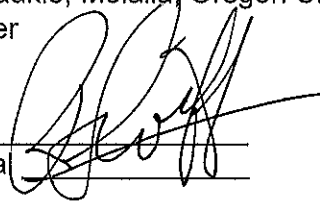
Staff respectfully recommends the BCC choose option 1.

**ATTACHMENTS:**

- Presentation slides
- Draft ordinance
- TRL resolution (Board Order No. 2019-04)
- City resolutions and letters of support
  - Resolution from City of Gladstone
  - Resolution from City of Milwaukie
  - Resolution from Oregon City
  - Resolution from West Linn
  - Letter of support from City of Sandy
  - Letter of support from Oregon City Together
  - Letter of support from Preventing Tobacco Addiction Foundation
  - Letter of support from Superintendents
  - Letter of support from Vibrant Future Coalition
  - Letter of support from American Cancer Society Volunteer
  - Letter of Support from Oregon Health Authority
  - Letter of Support from Oregon Health Equity Alliance
- Youth under 21 and tobacco retail location maps (Canby, Colton, Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, Tualatin, West Linn, Wilsonville)
- Letter from a tobacco retailer

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
 Department Director/Head Approval \_\_\_\_\_  
 County Administrator Approval \_\_\_\_\_



For information on this issue or copies of attachments, please contact Richard Swift at 503-650-5694.

# Protecting Youth through Tobacco Retail Licensing

Board of County Commissioners

Policy Session

February 26, 2019

# Youth Use of Tobacco Increasing

	2014	2019
Tobacco-related deaths	595	679
Youth population	88,342	87,315
11 <sup>th</sup> grade cigarette smoking	9%	14%
11 <sup>th</sup> grade non-cigarette tobacco use	17%	29%

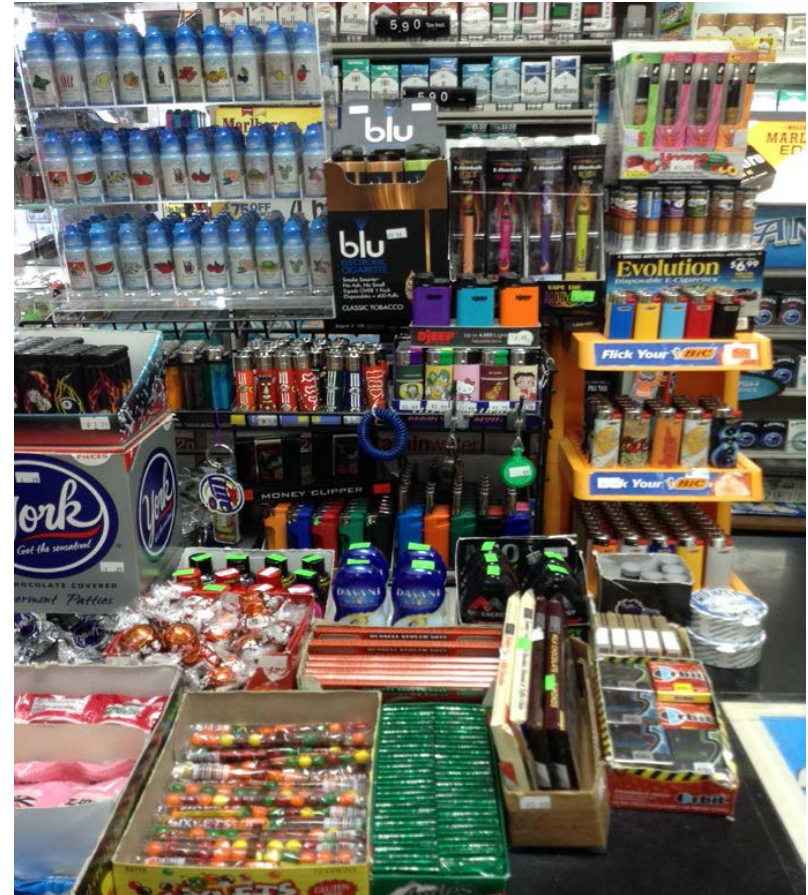
*Non-cigarette tobacco products include: cigars, pipe tobacco, hookah tobacco, chewing tobacco, dissolvable tobacco, and electronic cigarettes*

Clackamas County Fact Sheets, 2104 and 2019

Data sources available at <https://smokefreeoregon.com/sources/>

# What is Tobacco Retail Licensing (TRL)?

- Enforces existing tobacco control laws
- Requires businesses to purchase a license to sell tobacco & nicotine products
- Establishes relationships with retailers



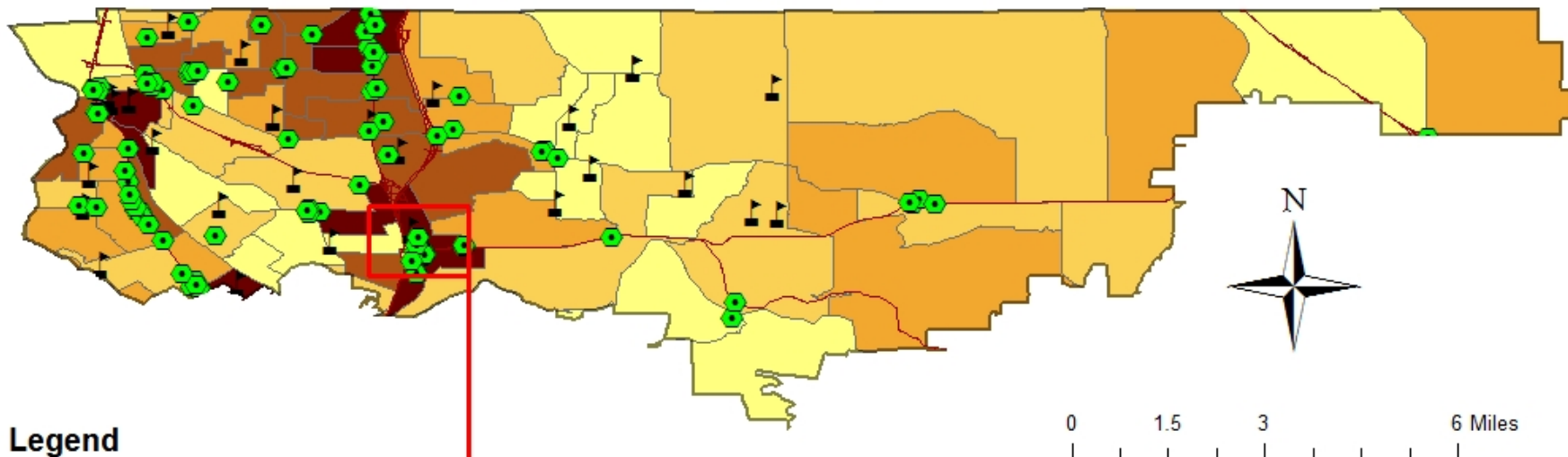
# TRL Fundamentals

- A license is required for each address at which tobacco products, tobacco paraphernalia, or inhalant delivery systems are available
- Licenses are valid for one year, renewed annually
- Fees are used exclusively to fund the costs of administration and enforcement of the ordinance

# Eligibility for TRL

- All businesses currently selling tobacco and nicotine products will be eligible to apply for a tobacco retail license
- A *new* business located within 1000 feet of any school, child care center, or establishment that serves children will not be eligible for a tobacco retail license.
- Existing businesses will be grandfathered in






# North Clackamas Health Equity Zone Tobacco Retailers, Schools, and Percentage in Poverty: By Census Block Group

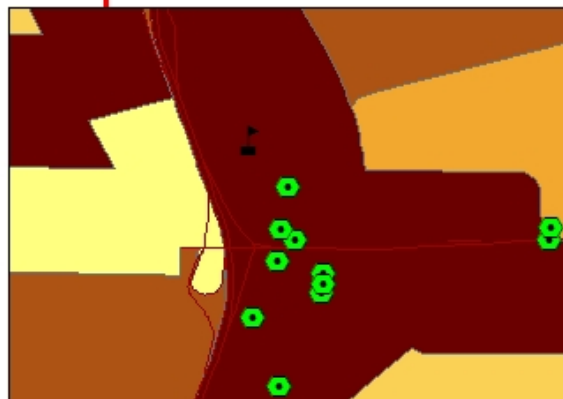


## Legend

-  Tobacco Retailers
-  Schools
-  Highways

## Percent in Poverty

-  0 - 4
-  5 - 8
-  9 - 13
-  14 - 22
-  23 - 45



0 1.5 3 6 Miles



Public Health  
Prevent. Promote. Protect.

Health, Housing  
& Human Services   
CLACKAMAS COUNTY

Clackamas County Public Health Division  
Data Source: ACS 5-year estimates, 2011-2015,  
Oregon Department of Education, and  
Clackamas County Health Division



# Inspections & Penalties

- Public Health will inspect each retailer at least once per year
- A tobacco retail license can be suspended or revoked if a retailer is found with multiple violations of the ordinance

# Rules Advisory Committee

- Public Health will develop Rules to implement the TRL ordinance via a Rules Advisory Committee
- The Rules Advisory Committee will inform the adoption of rules to address license application, enforcement, inspections, data collection and educational information

# Timeline of TRL

## 2019

- Present ordinance
- Establish Rules Advisory Committee
- Communicate change to tobacco retailers

## 2020

- Begin issuing licenses to retailers

## 2021

- Begin inspections of retailers

# Proposed Next Steps

- First reading of Tobacco Retail Licensing Ordinance to the Board of Health on March 14<sup>th</sup>
- Second reading of Tobacco Retail Licensing Ordinance to the Board of Health on March 28<sup>th</sup>
- Facilitate a Rules Advisory Committee

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance Amending the Clackamas County Code by Adding  
Chapter 8.10 TOBACCO and INHALANT DELIVERY SYSTEMS  
RETAIL LICENSING AND SALES**

WHEREAS, Clackamas County is the Local Public Health Authority under Oregon Public Health Laws and the Clackamas County Board of County Commissioners acts as the Local Board of Health; and

WHEREAS, nicotine products have been shown to be highly addictive and associated with serious health risks, and state and federal law regulates youth access to tobacco/nicotine products which enhances the public health and welfare of current and future generations; and

WHEREAS, Clackamas County desires to promote compliance with federal, state, and local laws relating to the retail sale of tobacco products and inhalant delivery systems and discourage violations of tobacco-related laws, particularly those which relate to minors; and

WHEREAS, Clackamas County finds that it is in the best interest for the health of its citizens to license tobacco retailers; now, therefore;

The Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** This ordinance is enacted in accordance with the Board of Health's Resolution No. \_\_\_\_\_

**Section 2:** Licensing of retail sales tobacco products and inhalant delivery systems will promote compliance with federal, state, and local laws relating to the retail sale of tobacco products and inhalant delivery systems and discourage violations of tobacco-related laws, particularly those which relate to minors.

**Section 3:** Public Health Division will begin accepting applications for Tobacco Retail licenses on \_\_\_\_\_.

**Section 4:** Clackamas County Code Title 8 is hereby amended by adding Chapter 8.10, Tobacco and Inhalant Delivery Systems Retail Licensing and Sales, attached hereto as Exhibit A and incorporated herein by this reference.

///

///

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

DRAFT

**Exhibit A**

**CHAPTER 8.10 TOBACCO and INHALENT DELIVERY SYSTEMS  
RETAIL LICENSING AND SALES**

- 8.10.010 Purpose
- 8.10.011 Definitions
- 8.10.012 License Required
  - Fee for License
  - Issuance of Privilege and Not a Right
  - Grounds for Denial
  - License Renewal and Expiration
  - License Nontransferable
- 8.10.013 Prohibitions
- 8.10.014 Policy and Procedures
- 8.10.015 Enforcement and Monitoring
- 8.10.016 Penalties, License Suspension & Revocation
- 8.10.017 Appeals and Hearing
- 8.10.018 Severability

**8.10.010 Purpose.**

The purpose of licensing Tobacco Retailers is to promote compliance with federal, state and local laws relating to the retail sale of Tobacco Products and inhalant delivery systems and to discourage violations of tobacco-related laws, particularly those that relate to underage persons. Clackamas County has determined that it is necessary to regulate Tobacco Retailers to assure activities necessary for the preservation of health and the prevention of disease in Clackamas County.

It is the intent of Public Health to provide education and assistance to Tobacco Retailers to help them comply with the ordinance and to enforce penalties in accordance with the ordinance. Public Health will work with Tobacco Retailers to remedy violations found during inspections.

**8.10.011 Definitions.**

A. "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, none of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

B. "Board" means the Clackamas County Board of Health.

- C. "Inhalant Delivery System" means any device or component of a device meeting the definition of "inhalant delivery system" in ORS 431A.175.
- D. "Mobile Vending Unit" means any motorized vehicle designed to be portable and not permanently attached to the ground from which tobacco products and inhalant delivery systems are peddled, vended, sold, or given away.
- E. "Person" means any natural person, business, partnership, cooperative association, employer, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including a government agency.
- F. "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 ten percent (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 can, does have, or shares ultimate control over the day-to-day operations of a business.
- G. "Public Health" means the Clackamas County Public Health Division of the Health, Housing and Human Services Department.
- H. "Retail Sale" means any transfer, conditional or otherwise, of title or possession of Tobacco Products or inhalant delivery systems.
- I. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, or other tobacco like product or substance in any manner or in any form. "Smoking" also includes the use of an Inhalant Delivery System, which creates an aerosol, in any manner or in any form.
- J. "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of any Tobacco Products.
- K. "Tobacco Product" means:
1. Any substance containing, made or derived from tobacco that is intended for human consumption by any means including but not limited to cigarettes, bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, shisha, hookah tobacco, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking; and
  2. Electronic cigarettes or any inhalant delivery systems containing or delivering nicotine.
  3. Vape juice or e-liquids defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing



product, in any amount or concentration, including tobacco plant extract, tobacco dust, or synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, pre-filled cartridges, or as part of a kit.

4. This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

- L. "Tobacco Retailer" means any person or entity that owns a business that sells, offers for retail sale, exchanges or offers to exchange, Tobacco Products, including inhalant delivery systems as defined in ORS 431A.175, or that distributes free or low cost samples of Tobacco Products. This definition is without regard to the quantity of Tobacco Products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

#### **8.10.012 License Required.**

- A. A Tobacco Retail license is required for each address at which Tobacco Products, tobacco paraphernalia, or Inhalant Delivery Systems are available from a Tobacco Retailer.
- B. Each applicant for a Tobacco Retail license must meet all requirements of this ordinance and all rules adopted pursuant to this ordinance, and all federal, state, and local laws relating to the retail sale of Tobacco Products, Tobacco Paraphernalia, or Inhalant Delivery Systems.
- C. Application for a Tobacco Retail license issued under this subchapter shall be made on forms provided by Public Health.
- D. A Tobacco Retail license fee shall be submitted with the license application.
- E. To obtain a Tobacco Retail license, each applicant must meet all requirements of this subchapter, the Rules adopted pursuant to this subchapter, and federal, state, and local laws relating to the retail sale of tobacco products.
- F. Each Tobacco Retail license shall expire one calendar year from the date of issuance.
- G. A licensed Tobacco Retailer shall inform Public Health in writing of any change in the information submitted on an application for a Tobacco Retailer license within ten (10) business days of any such change.
- H. The Tobacco Retail license shall be displayed in a prominent and conspicuous place in plain view of the general public at the location licensed.

I. All information specified in an application pursuant to this section is subject to disclosure under the Oregon Public Records Act or other applicable law, subject to the laws' exemptions.

J. Limits on Eligibility for a Tobacco Retailer License.

1) WITHIN 1,000 FEET OF ESTABLISHMENTS SERVING CHILDREN. No license will be issued to a Tobacco Retailer located "within 1,000 feet of any school, child care center, and other establishments that serve children" as follows:

(a) Except as provided in subsection (ii), no Tobacco Retailer license will be issued within one thousand (1,000) feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area is located to the nearest point of the property line of the parcel on which the applicant's business is located. For the purposes of this subsection, a "Youth-Populated Area" means a parcel in Clackamas County that is occupied by:

- (i) a private or public kindergarten, elementary, middle, junior high, or high school; library open to the public;
- (ii) a playground open to the public;
- (iii) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
- (iv) 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. "Recreation facility" includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;
- (v) an arcade open to the public;
- (vi) a park open to the public or to all the residents of a private community;
- (vii) a licensed child-care facility or preschool;

(b) A Tobacco Retailer in operation as of \_\_\_\_\_ is exempt from the requirements of section (a) above.

K. Fee for License.

1. A license fee shall be submitted with an application for a new license or the renewal of a license. The fee shall be established from time to time by resolution of the Clackamas County Board of Commissioners and shall be calculated so as to recover the costs of administration and enforcement of this ordinance including, but not limited to, issuing a license, administering the

Tobacco Retailer license program, providing Tobacco Retailer education, conducting Tobacco Retailer inspections and compliance checks, documenting violations, and prosecuting alleged violators. All fees are nonrefundable except as required by law. The fee established shall not exceed the costs of the administration and enforcement of this ordinance. All fees and interest upon proceeds of fees shall be used exclusively to fund the costs of the administration and enforcement of this ordinance. Fees will not be prorated.

