

Protecting Youth through a Tobacco Retail License: Community Engagement Report

December 2019

Date: December 9, 2019
To: Gary Schmidt
From: Richard Swift
Re: Tobacco Retail Licensing Community Engagement

Gary,

The H3S Public Health Division has laid the groundwork for Board adoption of a tobacco retail licensing (TRL) ordinance. Forty-one states and hundreds of jurisdictions use a TRL to stop illegal sales of tobacco and vaping products to youth. Because Oregon has not passed TRL state-wide, counties are taking local control to address the growing problem of youth access to and use of tobacco and vaping products.

The facts are alarming:

- One in four Clackamas County retailers inspected sold tobacco and vaping products to youth in 2018.
- More than a third (38%) of 11th graders used flavored tobacco or vaping products in 2017.
- Youth in Clackamas County have consistently used tobacco and vaping products at higher rates than their peers across the state

It is clear that youth are accessing and using highly addictive products, now is the time for our elected leaders to take action to protect our young people.

Governor Brown's recent Executive Order 19-09 directed state agencies OHA and OLCC to enact a temporary ban on the sale of flavored vaping products associated with cases of vaping-associated lung injury or death.

Public Health is pleased with the action taken to protect youth and reduce the health risks associated with the use of flavored nicotine and THC vaping products. However, it is critical to highlight that the Executive Order does not restrict the sale of all vaping products, nor does it limit access to other dangerous and addictive tobacco products that are easily accessible to our youth.

At the direction of the Board, the Public Health Division conducted a robust community engagement process that gathered input about a countywide TRL from stakeholders across our community. In

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total, the Public Health Division engaged with over 300 individual stakeholders including local officials, businesses and business interest groups, educators, and health experts.

The following community engagement report includes results of interviews with retailers, the outcomes of a community task force, and a draft ordinance that contains consensus language from the task force. A companion document (Appendix A) examines Clackamas-specific statistics about youth vaping and evidence-based practices, such as TRL, to address the immediate public health emergency.

With broad support from stakeholders and funding from the Oregon Health Authority, the H3S Public Health Division is ready to formally request Board adoption of a local TRL ordinance. Once implemented, the licensing fees will sustain the operation of a TRL.

Thank you for supporting this important initiative. We look forward to discussing next steps.

Regards,

Richard Swift, Director
Health, Housing and Human Services

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Executive Summary

The Problem

Youth use of e-cigarettes is an epidemic across the nation and in Clackamas County. One fourth of Clackamas County 11th graders used flavored tobacco or vaping products in 2018, a rate that is higher than their peers across the state. Despite the legal sales age of 21, 70% of adolescents reported that it was easy or very easy to get tobacco products. As evidence, almost one in four Clackamas County retailers sold tobacco and vaping products to youth in 2018.

Tobacco Retail Licensing is the best model to prevent youth access to tobacco and vaping products

Tobacco Retail Licensing (TRL) is a universal system to regulate tobacco sales. There is strong evidence across the country that TRL effectively reduces youth access to and use of tobacco and vaping products. In localities that had a strong tobacco retail license, youth were 33% less likely to have initiated cigarette use and 26% less likely to initiate e-cigarette use compared to localities that had no licensing law or did not have a licensing fee high enough to cover the costs of enforcement.

TRL enables local public health authorities to monitor retailer compliance with existing tobacco control laws and enforce penalties when tobacco is sold to those under the legal age, and is the foundation to implement more protective policies such as banning the sale of flavored vaping products.

Benefits to Clackamas County

TRL protects youth from developing an addiction to nicotine by limiting access to tobacco and vaping products. Clackamas County has a history of supporting statewide youth tobacco prevention legislation. In the absence of a statewide licensing system, Clackamas County can maintain local control of tobacco sales as other counties have in Oregon.

A foundational TRL establishes a registry of businesses selling tobacco and vaping products in the county, allows Public Health to provide education and enforce tobacco-related laws, and gathers data to further address the problem of youth access to tobacco.

Long-term, a TRL can avert life-long use of tobacco, and reduce money spent on tobacco-related medical care as well as lost productivity due to tobacco-related deaths in Clackamas County.

Results of community engagement

The overwhelming majority support a Tobacco Retail License. Since May 2018, H3S Public Health have engaged a broad range of community stakeholders about a county-wide TRL to share information, gather input and garner support for this evidence-based strategy to decrease youth access to and use of tobacco and vaping products.

- Elected leaders from six of 11 cities with tobacco retailers signed resolutions or letters in support of TRL.
- The majority (65%) of retail managers and owners interviewed by H3S staff either support or are neutral on tobacco licensing, minimum separation distance between retail locations and schools, and regulating the sale of flavored tobacco and vaping products.
- Educators, community-based organizations, and residents have submitted letters and testimony urging the Board of County Commissioners to adopt a TRL.
- The Task Force, comprised of 21 community members, recommended the Board of Health adopt the draft TRL Ordinance to address the problem of youth access to tobacco and vaping products.

Recommendations

The H3S Public Health Division recommends adopting a foundational TRL to reduce youth access to tobacco and vaping products. In doing so, the Board of County Commissioners will take the first critical step to protect youth from developing an addiction to nicotine and support their academic success.

Background

States and communities across the country, including Oregon, are adopting Tobacco Retail Licensing (TRL) laws to address youth access to tobacco and advance best practices in tobacco prevention.

In September of 2016, the Clackamas County Health, Housing, and Human Services (H3S) Public Health Division briefed the Board of County Commissioners (BCC) on how it could use its authority as the Board of Health (BOH) to strengthen rules related to youth health, access to tobacco, and safety by implementing TRL locally. At that time, the BCC supported the general principles associated with TRL, but decided against further action pending the outcome of proposed statewide TRL during the 2017 legislative session.

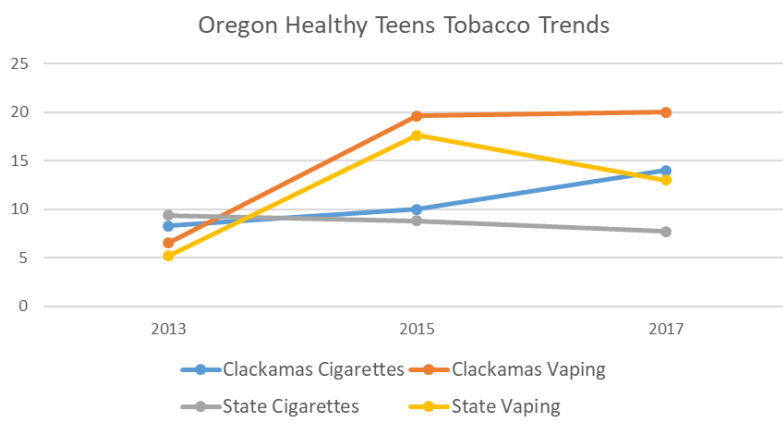
In January of 2018, after the State Legislature's decision that the matter should be handled locally, Public Health reengaged the BCC about local TRL and sought approval to commence a public engagement process to solicit input from various stakeholder groups, including the business community. The BCC approved the public engagement efforts with the understanding that Public Health would present the results and, as appropriate, put forward a policy proposal for TRL.

This document provides a summary of the community engagement processes, timeline and outcomes of TRL groundwork in Clackamas County.

The Problem of Youth Tobacco Use

Despite widespread awareness about the health consequences of smoking, tobacco use remains the leading cause of preventable illness and death both nationally and here in Clackamas County. Each year, more than 480,000 people die in the United States from tobacco-related illnesses, more than from firearms, motor vehicle accidents, and drug overdose *combined*. The Oregon Health Authority estimates that, on an annual basis, almost \$154 million is spent on tobacco-related medical care¹ and nearly \$137 million is lost in productivity due to tobacco-related deaths in Clackamas County².

Addressing youth access to tobacco remains the most important measure local health authorities can take to address the social and economic consequences of smoking. Despite the minimum legal sales age of 21, nearly 70% of Clackamas County 11th graders report that it is easy or very easy to get tobacco products, a rate which increased from 2016 to 2018³. As evidence, almost one in four Clackamas County retailers sold tobacco and vaping products to youth in 2018⁴. According to the Oregon Healthy Teen Survey⁵, Clackamas County teens are smoking and vaping at higher rates than their peers across the state.



¹ Smoking-related illness. Oregon Health Authority. Estimates calculated using 2017 Oregon Vital Statistics Annual Reports and Centers for Disease Control and Preventing smoking-related illness estimation based on "every person who dies because of smoking, at least 30 people live with a serious smoking-related illness". Unpublished data.

² Tobacco-caused costs. Campaign for Tobacco-Free Kids. The Toll of Tobacco in Oregon. Available at: <https://www.tobaccofreekids.org/problem/toll-us/oregon>. County calculations were allocated based on population estimates from 2018. Portland State University Population Data. Unpublished data.

³ Youth estimate. Oregon Health Authority. Student Wellness Survey, 2016, 2018. Unpublished data. SWS uses a census recruitment method (all schools are invited to participate). Colton, Estacada, Gladstone, Molalla River, North Clackamas, Oregon City, Oregon Trail, and West Linn-Wilsonville participated.

⁴ Oregon Health Authority-Public Health Division. Title: 2018-2019 Oregon Tobacco Retail Enforcement Inspection Results. Year: 2019. https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/CHRONICDISEASE/HPCDPCONNECTION/TOBACCO/Documents/retail_compliance/Enforcement_results_1819.pdf

⁵ Youth estimates. Oregon Health Authority. Oregon Healthy Teens Survey, 2013, 2015, 2017. Unpublished data. OHT uses a simple random sampling of school districts (select schools invited to participate). Canby, Estacada, Gladstone, North Clackamas, and Oregon City school districts participated.

This is alarming because tobacco and vaping products (e-cigarettes) contain numerous known carcinogens and heavy metals like lead. Additionally, e-cigarettes contain extremely high levels of nicotine, a highly addictive substance causing serious harm in young people, impacting learning, memory, attention and acting as a gateway for future addiction to other serious drugs (Office of the Surgeon General, 2014, 2016).

Tobacco Retail Licensing: A Component of Tobacco Prevention Programming

Tobacco Retail Licensing is part of a comprehensive strategy to reduce youth access to tobacco. TRL enables the local public health authority to adequately monitor retailers' compliance with existing laws, provide retailer outreach and education, and enforce penalties when tobacco is sold to those under the legal age.

In a study on the impact of TRL implementation in more than 100 cities across California, the American Lung Association's Center for Tobacco Policy & Organizing reports that "The results overwhelmingly demonstrate that local tobacco retailer licensing ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, often significantly, in all municipalities with a strong tobacco retail licensing ordinance where there is before and after youth sales rate data available."

Strong local tobacco retailer licensing laws can also help prevent youth tobacco use initiation for both cigarettes and e-cigarettes. In localities that had a strong tobacco retailer license, youth were 33% less likely to have initiated cigarette use and 26% less likely to initiate e-cigarette use compared to localities that had no licensing law or did not have a licensing fee high enough to cover the costs of enforcement⁶.

In Oregon, Multnomah, Klamath, Benton, and Lane Counties, have implemented TRL, and Clatsop, Columbia, and Umatilla County are developing licensing programs.

⁶ Astor, R.L.; Urman, R.; Barrington-Trimis, J.L.; Berhane, K.; Steinberg, J.; Cousineau, M.; Leventhal, A.M.; Unger, J.B.; Cruz, T.; Pentz, M.; Samet, J.M.; McConnell, R. Tobacco Retail Licensing and Youth Product Use. *Pediatrics*. February 2019, Volume 143, Issue 2 <https://pediatrics.aappublications.org/content/143/2/e20173536>

Chronology of Presentations to the Board

Public Health has briefed and sought input from the Board throughout the process of TRL consideration, beginning with the initial presentation in September of 2016.

