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Director

RESOLUTION SERVICES

Public Services Building

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Tobacco Retail Licensing Community Task Force
Report to the Board of Health
July 18, 2019

Who we are:

The Task Force was convened by Clackamas County Public Health at the request of the Board of Health.

Public Health staff worked closely with Public and Government Affairs (PGA) to draft a charter for the Task Force and recruit members. Together, PGA and Public Health recruited and reviewed applications from 30 people representing a wide range of stakeholders, and invited 22 applicants to join the Task Force. To ensure the independence of the Task Force, Public Health engaged the services of Clackamas County Resolution Services staff to serve as neutral facilitators.

The Task Force Membership included:

Urban and Rural Business Owners

- Brainard Brauer, Oregon City
- Jae Chun, Milwaukie
- John Hill, Happy Valley

Regional Grocery Associations

- Shawn Miller, Northwest Grocery Association
- Jae Chun, Korean American Grocers Association of Oregon

Chambers of Commerce/Business Associations

- John Hill, Oregon Cigar Association
- Nellie DeVries, Clackamas County Business Association

Parents / Community members

- Tim Driscoll, Molalla
- Leonard Kesterson, Milwaukie
- Bethany Lowe, Lake Oswego
- Amber Smith, Gladstone
- Jennifer Reeves, Oregon City

Youth

- Alexis Zavala, Canby

City official

- Teri Cummings, City Councilor, City of West Linn

Related State Agencies

- Charina Walker, Oregon Health Authority
- Patrick Owen, Oregon Liquor Control Commission

Non-profit health organizations

- Arlene Kantor, American Cancer Society
- Christopher Friend, American Cancer Society
- David Jacques, NAMI
- David Jacques, Native American Youth and Family Center

Community with Tobacco Retail Licensing in place

- Kari McFarlan, TPEP Program Supervisor, Multnomah County

How we worked:

The Task Force met in person two times during June and July, 2019 and supplemented that work with phone interviews and email drafts before and between meetings. We agreed to make decisions via consensus. Any member of the Task Force had the right to block consensus. Where we could not reach consensus, we provide majority and minority reports.

Our Consensus Recommendation:

The full Task Force* recommends the Board of Health adopt the Ordinance as attached. This draft is consistent with what was proposed to the Task Force by Public Health with the following changes:

- Edits for clarity;
- Remove penalty for license suspension for first offense;
- Reduced time for license suspensions for second and third offenses;

* One member abstains from joining this consensus report. They believe that the Task Force meetings as scheduled did not allow a full exploration of the impacts of adopting any form of Tobacco Retail License.

Location-Based Limits on Tobacco Retail Licensing: Majority and Minority Reports

The Task Force was unable to reach consensus on location-based limits for licensing. What follows are reports and proposals from the majority of the Task Force, and two significant minority reports on this issue.

Majority Report:

Thirteen Task Force members support the following language, which seeks a balance between public health and business interests by:

- Prohibiting new licenses within 1000 feet of a “youth-populated area”,
- Exempting locations that hold licenses within 1000 feet as of the passage of the rule or building of a new Youth Populated Area,
- Allowing new licenses to be issued to arms-length purchasers of an exempt business so long as there has not been a licensing gap of 6 months or more.
- Allowing the Public Health Board flexibility to clearly define what constitutes a “youth-populated area.”

Prohibiting new licenses within 1,000 feet of a Youth Populated Area and exceptions

The majority recognizes the public health value of limiting exposure to tobacco imagery and advertising to school-aged children. Children can build a positive association with brands and products through repeat exposure. This positive association reduces the perception of harm and increases the likelihood of youth tobacco use. Therefore, limiting exposure to the imagery and advertising that is prevalent at the majority of tobacco retailers is a valuable tool in reducing youth tobacco use.

The draft ordinance language includes an exemption to the prohibition on licensure within 1,000-feet of youth-populated area. Although this limits the effectiveness of such a prohibition, the majority believe this to be a reasonable concession and compromise to pre-existing businesses while maintaining a long-term benefit as these businesses over time will naturally reduce in number.

The majority recommends the exemption apply to new licenses issued at a previously-exempted physical location and that this exemption apply for a “grace period” of 6 months during which the location is not required to be licensed in order to maintain its exemption (although not exempt from licensing requirements generally.) This allows additional flexibility to business and prevents the need for Public Health to dedicate resources to analyzing any and every change in business structure, investment, stock distribution, and so on. This is an additional concession to industry interests that the majority believes provides reasonable accommodation to business at the cost of some reduced effectiveness of the general prohibition on reducing youth exposure to tobacco advertisement and imagery.