K. Issuance of Privilege and Not a Right.

Nothing in this ordinance grants 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 identified on the face of the license. Nothing in this Ordinance renders inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including but not limited to, any provision of this Ordinance, or any condition or limitation on smoking in an enclosed place of employment under ORS 433.847 and OAR 333-015-0068 or other federal or local ordinances. Obtaining a Tobacco Retailer's license does not make the Tobacco Retailer a certified smoke shop under ORS 433.847 and OAR 333-015-0068.

L. Grounds for License Denial.

Upon receipt of a completed application for a Tobacco Retailer license and the license fee required by this ordinance, Public Health shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is inaccurate, misleading, or false. Intentionally supplying inaccurate, misleading, or false information shall be a violation of this ordinance;
2. The application seeks authorization for a Tobacco Retailer license at a location for which this ordinance prohibits issuance of a Tobacco Retailer license. This subparagraph shall not constitute a basis for denial of a license if the applicant provides Clackamas County with clear and convincing evidence that the applicant has acquired, or is acquiring, the location or business in an Arm's Length Transaction from a Tobacco Retailer that is exempt from all applicable location prohibitions in this ordinance;
3. The application seeks a Tobacco Retailer license for a Proprietor to whom this ordinance prohibits a license to be issued; or

4. The application seeks a Tobacco Retailer license for activities that are prohibited by law or municipal Ordinance including, without limitation, a zoning ordinance, building code, or business license, or that is unlawful pursuant to any other local, state, or federal law.

M. License Renewal and Expiration.

1. A Tobacco Retailer license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. Each Tobacco Retailer shall apply for the renewal of the license and submit the license fee no later than thirty (30) days prior to expiration of the one-year license term.
2. A Tobacco Retailer license that is not timely renewed will expire at the end of its one-year term. To renew a license not timely renewed as described herein, the Tobacco Retailer must:
  - a. Submit the license fee and application renewal form; and
  - b. Submit a signed and notarized affidavit affirming that the Tobacco Retailer:
    - 1) Has not sold and will not sell any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System after the license expiration date and before the license is renewed; or
    - 2) Has waited the period of time required by Section 10 of this ordinance, for the violation of Tobacco Retailing without a valid license, before seeking renewal of the license.

N. License Nontransferable.

1. Tobacco Retail license may not be transferred from one Tobacco Retailer to another or from one location to another.
2. Prior violation of this subchapter at a location will continue to be counted against a location, and license ineligibility and suspension periods will continue to apply to a location, unless 100 percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners. The new owner must provide Public Health with clear and convincing evidence, including a sworn affidavit or declaration, that the business has been acquired in an Arm's Length Transaction.
3. Prior violation of this subchapter may be considered in subsequent enforcement actions and applications for additional Tobacco Retail licenses.

### 8.10.013 Prohibitions.

- A. It is a violation of this subchapter for a Tobacco Retailer to make available Tobacco Products, Tobacco Paraphernalia, or Inhalant Delivery Systems:
- (1) Without a Tobacco Retail License.
  - (2) From a motor vehicle or mobile vending unit.
  - (3) Outside original packaging containing health warnings satisfying the requirements of federal law.
  - (4) To a person who appears to be under the age of 27 years, per federal law, without first examining the recipient's identification to confirm that the recipient is at least 21 years old, the minimum age under state law to purchase and possess Tobacco Products.
  - (5) To distribute, sell or allow to be sold an inhalant delivery system if the system is not labeled and packaged in compliance with Oregon law and federal rules regulating inhalant delivery systems.
  - (6) To locate any Tobacco Products, Tobacco Paraphernalia, or Inhalant Delivery Systems in any location in a retail store or other establishment where such products are accessible by a customer without the assistance of a Tobacco Retailer or an employee or agent of the Tobacco Retailer. This prohibition does not apply to a Person in a licensed establishment that is permanently and entirely off-limits to Persons under the age of twenty-one (21) and that prohibits Persons under twenty-one (21) from entering the establishment at any time.
- B. It is a violation of this subchapter to fail to post a notice that it is unlawful to sell tobacco products or inhalant delivery systems to persons under 21 years of age. This notice must be clearly visible to the seller and the purchaser of tobacco products or inhalant delivery systems.
- C. It is a violation of this subchapter to fail to comply with license terms, the Rules adopted pursuant to this subchapter, and federal, state, and local laws relating to the retail sale of tobacco products and inhalant delivery systems.
- D. A Tobacco Retailer or any other Person without a valid Tobacco Retailer license, including, but not limited to, a Person whose license has been suspended, revoked, or not renewed shall keep all Tobacco Products, Tobacco Paraphernalia, and Inhalant Delivery Systems out of public view, and shall not display any indoor outdoor advertisement or otherwise publish or distribute any advertisement relating to a Tobacco Product, Tobacco Paraphernalia, or Inhalant

Delivery System that promotes the sale or distribution of such products from the Tobacco Retailer location or that could lead a reasonable consumer to believe that such products can be obtained at that location. The public display of any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System in violation of this provision shall constitute Tobacco Retailing without a license.

- E. It is a violation of this ordinance to fail to comply with license provisions or rules adopted pursuant to this ordinance and federal, state, and local laws relating to Tobacco and Inhalant Delivery System Retailing.

#### **8.10.014 Policy and Procedures.**

- A. The Board delegates the authority to develop Rules to implement this subchapter to Public Health with review by a Rules Advisory Committee. The powers, duties, membership, terms of office of members, provisions as to meetings and conduct of business of and by the Committee will be in accordance with its adopted bylaws.

Public Health will adopt Rules to address license application, inspections, data collection and educational information, as well as any other matters necessary to implement this subchapter.

- B. The Local Board of Health Rules will approve the Rules by resolution upon recommendation by the Rules Advisory Committee.
- C. As part of program administration, Public Health shall provide educational resources to licensed Tobacco Retailers to support compliance with the license requirements. Upon request, Public Health will provide educational materials in the preferred language of a Tobacco Retailer. In addition, Public Health, in its discretion, may offer Tobacco Retailers [including managers or other employees] annual, free, culturally responsive training on federal, state, and local laws to support clerks, managers, and owners in meeting applicable legal requirements. Public Health shall update its educational resources when federal, state, or local laws are enacted or changed, and provide the updated resources to Tobacco Retailers in a timely manner.

#### **8.10.015 Enforcement and Monitoring.**

- A. The Public Health Director, or designee, shall enforce the provisions of this Ordinance and the Rules adopted pursuant to this subchapter. In addition, any peace officer may enforce the penal provisions of this Ordinance.

- A. The Public Health Director, or designee, shall have the authority to inspect and investigate potential violations of this subchapter in accordance with the Rules.
- B. The provisions of this subchapter will not be deemed to restrict the right of the County to inspect any property pursuant to any applicable federal, state, or local law or regulation.
- D. Public Health will endeavor to inspect each Tobacco Retailer at least one time per twelve-month period. Nothing in this paragraph creates a right of action in any licensee or other Person against the County, Public Health or its agents.
- E. The Public Health Director or designee may issue civil penalties, impose restrictions, and deny, suspend, or revoke a Tobacco Retail license based upon a finding that a Tobacco Retailer is in violation of this subchapter, the Rules adopted pursuant to this subchapter, and federal, state, or local laws relating to the retail sale of Tobacco Products and Inhalant Delivery Systems.

#### **8.10.016 Penalties, License Suspension and Revocation**

- A. The Board shall set license fees and civil penalties under this subchapter by Board resolution.
- B. Any Tobacco Retailer found in violation of this subchapter may be subject to a civil penalty not to exceed \$1000 per day.
- C. For the purposes of the civil remedies provided in this ordinance the following constitute separate violations:
  - (a) Each day on which a Tobacco Product, Tobacco Paraphernalia or an Inhalant Delivery System is offered for sale in violation of this ordinance; or
  - (b) Each instance in which an individual retail Tobacco Product, item of Tobacco Paraphernalia or Inhalant Delivery System distributed, sold, or offered for sale in violation of this ordinance.
- D. Suspension or revocation of license for violation.
  - 1. In addition to any other penalty authorized by law, a Tobacco Retailer's license will be suspended or revoked if any court of competent jurisdiction determines, or the Division 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, has violated any of the requirements, conditions, or prohibitions of this ordinance or state or federal tobacco law or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in this ordinance.

(a) Upon a finding by Public Health Department of a first violation of this ordinance at a location within any sixty-month period, the license will be suspended for thirty days.

(b) Upon a finding by Public Health of a second violation of this ordinance at a location within any sixty-month period, the license will be suspended for ninety days.

(c) Upon a finding by Public Health of a third violation of this ordinance at a location within any sixty-month period, the license will be suspended for one year.

(d) Upon a finding by Public Health of four or more violations of this ordinance at a location within any sixty-month (60) period, the license will be revoked.

2. Revocation of license wrongly issued.

A Tobacco Retailer's license will be revoked if Public Health 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 this ordinance existed at the time application was made or at any time before the license issued. The decision by Public Health will be the final decision of the County. Such a revocation will be without prejudice to the filing of a new license application.

3. Tobacco Retailing without a valid license.

In addition to any other penalty authorized by law, if Public Health or a court finds 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 will be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

(a) After a first violation of this section at a location within any sixty-month period, no new license will be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty days have passed from the date of the violation.

(b) After a second violation of this section at a location within any sixty-month period, no new license will be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety days have passed from the date of the violation.



(c) After of a third or subsequent violation of this section at a location within any sixty-month period, no new license will be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until five years have passed from the date of the violation.

#### E. Penalties and Additional Remedies.

(1) The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.

(2) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance is a violation subject to penalties.

(3) Violations of this ordinance are hereby declared to be public nuisances.

(4) In addition to other remedies provided by this ordinance or by other law, any violation of this ordinance may be remedied by a civil action including, for example, through administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

#### **8.10.017 Appeals and Hearing.**

Any person receiving a written notice of violation of this subchapter may request a hearing in accordance with the Rules adopted to implement this subchapter.

#### **8.10.018 Severability**

The provisions of this Ordinance are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstance is invalid, the remaining provisions and the application of those provisions to other persons or circumstances is not affected by that decision.

**Commented [RK1]:** Note the appeal and hearing must comply with Oregon Administrative Law and thus will need to be written to comply with the statutory requirements. See the Hearing section currently in the Public Health code.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the Board  
of Health and the Local Public Health  
Authority Regarding Tobacco and  
Inhalant Delivery Systems

Board Order No. 2019-04  
Page 1 of 7

**Whereas**, ORS 431.150, ORS 431.413, and ORS 431.415 authorize the Board of Health and the Local Public Health Authority to conduct any activity necessary to protect the public health and safety; and

**Whereas**, Clackamas County ORS 431.444(1)(a) identifies the prevention of injury and disease and the promotion of health through the prevention and control of tobacco use;

**The Board of Health for Clackamas County finds:**

- a. The Clackamas County Board of County Commissioners constitutes the Board of Health for Clackamas County. The Board of Health is the policy making body for Clackamas County Public Health and assists Public Health in adopting rules necessary to carry out its policies. ORS 431.150 and ORS 431.415;
- b. Clackamas County also acts as the Local Public Health Authority, through the Clackamas County Public Health Department. ORS 431.375(2). A core responsibility of the Local Public Health Authority is to conduct activities necessary for the preservation of health or prevention of disease in the area under its jurisdiction. ORS 431.413 and ORS 413.415;
- c. State law prohibits the sale or furnishing of tobacco products and inhalant delivery systems (which include e-cigarettes and vaping devices) to underage persons, as well as the purchase, receipt, or possession of tobacco products and inhalant delivery systems by minors. ORS 167.755 (sales to underage persons), ORS 167.785 (possession by underage persons);
- d. Federal law requires that retailers check the identification of everyone under the age of 27 who attempts to purchase a tobacco product. 21 CFR § 1140.14;

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the  
Board of Health and the Local Public  
Health Authority Regarding Tobacco  
and Inhalant Delivery Systems

Board Order No. 2019-04  
Page 2 of 7

- e. Tobacco use is the most preventable cause of illness and death in Oregon.<sup>1</sup> The top three causes of death in Clackamas County are tobacco-related – cardiovascular disease, cancer, and chronic lower respiratory diseases (emphysema and chronic bronchitis).<sup>2</sup>
- The use of tobacco products or inhalant delivery systems by youth and young adults causes serious and potentially deadly health effects.
  - Most addiction to tobacco or nicotine starts in adolescence.<sup>3</sup>
  - Adolescents who start smoking before their 19<sup>th</sup> birthday have on average a 20% higher risk of dying from a smoking-related illness.<sup>4</sup>
  - Nicotine exposure during adolescence can harm the developing brain, which continues to develop until about age 25.<sup>5</sup>
    - Nicotine exposure during adolescence can impact learning and memory.<sup>6</sup>
    - Nicotine primes the brain for addition to other substances.<sup>8</sup>

<sup>1</sup> Oregon Vital Statistics Annual Reports, Volume 2: Chapter 6. Mortality. Table 6-20. Accessed at <http://www.oregon.gov/oha/ph/BirthDeathCertificates/VitalStatistics/annualreports/Volume2/Pages/index.aspx>

<sup>2</sup> Clackamas County Community Health Assessment 2017. Accessed at <https://dochub.clackamas.us/documents/drupal/aeb4ac5f-71a0-42cb-be78-65776a97be33>

<sup>3</sup> Oregon Tobacco Facts, 2018. Oregon Health Authority Public Health Division, Health Promotion and Chronic Disease Prevention Section. Accessed at [www.healthoregon.org/tobaccoretailsales](http://www.healthoregon.org/tobaccoretailsales)

<sup>4</sup> Choi, S.H., & Stommel, M. (2017). Impact of age at smoking initiation on smoking-related morbidity and all-cause mortality. *American Journal of Preventive Medicine*, 53, 33-41.

<sup>5</sup> Office of the Surgeon General. *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General*. Washington, DC: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2016. Accessed at [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf) Attached.

<sup>6</sup> Office of the Surgeon General. *The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention (US), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2014. Accessed at <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>

<sup>7</sup> Office of the Surgeon General. *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General*. Washington, DC: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2016. Accessed at [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf)

<sup>8</sup> Kandal DB, Kandal ER. A Molecular Basis for Nicotine as a Gateway Drug. *New England Journal of Medicine*. 2014. Accessed at <https://www.nejm.org/doi/full/10.1056/nejmsa1405092>

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the  
Board of Health and the Local Public  
Health Authority Regarding Tobacco  
and Inhalant Delivery Systems

Board Order No. 2019-04  
Page 3 of 7

- Most e-cigarettes contain nicotine, which is the addictive drug in regular cigarettes, cigars, and other tobacco products.<sup>9</sup>
- Attachment A shows the results of the Oregon Health Authority's most recent inspection results for Clackamas County.
  - According to the 2018 Student Wellness Survey, 69.4% of Clackamas County 11th graders said that it would be "sort of easy" or "very easy" to get e-cigarettes. One of the strongest predictors of smoking initiation among youth is the perceived ease of access.
  - Based on a 2018 assessment of 232 tobacco retailers and vape shops in Clackamas County, 91 percent sold little individual cigars, 72 percent sold e-cigarettes. Nearly all of which (98%) were flavors attractive to youth.
- Attachments B-L show the location of tobacco retailers in proximity to schools and density of youth under 21 years.
  - Studies show that density of tobacco retailers and proximity of retailers to schools impacts youth tobacco use rates.<sup>10,11</sup>
  - Increased tobacco retailer density is associated with experimental smoking.
  - Prevalence of smoking is higher at schools with five or more retailers within the area.