Date	Purpose	Outcome
09/06/16 Policy Session	Ask the BCC to adopt a framework to license marijuana and tobacco retailers.	The BCC voiced strong support for the concept, but chose to wait for the outcome of similar legislation proposed in the 2017 Oregon legislative session. The BCC asked H3S to return with a similar proposal if the state legislation did not TRL pass, which it did not.
01/30/18 Policy Session	Explain TRL, the need and benefit. Propose a process to move forward.	Approved Public Health to develop and implement a community engagement plan to assess support for TRL.
10/02/18 Policy Session	Update BCC on community engagement. Share results of economic impact assessment. Request permission to move forward developing an ordinance.	BCC supported TRL. Directed Public Health to engage tobacco retailers directly, collect letters of support, and develop an ordinance with county counsel.
01/08/19 Policy Session	Present the findings from tobacco retailer outreach process. Request support to proceed with creating a countywide TRL.	BCC directed Public Health and County Counsel to present a TRL resolution during the 1/24/19 business meeting.
01/24/19 Business Meeting	Gain approval of a resolution supporting a countywide TRL. Request approval to develop an ordinance with county council.	BOH signed a resolution in support of TRL and directed Public Health to move forward with an ordinance.
02/26/19 Policy Session	Present a draft ordinance for a countywide TRL. Request support to proceed with presenting the ordinance at the business meeting March 14th.	BOH directed H3S to conduct more in-depth engagement with tobacco retailers and convene a community task force.

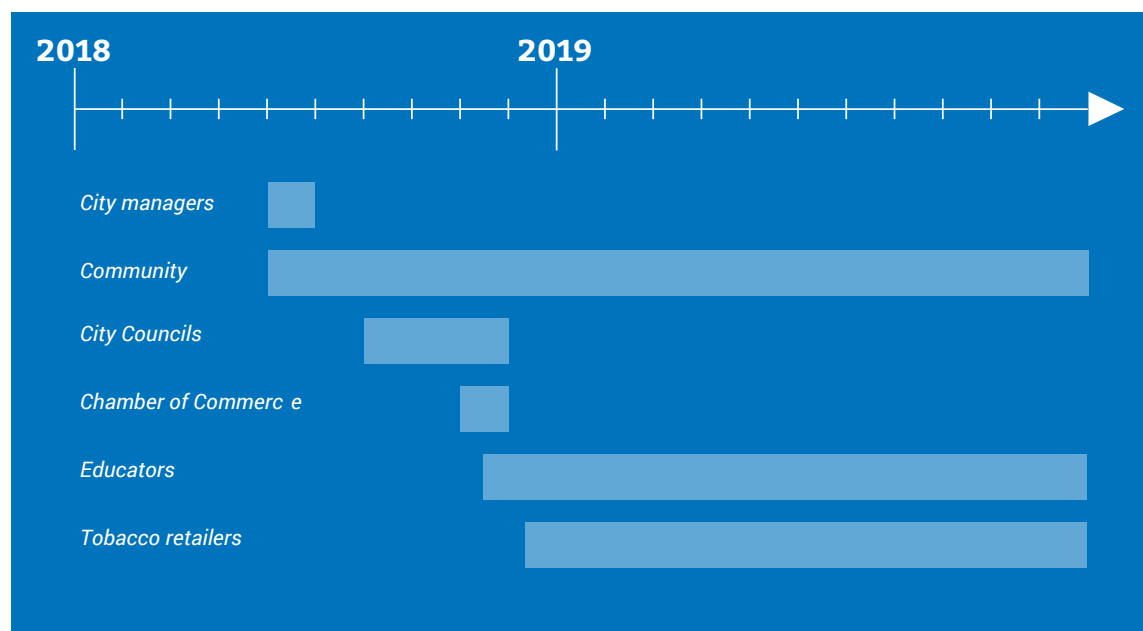
Tobacco Retail Licensing Community Engagement

Development of the Public Engagement Process: Power Mapping Exercise

With support and guidance from Public & Government Affairs (PGA), staff from the H3S Director's Office and Public Health engaged a broad range of community stakeholders in conversations about a countywide TRL to share information, gather input and garner support for this evidence-based strategy to decrease youth access to tobacco and vaping products. That engagement followed an intentional process developed during a power mapping exercise on March 7, 2018. The purpose of the exercise was to tease out the important relationships and influencers in each jurisdiction in order to prepare for conversations with key groups of community stakeholders. Participants in this exercise included Rich Swift, Tim Heider, Beth Byrne, Drenda Howatt, Bentley Moses, Jamie Zentner, and Philip Mason.

Participants identified four key groups of community stakeholders from whom input should be sought: 1) local officials, including city managers and city councils; 2) the business community, including chambers of commerce and tobacco retailers; 3) educators, including school superintendents; and 4) the community at large, as represented by various community coalitions. Participants also developed a roadmap for engagement of these stakeholder groups and a plan for ensuring continued dialogue and input throughout the development and adoption of a local TRL ordinance.

Timeline - Community Outreach



Community Engagement: Local Officials

Presentations to City Managers

Under County Administrator Don Krupp's leadership, Public Health staff began engagement with local officials in May of 2018 with a presentation to city managers. Staff explained the fundamentals of TRL and ways in which it can be utilized to reduce youth access to and consumption of tobacco products, with the goal of identifying next steps for continued dialogue within each community. The city managers were generally receptive to TRL as a public policy matter and recommended further engagement with city councils.

Presentations to City Councils

Between July and November 2018, Public Health staff, including the director, health officer and program manager, delivered presentations to the city councils of 10 of the 11 Clackamas County cities that have tobacco retailers with the goal of gaining their support for TRL. Information was also sent to leaders from the cities of Tualatin (Clackamas County area), Rivergrove, Johnson City, and Barlow, even though there are no known tobacco retailers in those jurisdictions. PGA was instrumental in facilitating introductions between Public Health and staff from the cities. Due to competing priorities, Lake Oswego declined a presentation, but information about TRL was emailed to city staff.

Six city councils signed letters in support or passed resolutions in support of TRL. Happy Valley did not respond to staff's attempts to follow-up. Estacada city council supports TRL in theory, but opposes the one set license fee. Canby city council voted to take no position. See Appendix B for a summary of each presentation and collection of signed resolutions.

Jurisdiction	Presentation Date (2018)	Outcome
Sandy City Council	July 2	Letter of Support
West Linn City Council	July 16	Resolution in Support
Happy Valley City Council	July 17	No Response
Estacada City Council	July 23	Does not Support
Molalla City Council	July 25	Does not Support
Canby City Council	August 1	No Position
Wilsonville City Council	August 6	Resolution in Support
Milwaukie City Council	August 7	Resolution in Support
Gladstone City Council	August 14	Resolution in Support
Oregon City Council	November 8	Resolution in Support
Lake Oswego	No Presentation	No Response

Community Engagement: Business Community

Presentations to Chambers of Commerce

With support and assistance from PGA, Public Health staff, including the director, and program manager, presented to five local chambers of commerce with the goal of assessing the views of business community representatives and garnering support for TRL. Presentations, which included information on how TRL results in a healthier workforce long-term, were made to North Clackamas, Lake Oswego, Tualatin and Sandy chambers of commerce and the Clackamas County Business Alliance.

These presentations prompted thoughtful and honest dialogue with representatives of the business community. There were no outward objections to TRL. See Appendix C for a summary of each presentation, including comments and questions posed by participants.

Engagement with Tobacco Retailers (Phase 1)

In November 2018, Public Health and PGA mailed a letter and follow-up post card to 293 known tobacco retailers informing them that the County was considering TRL and soliciting their feedback at listening sessions scheduled for November 20 in Sandy and November 27 in Oregon City. The listening sessions were facilitated by Resolution Services. PGA created an informational TRL website, which included an online survey for retailers to provide feedback if they could not attend the listening sessions.

These engagement efforts resulted in responses from five businesses and one store association: two phone calls from businesses requesting more information, two responses were submitted via the online feedback survey, and representatives from two businesses attended listening sessions. The following is a summary of the feedback provided by retailers:

- Fees have a disparate impact on small businesses
- The same licensing burden exists for those who follow rules and those who don't
- There is not effective enforcement of existing age-restriction laws
- Creating laws and policies does not change behavior
- Schools and parents are more influential over the decisions of minors than restrictive laws

PGA notified participants from the listening session when the final report from Resolution Services was posted on the TRL webpage. See Appendix D for the full report.

Engagement with Tobacco Retailers (Phase 2)

Given the limited retailer participation in Phase 1 of engagement efforts, the BCC requested that Public Health make additional efforts to gather retailer feedback. In response, Public Health developed an outreach plan to interview individual retailers. Half of the non-chain

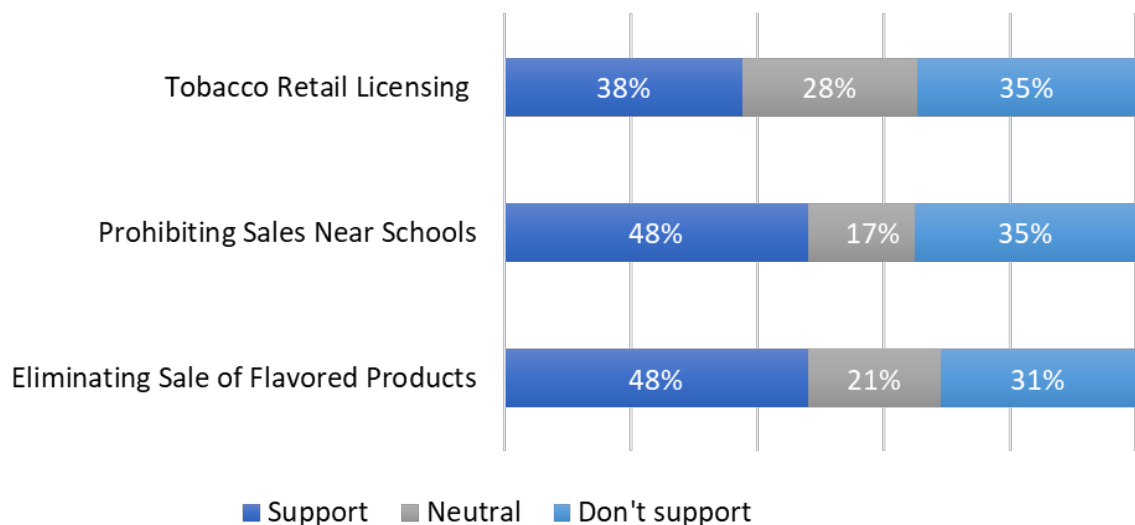
retailers were randomly selected, with an oversampling of those from unincorporated areas (60/40), to be contacted for an interview. An interview script, a list of questions, and training was provided to a team of volunteers (H3S staff and the Oregon Health Equity Alliance), who attempted to contact 125 tobacco retail locations. Seventy locations were reached and 29 business owners or managers agreed to an interview. Public Health staff entered the interview responses into a database for the Oregon Health Authority to analyze.

The 29 individuals interviewed represented 73 retail locations. Participants were asked questions about their level of support for tobacco licensing, minimum separation distance from schools, and regulating the sale of flavored tobacco and vaping products. Participants were also asked what their business would need to successfully participate in the program and if they would like to be part of a TRL task force.

The following are the key takeaways from the Phase 2 of the engagement with retailers:

- 66% support or are neutral on Tobacco Retail Licensing
- 65% support or are neutral on prohibiting tobacco sales near schools
- 69% support or are neutral on eliminating the sale of flavored tobacco products

Tobacco Retailer Interview Results



Community Engagement: Educators

Public Health delivered a presentation to Clackamas County school district superintendents during a joint meeting at the Clackamas Education Service District in November 2018. The presentation was well received; all 11 superintendents agreed to provide a unified letter of support. In that letter, they noted that adolescent brains are more sensitive to the rewarding properties of nicotine, that the use of nicotine during this critical developmental period can have lasting adverse consequences for brain development and that the use of nicotine products negatively impacts ability to learn and academic success.

Public Health staff reached out to high school and school district administrators to learn in more detail about youth use of vaping products. Almost 500 students across a sample of five school districts were discovered consuming or in possession of tobacco or vaping products over the 2018 – 19 school year.