The majority also recommends the exemption extend to any location that pre-exists as a licensed tobacco retailer at the time a youth-populated area is established as a concession to any business near an area which later becomes youth-populated but was not at the time of the license issuance.

Defining “youth-populated area”

The majority recommend that what constitutes a “youth-populated area” be established by Public Health, with review by the task force, will develop rules which will then be formally adopted by the CC Board of Public Health. For each of the categories defined in draft ordinance language, there are few, if any, central record-keeping systems tracking the locations of the defined areas. The definition of “school” in particular has been a source of challenge for both the Oregon Liquor Control Commission and the Oregon Health Authority in implementing similar rules due to the nature of optional and alternative educational requirements in Oregon. Allowing Public Health to clarify definitions by rule allows flexibility and clarity.

Ordinance Language Proposed by Majority:

The majority supports the language proposed by Public Health with the following changes:

J. Limits on Eligibility for a Tobacco Retailer License.

- 1) WITHIN 1,000 FEET OF ESTABLISHMENTS SERVING CHILDREN. No new license will be issued to a Tobacco Retailer located “within 1,000 feet of any existing school, child care center, and other establishments that serve children” as follows:
 - (a) Except as provided in subsection (~~#b~~), no new Tobacco Retailer license will be issued within one thousand (1,000) feet of an existing 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 the following as defined by the Public Health Board in its rules:

- (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 location with a Tobacco Retailer in operation as of _____ is exempt from the requirements of section (a) above if a Tobacco Retailer there holds a valid license:-
- (i) At the time the Ordinance is adopted, or
 - (ii) At the time a new Youth-Populated Area is built, or
 - (iii) At the time that ownership of the business at the location has been transferred in an Arm's Length Transaction.
- (c) A location exempted under (b) above will lose exemption if no business at that location holds a valid Tobacco Retail License for a period of six months.

Minority Report 1

Two Task Force members support more restriction near Youth Populated Areas.

It is clear the majority of taskforce members recognize youth are especially susceptible to marketing and availability of tobacco where youth frequent. This is evident in the consensus agreement to including 1000 ft definitional language in the ordinance. Recognizing the concerns of youth access to marketing and sales of tobacco products, our primary concern lies around the allowance of a new license issuance in the case of new arms-length transfers. Certainly, the best way to address both youth access and marketing is to reduce the number of retailers surrounding areas where children frequent. While as a minority, we find the allowance of current retailers located within 1000 ft zone grandfathering an agreeable concession, we believe the best way to reduce youth interaction with marketing and sales is through attrition. We suggest language which prohibits the allowance of new licenses in the case of arms-length transaction within the 1000 ft zone would allow for current businesses to continue operating while reducing youth access to marketing and sales over time.

Overtime as retail stores or sold, this would reduce the density of retailers within what the taskforce has determined an important zone to preventing youth initiation. Without allowing for attrition of retailers overtime, the proposed ordinance does little to protect youth.

If the commission is not inclined to remove this provision, we suggest an inclusion of time sale restrictions for retailers within the 1000 foot zone which prohibit the sale of tobacco products 1 hour before and 1 hour after youth are typically present in the Youth Populated Area. It is our belief this is a reasonable provision to protect youth if the commission is not inclined to allow for the more business-friendly retailer attrition over time.

Ordinance Language Proposed by Minority 1:

These members support the language proposed by the majority with the following additional changes:

K. Limits on Eligibility for a Tobacco Retailer License.

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

(a) Except as provided in subsection (b), no ~~new~~ Tobacco Retailer license will be issued within one thousand (1,000) feet of an existing 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 the following as defined by the Public Health Board in its rules:

- (viii) a private or public kindergarten, elementary, middle, junior high, or high school; library open to the public;
- (ix) a playground open to the public;
- (x) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
- (xi) 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;
- (xii) an arcade open to the public;
- (xiii) a park open to the public or to all the residents of a private community;
- (xiv) a licensed child-care facility or preschool;

(b) A Tobacco Retailer in operation as of the passage of this ordinance is exempt from the requirements of section (a) above.

Minority Report 2

Two Task Force members oppose any location-based restrictions. We believe that all businesses should have a chance to comply with tobacco age restrictions by not selling to minors and accept appropriate penalties for non-compliance. A location-based restriction of any distance is arbitrary and holds compliant businesses responsible for the violations of others based merely on location. It further allows an advantage to businesses just outside the restricted zone.

We support sustainable licensing fees, effective penalties for violation, and other restrictions designed to prevent underage access to tobacco.