<sup>9</sup> Office of the Surgeon General. *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General*. Washington, DC: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2016. Accessed at [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf)

<sup>10</sup> Henriksen, L., Feighery, E. C., Schleicher, N. C., Cowling, D. W., Kline, R. S., & Fortmann, S. P. (2008). Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Preventative Medicine*, 47, 210-214. Accessed at <https://www.ncbi.nlm.nih.gov/pubmed/18544462>

<sup>11</sup> McCarthy, W. J., Mistry, R., Lu, Y., Patel, M., Zheng, H., & Dietsch, B. (2009). Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students. *American Journal of Public Health*, 99, 2006-2013. Accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2759807/>

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the  
Board of Health and the Local Public  
Health Authority Regarding Tobacco  
and Inhalant Delivery Systems

Board Order No. 2019-04  
Page 4 of 7

- E-cigarette use among 11th grade children in Oregon increased **three-fold** from 2013 to 2105.<sup>12</sup> Flavored tobacco products are more popular among Oregon youth (65%) and young adults (21%) compared to older adults. *Id.*
- The Surgeon General has declared youth e-cigarette use an epidemic.<sup>13</sup> In 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, used e-cigarettes.<sup>14</sup>
- A survey released by the Centers for Disease Control & Prevention found youth who tried e-cigarettes were nearly **twice as likely** to try a conventional cigarette.<sup>15</sup>
- Adolescents who use e-cigarettes are not only more likely to smoke cigarettes but are also likely to increase their use of both products over time<sup>16</sup>.
- Use of e-cigarettes is not harmless. Testing of e-cigarettes has identified chemicals known to cause cancer and birth defects, as well as lung and cardiovascular disease, in first and secondhand e-cigarette vapor.<sup>17</sup>

---

<sup>12</sup> Oregon Healthy Teens (OHT) Survey, 2015. Oregon Health Authority. Chronic Disease Data. Youth Data. Tobacco use and related topics. Accessed at [https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT\\_Tobacco.pdf](https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT_Tobacco.pdf)

<sup>13</sup> <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>  
<https://www.cnn.com/2018/12/18/us-surgeon-general-adams-declares-youth-e-cigarette-use-an-epidemic.html>;  
<https://www.cardiovascularbusiness.com/topics/healthcare-economics/us-sg-declares-teen-vaping-national-epidemic>  
<https://abcnews.go.com/Politics/surgeon-general-warns-cigarettes-vaping/story?id=59873481>

<sup>14</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Increase in use of electronic cigarettes and any tobacco product among middle and high school students – United States, 2011-2018. *MMWR Morbidity & Mortality Weekly Report* 2018; 67(45):1276-1277.

<sup>15</sup> Bunnell RE, Agaku IT, Arrazola R, Apelberg BJ, Caraballo RS, Corey CG, Coleman B, Dube SR, King BA. Intentions to smoke cigarettes among never-smoking U.S. middle and high school electronic cigarette users. National Youth Tobacco Survey, 2011-2013. *Nicotine and Tobacco Research*. Accessed at <https://www.ncbi.nlm.nih.gov/pubmed/25143298>

<sup>16</sup> Dunbar MS, Davis JP, Rodriguez A, Tucker JS, Seelam R, D'Amico EJ. Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-cigarette and Cigarette Use Trajectories From Late Adolescence to Young Adulthood. Accessed at [https://www.rand.org/pubs/external\\_publications/EP67710.html](https://www.rand.org/pubs/external_publications/EP67710.html).

<sup>17</sup> <http://www.tobacco.ucsf.edu/9-chemicals-identified-so-far-e-cig-vapor-are-california-prop-65-list-carcinogens-and-reproductive-t>.

<https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>  
<https://www.fda.gov/tobaccoproducts/labeling/productsingredientscomponents/ucm456610.htm>  
<https://e-cigarettes.surgeongeneral.gov/>

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the Board  
of Health and the Local Public Health  
Authority Regarding Tobacco and  
Inhalant Delivery Systems

Board Order No. 2019-04  
Page 5 of 7

- In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.<sup>18</sup>
- More than 75% of flavored e-cigarette liquids contain Diacetyl, a flavoring chemical linked to cases of severe respiratory disease.<sup>19</sup>
- f. Requiring tobacco and inhalant delivery system retailers in Clackamas County to be licensed will allow Clackamas County to assist local business in complying with and discourage violations of federal, state and local laws intended to regulate tobacco and inhalant delivery system sales and use, including the illegal sales of tobacco and inhalant delivery system products to minors and the illegal purchase of tobacco and inhalant delivery system products by minors;
- Tobacco Retail Licensing has been effective in reducing youth access to illegal tobacco, e-cigarettes and inhalant delivery systems.<sup>20,21, 22</sup>
- g. Implementation of tobacco and inhalant delivery system retailer licensing is an evidence-based, cost-effective strategy that can be implemented to improve the health, safety, and welfare of our community.

<https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/TOBACCPREVENTION/SMOKEFREEWORKPLACELAW/Pages/e-cigarettes.aspx>

<sup>18</sup> Office of the Surgeon General. *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General*. Washington, DC: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2016. Accessed at

[https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf)

<sup>19</sup> Roeder A. "Chemical flavorings found in e-cigarettes linked to lung disease." Accessed at

<http://consumer.healthday.com/cancer-information-5/misc-tobacco-health-news-666/millions-of-u-s-teens-exposed-to-e-cigarette-ads-cdc-706734.html>

<sup>20</sup> American Lung Association. California Center for Tobacco Policy and Organizing, Tobacco Retail Licensing is Effective, September 2018. Accessed at <https://center4tobaccopolicy.org/wp-content/uploads/2018/09/Tobacco-Retailer-Licensing-is-Effective-September-2018.pdf>

<sup>21</sup> American Lung Association. California Center for Tobacco Policy & Organizing, Becoming a Policy Wonk on Tobacco Retail Licensing, June 2018. Accessed at <https://center4tobaccopolicy.org/wp-content/uploads/2018/06/Becoming-a-Policy-Wonk-on-TRL-2018-06-20.pdf>

<sup>22</sup> Astor RL, Urman R, Barrington-Trimis JL, Berhane K, Steinberg J, Cousineau M, Leventhal AM, Unger JB, Cruz T, Pentz MA, Samet JM, McConnell R. Tobacco retail licensing and youth product use. 2019. *Pediatrics*. Accessed at <https://www.ncbi.nlm.nih.gov/pubmed/30617237>

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the Board  
of Health and the Local Public Health  
Authority Regarding Tobacco and  
Inhalant Delivery Systems



Board Order No. 2019-04  
Page 6 of 7

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. It is the Board of Health's policy to reduce preventable illness and disease and premature death in Clackamas County by supporting regulation of retail sales and use of tobacco and inhalant delivery systems in the County. This policy is intended to give guidance for policies and procedures, including education for retailers about local, state and federal laws pertaining to the sales of tobacco and inhalant delivery systems, enforcement mechanisms, and penalties for violations;
2. It is the Board of Health's policy to reduce addiction, preventable disease, and premature death by supporting prohibitions on sales to and purchase and use by minors of tobacco and inhalant delivery systems. This policy is not intended to expand or reduce federal or state laws that regulate the sale or distribution of tobacco and inhalant delivery systems or to alter related penalties.
3. It is the Board of Health's policy to reduce addiction, preventable illness and disease, and premature death by supporting prohibitions on use of inhalant delivery systems in Clackamas County in any place where smoking and use of tobacco products is prohibited;
4. The Board of Health supports the Local Public Health Authority's intent to adopt policies and procedures for tobacco and inhalant delivery system retailers in Clackamas County;
5. The Board of Health directs the Local Public Health Authority to adopt policies and procedures to implement and enforce prohibitions on the use of inhalant delivery systems in Clackamas County in any place where smoking and use of tobacco products is prohibited, sales to minors, and purchase and use by minors;
6. When the Local Public Health Authority develops policies and procedures the Board of Health will adopt them prior to their implementation;
7. The Board of Health directs the Local Public Health Authority to form a Rules Advisory Committee to provide input on and review of the policies and procedures developed by the Local Public Health Authority.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Clackamas  
County Board of County  
Commissioners, Acting As the Board  
of Health and the Local Public Health  
Authority Regarding Tobacco and  
Inhalant Delivery Systems

Board Order No. 2019-04  
Page 7 of 7

DATED this 24th day of January, 2019.

**BOARD OF COUNTY COMMISSIONERS, Acting as the Clackamas County Board of Health**

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Recording Secretary



**RESOLUTION 1146**

**A RESOLUTION SUPPORTING A CLACKAMAS COUNTY-WIDE  
TOBACCO RETAIL LICENSE**

**WHEREAS,** Tobacco use remains the most preventable cause of illness and death in America and Clackamas County; and

**WHEREAS,** Nearly 90% of adult tobacco smokers started smoking before age 18, more than three quarters start before age 20. Adolescents who start smoking before their 19<sup>th</sup> birthday have on average a 20% higher risk of dying from smoking-related illness; and

**WHEREAS,** One in three youth said it would be “very easy” to get tobacco according to the Oregon Healthy Teen Survey and youth living in areas with the highest density of retail tobacco outlets are more likely to have smoked cigarettes in the last month; and

**WHEREAS,** Oregon increased the tobacco and nicotine product possession age to 21 but did not pass a state-wide tobacco retail license, the necessary mechanism to enforce the new legal sales age; and

**WHEREAS,** a county-wide licensing system for tobacco retailers is appropriate to enforce tobacco control laws to protect the health, safety, and welfare of our residents; and

**WHEREAS,** research demonstrates that local tobacco retail ordinances reduce youth access to cigarettes. A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and

**WHEREAS,** a requirement for a tobacco retailer license will not unduly burden businesses who sell or distribute tobacco or nicotine products.

**NOW THEREFORE,** the Gladstone City Council does hereby resolve to support the Clackamas County Board of County Commissioners as the Board of Health to adopt a tobacco retail license requiring all businesses located in the County to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes.

Dated this 11<sup>TH</sup> day of SEP., 2018

  
\_\_\_\_\_  
Tamara Stempel, Mayor

ATTEST

  
\_\_\_\_\_  
Tami Bannick, City Recorder

**COUNCIL RESOLUTION No. 72-2018**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN SUPPORT OF A COUNTYWIDE TOBACCO RETAIL LICENSE (TRL).**

**WHEREAS,** Tobacco use remains the most preventable cause of illness and death in America and Clackamas County; and

**WHEREAS,** nearly 90% of adult tobacco smokers started smoking before age 18, with more than three quarters starting before age 20, and adolescents who start smoking before their 19th birthday are more likely to die from smoking-related illness; and

**WHEREAS,** according to the Oregon Healthy Teen Survey, one in three youth said it would be "very easy" to get tobacco and youth living in areas with the highest density of retail tobacco outlets are more likely to have smoked cigarettes in the last month; and

**WHEREAS,** the State of Oregon increased the tobacco and nicotine product possession age to 21 but did not pass a state-wide tobacco retail license, the necessary mechanism to enforce the new legal sales age; and

**WHEREAS,** a county licensing system for tobacco retailers is appropriate to enforce tobacco control laws to protect the health, safety, and welfare of our residents; and


**WHEREAS,** research demonstrates that local tobacco retail ordinances reduce youth access to cigarettes, and a review of 33 California communities with strong tobacco retailer licensing ordinances showed that youth sales of tobacco declined in 31 of these communities after the ordinances were enacted; and

**WHEREAS,** a requirement for a tobacco retailer license will not unduly burden businesses who sell or distribute tobacco or nicotine products.

**NOW THEREFORE,** the City Council of the City of Milwaukie, Oregon, does hereby support the Clackamas County Board of Commissioners, as the Board of Health, plans to adopt a tobacco retail license that requires all businesses in the county to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes.

Introduced and adopted by the City Council on **August 21, 2018.**

This resolution is effective immediately.

  
\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Jordan Ramis PC

  
\_\_\_\_\_  
Scott Stauffer, City Recorder

  
\_\_\_\_\_  
City Attorney

RESOLUTION NO. 18-43

---

**A RESOLUTION SUPPORTING THE CLACKAMAS COUNTY-WIDE TOBACCO  
RETAIL LICENSE**

**WHEREAS**, tobacco use remains the most preventable cause of illness and death in America and Clackamas County; and

**WHEREAS**, nearly 90% of adult tobacco smokers started smoking before age 18, more than three quarters start before age 20. Adolescents who start smoking before their 19th birthday have on average a 20% higher risk of dying from smoking-related illness; and

**WHEREAS**, one in three youth said it would be “very easy” to get tobacco according to the Oregon Healthy Teen Survey and youth living in areas with the highest density of retail tobacco outlets are more likely to have smoked cigarettes in the last month; and

**WHEREAS**, Oregon increased the tobacco and nicotine product possession age to 21 but did not pass a state-wide tobacco retail license, the necessary mechanism to enforce the new legal sales age; and

**WHEREAS**, a county-wide licensing system for tobacco retailers is appropriate to enforce tobacco control laws to protect the health, safety, and welfare of our residents; and

**WHEREAS**, research demonstrates that local tobacco retail ordinances reduce youth access to cigarettes. A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and

**WHEREAS**, a requirement for a tobacco retailer license will not unduly burden businesses who sell or distribute tobacco or nicotine products.

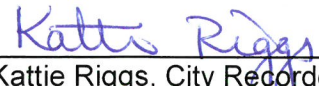
**NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:**

**Section 1:** The City Commission supports the Clackamas County Board of County Commissioners as the Board of Health to adopt a tobacco retail license requiring all businesses located in the County to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes.

Approved and adopted at a regular meeting of the City Commission held on the 5<sup>th</sup> day of December 2018.

  
\_\_\_\_\_  
DAN HOLLADAY, Mayor

Attested to this 5<sup>th</sup> day of December 2018:

  
\_\_\_\_\_  
Katie Riggs, City Recorder

Approved as to legal sufficiency:

  
\_\_\_\_\_  
City Attorney

**RESOLUTION NO. 2018-20**

**A RESOLUTION SUPPORTING A CLACKAMAS COUNTY-WIDE TOBACCO RETAIL LICENSE PROGRAM**

**WHEREAS**, Tobacco use remains the most preventable cause of illness and death in America and Clackamas County; and

**WHEREAS**, Nearly 90% of adult tobacco smokers started smoking before age 18 and more than three quarters start before age 20; and

**WHEREAS**, Adolescents who start smoking before their 19th birthday have on average a 20 percent higher risk of dying from smoking-related illness; and

**WHEREAS**, One in three youth said it would be “very easy” to get tobacco according to the Oregon Healthy Teen Survey and youth living in areas with the highest density of retail tobacco outlets are more likely to have smoked cigarettes in the last month; and

**WHEREAS**, Oregon increased the tobacco and nicotine product possession age to 21 but did not pass a state-wide tobacco retail license, the necessary mechanism to enforce the new legal sales age; and

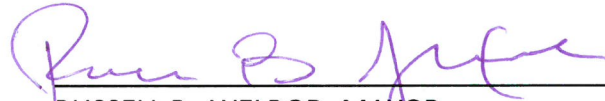
**WHEREAS**, a county-wide licensing system for tobacco retailers is appropriate to enforce tobacco control laws to protect the health, safety, and welfare of our residents; and

**WHEREAS**, research demonstrates that local tobacco retail ordinances reduce youth access to cigarettes. A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and

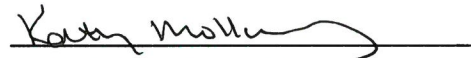
**WHEREAS**, a requirement for a tobacco retailer license will not unduly burden businesses who sell or distribute tobacco or nicotine products.

**NOW, THEREFORE**, the City of West Linn resolves to support the Clackamas County Board of County Commissioners as the Board of Health to adopt a tobacco retail license program requiring all businesses located in the County to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes.

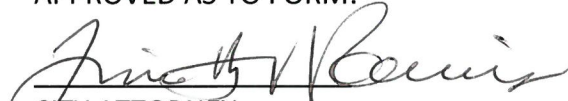
This resolution was PASSED and ADOPTED this 10<sup>th</sup> day of September, 2018, and takes effect upon passage.

  
RUSSELL B. AXELROD, MAYOR

ATTEST:

  
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

  
CITY ATTORNEY

November 6, 2018

To the Clackamas County Board of Health:

The City of Sandy writes to you in support of a county-wide tobacco retail licensing ordinance. As tobacco use remains the leading cause of illness and death in Clackamas County, the City of Sandy believes that a Tobacco Retail License (TRL) is an effective strategy to promote health and wellbeing of our youth by limiting their access to tobacco products in the retail environment.

We learned from the Clackamas County Public Health Division that one in four 11th graders in Clackamas County have used any form of tobacco; one in three youth said it would be “very easy” to get tobacco.

This is alarming because nicotine is a highly addictive powerful drug. Nearly 90% of adult tobacco smokers report starting before age 18. Adolescents who start smoking before their 19th birthday are more likely to die from smoking-related illness. Moreover, nicotine use during adolescence may have lasting negative consequences for brain development.

A countywide TRL requiring all businesses to obtain a license to sell tobacco and nicotine products is a necessary mechanism to enforce the minimum legal sales age and other tobacco laws. TRL would ensure that all retailers in the City of Sandy are equipped with the information and tools to keep tobacco and nicotine products out of the hands of our young people and to help protect them from a lifetime of addiction and poor health.

The Sandy City Council has directed me to write this letter that supports the Clackamas County Board of Commissioners, as the Board of Health, to adopt a county-wide TRL to protect the health of our community. We entrust the Public Health Division to implement the program in the City of Sandy.

Submitted on behalf of the Sandy City Council.

Respectfully,

*Kim E. Yamashita*

Kim E. Yamashita, City Manager



December 6, 2018

Dear Clackamas County Chair Commissioner Jim Bernard and Board of County Commissioners,

Oregon City Together is a local coalition of parents, youth, schools, law enforcement, past and current elected officials, faith-based organizations, government agencies and other organizations serving youth. The coalition's mission is to create healthy futures for Oregon City youth.

Our focus is primarily on preventing youth marijuana use and underage drinking. However, we have seen a huge jump in the use of e-cigarettes and vaping. According to the 2018 Oregon Healthy Teen Survey, 10 percent of 11th graders in the Oregon City School District said they had smoked a cigarette during the past 30 days. But three times as many (30.2) percent of 11th graders said they had used an e-cigarette, vape pen or e-hookah during the past 30 days.