Community Engagement: Community at Large

Over the course of the last 15 months, Public Health staff has delivered presentations to community groups across the County, including the 40 individuals who attended the October 2018 Community Leaders meeting (from Community Planning Organizations), Public Health Advisory Committee (PHAC), Clackamas County Prevention Coalition (CCPC), Oregon Partners for Tobacco Prevention (OPTP), and Oregon Health Equity Alliance (OHEA). Each of these groups provided important input and feedback. To date, Public Health has collected letters of support from the following organizations and community members:

- Public Health Advisory Committee
- Vibrant Future Coalition
- Oregon City Together Coalition
- Oregon Health Equity Alliance
- Oregon Health Authority
- A student from the North Clackamas School District
- Preventing Tobacco Addiction Foundation
- Clackamas Workforce
- Sandy High School Principal
- Gretchen Groves, mother, provided testimony during a BCC Business Meeting (Jan. 24, 2019)
- Arlene Kantor, retired cancer epidemiologist and resident of Lake Oswego, provided testimony during a BCC Business Meeting (January 24, 2019)

Community Engagement: Community Task Force

Public Health established a community Task Force to provide input on a draft TRL ordinance and make recommendations on policy strategies to address the problem of youth access to tobacco and vaping products. Twenty-five community members applied to participate on the Task Force; 21 participated, representing the following disciplines:

- Rural and urban business owners
- Parent / Community member
- Local prevention coalition
- Oregon Liquor Control Commission (OLCC)
- Health Care / Scientist
- Non-profit health organizations
- Chamber of Commerce
- Regional grocery association
- Youth
- Rural and urban city officials
- Community with Tobacco Retail Licensing in place
- Oregon Health Authority
- Oregon Health Equity Alliance

Two facilitators from Clackamas County Resolution Services guided Task Force members through two, three-hour meetings on June 24, 2019 and July 9, 2019. See Appendix E for the full Tobacco Retail Licensing Community Task Force report and draft ordinance.

The Task Force recommended the Board of Health adopt the draft TRL Ordinance, 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

During the second meeting, one Task Force member, who is a tobacco resale business owner, suggested an OLCC model as a means to regulate tobacco advertising and price of tobacco products for retailers to purchase from distributors.

The Task Force used a consensus model for developing the recommendations. No Task Force members expressed support for a pricing regulation; therefore, price regulation through an OLCC model is not included in the final recommendations. This Task Force member also

submitted a citizen comment during the Aug. 1, 2019, BCC Business Meeting to encourage the BCC to consider an OLCC model rather than a TRL. The Task Force used a consensus model for developing the recommendations. No Task Force members expressed support for a pricing regulation; therefore, price regulation through an OLCC model is not included in the final recommendations.

The Task Force* member does not contract with the tobacco industry, which means they do not receive price discounts on their inventory. In turn, they must sell tobacco products at higher prices to make a profit. Price regulation at the distributor level could benefit their business by making tobacco products the same price for all retailers and removing the incentive to contract with the tobacco industry.

The Oregon Liquor Control Commissioner (OLCC) model, as suggested by this Task Force member and business owner, is not a feasible model to regulate tobacco retail. The OLCC is a state entity authorized under statutes to regulate statewide pricing. Clackamas County and Public Health do not have that same authority. Moreover, regulating price is complex and poses legal risks, including challenges on multiple legal grounds from tobacco companies.

Community-wide Earned Media

H3S Public Health Division worked with PGA to release the results of the Oregon Health Authority's 2018 Enforcement Inspections. While the rate of illegal tobacco sales decreased across the state, sales of tobacco and vaping products to minors in Clackamas County increased from 13.8 percent to 23.4 percent in one year. The news alert prompted three local media outlets to cover the story and two citizens to submit letters to the editor urging the Board of County Commissioners to adopt a countywide TRL. See Appendix F for the media advisory and earned local media.

* One member, a local tobacco retailer, abstained 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 TRL. The Task Force member was absent from the first of two Task Force meetings.

Recommendation

Based on the robust community support and legal considerations, the H3S Public Health Division recommends adopting a foundational TRL to reduce youth access to tobacco and vaping products. A foundational TRL framework includes an annual license to cover the cost of maintaining a registry of all tobacco retailers, retailer education, two inspections per year to each retail location, and enforcement through remediation plans and penalties. A TRL is an evidence-based method and a starting point for more protective policies to reduce youth access to tobacco and vaping products in the future.

Appendix A

Tobacco Retail License Presentations Summary & Outcomes

Sandy City Council (7/2/18) – Signed Letter of Support county-wide TRL

Present: Kim Yamashita, Manager; Bill King, Mayor; Jeremy Pietzold, President; Scott Horsfall, Member; John Hamblin, Member; Jan Lee, Member; Carl Exner, Member

Absent: Jean Cubic, Member

Positions

- Mayor King – not 100% sold on effectiveness of TRL. Does not like growing government by hiring more staff to implement TRL.
- Councilor Exner – Does not like growing government. Prefers to build on what already exists
- Councilor Hamblin – Fully supports TRL. Recent experience in a convenience store – young son asked why candy was behind the counter. Hamblin corrected son – tobacco products, not candy
- President Pietzold – Supports TRL. Has a son, wants to do anything to prevent tobacco use. Heard about vaping on a podcast
- Councilor Lee – Supports TRL. Benefits outweigh drawbacks. She would like to see a state-wide TRL

Question / Point raised / Concern	Response / Action
Concern for growing government by hiring more County employees.	Need to detail our proposed staffing structure for TRL maintenance to reassure city officials that CCPHD will not be hiring a team
Asked for more detail about enforcement. What is our proposed enforcement strategy? How would it be different than current enforcement? What are the current penalties for illegal sales? What is the role of local law enforcement?	Revised talking points to speak more clearly about current and proposed enforcement. According to Sandy police officer present at the meeting, they (local law enforcement) are able to issue citations for “Endangering the welfare of a minor” ORS 163.575 to store owners for illegal sales. Class A violation, minimum fine for each violation is \$100.
What is the Board of Health’s authority to pass a county-wide TRL? Are they able to implement TRL against the will of elected city officials?	Per counsel: <i>“The BCC as LPHA has the powers of the Oregon Health Authority under ORS 431A.010. Those powers don’t explicitly include licensing power, but do include general enforcement of public health laws.”</i> However, the County lacks authority to enforce state law within a city without its consent. The state would retain the ability to enforce tobacco and health laws within the city.
Based on the experiences of other counties in Oregon that have implemented TRL, what impact has TRL had on illegal sales to youth?	Added to ‘Anticipated Questions’ document: The license fees in Benton & Lane Counties are not high enough to support compliance checks. Multnomah and Klamath Counties have not had TRL in place long enough to measure change in underage sales. However, in several counties in California youth access to nicotine products dropped with licensing.

Other observations

- Protecting children from using tobacco is a high priority
- During the meeting, Councilor Hamblin pulled up CDC statistics about adults tobacco use and a report from the American Lung Association, State of Tobacco Control 2018 <http://www.lung.org/our-initiatives/tobacco/reports-resources/sotc/>. The report evaluates states and the federal government on the proven-effective tobacco control laws and policies necessary to save lives. The findings serve as a blueprint for what state and federal leaders must do to eliminate the death and disease caused by tobacco use.
- Need sample tobacco products – ‘Candy Jar’ and a Juul. Jamie will purchase a Juul for next presentation in West Linn July 16th.

West Linn City Council (7/16/18) – Signed a resolution in support county-wide TRL.

Present: Eileen Stein, Manager; Russ Axelrod, Mayor; Brenda Perry, President; Teri Cummings, Councilor; Bob Martin, Councilor; Richard Sakelik, Councilor;

Positions

- Councilor Cummings raised the point about youth social sources of tobacco (older friends, family). Emailed questions to follow up after Don Krupp followed up with cities.
- Councilor Martin asked if we needed a signed letter of support from the council.
- Mayor Axelrod declared to be the second city in support of a county-wide TRL and offered to sign a resolution in support.

Question / Point Raised / Concern	Response / Action
Why on earth isn't vaping taxed? Is there a plan to do so? Adding to my concern is a lack of requirements to display ingredients of the vape pens. To what extent are vape sales to minors regulated?	<p>There were at least seven bills introduced in the state legislature in 2017 to impose a tax on “inhalant delivery devices” as well as increase taxes on all tobacco products. Strong industry opposition defeated those bills. No tobacco-related bills were considered in the 2018 short session. We expect the legislature will consider taxes on tobacco and inhalant delivery devices again in 2019.</p> <p>Clackamas County’s legislative agenda consistently includes Youth Tobacco Prevention - supporting legislation aimed at reducing youth tobacco use. This priority directs public health to monitor proposed bills and educate our representatives in Salem about the tobacco-related issues and the impact of their decisions on tobacco use in our communities.</p> <p>Oregon revised statutes (ORS) and Oregon administrative rules (OARs) regulate the sale and distribution of tobacco products and inhalant delivery systems to persons under 21 years old. These statutes and rules require retailers to post a notice about the prohibition of selling tobacco products and inhalant delivery systems to persons under 21 years old; and require retailers to place tobacco products and inhalant delivery systems in a location where customers cannot access them without assistance from an employee.</p> <p>Tobacco and Inhalant Delivery Systems Sales to Minors, OAR 333-015-0200 to 0220</p> <p>Inhalant delivery systems retailers are required to comply with Oregon packaging standards (e.g. prohibitions on “packaging that is attractive to minors” and requirements for child-resistant packaging) and all federal rules regulating inhalant delivery systems.</p>

	<p>Packaging and Labeling Standards for Inhalant Delivery Systems, OAR 333-015-0300 to 0375 https://www.oregon.gov/OHA/PH/PreventionWellness/TobaccoPrevention/Pages/retailcompliance.aspx</p> <p>FDA Deeming Rule</p> <p>Effective August 8, 2016, the U.S. Food and Drug Administration (FDA) authority extends to all tobacco products, including e-cigarettes, cigars, hookah tobacco and pipe tobacco, among others. The FDA is now able to:</p> <ul style="list-style-type: none"> • Prohibit free samples; • Require warning labels; • Prevent misleading health claims by tobacco product manufacturers; • Evaluate the ingredients of all tobacco products and how they are made; and, • Communicate the potential risks of tobacco products. <p>Tobacco companies must provide FDA with detailed information about the ingredients in their products however, the industry is not required to list ingredients on any tobacco products, including inhalant delivery systems.</p> <p>For a summary of the FDA rules for tobacco retailers, visit: https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm205021.htm</p>
<p>What methodology was used to determine whether the increased charge will sustainably cover the increased training/inspection requirements? Will there be flexibility to increase the fee and/or adjust the program requirements if it becomes apparent that certain extenuating conditions are impacting the ability to successfully implement this program? (ie allow a certain percent increase in fee. Option to increase fines or decrease the number of training and random inspections from twice a year to once a year for business in compliance for multiple consecutive years).</p>	<p>The cost to operate a Tobacco Retail License program is based on the projected cost to administer the license, educate retailers and conduct two annual inspections with 232 known retailers in the county. If the Board of County Commissioners / Board of Health adopts a tobacco retail license, we will facilitate a Rules Advisory Committee to help determine the details around a fee schedule, including financial penalties if retailers do not comply with tobacco laws.</p>

Happy Valley City Council (7/17/18)

Present: Ben Bryant, Assistant City Manager; Lori Chavez DeReemer, Mayor; Tom Ellis, President; Markley Drake, Councilor; Brett Sherman, Councilor; Dave Golobay, Councilor

Positions

- Mayor did not ask questions, did not express support or opposition to TRL

- Councilor Ellis – support TRL. Asked why bars are not exempt from TRL if they do not youth under 21 years.
- Councilor Drake – supports TRL. Asked why state did not pass TRL.
- Councilor Golobay – supports TRL. Asked how the revenue generated from licensing fees would be allocated (education & enforcement verses administration).
- Councilor Sherman did not ask questions, did not express support or opposition to TRL.

Question / Point raised / Concern	Response / Action
Why are bars and adult venues required to have a license to sell tobacco if youth under 21 years are not permitted on the premise?	<p>While youth are legally not allowed into bars and adult venues, they occasionally manage to skirt the system to enter. Multnomah County had a couple failed minimum legal sales age inspections in places that are restricted to adults only. The tobacco retail license enables CCPHD to provide compliance checks as well as help retailers know and understand tobacco retail laws.</p> <p>Oregon law preempts any local jurisdiction from regulating vending machines. So if a bar / adult venue has only a vending machine, CCPHD cannot require them to get a tobacco retail license. Oregon Revised Statutes §167.404 Cities and counties by ordinance or resolution may not regulate vending machines that dispense tobacco products or inhalant delivery systems. [1991 c.970 §3; 2015 c.158 §10]</p>

Estacada City Council (7/23/18)

Email from the city manager in September, “I don’t see taking this back to them if the fee is going to stay as proposed. At this time they have not given support but also have not spoken against the program – just the fee.”

Present: Denise Carey, City Manager; Sadie Main, City Recorder/Finance Director; Sean Drinkwine, Mayor; Aaron Gant, Councilor; Justin Gates, Councilor; Lanelle King, Councilor; Luke Wever, Councilor; Dan Neujahr, Councilor
Absent: K.C. Spangler, Councilor

Positions

- Mayor Drinkwine - did not ask questions. Agreed with TRL and that tobacco use among youth is a problem.
- Councilor Gant – Asked what the arguments are against TRL. Did not express support or opposition
- Councilor Neujahr – Asked alcohol licensing fees and enforcement compare to TRL. Did not express support or opposition. He would like to see a TRL be equitable to the OLCC liquor license fees.
- Councilors Gates, King and Wever - did not ask questions. Did not express support or opposition to TRL.

Mayor thanked us for the presentation, the council had much to consider. Did not commit support. Did not suggest next steps or follow-up.

Jamie sent follow-up email to City Manager and City recorder the following day to answer Councilor’s Neujahr question:

Question / Point raised / Concern	Response / Action
What is the fee for a liquor license and how does it compare to the fee proposed for TRL?	The liquor license fee ranges from \$100 for Distilleries to \$500 for Breweries. The fee for a full on-site commercial sale is \$400. A list of licensing types and fees is available online https://www.oregon.gov/olcc/LIC/Pages/index.aspx
How does the enforcement for underage liquor sales compare to enforcement for underage tobacco sales?	The OLCC is responsible for ensuring compliance with liquor laws. One way in doing so is through minor decoy operations to ensure retailers do not sell or serve alcohol to people under 21 years. The OLCC is woefully under staffed to adequately ensure compliance with State liquor laws. Their capacity has been further stressed since the legalization of marijuana as they are responsible for

	<p>ensuring compliance with marijuana laws as well. For example, the last inspection in Estacada was to one business in 2015. The OLCC posts inspection results on their website https://www.oregon.gov/olcc/Pages/reg_program_overview.aspx</p> <p>The penalty for failing to verify the age of a minor (category III offense) is a 10 day suspension of license or \$1650. The second offense is a 30 day suspension or \$4950. A summary of common violations and penalties is available here https://www.oregon.gov/OLCC/pages/laws_and_rules.aspx#Penalty_Schedule/Sanction_Schedule</p> <p>If adopted, a Tobacco Retail License would include two inspections per year for every business selling tobacco & nicotine products. One with a Public Health staff to help retailers understand and comply with tobacco-related laws and the other using minor decoys to ensure retailers do not sell to people under 21 years.</p>
What is the argument against TRL?	<p>So far, TRL has not met opposition. The commissioners have asked why TRL is needed if businesses already have licenses to operate.</p> <p>TRL is separate from other business licenses because tobacco is a hazardous product that causes disease and death, there are no safe levels of tobacco use. Tobacco retail licensing is the mechanism to identify stores that sell tobacco so they can be monitored for compliance. It is similar to the licenses required to sell alcohol and marijuana.</p>
Question from Estacada City Manager 8/16	
They would like to know what businesses would be charged. Will a small mom and pop store get charged the same as a larger entity such as Fred Meyer or Winco, etc.?	<p>Clackamas County Public Health is proposing a flat fee between \$500 - \$600, based on the cost to administer the license, educate retailers and conduct inspections with the 232 known retailers in the county. The total cost of the program is be divided among all retailers.</p> <p>The licensing fee must be set no higher than the actual costs incurred by the government to operate the program. We have learned from other jurisdictions that a tiered based fee structure has been challenged in court.</p> <p>In 2009, the New York State Legislature adopted legislation to replace the licensing fee of \$100/year with a graduated fee of between \$1,000 and \$5,000/year, depending on the volume of sales by a retailer. The amount of the proposed new fee was not based on any precise calculation of program costs. A trade association filed a lawsuit alleging that the fee increase was an unconstitutional tax, and the appellate court issued an order allowing the retailers to pay the \$100 fee until the court decided the case. The lawsuit was ultimately dismissed when the State Legislature adopted legislation to impose a flat licensing fee of \$300/year.</p> <p><i>Long Island Gasoline Retailers Ass'n v. Paterson, 83 A.D.3d 913 (App. Div. 2011). Case summarized by ChangeLab Solutions, Tobacco Retailer Licensing Playbook changelabsolutions.org/tobacco-control</i></p> <p>A fee between \$500 - \$600 amounts to \$1.37 - \$1.64 per day to sell tobacco products. The impact on store revenue would be minimal because retailers are able to raise tobacco prices and/or adjust the prices of other store items to offset the cost of the license fee.</p>

Molalla City Council (7/25/18)

Present: Dan Huff, City Manager; Kelly Richardson, City Recorder; Jimmy Thompson, Mayor; Keith Swigert, Councilor; Glen Boreth, Councilor; Leota Childress, Councilor; DeLise Palumbo, Councilor;

Absent: Elizabeth Klein, President

Positions

- Mayor Thompson - did not ask questions. Said he is not opposed but the council is not able to support / approve anything until they have something (i.e. an ordinance) to consider.
- Councilor Palumbo – Did not ask questions. Did not express support or opposition
- Councilor Swigert – Asked about current enforcement system. Did not express support or opposition. He would like to see a TRL be equitable to the OLCC liquor license fees.
- Councilor Childress – Asked how the current tobacco retailers are known, how many staff would be hired to administer & enforce TRL. Made the point that the cost of a license would be shifted to patrons. Did not express support or opposition to TRL.
- Councilor Boreth – Will bars and vending machines would be included in TRL? Do educational materials exist already for retailers? Does the council need to pass a resolution to support? Who has jurisdiction, the County or City? What is the financial impact on the city? Thanked Public Health for including the city in the conversation and willingness to take on TRL, cities don't have resources to do it.

Question / Point raised / Concern	Response / Action
Council not able to support / approve anything until they have something (i.e. an ordinance) to consider.	Jamie sent a draft resolution for the Council to consider in the follow-up thank you email to the city recorder, Kelly Richardson, who helped coordinate the meeting.

Minutes from the City Council meeting 11/14 do not provide much detail. Areas of concern: Education, notification, information, proof of compliance/evidence.

Canby City Council (8/1/18)

Present: Rick Robinson, City Manager; City Attorney; Brian Hodson, Mayor; Tyler Smith, Councilor; Greg Parker, Councilor; Traci Hensley, Councilor; Tracie Heidt, Councilor;

Absent: Tim Dale, President; Sarah Spoon, Councilor

Large attendance due to other items on the agenda. Meeting was recorded, presentation can be viewed here

https://www.canbyoregon.gov/CityGovernment/councilminutes_agenda.htm

Feedback from Rick Robinson morning after the meeting, "The presentation was well done and it was good to see the Council engaged in the discussion."

Positions

- Mayor Hodson – Seems to be supportive. Has teen daughter who can attest to the number of students who use Juuls. How license fee is appropriated? Can Canby police cite youth for smoking? What does support look like? Council agreed to talk more in depth in a separate conversation.
- Councilor Smith – Expressed support. Fear of growing government. Why can't Department of Revenue records be used to identify retailers? What is the interplay between county and city home rule? Can cities' opt out?
- Councilor Parker – Did not express support or opposition. Has been on council for eight years. This is first time the county asked cities for input on anything. Thank you for including us in the conversation. Bigger question

is around Council's role in weighing in on topics not related to the governance of the city. Question has come up before, not only in context of TRL. Need to discuss more.

- Councilor Hensley – Did not express support or opposition. Why didn't state pass? Would paraphernalia and non-nicotine liquid be taxed too?
- Councilor Heidt – Expressed support. Asked about the financial cost to retailers.

Question / Point raised / Concern	Response / Action
Why can't Department of Revenue records be used to identify retailers?	<p>In Oregon, tobacco taxes are levied at the distributor or wholesaler level, rather than at the retail level. Some retailers, like maybe Costco, might have a license through the Dept. of Revenue so they can distribute to other retailers. Most retailers get their tobacco from the tobacco company distributors themselves (RJR and Altria sales reps grease the wheels for this process by visiting stores and signing them up on distribution contracts). The distributors are responsible for paying for and applying the Oregon tax stamp. The distributors don't inform the Dept. of Revenue who they distribute products to. Therefore, the Department of Revenue doesn't have a comprehensive list of who sells tobacco in the state of Oregon, only who "distributes" tobacco.</p> <p>There are three kinds of licenses:</p> <ul style="list-style-type: none"> • Cigarette Distributor's License: For people who bring untaxed cigarettes into Oregon for resale. This license allows you to purchase Oregon tax stamps from us. • Cigarette Wholesaler's License: For people who buy stamped cigarettes from licensed distributors. This license allows you to resell these cigarettes to other retailers. • Tobacco Products Distributor's License: For people who bring untaxed tobacco products into Oregon for resale.
Would paraphernalia and non-nicotine liquid be taxed too?	No.
What does support look like?	Jamie sent an example resolution for the Council to consider in the follow-up thank you email to the city manager, Rick Robinson.

Jamie spoke with the city manager on 12/21. There were a couple in support, a couple opposed. The council believes the County is just going to do whatever they want anyway. Mr. Robinson does not believe that the Canby City Council will not stand in the way if the County does implement TRL.

Wilsonville City Council (8/6/18) – Signed a resolution in support of TRL

Present: Tim Knapp, mayor; Charlotte Lehan, councilor; Kristin Akervall, councilor; Scott Starr, council president; Bryan Cosgrove, city manager

Positions

- Mayor Knapp- hadn't seen Juul before, recommended presenting to C4 to get their feedback, asked about the possibility of metro-wide TRL, asked about timeframe, wants to see sample resolutions prior to city making a decision
- Council President Starr- has seen Juul before. Asked how TRL would be passed and by which jurisdiction.

- Councilor Akervall- has seen Juul before, engaged in presentation, asked about the process to implement. Would there be an education period before enforcement?
- Councilor Lehan- hadn't seen Juul before. Interested in TRL especially since West Linn has resolution—shared school district, the two cities should have cohesion around TRL
- City Manager Cosgrove – expressed concern about fee schedule. Same fee regardless of retailer size.

Question/ Point Raised/ Concern	Response / Action
What is happening in Washington County? Is this an issue being pursued across the metro area?	Washington County is talking about TRL but not ready to move forward yet. If TRL passes in Clackamas County, helps to build their case to approve TRL
What is the process for implementation?	TRL will be phased in if the ordinance passes. Retailers would have a period of time to obtain their license. Referenced CCPH experience with restaurant inspections as experience in doing TRL inspections
What is the timeline for TRL?	BCC meeting in October, city council invited to attend, and we are hoping for a decision by the end of the year.
What does support look like?	CCPH is seeking municipal support first for our practice of getting the community engaged, then the community's support and ideas can be brought back to the drafting of the ordinance. Sent sample resolution.

Following the presentation, Councilor Lehan mentioned that it would make sense for Wilsonville to follow West Linn by signing a resolution since they share the same school district. Allison has been communicating with Mark Ottenad, PGA Director. Mayor met with Chamber of Commerce on 1/11. City Council will discuss February 5th.

Milwaukie City Council (8/7/18) – Signed a resolution in support of TRL

Present: Ann Ober, city manager; Angel Falconer, councilor; Lisa Batey, councilor; Wilda Parks, councilor; Shane Abma, councilor; Mark Gamba, mayor

Positions

- Councilor Falconer- supports TRL
- Councilor Batey- supports TRL. Commented on removal of cigarette branding in Australia, would like to see implemented here. Also interested in more drug disposal sites in Milwaukie.
- Councilor Parks- supports TRL. Had not seen Juul, familiar with vaping because of a family member who vapes.
- Councilor Abma- supports TRL, questions about loss in FTE. Liked the idea of passing along cost of licensing to consumers.
- Mayor Gamba- supports TRL, asked for sample resolution

Question/ Point Raised / Concern	Response / Action
What does the loss of FTE mean?	In Milwaukie, 0.79 employees would lose their jobs if the cost of TRL not passed along to consumers. For smaller retailers, this could be \$0.12 per pack added.
Has there been any formal opposition?	Not yet seen. However, we are anticipating the public may come to oppose TRL at BCC meeting
How has this been received by chambers of commerce?	The largest chamber first said no, but we have a meeting scheduled September 12 to discuss TRL further. There are examples of chambers supporting TRL, Kansas City

	chamber is leading the Tobacco 21 initiative there because of the business case (healthier work force, less tobacco illness). CCPH has been participating in KC conference calls to learn more about their process, and we are being proactive to engage our chamber here.
What is the cost of a Juul?	Initially misquoted, corrected to state that a starter kit costs \$50, which includes the Juul device (retails for \$35) and four flavor pods (retails for \$16).
Doesn't the state know where tobacco retailers are from the taxes collected?	No, wholesalers are taxed, not the local retailers. TPEP and the Prevention Coalition walked the county to identify all tobacco retailers and document what is sold to get a better picture. Milwaukie has the most tobacco retailers (22) of any city in the county.