Oregon's success in reducing the youth smoking rate is being eroded by the vaping trend. The Centers for Disease Control states that most e-cigarettes contain nicotine. Nicotine is highly addictive and can harm adolescent brain development. Young people who use e-cigarettes may be more likely to smoke cigarettes in the future.

Oregon works to stop illegal retail sales of alcohol and marijuana to youth. It would be useful to provide tools to improve monitoring and enforcement of illegal tobacco sales to youth as well, especially sales of e-cigarettes.

Sincerely,

A handwritten signature in cursive script that reads "Laura Poore".

Laura Poore  
OCT Chair

SIGNATURE PAGE TO THE YOUTH SUBSTANCE USE PREVENTION GRANT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**SUBRECIPIENT**

Oregon City Together  
1417 12<sup>th</sup> Street  
Oregon City, OR 97045

By:   
Laura Poore, Executive Director

Dated: 12/5/18

**CLACKAMAS COUNTY**

Commissioner Jim Bernard, Chair  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader

**Signing on behalf of the Board:**

By: \_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Services

Dated: \_\_\_\_\_

Approved to work plan and budget:

By: \_\_\_\_\_  
Rodney A. Cook, Director  
Children, Family & Community Connections Division

Dated: \_\_\_\_\_

- Exhibit A-1: Statement of Program Objectives
- Exhibit A-2: Performance Reporting Schedule and Work Plan Quarterly Report
- Exhibit A-3: Client Feedback Survey and Report
- Exhibit A-4: Demographic Report
- Exhibit B: Program Budget
- Exhibit C-1: Financial Report and Disbursement Request
- Exhibit C-2: Monthly Activity Report





October 25, 2018

Jim Bernard, **County Commissioner - Chair**  
Paul Savas, **County Commissioner, Position 2**  
Martha Schrader, **County Commissioner, Position 3**  
Ken Humberston, **County Commissioner, Position 4**  
Sonya Fischer, **County Commissioner, Position 5**

Clackamas County Commissioners,

Established in 1996, the Preventing Tobacco Addiction Foundation works nationwide to reduce the deadly toll of smoking by advocating to raise the minimum legal sales age of tobacco products to 21 and supporting other proven tobacco control initiatives, including tobacco retailer licensing (“TRL”). Tobacco use is the leading preventable cause of morbidity and mortality in the United States, the state of Oregon, and Clackamas County and kills almost half a million people in the United States each year. Tobacco disproportionately impacts lower-income populations, communities of color, people living with mental illness, and the LGBTQI community, contributing to the persistence of health inequities among communities in Clackamas County. A TRL helps to address health disparities associated with tobacco use.

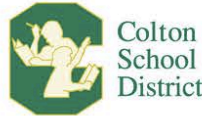
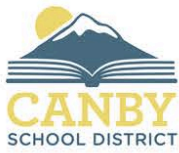
Through our work across the nation promoting and helping cities and counties implement Tobacco 21 laws, we know that enforcement of tobacco control policies is *critical* to policy success. TRL laws have proven effective in reducing illegal sales to underage youth. Requiring tobacco retailers to obtain a TRL enables cities and counties to collect a database of all retailers, provides a self-financing mechanism for best practices compliance checks, and gives the licensing authority the ultimate compliance lever (i.e. license suspension or revocation) for those few rogue retailers who refuse to comply with federal, state, or local tobacco control laws and continue to illegally profit from selling an addictive, deadly product to community youth. A TRL can also allow jurisdictions to limit where a license may be issued, i.e. restrictions on distance from schools and other youth-oriented facilities and density restrictions. A study out of Santa Clara County, CA reported licensing laws that restrict tobacco retailers from being located within 1000 feet of a school or 500 feet of another tobacco retailer can reduce tobacco outlets by 30%, reducing youth exposure and access to these products. Density restrictions help in high risk population areas, where retail density is often found the highest.

Leading the way, Oregon was one of the first states in the nation to pass a Tobacco 21 policy. However, Oregon communities need a mechanism to monitor compliance of and enforce the Tobacco 21 law and other tobacco control regulations. We understand that the Clackamas County Public Health Division is engaging stakeholders and gathering information to help the Commission consider adoption of a TRL program for your community. By allowing such exploration, Clackamas County clearly recognizes its duty to protect youth from addictive and deadly tobacco and nicotine products. We urge the Clackamas County Commission to adopt the strongest and most comprehensive tobacco retail license for your community.

Respectfully,

Ginny Chadwick  
Western Regional Director  
Preventing Tobacco Addiction Foundation

Katherine Ungar  
Executive Director  
Preventing Tobacco Addiction Foundation



November 29, 2018

To the Clackamas County Commissioners,

We are the superintendents representing all school districts in Clackamas County. As educators, we are deeply invested in the current and future success of our students. We write to you in support of a countywide tobacco retail license as a means to protect youth from developing an addiction to nicotine.

Adolescent brains are more sensitive to the rewarding properties of nicotine, making them especially vulnerable to addiction. Because adolescence is a critical period of growth and development, exposure to nicotine may have lasting, adverse consequences on brain development. <sup>1</sup> The use of nicotine products during adolescence can significantly impact their ability to learn and their academic success.

The proliferation of e-cigarettes presents a new distraction for students across our districts. The discreet Juuls are being used throughout the school day and detract from the learning environment. According to the 2018 Oregon Student Wellness Survey, almost half of 11th graders said that it would be “very easy” to get e-cigarettes. <sup>2</sup> As evidence, nearly three quarters of teen Juul owners nationwide said they obtained their Juul at a store. <sup>3</sup> A tobacco retail license is essential to enforce the minimum legal sales age and to prevent our kids from accessing and using these devices.

We recently learned from the Public Health Division staff that the influences of the tobacco industry are more concentrated in communities of low socioeconomic status. A countywide tobacco retail license would reduce access to tobacco, including e-cigarettes, for all students, regardless of the neighborhoods in which they live, learn, and play.

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. <sup>4</sup> Given the high propensity of students to join their peers in risk 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 and young adults.

As a society, we have a responsibility to provide a healthy environment for our youth to thrive. We urge you to adopt a tobacco retail license ordinance in Clackamas County to protect our youth, support their academic success, and their futures.

Sincerely,

Clackamas County Superintendents

<sup>1</sup> Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Washington, DC: The National Academies Press, 2015

[http://www.iom.edu/~media/files/report%20files/2015/TobaccoMinAge/tobacco\\_minimum\\_age\\_report\\_brief.pdf](http://www.iom.edu/~media/files/report%20files/2015/TobaccoMinAge/tobacco_minimum_age_report_brief.pdf)

<sup>2</sup> Student Wellness Survey <https://oregon.pridesurveys.com/>

<sup>3</sup> The Truth Initiative <http://www.truthinitiative.org/news/where-are-kids-getting-juul>

<sup>4</sup> Oregon Healthy Teen Survey

<https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/SURVEYS/OREGONHEALTHYTEENS/Pages/2017.aspx>





December 28<sup>th</sup>, 2018

Dear Clackamas County Chair Commissioner Jim Bernard and Board of County Commissioners,

Vibrant Future Coalition is a local group comprised of youth, parents, teachers, faith organizations, concerned community members, law enforcement and healthcare professionals, among other youth-serving agencies. Our mission is to work together with the North Clackamas community to educate and to reduce underage drinking, marijuana and prescription drug abuse amongst our youth. We are writing to educate you on the potential outcomes of a county-wide Tobacco Retail License ordinance, as tobacco use directly relates to the health and well-being of youth in the community and connects directly to our substance use prevention efforts.

In 2017, Oregon became the 5<sup>th</sup> state in the country to raise the smoking age to 21. Although this legislation went into effect at the beginning of this year, the county is still encountering high rates of youth, under the age of 21, having easy access to cigarettes and e-cigarette devices.

According to the 2018 Oregon Student Wellness Survey, 67.5% of 11<sup>th</sup> grade students in the North Clackamas School District reported that it would be either *sort of easy* or *very easy* to get some e-cigarettes, vape-pens, or e-hookahs. The average age of onset for smoking a whole cigarette was 13.7 years old, while trying an e-cigarette, vape-pen or e-hookah was 14.9 years old.

While the state successfully passed legislation to increase the legal smoking age to 21, there are currently no steps to hold retailers accountable. Clackamas County would lead the state, as one of the first to pass a county-wide Tobacco Retail License, among only 4 others. Additionally, Oregon is 1 of the 9 states that do not have state-wide Tobacco Retail Ordinances, to ensure all retailers in the county are compliant with tobacco-related laws.

Lastly, I wanted to take the time to thank you for all the work you do to keep Clackamas County a healthy and thriving community. We are lucky to have a dedicated and thoughtful board of county commissioners that is committed to the health and well-being of the community.

Sincerely,

A handwritten signature in black ink that reads "Ellen Velez". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Ellen Velez  
Prevention & Policy Coordinator  
Vibrant Future Coalition

Comment and Testimony  
Arlene Kantor, Dr.P.H.  
In Favor: Clackamas County Countywide Tobacco Retail License  
Clackamas County Board of Commissioners  
Public Hearing  
January 24, 2019

Commissioners, good morning. Thank you for the opportunity to speak about tobacco retail licensing in Clackamas County. My name is Arlene Kantor. I am a resident of Clackamas County. I am also a cancer epidemiologist, and a Volunteer member of the American Cancer Society Cancer Action Network. I am here today to support the County's interest in a countywide tobacco retail license program. This is a powerful way to monitor retailers' compliance with laws and to enforce penalties for illegal sale of tobacco to young people.

We have made vital progress toward preventing and reducing smoking in our youngest Oregonians by raising the age for the sale of tobacco products to 21. Now we can support and strengthen this effort by monitoring and strongly enforcing compliance through a countywide tobacco retail license program that provides retailer education and consequences for illegal sale to underage individuals. For our new Tobacco 21 law to be effective, the age limit for access must be rigorously enforced. If we don't, then our young people will readily identify the retailers who would sell to them.

The Oregon Health Authority's most recent inspection revealed that 14% of tobacco retailers in Clackamas County sold tobacco products to underage individuals. The Oregon Health Authority is only able to inspect about 30% of tobacco outlets annually. However, the Clackamas County tobacco retail licensing program would identify and visit every tobacco retailer in our county, and twice per year. This would strongly reinforce the Tobacco 21 law as well as establish important relationships with retailers; it will be especially significant where there are tobacco retailers located near schools. And California's experience with communities that have adopted strong local tobacco retailer licensing ordinances, has overwhelmingly demonstrated that these programs are successful.

A countywide tobacco retail license program here in Clackamas will be an effective mechanism to strengthen our efforts to prevent and reduce smoking, with a positive impact on public health, and it will save lives. Preventing our vulnerable young people from becoming smokers is one of our most important goals in eliminating addiction to tobacco and nicotine. This is a key health priority. Thank you for your interest in moving forward with this vital effort for a comprehensive countywide tobacco retail license program.

Arlene F. Kantor, Dr.P.H.  
Lake Oswego, OR  
Tel. (503) 534-8914



OREGON PUBLIC HEALTH DIVISION  
Health Promotion & Chronic Disease Prevention Section

Kate Brown, Governor

Oregon  
**Health**  
Authority

800 NE Oregon Street, Suite 730

Portland, OR 97232

Voice: (971) 673-0984

Fax: (971) 673-0994

TTY: (971) 673-0372

January 2, 2019

Jim Bernard, County Commissioner - Chair  
Paul Savas, County Commissioner, Position 2  
Martha Schrader, County Commissioner, Position 3  
Ken Humberston, County Commissioner, Position 4  
Sonya Fischer, County Commissioner, Position 5

Dear Commissioners:

On behalf of the Oregon Health Authority's Public Health Division, I am writing to express support for the proposed ordinance in Clackamas County to establish a license for the sale of tobacco products and inhalant delivery systems.

The Clackamas County Public Health Division and the Oregon Public Health Division have a long history of working together on proven tobacco control strategies. Since the inception of the Tobacco Prevention and Education Program in 1997, we've reduced cigarette consumption in Oregon by over 45%.<sup>1</sup> However, tobacco use is still the leading cause of preventable death in Oregon, causing nearly 8,000 deaths per year,<sup>2</sup> and e-cigarette use among 11th graders nearly tripled from 2013 to 2017.<sup>3</sup> Both the Food and Drug Administration and the U.S. Surgeon General recently released statements on e-cigarettes, declaring their use an "epidemic" among youth, and urged action to protect the health of young people.

A sustainable tobacco retail licensing system establishes a standard fee and meaningful penalties, including suspension or revocation of a license for violations, that fully cover all program costs, including administration, inspection, education, and enforcement. An effective tobacco retail licensing system also allows jurisdictions to take further measures to protect the public. The tobacco industry is spending nearly \$116 million dollars to promote their products in Oregon's stores.<sup>4</sup> Regulating the price, flavor, and location are all policies proven to reduce the significant health burdens and negative economic costs of tobacco.

I commend the Board of Health for considering tobacco retail licensing to protect Clackamas County residents from the severe health consequences of tobacco. The Oregon Health Authority is committed to supporting Clackamas County on this important issue and thanks you for your leadership in tobacco prevention.

Sincerely,

Karen Girard, MPA

Manager

Health Promotion and Chronic Disease Prevention Section

Public Health Division

Oregon Health Authority

---

<sup>1</sup> Orzechowski W and Walker RC. The tax burden on tobacco. Historical compilation Volume 52, 2017. Fairfax and Richmond, Virginia.

<sup>2</sup> Oregon Vital Statistics Annual Reports, Volume 2: Chapter 6. Mortality. Table 6-20. Available at:  
<http://www.oregon.gov/oha/ph/BirthDeathCertificates/VitalStatistics/annualreports/Volume2/Pages/index.aspx>

<sup>3</sup> Oregon Health Authority. Oregon Healthy Teens Survey (OHT). Unpublished data.

<sup>4</sup> Campaign for Tobacco-Free Kids (CTFK). State-Specific Estimates of Tobacco Company Marketing Expenditures 1998-2016. Campaign for Tobacco-Free Kids webpage.  
<https://www.tobaccofreekids.org/research/factsheets/pdf/0271.pdf>. Updated April 10, 2018. Accessed December 26, 2018.



1/3/2019

Jim Bernard, **County Commissioner - Chair**  
Paul Savas, **County Commissioner, Position 2**  
Martha Schrader, **County Commissioner, Position 3**  
Ken Humberston, **County Commissioner, Position 4**  
Sonya Fischer, **County Commissioner, Position 5**

Clackamas County Commissioners,

We are writing to you, as a partner of Clackamas County Public Health Division, working to ensure communities most impacted are engaged in efforts towards a county-wide Tobacco Retail License ordinance.

OHEA is a person of color led collaborative, organized to center and uplift the wisdom of our communities of color through racial justice informed health equity policies and practices as part of the movement to dismantle white supremacy and shift the imbalance of power. OHEA has been engaged in work around tobacco prevention and impacts in communities who face the greatest inequities since 2014. We have successfully worked in partnership with other counties to identify strategies for stronger, healthier communities that ensure all Oregonians have the ability to attain health, equitably.

Tobacco use disproportionately affects many communities of color. Statistics reveal that the communities most impacted by tobacco use are also the same communities burdened with other social, environmental, and physical burdens. For example, members of the LGBTQ community are more likely to experience other mental and physical health issues<sup>1</sup>, those experiencing mental illness are less likely to have health insurance or other health supports<sup>2</sup>, and people of color along with LGBTQ and mentally ill communities may experience chronic stress from discrimination in their daily life<sup>3,4,5</sup>.

---

<sup>1</sup> Kelleher, C. Minority stress and health: Implications for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) young people. *Counseling Psychology Quarterly* 22, 373–379 (2009).

<sup>2</sup> Schroeder, S. A. & Morris, C. D. Confronting a neglected epidemic: Tobacco cessation for persons with mental illnesses and substance abuse problems. *Annual Reviews of Public Health* 31, 297–314 (2010).

<sup>3</sup> Purnell, J. Q. et al. Perceived discrimination, psychological distress, and current smoking status: Results from the Behavioral Risk Factor Surveillance System Reactions to Race Module, 2004-2008. *American Journal of Public Health* 102, 844–851 (2012).

<sup>4</sup> Apollonio, D. E. & Malone, R. E. Marketing to marginalised: Tobacco industry targeting of the homeless and mentally ill. *Tobacco Control* 14, 409–415 (2005).

<sup>5</sup> Williams, D. R., Neighbors, H. W. & Jackson, J. S. Racial/Ethnic discrimination and health: Findings from community studies. *American Journal of Public Health* 93, 200–208 (2003).