Gladstone City Council (8/14/18) – Signed resolution in support of TRL

Present: Tamyra Stempel, Mayor; Michael Milch, councilor; Thomas Mersereau, councilor; Patrick McMahon, councilor; Neal Reisner, councilor; Matt Tracy, counselor; Linda Neace, councilor; Jacque Betz, city manager

Positions

- Councilor Milch – Did not express support or opposition. Asked about legal authority, can BCC pass TRL county-wide? Can cities pass own?
- Councilor Reisner – Did not express support or opposition. Asked about outreach to school districts; asked why aren't retailers known if they pay taxes to DOR?
- Councilor McMahon – Did not express support or opposition. BCC can pass for unincorporated only?
- Mayor Stempel - Did not express support or opposition. Did not ask questions.
- Councilor Mersereau - Did not express support or opposition. Did not ask questions.
- Councilor Tracy - Did not express support or opposition. Did not ask questions.
- Councilor Neace - Did not express support or opposition. Did not ask questions.
- City Manager Jacque - Did not express support or opposition. Would like to know what other cities are doing. Advised Council that they would need to schedule a separate meeting to discuss resolution.

Question/Point Raised/ Concern	Response/Action
Can the BCC just adopt TRL or do cities have to also pass with a vote for TRL to be implemented city-wide?	The BCC/BOH doesn't have the authority to implement TRL county wide. We are requesting resolutions from each city in order for this to pass across the county. Without a resolution, the state continues to be responsible for the enforcement of laws.
City manager recommends getting feedback from other city managers and putting a resolution on future agenda	Sample resolution given to city manager and councilors for future discussion
Doesn't the state tobacco tax let us know where retailers are located?	No, the wholesalers & distributors are taxed by the state, not the retailers. Also, e-cigs are not taxed so there is really no trace of where these are sold in our county.
What about school support?	We are seeking to discuss TRL with schools once school is back in session. The superintendents we have talked to have been supportive. They believe that Juuls are a real distraction from learning.
What about unincorporated Clackamas County?	If cities don't buy into TRL, the county would enforce TRL in the unincorporated areas while the state would be responsible for enforcement in cities.

Questions from City Manager the following day	
What other Clackamas County cities have approved resolutions?	<p>All the cities so far have expressed support for a county-wide TRL. We have not presented to Lake Oswego and Oregon City.</p> <p>The city of Milwaukie signed the sample resolution we shared with them. West Linn and Wilsonville have indicated they will as well.</p> <p>Our first presentation was to the Sandy City Council. While we didn't have a sample resolution for them at the time, they proudly declared themselves as 'the first city council in Clackamas County to support TRL'.</p> <p>Like you in Gladstone, other city councils want to discuss a county-wide TRL more at separate meetings.</p>
One citizen said, "I would hope that the Council would let the citizens vote on something like this instead of the Council" Has this come up before?	We have not heard anyone else ask about a citizens' vote on TRL. While we value community input, ballot measures are expensive. Instead of a vote in the mid-term election, we will invite citizens and business owners to provide oral and written comments during the County Commissioners' public hearings.
Is there anything negative to approving the resolution?	<p>It's no surprise that the tobacco industry opposes TRL. Their revenue relies on young people developing a life-long addiction to tobacco & nicotine products.</p> <p>If the Board of County Commissioners, acting as the Board of Health, adopts a county-wide Tobacco Retail License, Clackamas County Public Health Division (CCPHD) will be directed to administer and implement the program. Shifting responsibility to CCPHD will result in consistent education and enforcement as well as equitably prevent all youth in the county from developing an addiction to nicotine.</p>

Community Leaders (10/15/18)

Present: Four commissioners (missing Chair Bernard); PGA staff; Over 30 community leaders representing unincorporated Clackamas County, many CPOs.

No positions stated. No verbalized opposition.

- Terrific venue for communicating with leaders in unincorporated Clackamas County. Based on the attendees comments, Public Health (and Clackamas County) needs to engage the rural communities more on the TRL conversation. These leaders very much want to be included in conversations and decision making.
- Because all Commissioners were present, it was more appropriate for Director to present to the large audience.
- TRL was new to most everyone. Great opportunity to communicate with another valuable group of stake holders.
- While it was a relatively casual environment, should have had PowerPoint slides to bring everyone through the presentation together.

Question/Point Raised/ Concern	Response/Action
Can the county implement a local tax on e-cigarettes?	ORS 323.030(2) and 323.640(1) provide that taxes on sale or use of cigarettes is reserved to the State.
Shouldn't TRL be implemented metro-wide rather than county by county?	
Are there minors in possession laws for tobacco?	Yes. ORS 167.785
If 18 year-olds are able to join the military, shouldn't they have the right to purchase tobacco?	It is against state law. ORS 167.755

Question for County Counsel: According to Dan Johnson, Director of DTD, the BCC can pass a resolution to implement a vehicle registration fee. The BCC has to pass an ordinance to implement a tobacco retail license? Why difference? No difference but an ordinance has binding effect of law.

Oregon City (11/8/2018) – Signed a resolution in support of TRL

Present: Dan Holladay, mayor; Tony Konkol, city manager; Brian Shaw, commissioner; Renate Mengelberg, commission president; Nancy Ide, commissioner; Frank O'Donnell, commissioner; Jim Band, Chief of Police; Wyatt Parno, finance director; John Lewis, public works director; Laura Terway, community development director; Eric Underwood, economic development manager

Positions

- Mayor Holladay voiced strong opposition. Believes that \$600 is not a small amount for a small business. Stated that local government doesn't have the place to change people's behavior and there is already plenty of regulation in place. Sees TRL as further growing government for a "nebulous positive impact." Also believes it is impossible to stop youth from using alcohol, tobacco, and marijuana.
- Commissioner O'Donnell has prior experience in alcohol and drug work, asked many questions about logistics of TRL.
 - Consider asking for his voice on RAC

Question / Point Raised / Concern	Response
Is there evidence that raising the legal sales age to 21 impacts youth use?	
What is the anticipated projected gross income from TRL?	The money made from the licensing fee will cover the cost of enforcement. We are not allowed to profit from this ordinance, all money will be accounted for. It is also important to note that in order for this ordinance to be most effective, there has to be sufficient funding. We have learned from other Oregon counties who set their TRL fee too low that they are unable to sufficiently enforce the rules.
Who will enforce this program?	The Public Health Division based on our experience with restaurant, pool, and daycare inspections.
What penalties will be in place for underage sales? Will there be penalties for MIP? What about for tobacco paraphernalia?	Penalties will be informed by our proposed Rules Advisory Committee. We have a few models we can use as examples, which include monetary penalties as well as limitations on being able to sell tobacco products. We cannot regulate MIP laws.

What is the cost of enforcement?	The fee revenue would cover the cost of enforcement, to be administered by the Clackamas County Public Health Division.
What current enforcement laws exist?	
How does purchasing tobacco products and paraphernalia work? What laws are already in place?	
Could a retailer lose their license if they have been cited for too many violations?	Our goal is to help retailers comply with laws, so there will be a tremendous amount of education that happens with the enforcement. If a retailer has too many instances of non-compliance, they could lose their license.
Do e-cigarettes have a high profit margin? Is it a lucrative product for retailers to have in stock?	Unsure of the profit margin on these items specifically. However, we do know that the margin is enough that there are 25 tobacco retailers in Oregon City alone. Additionally, youth are very sensitive to changes in price. If the cost of these products were to increase as a result of licensing fees, this could further impact youth purchasing habits.
What has been the reception across the county?	4 signed resolutions in support of TRL and a letter of support from Sandy. We've had a lot of positive reception throughout our engagement.
What is the next step?	We will share a proclamation for your City Commission to review. We are also in the process of engaging retailers through an online survey and listening sessions so our retailers have the opportunity to provide feedback in the planning stage of this ordinance.

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 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, 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 11TH 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

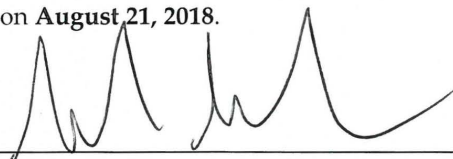
WHEREAS, research demonstrates that local tobacco retail ordinances reduce youth access to cigarettes, and a review of 33 California communities with strong tobacco retailer licensing ordinances showed that youth sales of tobacco declined in 31 of these communities after the ordinances were enacted;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

APPROVED AS TO FORM:
Jordan Ramis PC



City Attorney

ATTEST:



Scott Stauffer, City Recorder

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.

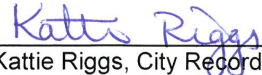
NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:

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 5th day of December 2018.


DAN HOLLADAY, Mayor

Attested to this 5th day of December 2018:


Katie Riggs, City Recorder

Approved as to legal sufficiency:


Karin R.
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

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

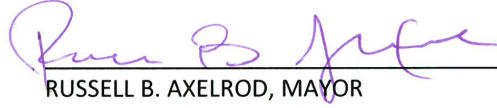
WHEREAS, a county-wide licensing system for tobacco retailers is appropriate to enforce tobacco control laws to protect the health, safety, and welfare of our residents; and

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

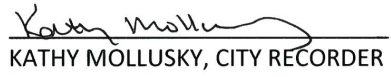
WHEREAS, a requirement for a tobacco retailer license will not unduly burden businesses who sell or distribute tobacco or nicotine products.

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.

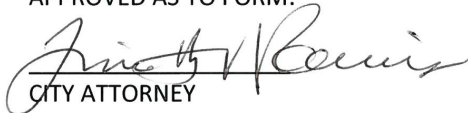
This resolution was PASSED and ADOPTED this 10th day of September, 2018, and takes effect upon passage.


RUSSELL B. AXELROD, MAYOR

ATTEST:


KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:


CITY ATTORNEY

RESOLUTION NO. 2727

A RESOLUTION OF THE CITY OF WILSONVILLE SUPPORTING A CLACKAMAS COUNTY TOBACCO RETAIL LICENSE.

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

WHEREAS, the U.S. Centers for Disease Control and Prevention reports that cigarette smoking is responsible for more than 480,000 deaths per year in the United States, including more than 41,000 deaths resulting from secondhand smoke exposure; and

WHEREAS, the total economic cost of smoking in the U.S. is more than \$300 billion a year, including nearly \$170 billion in direct medical care for adults and over \$156 billion in lost productivity due to premature death and exposure to secondhand smoke; and

WHEREAS, the Oregon Health Authority reports that tobacco use is responsible for killing nearly 8,000 people each year in the state and an estimated 625 deaths annually as a result of secondhand smoke and that tobacco use costs Oregonians \$2.5 billion a year in medical expenses, lost productivity and early death; and

WHEREAS, nearly 90 percent 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 percent higher risk of dying from smoking-related illness; and

WHEREAS, if smoking continues at the current rate among U.S. youth, 5.6 million of today's Americans younger than 18 years of age are expected to die prematurely from a smoking-related illness, representing about one in every 13 Americans aged 17 years or younger who is alive today; and

WHEREAS, the Federal Trade Commission reported in 2015 that the tobacco industry spent nearly \$8.9 billion marketing cigarettes and smokeless tobacco nationwide, with marketing efforts targeted to retail displays located near the point-of-purchase in convenience stores, pharmacies and grocery stores; and

WHEREAS, the tobacco industry reportedly spends more than \$100 million every year to advertise and promote tobacco products in Oregon retailers; 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 in 2018 the tobacco and nicotine product possession age to 21 but did not pass a statewide 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 Wilsonville 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.

ADOPTED by the Wilsonville City Council at a regular meeting on March 4, 2019, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Stevens	Excused
Councilor Lehan	Excused
Councilor West	Yes

RESOLUTION NO. 2727

Page 2 of 2

Appendix B

TRL Presentations to Chambers of Commerce Summary & Outcomes

North Clackamas Chamber of Commerce (9/10/18)

Large attendance. Notable people present: Councilor Wilda Parks (Milwaukie), Drenda (Clackamas County), Mark Meek (State Representative, District 40)

Feedback from Laura Edmonds, CEO North Clackamas Chamber of Commerce, received 9/11/18

- Presentation was much appreciated.
- Presentation was focused more on the sale, needed more facts and time for Q & A to make a more informed decision. Please respond to unanswered questions (below).
- Good to know what other states and Chambers are in support of and implementing such programs. Good to know others are on-board.
- The health, wellbeing and safety of children is critical. Smoking is a health concern and hugely addictive.