In the last year, e-cigarette use among high school students increased by 78%.<sup>6</sup> According to the 2018 Student Wellness Survey, almost half of 11 graders said that it would be “very easy” to get E-cigarettes.<sup>7</sup>

Because the vast majority of adult smokers (95%) began smoking before age 21, Oregon raised the legal age to purchase tobacco to 21 in 2017. Tobacco retail licensing policy (TRL) has emerged as an effective strategy to reduce rates of tobacco sales to minors. The most effective licensing systems involve a sustainable funding source, such as an annual fee, to maintain the licensing program and include the option to suspend or revoke a license. With these elements in place, retailers are more likely to ask for identification, and sales to minors fall.<sup>8</sup>

Despite the average declining trend in tobacco use, some Oregonians are more affected by tobacco and nicotine addiction than others and need further support. The national Synar Program, sponsored by the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, collects data from random inspections of retailers who sell tobacco to minors. The 2013 report indicated that Oregon was leading the nation in illegal sales to minors.<sup>9</sup>

In spite of the education students receive in school about the harm of tobacco, alcohol and other drugs, over 40 percent of 11 graders have used any form of tobacco in Clackamas County.<sup>10</sup> *A comprehensive approach that includes policy that is led and driven by youth themselves, is necessary to prevent youth from regularly using substances such as tobacco. A tobacco retail license would complement education by ensuring retailers do their part to keep tobacco and e-cigarettes out of the hands of adolescence and young adults.*

OHEA is committed to ensuring out communities of color, youth, LGBTQIA2+ communities, low income communities and other communities who face the greatest health inequities are at the forefront of all of our policy decisions. This includes ensuring a health equity lens and framework is included in all tobacco prevention efforts, and that the voices of those most impacted are heard, valued and respected. Without this, we do not believe these efforts will yield the expected results.

Sincerely,  
Dr. Zeenia Junkeer  
Director, Oregon Health Equity Alliance (OHEA)



---

<sup>6</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. *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;67:1276-1277.

<sup>7</sup> Student Wellness Survey <https://oregon.pridesurveys.com/>

<sup>8</sup> States and Municipalities with Laws Regulating Use of Electronic Cigarettes As of July 1, 2015. (American Nonsmokers’ Rights Foundation, 2015). at <<http://www.no-smoke.org/pdf/ecigslaws.pdf>>

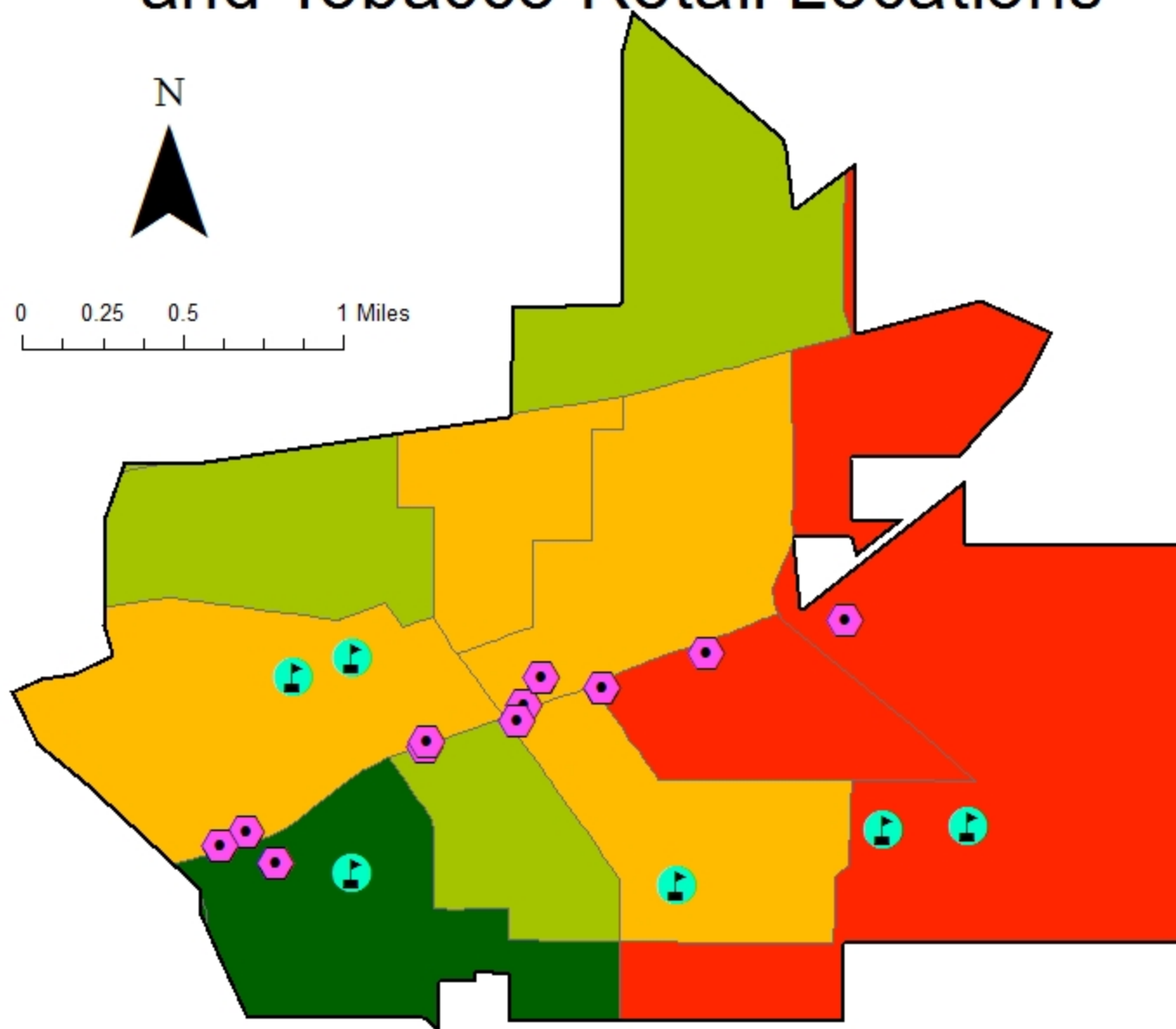
<sup>9</sup> 9. FFY 2013 Annual Synar Reports Tobacco Sales to Youth. (Substance Abuse and Mental Health Services Administration, 2013). at <<http://www.oregon.gov/oha/amh/datareports/Annual%20Synar%20Report%202012.pdf>>

<sup>10</sup> Oregon Healthy Teen Survey

<https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/SURVEYS/OREGONHEALTHYTEENS/Pages/2017.aspx>



# Canby: Youth Under 21 and Tobacco Retail Locations



## Legend

- Tobacco Retailers
- Schools
- Canby City Limits

## Population Under 21

- 100 - 250
- 251 - 500
- 501 - 750
- 751 - 1000

Approximately 5,700 youth under the age of 21 live in the Canby area. In this same area, there are 11 tobacco retail locations.

Clackamas County Public Health Division, Data Source: ACS 5 year estimate 2012-2016, and Oregon Department of Education



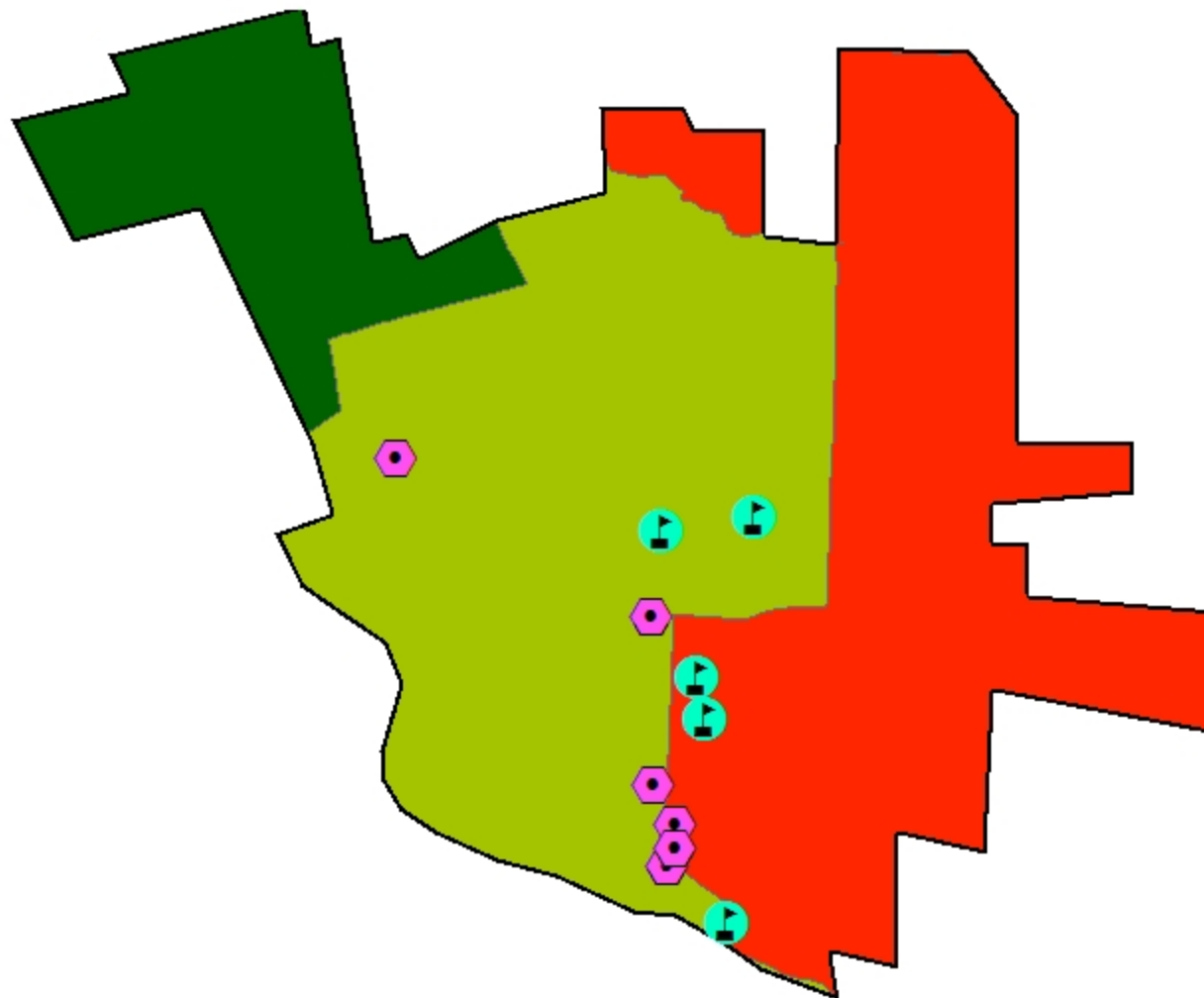
**Public Health**

**Health, Housing  
& Human Services**




CLACKAMAS COUNTY







# Estacada: Youth Under 21 and Tobacco Retail Locations



## Legend

-  Schools
-  Tobacco Retailers
-  Estacada City Limits

## Population Under 21

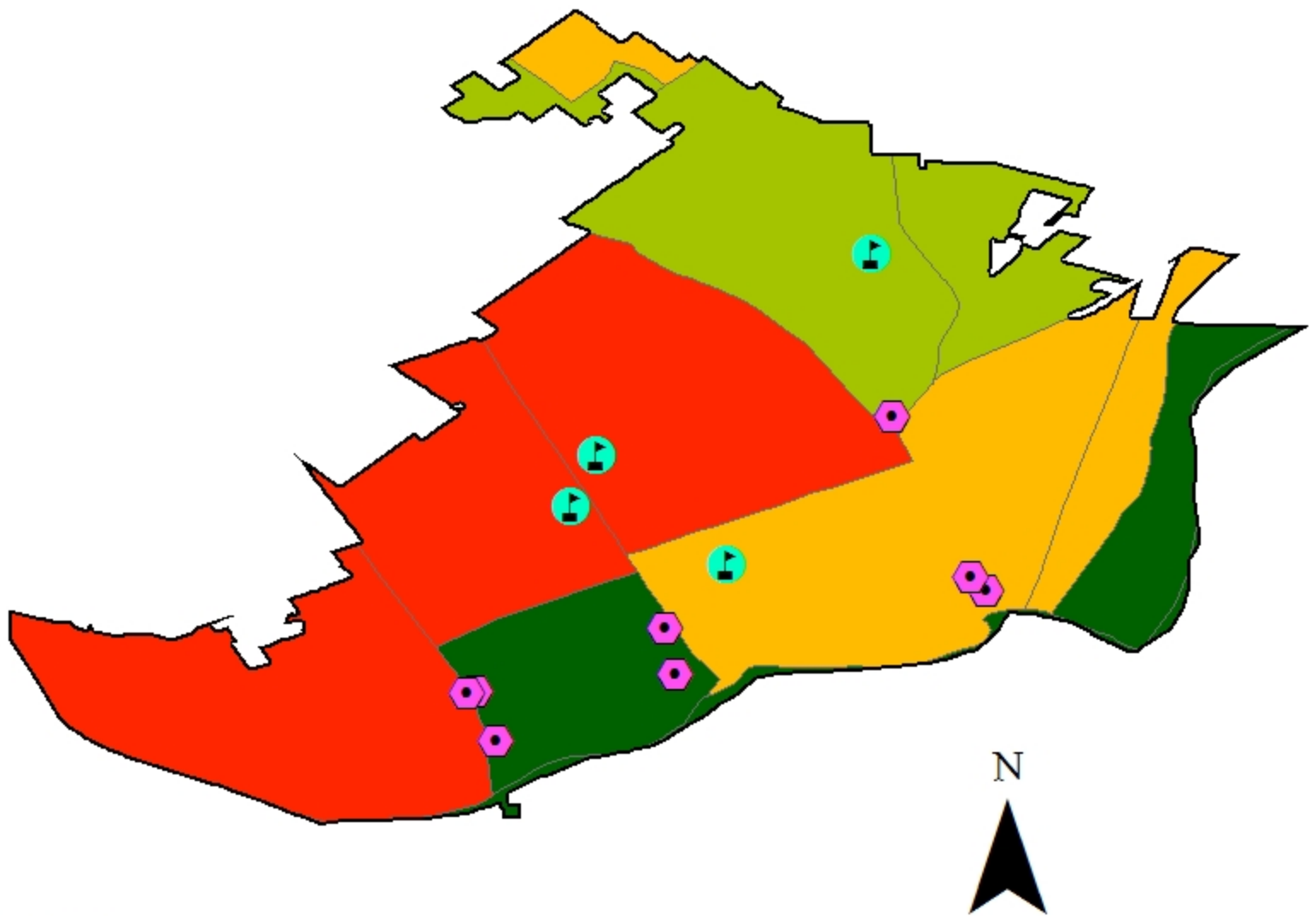
-  0 - 250
-  251 - 500
-  501 - 750
-  751 - 1000

Approximately 2,000 youth under the age of 21 live in the Estacada area. In this same area, there are 6 tobacco retail locations.




Clackamas County Public Health Division  
Data Source: ACS 5 year estimate 2012-2016  
Oregon Department of Education, and  
Clackamas County Public Health Division







# Gladstone: Youth Under 21 and Tobacco Retail Locations



## Legend

-  Tobacco Retailers
-  Schools
-  Gladstone City Limits

## Population Under 21

-  100 - 250
-  251 - 500
-  501 - 750
-  751 - 1000

Approximately 4,800 youth under the age of 21 live in the Gladstone area. In this same area, there are 8 tobacco retail locations.

Clackamas County Public Health Division, Data Source: ACS 5 year estimate 2012-2016, and Oregon Department of Education

0 0.25 0.5 1 Miles



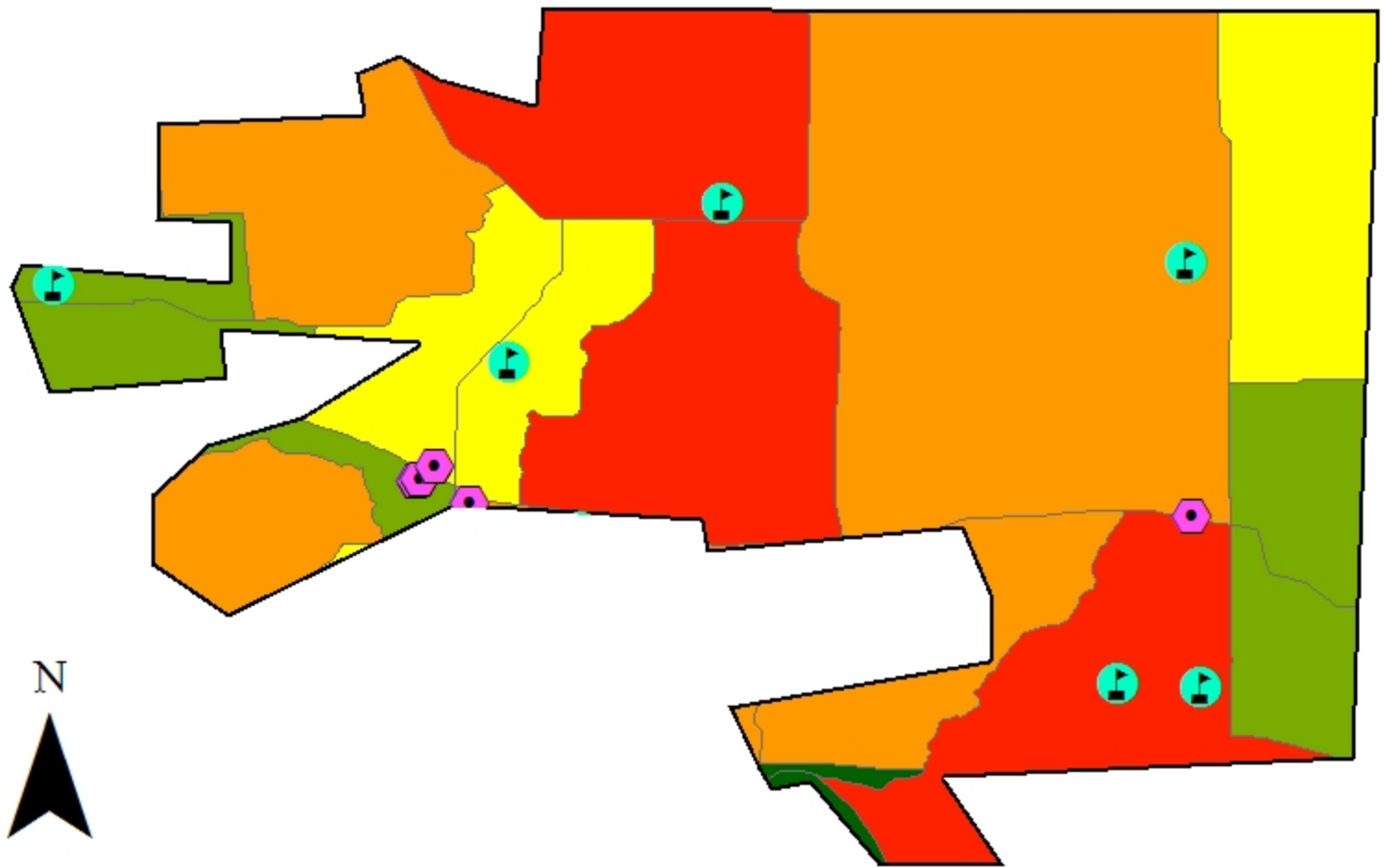
**Public Health**

Health, Housing  
& Human Services

CLACKAMAS COUNTY








# Happy Valley: Youth Under 21 and Tobacco Retail Locations

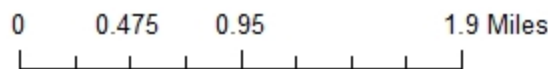


## Legend

-  Tobacco Retailers
-  Schools
-  Happy Valley City Limit

## Population Under 21

-  0 - 250
-  251 - 500
-  501 - 750
-  751 - 1000
-  1001 - 2150



Approximately 15,000 youth under the age of 21 live in the Happy Valley area. In this same area, there are 5 tobacco retail locations.

Clackamas County Public Health Division, Data Source: ACS 5 year estimate 2012-2016, and Oregon Department of Education



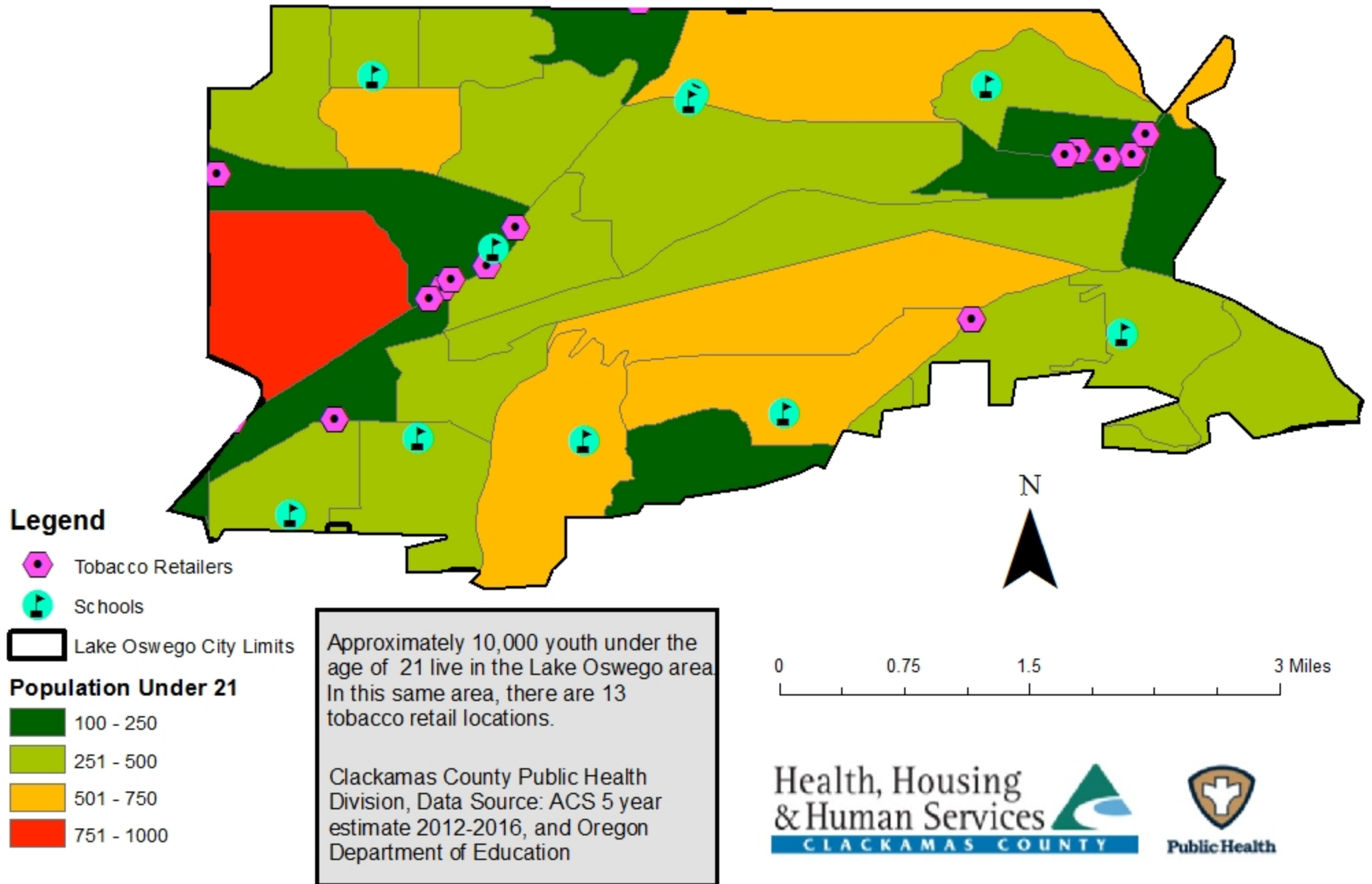
**Public Health**

Health, Housing  
& Human Services

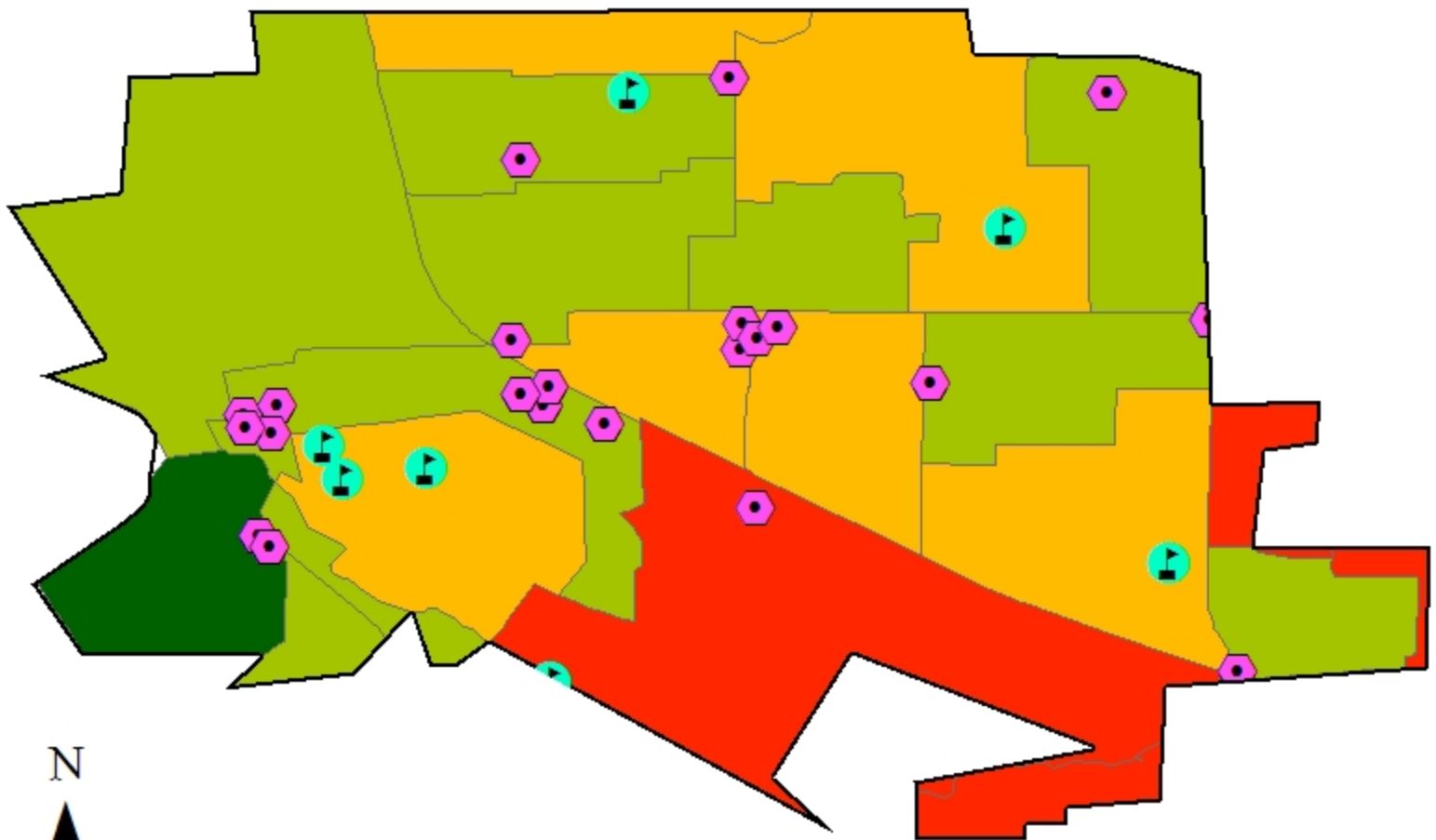
CLACKAMAS COUNTY



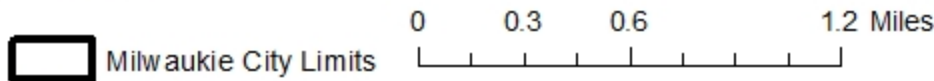
# Lake Oswego: Youth Under 21 and Tobacco Retail Locations



# Milwaukie: Youth Under 21 and Tobacco Retail Locations



## Legend

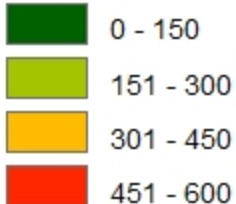


Milwaukie City Limits

Schools

Tobacco Retailers

### Population Under 21



Approximately 6,000 youth under the age of 21 live in the Milwaukie area. In this same area, there are 22 tobacco retail locations.

Clackamas County Public Health Division, Data Source: ACS 5 year estimate 2012-2016, and Oregon Department of Education