Questions raised during the meeting / presentation

Question/Point Raised/Concern	Response
What does TRL look like? Would every business need to apply?	TRL would require businesses located in the county to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes. Any business that sells products containing tobacco or nicotine would need to maintain a tobacco retail license. We are proposing a licensing fee of \$500-\$600 annually. This amount is necessary to provide adequate education and enforcement to the 232 known tobacco retailers in Clackamas County.
Why would bars need a TRL?	See response below (Q 2).
What are the numbers to show that compliance is a problem?	Currently, the Oregon Health Authority enforces the tobacco minimum sales age law and coordinates with the Oregon State Police to conduct compliance inspections, known as Synar inspections. Synar inspections revealed that Oregon is one of the easiest states for youth to illegally purchase tobacco from retailers. It takes teens in Oregon less than five attempts to purchase tobacco; nationally, it takes teens an average of ten attempts before successfully purchasing tobacco. ¹ A clerk may be cited for Endangering the Welfare of a Minor if caught selling tobacco or nicotine products (e-cigarettes) to a person under 21 years. Minimum fine of \$200, maximum of \$2000. Due to the State's limited capacity and resources, a random sample of retailers are inspected. A TRL in Clackamas County would augment the state's system so that every tobacco retailer is inspected annually.
How much money are you making off of this? Where will that money go?	See responses below (Qs 4, 6, & 7).
Would OLCC be suited to take this on?	See response below (Q 2).

¹ Substance Abuse and Mental Health Administration, *FFY 2013 Annual SYNAR Reports: Tobacco Sales to Youth, 2013*.
<https://store.samhsa.gov/shin/content/SYNAR-14/SYNAR-14.pdf>.

Lessons Learned:

- TRL is not a tax. Do not mention taxation.
- Be prepared for questions about budget. There is concern for growing government and a desire to ensure that the budget is properly managed.
- Not necessary to discuss why smoking is bad (i.e. causes of death in Clackamas County). People know that smoking is bad, what can they do about it?
- Talk about what TRL is before talking about what other chambers of commerce have done in support of Public Health's tobacco agenda
- Think about equity piece more. How can we align public health values with chambers' values and thoughts around healthy, vibrant, equitable, and prosperous communities?
- Emphasize the purpose of TRL is to enforce T21.

Follow-up questions received from Laura Edmonds received 9/11/18

- 1) **Your Economic Impact piece states that this shouldn't have much of an economic impact to the County as it may relate to a total loss of 4.12 FTE's – but you also stated that you don't know "who" all are selling tobacco products. So this isn't clear how job losses can be estimated when we don't know who is selling.**

The Economic Impact Analysis, completed by the Northwest Economic Research Center (NERC), is based on a list of 242 known tobacco retailers Clackamas County Public Health Division (CCPHD) received from the Oregon Health Authority (OHA) in spring 2018. NERC used the list and the modeling software IMPLAN to estimate the Economic Impact of a county-wide tobacco retail license (TRL).

Because Oregon does not have statewide TRL, OHA applies multiple methods to maintain a list of tobacco retailers including coverage studies and retail assessments. Public health staff used to the list from OHA to complete an assessment of all known tobacco retailers in July 2018. We confirmed 232 businesses in Clackamas County sell tobacco and nicotine products.

We have learned from the Tobacco Retail License program in Multnomah County that the number of tobacco retailers fluctuates as new businesses open, change ownership, and close.

- 2) **Bars/Taverns – still not clear why this license fee pertains to those who already have an age restriction by law and are monitored by OLCC?**

While youth are legally not allowed into bars and adult venues, they occasionally manage to skirt the system to enter. A few bars in Multnomah County have sold tobacco products to minors.

While the OLCC is responsible for ensuring compliance with liquor and marijuana laws, they are understaffed to adequately ensure businesses across the state do not sell or serve alcohol or marijuana to people under 21.

The OLCC last conducted minor decoy operations to 28 alcohol retailers (includes restaurants, bars, liquor stores) in Clackamas and Happy Valley on **March 8, 2017**. Eight businesses sold alcohol to minors. The OLCC posts inspection results on their website https://www.oregon.gov/olcc/Pages/reg_program_overview.aspx#Alcohol_Minor_Decoy_Operations

Of note, Oregon law preempts any local jurisdiction from regulating vending machines. So if a bar / adult venue has only a vending machine, CCPHD cannot require them to get a tobacco retail license. Oregon Revised Statutes §167.404 Cities and counties by ordinance or resolution may not regulate

vending machines that dispense tobacco products or inhalant delivery systems. [1991 c.970 §3; 2015 c.158 §10].

- 3) How are you positioned w/ the cities to impose this license fee? Is the fee split or do they or the County receive 100% of the license fees within their boundaries and then are they responsible for implementing their own program to enforce it? How is this partnership being established and is there 100% buy-in from them?**

CCPHD has engaged all cities in Clackamas County and have presented TRL to nine city councils. They have raised thoughtful questions and vocalized their support. West Linn and Milwaukie have signed resolutions in support of TRL.

The Board of County Commissioners is considering a county-wide TRL proposal that, if adopted, would be implemented by CCPHD. The Public Health Division would retain 100% of the fee to administer the license, uniformly educate retailers and enforce tobacco-related laws across the county, alleviating the burden from cities. A county-wide TRL would avoid a patchwork of city ordinances. Cities would follow their own governing process to support TRL in their city, by resolution or an IGA with the County to implement TRL.

- 4) You said yesterday that all proceeds collected must be used for the program and that you can't profit from it... so what's the plan? How many jobs will this create to enforce it? What are those salaries expected to be and what is the overall cost for those employee's? (salary, benefits, et all).**

The Public Health Division would hire one permanent, full-time, Program Coordinator for the Tobacco Retail License Program in calendar year 2020 and one temporary adult, between 18 – 20 years of age, to implement annual Minimum Legal Sales Age Inspections in calendar year 2021. Please see the attached budgets for more details.

- 5) Are any proceeds being set aside for education of youth on the consequences of smoking? Your documents state that you'll educate the retailers on the consequences of selling... so more fines if caught... OK... but it's the kids' health and safety we are concerned with. Where do they come into play for education?**

The revenue generated from TRL fees and fines will be committed to sustain the TRL program, not for youth education. CCPHD partners with prevention coalitions to deliver prevention messages and education around a variety of substances through social media and community-based programming.

TRL is a health-enhancing policy that limits youth access to and use of tobacco and nicotine products. Although education is important, changing policy is a far-reaching intervention that will benefit every youth in Clackamas County, which education alone cannot guarantee.

- 6) Will all funds be held in a stand-alone account, co-mingled with no others, that is audited and transparent?**

"Tobacco Retail License" will be a separate program where the revenues and expenses will be tracked. Revenue from fees and fines will be posted separately. Clackamas County general funds will also be used to supplant whatever expenses the fees and fines don't cover, particularly in the first couple years of operation. The detailed budgets are designed to be transparent and all Public Health Programs/Project Budget to Actual reporting is audited annually by an external auditor.

- 7) If retailers are caught, what are the fines & punishment? Where does that money go? Is it general fund or remain in a separate fund to offset the cost of this proposed program?**

Retailers found selling tobacco and nicotine products to minors will face a civil penalty. The penalty structure for violating a tobacco-related law will be developed under the guidance of a Rules Advisory

Committee. The following *examples* are civil penalties tobacco retailers face for violating any provision of Multnomah County's TRL:

- 1st violation: \$500 Fine and mandatory training
- 2nd violation within 60 months: \$500 Fine and 30 day license suspension
- 3rd violation within 60 months: \$750 Fine and 90 day license suspension
- 4th violation within 60 months: \$1,000 Fine and license revocation for 2 years

The money collected through fines will be committed to support the operations of TRL. There will be different account line items in the budget to support this program (e.g. general fund, licensing fees, and fines). The Rules Advisory Committee will provide input on how money collected from fines will be used.

8) We like the inclusion of e-cigarette and the new vapes that are out. Makes sense to include all tobacco and related products and paraphernalia.

Thank you, we agree! Youth are using vape products at alarming rates. Vape products were included when the state raised the legal sales age to purchase tobacco to 21.

9) Is there a clear and laid out plan for this program?

The plan to adopt and implement TRL in Clackamas County is based on other successful TRL programs in Oregon. The Board of Health and Rules Advisory Committee may influence the details of implementation and operations as well as the following timeline:

2018

- CCPHD engages community and stakeholder May – December 2018
- Board of County Commissioners / Board of Health adopts county-wide TRL by December 2018.
- Cities sign Inter-Governmental Agreements / Resolutions in support of TRL

2019

- Cities sign Inter-Governmental Agreements / Resolutions in support of TRL
- CCPHD convenes Rules Advisory Committee January – March 2019
- Board of Health adopts finalized TRL rules by June 2019
- CCPHD educates tobacco retailers on TRL July – December 2019
- CCPHD finalizes operational systems, protocols and database

2020

- Launch TRL January 1, 2020
- Tobacco retailers apply for licenses by June 30, 2020
- CCPHD educates tobacco retailers on TRL January – December (ongoing)
- CCPHD conducts annual TRL inspections with tobacco retailers starting July 2020

2021

- TRL education (ongoing)
- Tobacco retailers renew licenses (annually)
- CCPHD continues annual TRL inspections
- CCPHD starts annual Minimum Legal Sales Age (MLSA) Inspections
- Fines / civil penalties begin

Clackamas County Business Association (9/19/18)

Attendees:

Jamie Stasny, Metro Land Group; John Howorth, 3J Consulting; Herb Koss, Koss Development; Russ Reinhard, Providence; Chip Laizure, Deacon Corporation; Chair Jim Bernard; Commissioner Paul Savas; Dave Golobay, HV City Councilor; Brook Berglund, PGE; Alissa Mahar, CCC; Wilda Park, Milwaukie City Councilor; Nellie deVries, CCBA; Wilsonville Mayor; Chris Lyons

Lessons learned:

- Include “the ask” of a letter of support/resolution at the end of the presentation.
- Our county commissioners are much more on board with TRL and health issues than when we started this process. They have a better understanding and now have the authority as the Board of Health for Clackamas County.

Question / Point Raised / Concern	Response
Concern about educational efforts especially for high-schoolers and kids just turning to online sources if they cannot purchase in stores (from Alissa Mahar, CCC)	We have partners that are working on educational outreach. Policy is the next level that changes the environment so there is no access point. We know that people make healthier choices when the healthy choice is the only choice. Most youth purchase tobacco through traditional storefronts.
Marijuana laws are different across the county, will a uniform tobacco law work? (question from Wilsonville Mayor, directed at Chair Bernard)	In regards to marijuana, enforcement has been different and difficult especially as the number of growers has increased. TRL is a more simple process of enforcement because it is being pitched as a county-wide ordinance. The issue with marijuana enforcement is that the state gets most of the tax revenue, and there is not enough money for enforcement. Biggest issues are noise from the fans and odor.

Lake Oswego Chamber of Commerce 10/11/18

Attendees: Members of Government Affairs Committee (GAC): Doug Cushing (Chair), Keith Dickerson (CEO), Karen Stuart, Mike Buck, Rob ---, additional person arrived after introductions.

Question / Point Raised / Concern	Response
Is there a regional TRL effort? Why not?	TRL was implemented in Multnomah County in 2017. Washington County is considering TRL but is not yet ready to move forward. If TRL passes in Clackamas County, it will help move closer to TRL across the tri-county area.