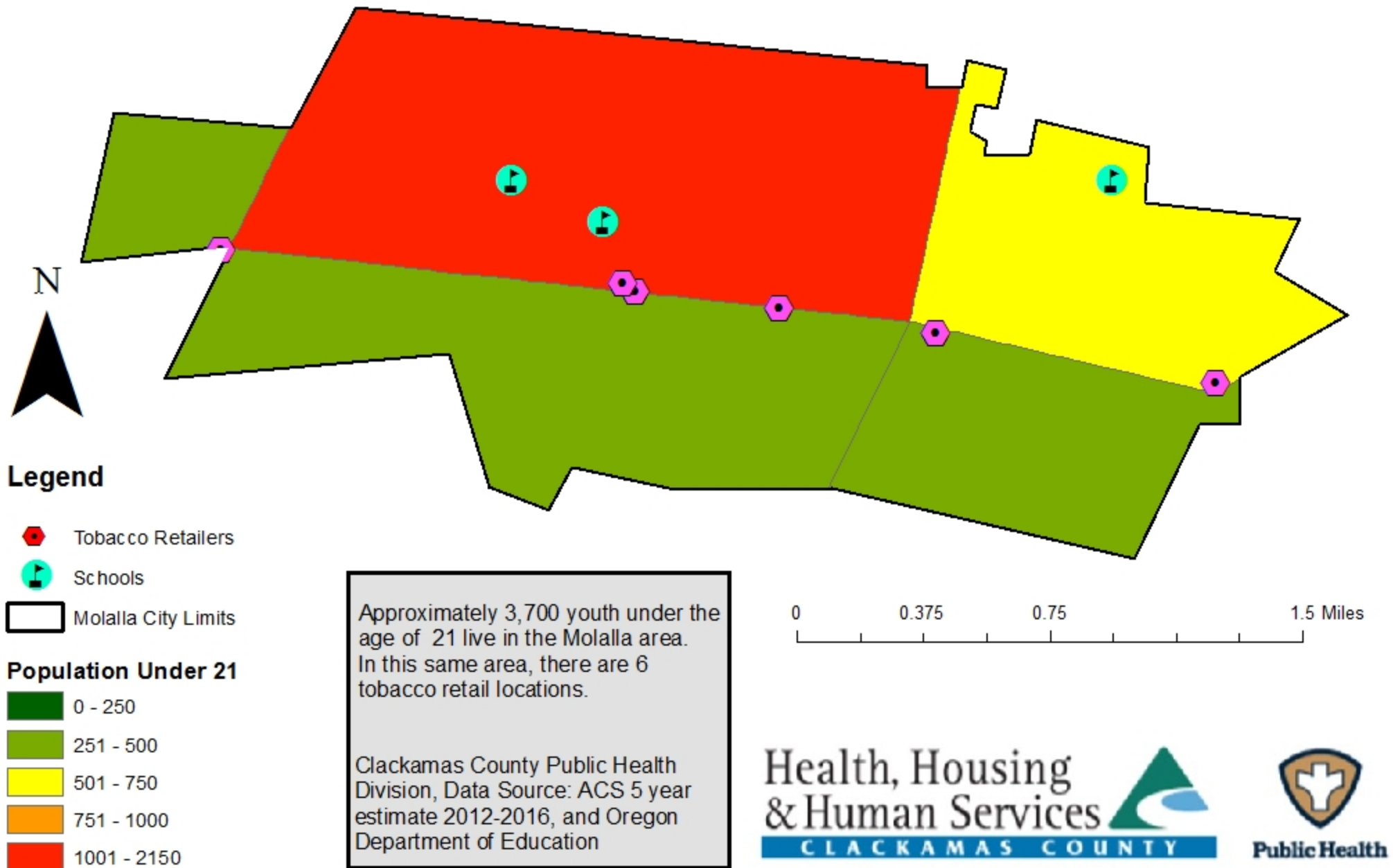
**Public Health**

Health, Housing  
& Human Services

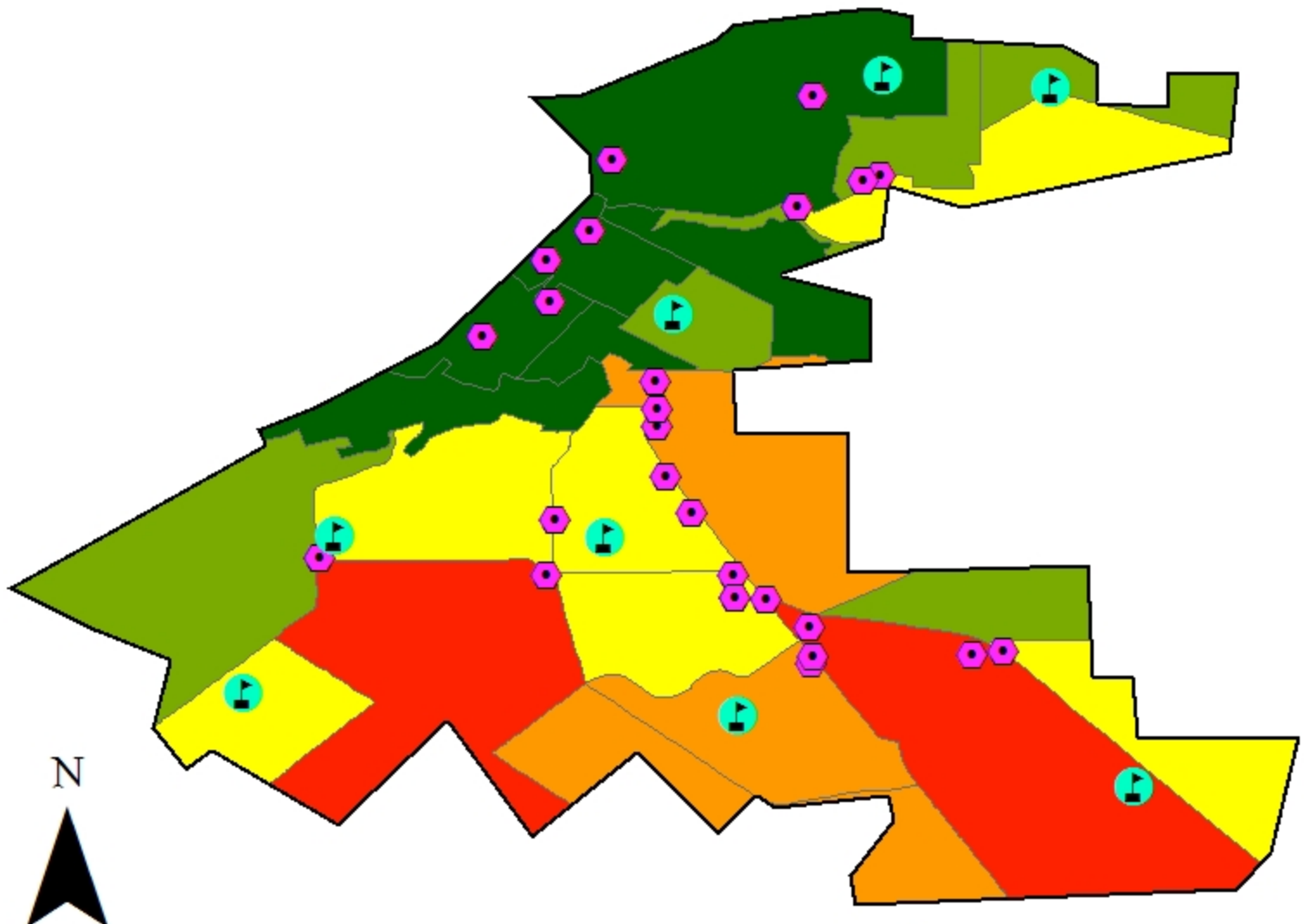
CLACKAMAS COUNTY











# Molalla: Youth Under 21 and Tobacco Retail Locations



# Oregon City: Youth Under 21 and Tobacco Retail Locations



## Legend

-  Tobacco Retailers
-  Schools
-  Oregon City Limits
- Population Under 21**
-  75 - 250
-  251 - 500
-  501 - 750
-  751 - 1000
-  1001 - 2150

0 0.5 1 2 Miles

Approximately 11,000 youth under the age of 21 live in the Oregon City area. In this same area, there are 25 tobacco retail locations.

Clackamas County Public Health  
Division: Data Source: ACS 5 year  
estimate 2012-2016, and Oregon  
Department of Education.



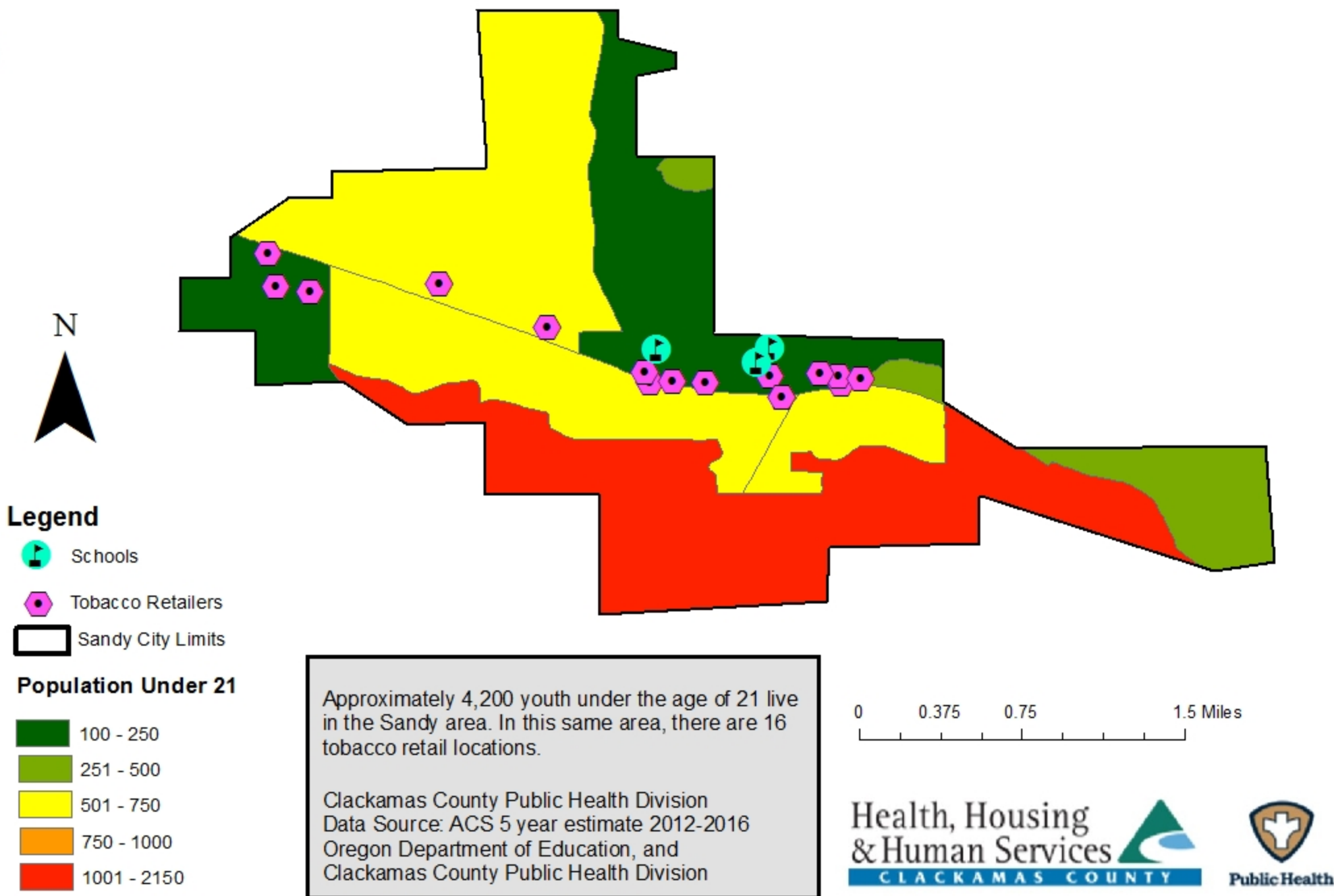
**Public Health**

Health, Housing  
& Human Services

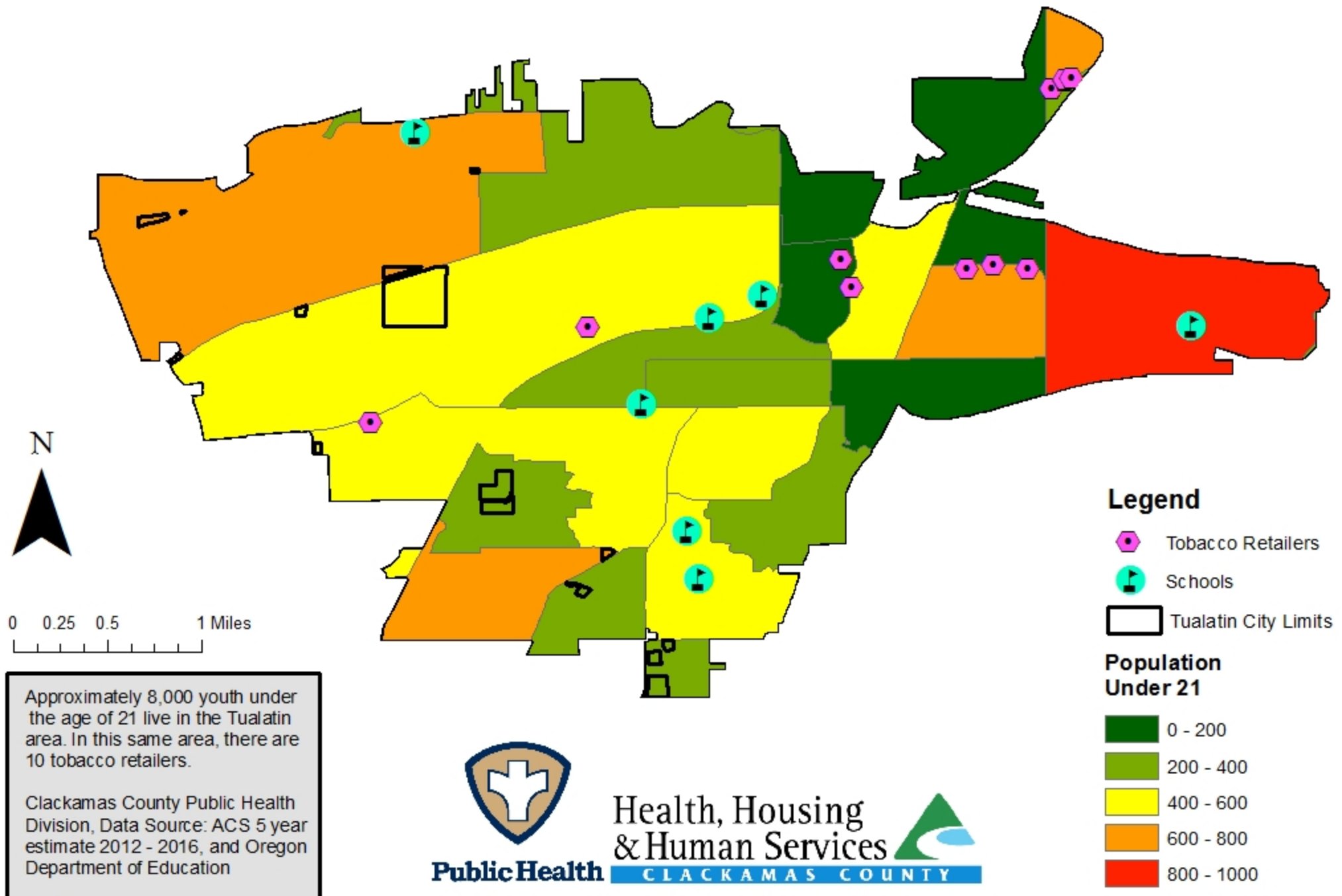
CLACKAMAS COUNTY



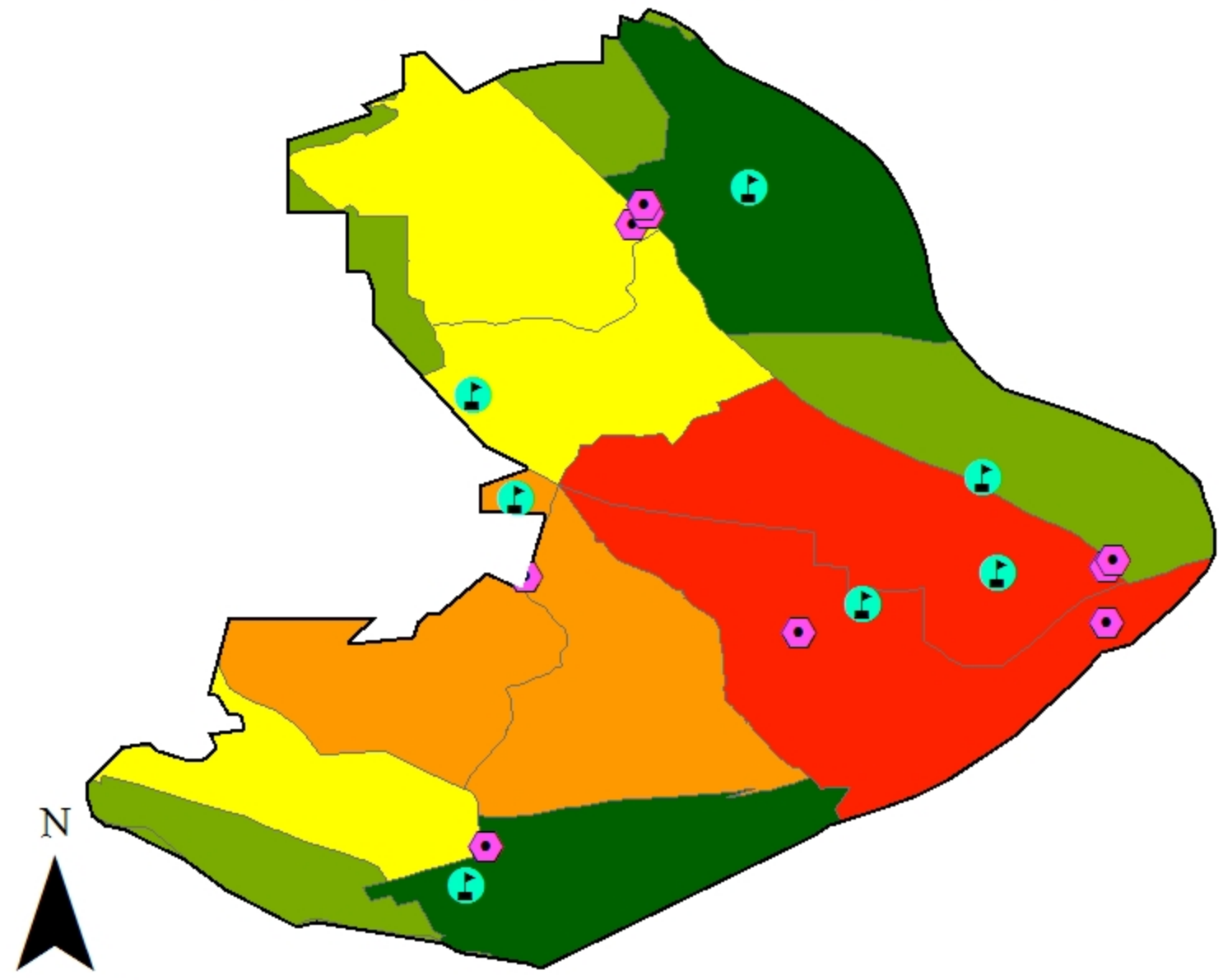
# Sandy: Youth Under 21 and Tobacco Retail Locations




# Tualatin Youth Under 21, Schools, and Tobacco Retail Locations








# West Linn: Youth Under 21 and Tobacco Retail Locations



## Legend

-  Tobacco Retailers
-  Schools
-  West Linn City Limit

## Population Under 21

-  100 - 250
-  251 - 500
-  501 - 750
-  751 - 1000
-  1001 - 2150

Approximately 7,100 youth under the age of 21 live in the West Linn area. In this same area, there are 9 tobacco retail locations.

Clackamas County Public Health Division, Data Source: ACS 5 year estimate 2012-2016, and Oregon Department of Education

0 0.375 0.75 1.5 Miles



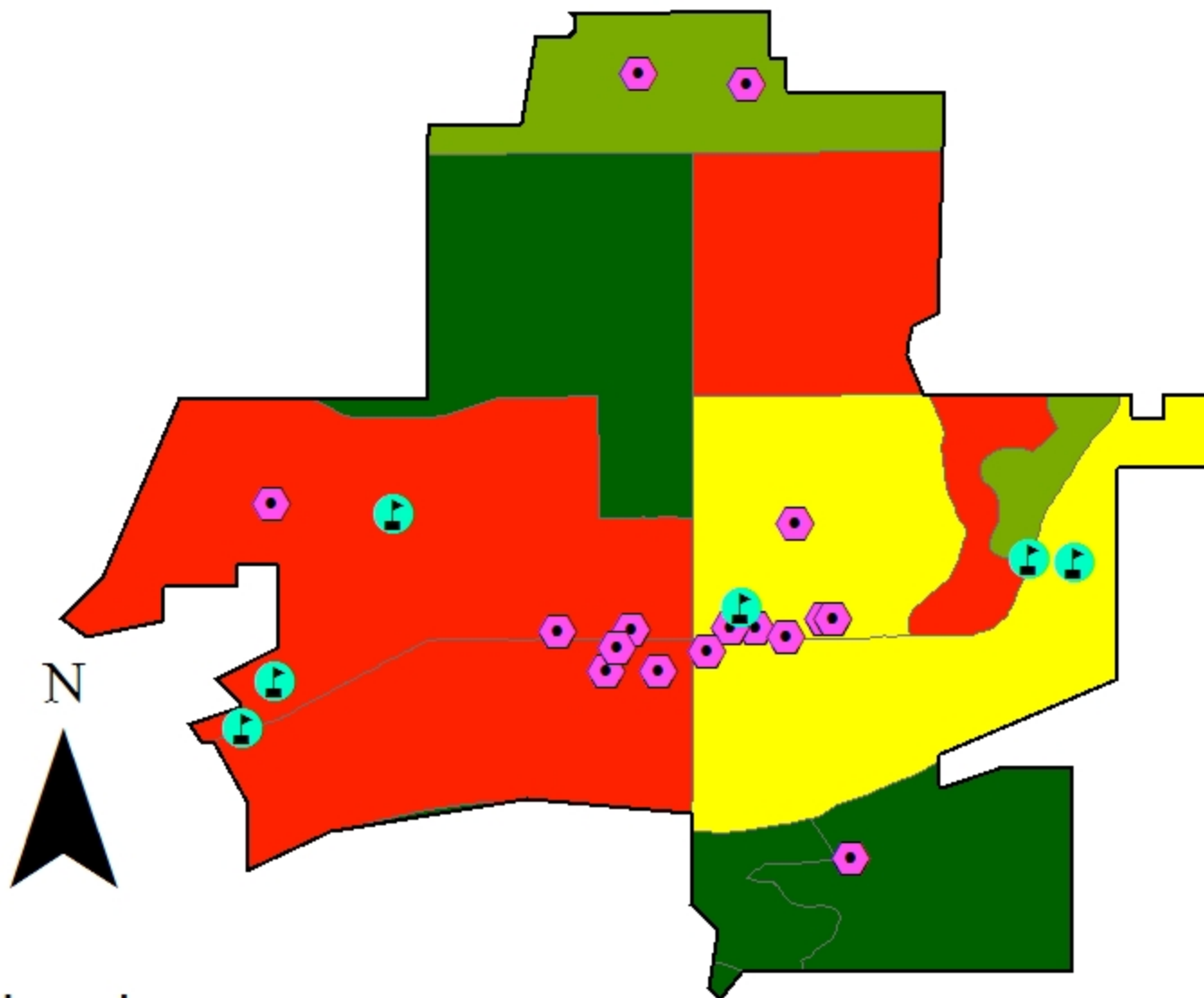
**Public Health**

Health, Housing  
& Human Services









CLACKAMAS COUNTY



# Wilsonville: Youth Under 21 and Tobacco Retail Locations



## Legend

-  Tobacco Retailers
-  Schools
-  Wilsonville City Limits
- Population Under 21**
-  0 - 250
-  251 - 500
-  501 - 750
-  751 - 1000
-  1001 - 2150

0 0.4 0.8 1.6 Miles



Approximately 5,800 youth under the age of 21 live in the Wilsonville area. In this same area, there are 16 tobacco retail locations. 2 of the tobacco retailers in Wilsonville are not located in Clackamas County.

Clackamas County Public Health Division: Data Source: ACS 5 year estimate 2012-2016, and Oregon Department of Education.



**Public Health**

Health, Housing  
& Human Services

CLACKAMAS COUNTY



## Tobacco's toll in one year



**50,400** Adults who regularly smoke cigarettes

**11,634** People with a serious illness caused by tobacco



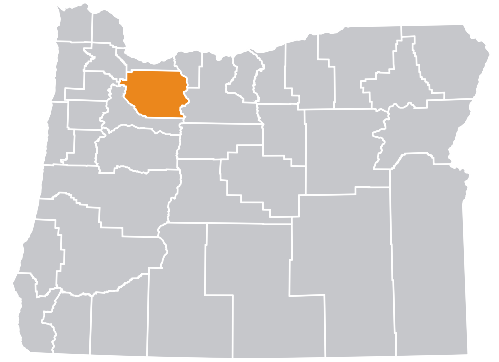
**595**

Tobacco-related deaths



**\$118.7 Million**

spent on tobacco-related medical care



## Population

Youths	88,342
Adults	297,738
Total residents	386,080

**\$95.1 Million**

in productivity losses due to premature tobacco-related deaths

## Among tobacco retailers assessed in Clackamas County



More than **1 in 2** was located within 1,000 feet of a school or park



**2 in 3** advertised tobacco outside



Nearly **8 in 10** sold tobacco at discounted prices



**\$1.23** was the average price of a single, flavored little cigar



The Tobacco Industry spent **\$112 million a year promoting tobacco products in Oregon stores in 2012.**

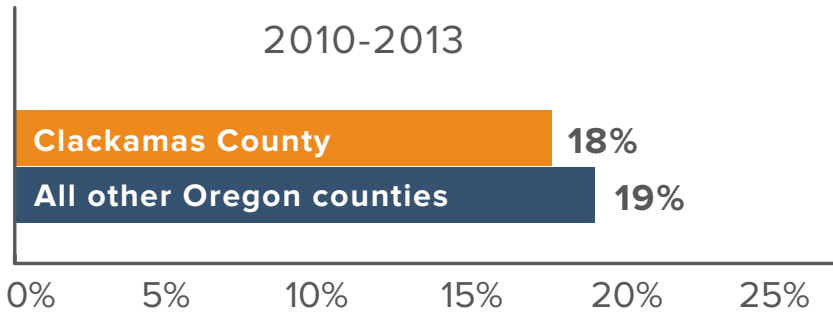
## Components of a comprehensive tobacco prevention program



Oregon's Tobacco Prevention and Education Program (TPEP) supports local public health authorities to serve all 36 counties and nine federally-recognized tribes. TPEP works to:

- Engage communities in reducing the tobacco industry influence in retail stores
- Increase the price of tobacco
- Promote smokefree environments
- Provide support and resources to Oregon smokers who want to quit
- Engage diverse populations of Oregonians

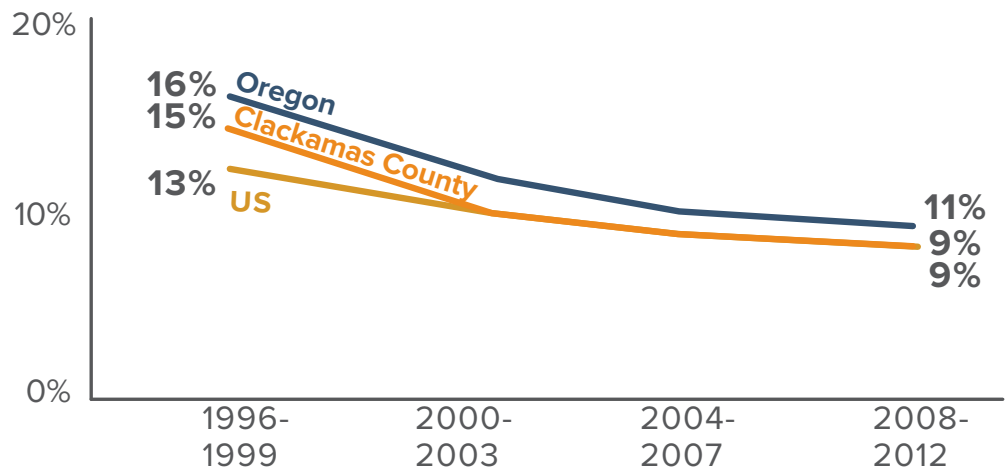
## Adult cigarette smoking



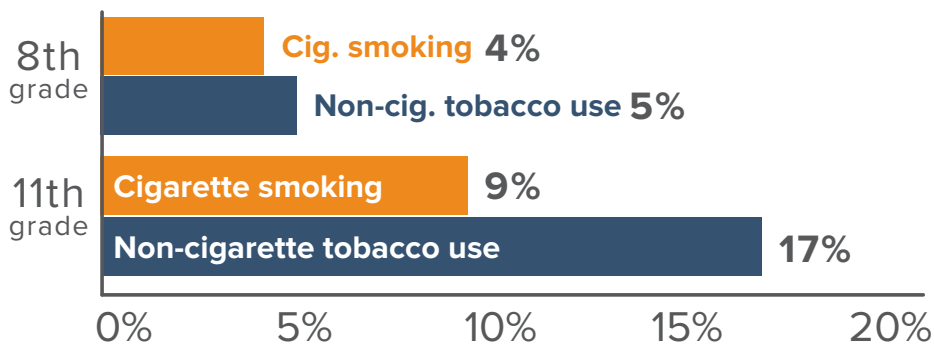
Cigarette smoking among adults in Clackamas County is similar to the rest of Oregon.

## Cigarette smoking during pregnancy

Cigarette smoking among pregnant women in Clackamas County is about the same as Oregon overall and the rest of the United States.



## Youth cigarette and non-cigarette tobacco use



Nearly **twice as many** 11th graders in Clackamas County are using non-cigarette tobacco products compared to cigarettes.

*Note: non-cigarette tobacco products include: cigars, pipe tobacco, hookah tobacco, chewing tobacco, dissolvable tobacco, and electronic cigarettes.*



**Want to know more or have questions about the burden of tobacco in your community?**

Visit Smokefree Oregon to find out what you can do:  
<http://smokefreeoregon.com/what-you-can-do/>

Clackamas County Tobacco Fact Sheets 2014 and 2019  
Produced and published by the Oregon Health Authority

# Youth Use of Tobacco Increasing



	2014	2019
Tobacco-related deaths	595	679
Youth population	88,342	87,315
11 <sup>th</sup> grade cigarette smoking	9%	14%
11 <sup>th</sup> grade non-cigarette tobacco use	17%	29%

*Non-cigarette tobacco products include: cigars, pipe tobacco, hookah tobacco, chewing tobacco, dissolvable tobacco, and electronic cigarettes*

Clackamas County Fact Sheets, 2104 and 2019

Data sources available at <https://smokefreeoregon.com/sources/>

Clackamas County Tobacco Fact sheets include:

- Tobacco's toll in one year
- Highlights from the assessment of 232 Tobacco Retailers, completed June 2018
- Adult cigarette smoking
- Youth tobacco use

## Tobacco's toll in one year<sup>1-5</sup>



**46,500** Adults who regularly smoke cigarettes

**20,370** People with a serious illness caused by tobacco



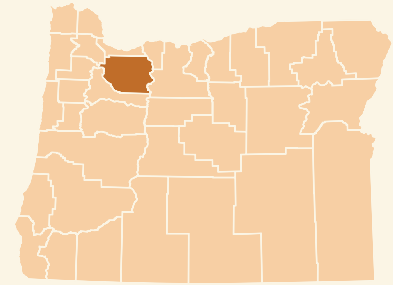
**679**

Tobacco-related deaths



**\$153.7 Million**

spent on tobacco-related medical care



### Population

Youths	87,315
Adults	332,110
Total residents	419,425

**\$136.7 Million**

in productivity losses due to premature tobacco-related deaths

### Among tobacco retailers assessed in Clackamas County<sup>6</sup>



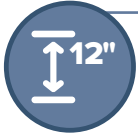
**1 in 3**

advertised tobacco or e-cigarettes outside the store



**97%**

sold flavored products (menthol, candy, etc.)



**12%**

sold products within 12" of toys, candy, gum, slushy/soda or ice cream



**2 in 5**

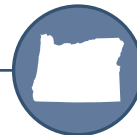
offered price promotions/discounts



**27%**

advertised cigarillos for less than \$1

### Components of a comprehensive tobacco prevention program

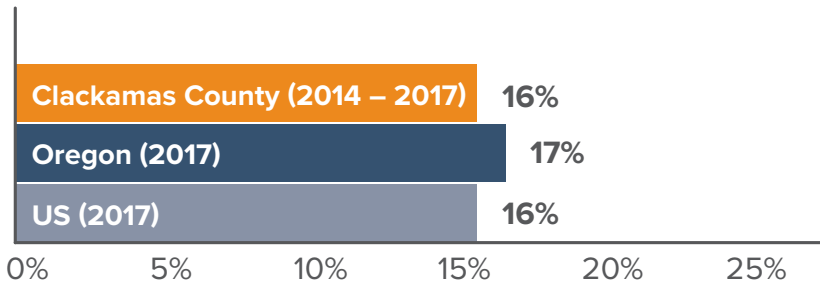


Oregon's Tobacco Prevention and Education Program (TPEP) supports local public health authorities to serve all 36 counties and nine federally recognized tribes. TPEP works to:

- Engage communities in reducing the tobacco industry's influence in retail stores
- Increase the price of tobacco
- Promote smoke-free environments
- Provide support and resources to Oregon smokers who want to quit
- Engage diverse populations of people in Oregon



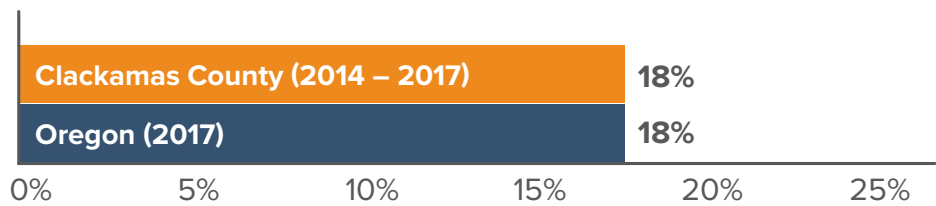
# Adult cigarette smoking<sup>1</sup>



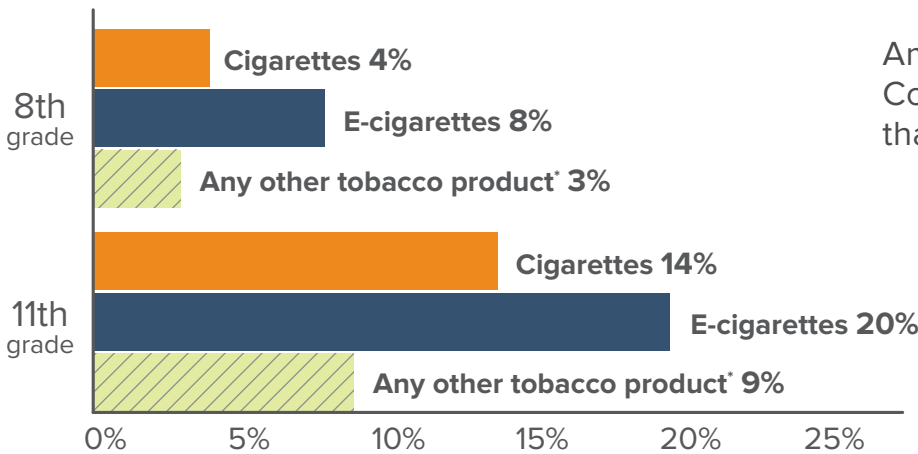
Cigarette smoking among adults in Clackamas County is **similar** to Oregon overall and the rest of the United States.

# Adults exposed to secondhand smoke indoors<sup>1</sup>

Secondhand smoke exposure for adults in Clackamas County is **similar** to Oregon overall.



# Youth tobacco use<sup>7</sup>



Among 11th graders in Clackamas County, e-cigarette use was **higher** than cigarette smoking in 2017.

\* 'Any other tobacco product' includes any smokeless tobacco, small or large cigars, or hookah use.



**Want to know more or have questions about the burden of tobacco in your community?**

Visit Smokefree Oregon to find out what you can do:  
<http://smokefreeoregon.com/what-you-can-do/>

<sup>17</sup> For more information on data sources, please visit:  
<https://smokefreeoregon.com/sources/>

NOV 19 2018

BCC, CH

November 14, 2018

Chairman Jim Bernard

Board of Commissioners & Dawn Emerick, Director Public Health Division

2051 Kaen Road

Oregon City, OR 97045

RE: Retail Tobacco License

Dear Chairman Bernard, Commissioner and Director Emerick:

I have been a tobacco retailer in Clackamas County for over twenty-five years. I have street level experience and knowledge people in County government do not have. I take exception to retailers being blamed as the source of "11<sup>th</sup> graders finding easy access to tobacco products." The survey did not ask where the kids got their tobacco, a retail shop or from peers and even family members. No retailer is out to get kids hooked on tobacco products. I had the Mother of a D.A.R.E. student buying him cigars because he was too young to buy them. The young man was one of the minors who participated in stings on retailers. She said she would rather he smoke cigars than do drugs. Therein lies your problem keeping tobacco out of the hands of minors.

I have long advocated for a retail tobacco license for a totally different reason. I worked with former State Representative Tom Butler and Mazen Malik of the Legislative Revenue office to get a statewide bill passed. Our reason was to prevent non-retail tobacco shops from buying online and selling to the public without paying the tobacco taxes legal retailers pay. The Dept. of Revenue still has no way to track legal retailers unless they are traditional retailers.

I also would suggest the tobacco retail license not exceed the price of a beer/wine resell license. An annual license fee of \$500 is excessive and punitive to small Mom & Pop businesses. While your literature shrugs off the financial impact of job losses, remember those jobs pay the taxes that support schools, public safety and other state services. The loss of a job does more than harm the employee, it impacts the entire infrastructure of the state taxation, not just Clackamas County.

I believe the retail tobacco license should be a state issue for consistency with each County collecting no more than the cost of a beer & wine license. The state as well as the FDA are already conducting stings of retail tobacco shops, why spend money duplicating their law enforcement efforts?

Respectfully submitted

Jan Esler-Rowe, President

A handwritten signature in cursive script that reads "Jan Esler-Rowe". The signature is written in black ink and is positioned to the right of the typed name "Jan Esler-Rowe, President".

Cascade Cigar & Tobacco Co., Inc.

9691 SE 82<sup>nd</sup> Avenue

Happy Valley, OR 97086

I am unable to attend the public hearings on the dates listed but I want to present my position on the matter.