Does TRL present a huge burden to retailers?	<p>When considering the burden on businesses, it is important to weigh a \$600 TRL fee verses the significant excess costs employees who smoke impose on private employers. According to a scientific study published in the journal of <i>Tobacco Control</i> in 2013, a private employer may incur an excess annual costs of \$5816 to employ an individual who smokes tobacco as compared to a non-smoking employee.</p> <p>TRL ensures that all retailers in Oregon are equipped with the appropriate information and tools to keep tobacco and nicotine inhalant devices out of the hands of our young people and help protect them from a lifetime of addiction and poor health. For businesses, this means less absenteeism, fewer smoke breaks, higher productivity and lower cost of health insurance.</p>
How are businesses supposed to stay on top of training all employees on these laws when turnover rate is so high?	<p>A local TRL ordinance provides a mechanism to educate tobacco retailers to adhere to federal and state laws. Education can take many forms including classes, one-on-one technical assistance and online training modules.</p> <p>Public Health staff would assist business owners in establishing protocols to ensure new employees learn how to adhere to tobacco-related laws. This is comparable to requiring a food handlers' card to working in restaurants.</p>
Don't kids learn to stay away from tobacco in school? How does TRL do more than education?	<p>TRL is a systems level change that makes the healthy choice the only choice. Research has shown greater impact from interventions influence social norms, systems, and environments.</p> <p>TRL is a high-level change that benefits every adolescent and every community by enforcing age restrictions on the purchase of tobacco and nicotine products.²</p> <p>TRL reduces youth access to and use of tobacco and nicotine products in a way that education alone cannot do.</p>
Can a kid get the equivalent of an MIP for tobacco?	<p>Possession of Tobacco or Inhalant Delivery Systems by Minors</p> <p>Oregon law prohibits a person under the age of 18 from possessing tobacco products or inhalant delivery systems. City, county or state law enforcement authorities are responsible for enforcing the law.</p> <p>ORS 167.785 Possession of tobacco products or inhalant delivery systems by person under 18 years of age; penalty.</p>

⁵ The Center for Tobacco Policy & Organizing. Reducing Youth Access to Electronic Cigarettes through Tobacco Retailer Licensing. 2015. <http://center4tobaccopolicy.org/wp-content/uploads/2016/11/E-cigarettes-in-TRL-April-2015.pdf>.

	<p>(1) It is unlawful for a person under 18 years of age to possess tobacco products or inhalant delivery systems.</p> <p>(2) A person who violates this section commits a Class D violation. [Formerly 167.400]</p> <p>https://www.oregonlegislature.gov/bills_laws/ors/ors167.html</p>
Doesn't it make sense to bundle all the licensing fees that businesses have to pay?	Businesses operate under regulations that vary according to the business type. Due to the technical nature of regulations, there are a variety of specialized regulatory bodies (i.e. city, restaurants, pools, childcare, water district, OLCC) that need to collect fees to operate and sustain the service. Tobacco retailers, including smoke shops and vape shops, need to adhere to specific laws that are unique to that business type.
<p>How much of the funds from license fee are actually being used to reduce tobacco use?</p> <p>What is the return on investment?</p>	<p>100% of the TRL fee would be used to administer the license, educate retailers and enforce tobacco laws.</p> <p>The American Lung Association Center for Tobacco Policy and Organizing studied the effects of a strong TRL ordinance in 33 California communities in 2013. They found significant decreases in illegal sales to minors in nearly every community; 14 communities saw decreases of 30% or more in the time since a strong TRL ordinance was adopted.³</p> <p>An analysis of FDA compliance checks across the country found that state police significantly affect the sale of tobacco products to minors. Stores located in states with fewer/weaker enforcement measures were 36 percent more likely to illegally sell tobacco to minors than stores located in states with more effective measures.⁴</p>
Why can't Department of Revenue records be used to identify retailers?	<p>In Oregon, tobacco taxes are levied at the distributor or wholesaler level, rather than at the retail level. Some retailers, like Costco, might have a license through the Dept. of Revenue so they can distribute to other retailers.</p> <p>Most retailers get their tobacco from the tobacco company distributors themselves (RJR and Altria sales reps grease the wheels for this process by visiting stores and signing them up on distribution contracts).</p> <p>The distributors are responsible for paying for and applying the Oregon tax stamp. The distributors don't inform the Dept. of Revenue who they distribute products to. Therefore, the Department of Revenue doesn't have a comprehensive list of who sells tobacco in the state of Oregon, only who "distributes" tobacco.</p>

³ The Center for Tobacco Policy & Organizing. Tobacco Retailer Licensing is Effective. 2013. <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>

⁴ Gray, B & Chaloupka, FJ, "State Policies and Community Characteristics Affect Tobacco Sales to Minors. An Analysis of over 100,000 FDA Compliance Checks", *Policy Forum* 16(1), 2003.

	<p>There are three kinds of licenses:</p> <ul style="list-style-type: none"> • Cigarette Distributor's License: For people who bring untaxed cigarettes into Oregon for resale. This license allows you to purchase Oregon tax stamps from us. • Cigarette Wholesaler's License: For people who buy stamped cigarettes from licensed distributors. This license allows you to resell these cigarettes to other retailers. • Tobacco Products Distributor's License: For people who bring untaxed tobacco products into Oregon for resale.
Numbers & types of tobacco retailers in Lake Oswego	<p>We didn't have an opportunity to talk about slide 12 of the PowerPoint presentation. There are approximately 10,000 youth under the age of 21 living in Lake Oswego and 13 known businesses that sell tobacco and nicotine products. The business types include:</p> <ul style="list-style-type: none"> • Five tobacco retailers are mini-mart and gas stations • Four are mini-marts • Two are drug stores • Two are grocery stores <p>The Oregon Health Authority, in partnership with the Oregon State Police, conduct Minimum Legal Sales Age inspections annually. The <i>Oregon Tobacco Retail Enforcement Inspection Results</i>, published July 2018, lists five businesses that were inspected. Of the five inspected, one illegally sold tobacco to a minor.</p>

Lessons learned & next steps:

- LOCC was very much concerned with protecting businesses from growing government, minimize fees/expenses and simplify/bundle requirements.
- Decision process of LOCC: GAC will make a decision to support or not -> recommend to board -> board decides to write letter of support
- Jamie thank Keith Dickerson for time, send documents & data points that respond to their questions.
- Follow up with LOCC for date of next BCC presentation

Tualatin Chamber of Commerce 10/15/18

Attendees: No introductions. Board well represented. Washington County Tobacco Prevention & Education Program Coordinator attended.

Short time allotted for presentation, not able to record notes. No questions during presentation. Couple members expressed support for TRL.

Sandy Chamber of Commerce 10/17/18

Attendees: Dave, City of Sandy Economic Development; Khrys, Director, Sandy Chamber of Commerce; Debbie Grimes, Edward Jones; Debbie Mallory, Avamere; Brian, President; Mary Horst, Farmers Insurance; Faye Stewart, Red Boot; Debi Vann, Designer; Lisa Foster, Vice President, LP Travel

Questions:

How many students responded to OHT survey?

Who would enforce TRL?

What does enforcement look like?

What happens if there is a violation?

What is the fee?

Will the fee be tiered for store size?

What other states have done TRL?

What about Minors in Possession?

What about e-cigs/e-juice

Observations:

One person in the group was a smoker and used e-sigs to quit.

Discussion regarding cost of the fee be mostly nominal.

Strong support from City of Sandy person.

General support and answers to questions diminished concerns. Will provide letter of support

Appendix C



Lauren MacNeill
Director

RESOLUTION SERVICES

Public Services Building

2051 Kaen Road, #210 / Oregon City, OR 97045

TOBACCO RETAIL LICENSING RETAILERS LISTENING SESSIONS NOVEMBER 20 AND 27, 2018

Facilitators Report
Prepared by Erin Ruff

Resolution Services provided neutral facilitation of listening sessions for retailers of tobacco and nicotine products. As the intent of this session was to receive feedback from retailers, I asked Public Health staff to limit themselves to responding to questions. This report provides a summary of the concerns and issues raised by the retailers. Public Health staff will respond in other documents or testimony.

PRIORITY CONCERNS

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

- Retailers that consistently pass decoy operations would bear the same annual licensing burden as retailers with multiple violations. Noncompliant retailers are benefiting both from the revenue of selling to minors and the structure of the licensing fee.
- Small retailers who follow the law have already seen significant income decrease after the age raised from 18 to 21. Retailers who exclusively sell tobacco products reported a 30% reduction in revenue, which required them to lay off staff.
- Tobacco manufacturers offer discounts on product for high-volume retailers. Low-volume retailers are already paying more for product and would pay equal fees under this system.

Law enforcement is not effectively enforcing existing age restrictions.

- Youth who obtain and use tobacco and nicotine products are not being charged for law violations by law enforcement. The disincentive intended by the current law has not effectively changed youth decision making. This licensing fee holds business owners responsible while law enforcement does not hold youth responsible.
- The existing state laws and enforcement mechanisms have not significantly reduced underage use of tobacco and nicotine, this licensing structure does not demonstrate that it will lead to better results.

Creating and changing law and policy does not effectively change behaviors

- Enacting new laws and licensing structures like this creates new burdens for already law-abiding citizens and businesses but do not create a paradigm shift in the thinking of those who are already in violation of existing laws.

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

- Youth have outsmarted every system restricting their access to harmful and addictive substances so far, and they will find a way to outsmart this system. Retailers who are already not selling tobacco and nicotine products to minors will see increased costs, and minors will continue to find ways to get the products from another store, from another county, or from an adult purchaser.
- Retailers do not have influence over use decisions of minors. It would be more effective for public health advocates to put resources into supporting parents and schools to educate youth about tobacco use as schools are much more influential on youth than retailers.

OTHER CONCERNS RAISED

- The structure of this fee would require co-located businesses to obtain multiple licences. This is a significant issue in rural areas where co-located businesses have much lower volume.
- Business owners do not believe that they can effectively raise prices to offset the licensing fee because their larger-volume competitors, who also receive volume discounts and other incentives that small retailers do not, will not similarly raise prices.
- Retailers report parents buying tobacco for their children (and they also report refusing to sell to parents when that is obvious to them). If parents are supporting their children's unhealthy choices, no amount of retailer education paid by the cost of licensing will realistically achieve public health goals of reduced youth use and addiction.

OTHER ISSUES NOT FULLY EXPLORED

As I said above, this was a listening session for retailers, not a debate, and Public Health staff agreed to limit their input to responding to questions. During the conversation, there were times that I thought that exploring the pros and cons of issues might yield valuable information for the Board. Those are outlined below, with an attempt to represent both Public Health staff and retailers with accuracy and respect.

Is the cost to small businesses worth the expected results?**Public Health Staff:**

Public Health staff acknowledge that licensing will not prevent 100% of youth from accessing tobacco and nicotine products, and that youth who are determined to use these products will continue to find ways to obtain them. They emphasize data from other communities

which supports that licensing, as a tool, effectively reduces illegal sales to minors, which correlates to reduced youth use, which correlates to improved public health in both the short and long term.

Retailers

Retailers described that this licensing fee, combined with all the other costs of doing business, would have a significant financial impact on many small, locally owned businesses that will not be recoverable through raised prices. They believe that youth who choose to use tobacco and nicotine will get it if they want it by going to a business willing to risk the license and law violation, by going to another county, or by having an adult friend or family member purchase for them.

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

Public Health Staff

The amount of the fee is designed to cover the costs of effective administration and enforcement. A flat fee is easiest to administer and less time and paperwork burden on retailers. Tiered fee structures have been challenged in court in other states.

Retailers

The margins of small, locally-owned businesses are much narrower than large, national corporations. High volume corporations are offered both product discounts and incentives for which low-volume small business are not eligible. Retailers believe that large corporations will not reduce prices to cover the cost of the licensing fee, which means small businesses will also not be able to raise prices in order to remain competitive. Small compliant retailers are already facing significant reduced income from sales to 18 – 21 year olds, whereas noncompliant businesses profit from sales to minors easily offsets licensing and enforcement fees.

Appendix D

Lauren MacNeill
Director



RESOLUTION SERVICES

Public Services Building

2051 Kaen Road, PSB #210 / Oregon City, OR 97045

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
- William Miller, 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.

Tobacco Retail Licensing Community Task Force
Report to the Board of Health
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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.
- A. "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.
- B. "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.
- C. "Public Health" means the Clackamas County Public Health Division of the Health, Housing and Human Services Department.
- D. "Retail Sale" means any transfer, conditional or otherwise, of title or possession of Tobacco Products or inhalant delivery systems to a consumer of such products to a consumer of such products.
- E. "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.
- F. "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of any Tobacco Products.
- G. "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; and-
 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.

H. "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.

**See Attached Majority and Minority Reports
on Location-Based Restrictions**

~~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 available to a consumer:
- (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, a fine and mandatory training will be imposed ~~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, a fine will be imposed and the license will be suspended for ninety ~~thirty~~ days.

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

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

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.

Appendix E

From: Gari Johnson, Clackamas County Public and Government Affairs, 503-742-4370

09-9-19



Media and Interested Parties

Illegal sales of tobacco products increase to youth under 21 in Clackamas County

An Oregon Health Authority (OHA) report on the most recent round of inspections of tobacco sales to people under 21 in Clackamas County revealed that 35% of sales violations were for electronic cigarette (e-cigarette) products, larger than the statewide average at 21.3%.

In January 2018, the OHA started enforcing a tobacco sales age of 21, up from 18. Initial results of an evaluation of Oregon's Tobacco 21 law show it may reduce the number of youth who take up smoking. But while the law made some minor changes to who can be fined for an illegal sale, the recent inspection results suggest more needs to be done.

In 2019, OHA in collaboration with Oregon State Police inspected 1,100 retailers out of about 3,200 retailers who sell tobacco and e-cigarette products statewide. The state inspected 94 retailers in Clackamas County, which is less than a third of total retailers. These inspections additionally showed a rise in illegal sales of conventional cigarettes to people under 21 in Clackamas County, while illegal little cigar sales more than doubled statewide.

This is significant because e-cigarettes, nicotine vaping products and little cigars (also called cigarillos) are sold in sweet flavors, which is a tactic used by the tobacco industry to make nicotine delivery products appeal to youth as described in a recent OHA report on the tobacco industry.

Given that more than one in four Oregon retailers sold little cigars illegally to people under 21 in 2019, these products as well as e-cigarettes are relatively easy for young people to get. Middle and high school students' use of fruit and candy flavored nicotine delivery devices, also called vape devices, are on the rise.

"Flavors hook kids and they don't realize that nicotine is a powerful drug that can seriously affect their health throughout their lives," said Sarah Present, M.D., Clackamas County Health Officer. "We have a public health epidemic that is happening with our young people right before our eyes, but hard to detect due to stealthy smoke-free e-cigarettes that look like thumb drives that kids get ahold of and even take to school."

Illegal tobacco sales by retailers create risks for young people in Clackamas County that require the enforcement of Oregon's strong Tobacco 21 laws. Currently, there are approximately 287 known tobacco retailers in Clackamas County.

<https://www.clackamas.us/news/2019-09-09/media-release-illegal-sales-of-tobacco-products-increase-to-youth-under-21-in-clackamas-county>

“One of the challenges of our inspection process is that only a few counties in Oregon require a license to sell tobacco – and there’s no state license,” said Tom Jeanne, M.D., deputy state health officer at the Oregon Health Authority Public Health Division. “This means it is extremely difficult to enforce the minimum legal sales age by holding retailers accountable for illegal sales. A tobacco retail license would make it possible to track who is selling tobacco, educate retailers on how to comply with the law and have meaningful penalties for repeat offenders.”

Oregon is one of only nine states that doesn’t require a license to sell tobacco.

Clackamas County’s Public Health Department officials have conducted surveys within the community to determine possible enforcement solutions and are considering tobacco retail licensing due to the importance of knowing who is selling tobacco and nicotine vaping products and where are they located.

“We are actively working with our leaders, educators, families and community partners to reduce youth access to these addictive and harmful products,” said Richard Swift, Director of Clackamas County Health, Housing and Human Services. “Giving our kids a head start by protecting them from tobacco requires a solution that involves all of our communities.”

The list of Oregon tobacco retailers that violated the tobacco sales is available on the OHA Public Health Division website here:

https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/CHRONICDISEASE/HPCDPCON/NECTION/TOBACCO/Documents/retail_compliance/Enforcement_results_1819.pdf.

###

For more information about how the tobacco industry markets in Oregon, see the recent Tobacco Retail Assessment Report here: <https://smokefreeoregon.com/retailassessment/>

Contact: Jamie Zentner

Phone: 503-742-5939

Email: JZentner@clackamas.us

<https://www.clackamas.us/news/2019-09-09/media-release-illegal-sales-of-tobacco-products-increase-to-youth-under-21-in-clackamas-county>



Study: Illegal Sales of Vaping Products to Minors 14 Points Higher in Clackamas County than State Average

SEPTEMBER 9, 2019 [TYLER FRANCKE NEWS](#), [PUBLIC SAFETY](#), [YOUTH](#)

Tobacco products are easier for minors to illegally obtain in Clackamas County than in other parts of the state, according to [a recent study by the Oregon Health Authority](#).

The most recent round of inspections of tobacco sales to people under 21 in Clackamas County revealed that 35 percent of sales violations were for electronic cigarette (e-cigarette) products, significantly higher than the statewide average at 21.3 percent. The county's violation rate on cigarette sales, 21.2 percent, was also higher than the statewide result of 13.3 percent.

In January 2018, the OHA started enforcing a tobacco sales age of 21, up from 18. Initial results of an evaluation of Oregon's Tobacco 21 law show it may reduce the number of youth who take up smoking. But while the law made some changes to who

<https://canbynowpod.com/crime/study-illegal-sales-of-vaping-products-to-minors-14-points-higher-in-clackamas-county-than-state-average/>

can be fined for an illegal sale, the recent inspection results suggest more needs to be done.

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This is significant because e-cigarettes, nicotine vaping products and little cigars (also called cigarillos) are sold in sweet flavors, which is a tactic used by the tobacco industry to make nicotine delivery products appeal to youth, according to the OHA report.

"Flavors hook kids and they don't realize that nicotine is a powerful drug that can seriously affect their health throughout their lives," said Dr. Sarah Present, Clackamas County health officer. "We have a public health epidemic that is happening with our young people right before our eyes, but hard to detect due to stealthy smoke-free e-cigarettes that look like thumb drives that kids get a hold of and even take to school."

Illegal tobacco sales by retailers create risks for young people in Clackamas County that require the enforcement of Oregon's strong Tobacco 21 laws. Currently, there are approximately 287 known tobacco retailers in Clackamas County.

"One of the challenges of our inspection process is that only a few counties in Oregon require a license to sell tobacco — and there's no state license," said Dr. Tom Jeanne, deputy state health officer at the Oregon Health Authority Public Health Division. "This means it is extremely difficult to enforce the minimum legal sales age by holding retailers accountable for illegal sales. A tobacco retail license would make it possible to track who is selling tobacco, educate retailers on how to comply with the law and have meaningful penalties for repeat offenders."

Oregon is one of only nine states that doesn't require a license to sell tobacco.

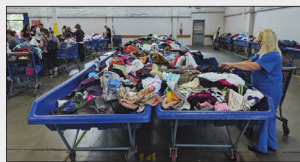
In Canby, five retailers [were part of the inspection](#), in which locations were tested on whether they would sell cigarettes, e-cigarettes or other tobacco products to minors. Three of the five passed the inspection (7-Eleven, Arco and Cutsforth's Market) and two failed (Astro and Safeway).

For complete results, click [here](#).

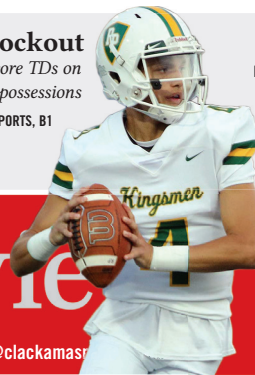
Photo by [Vaping 360](#). Licensed under [CC 2.0](#).

<https://canbynowpod.com/crime/study-illegal-sales-of-vaping-products-to-minors-14-points-higher-in-clackamas-county-than-state-average/>

**Bin there,
done that**
Milwaukie 'bins' attract
back-to-school shoppers
See ARTS&PEOPLE, A13



Early knockout
Kingsmen score TDs on
first four possessions
See SPORTS, B1



MARCELLAS
KENION



Owner & Neighbor
Dr. Robert B. Pamplin, Jr.

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Pamplin
MediaGroup

Illegal sales of tobacco products to youth on rise

*E-cigarettes sold to
Clackamas County
minors at higher
rate than rest of state*

By RAYMOND RENDLEMAN
The Clackamas Review



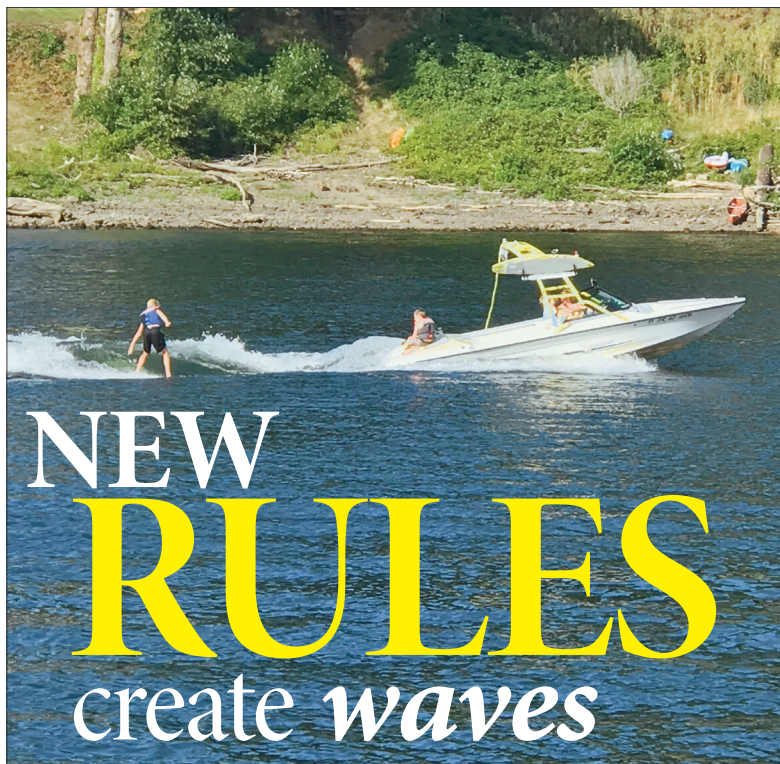
**"Giving our
kids a head
start by
protecting
them from
tobacco
requires a
solution that
involves all of
our
communities."**

— Richard Swift,
director of Clackamas
County's health
department

Clackamas County officials say they are considering tobacco retail licensing in the wake of surveys showing a disproportionate number of violations in the county, especially if youth try to buy nicotine vaping products.

Recent anonymous surveys of middle and high school students have shown their use of nicotine-delivery devices, also called vape or

See TABACCO / Page A10



PMG FILE PHOTO

The Newberg Pool, the section of the Willamette River from Newberg to Oregon City above the falls, is continuing to undergo rule changes designed to mitigate the impact of wakes produced from wakesurfing and wakeboarding.

**Wakeboarders
must pass
exam to surf
upstream of
Willamette
Falls in
Oregon City**

The Oregon State Marine Board is determining how it will translate mandates passed by the Oregon Legislature into new rules that will affect boaters in a congested section of the Willamette River.

House Bill 2352 requires boaters who want to perform towed water sports like wakeboarding and wakesurfing from river

STORY BY
COREY
BUCHANAN

mile 30 to 50 (from Oregon City above Willamette Falls to Newberg) to receive a water sports education certificate by taking a boater safety class and then passing an examination (or just passing the exam without taking the class).

The purpose of the bill is to make wakeboarders and wakesurfers more aware of the rules and the impacts such activities

can have on riverfront properties, shoreline erosion and other recreators.

Oregon State Marine Board Boating Safety Program Manager Randy Henry said the specifics of the program have yet to be determined. However according to draft language of the new rules, boaters will have to answer at least 70% of questions correctly to pass the test and, in turn, receive a Towed Water

See RIVER / Page A12

Oregon's first public records advocate quits

*Ginger McCall, hired
a year ago to improve
transparency, claims
pressure from
governor's office led
to her resignation*

By CLAIRE WITHYCOMBE
Oregon Capital Bureau

Oregon's first-ever public records advocate is resigning from her post Oct. 11.

Ginger McCall, appointed by Gov. Kate Brown in early 2018 to boost transparency and openness in state and local government, said she was stepping down after what she called "meaningful pressure" from the governor's office to represent its interests in her role on the state's public records advisory council.



**"(This) office
must be
independent,
operating to
serve the
public and
not partisan
political
interests."**

— Ginger McCall,
Oregon's first-ever
public records
advocate explaining
her resignation

Willamette Week first reported McCall's resignation.

McCall sent two resignation letters: one to the advisory council, and a second to Gov. Kate Brown.

In her letter to Brown, McCall wrote that she believed she and

See ADVOCATE / Page A10



PMG PHOTO: CLARA HOWELL

Oregon schools are battling a growing trend of teens vaping on campuses.

Tobacco: Few counties in Oregon require a license to sell

■ From Page A1

e-cigarette devices, is on the rise. Clackamas County Health Officer Dr. Sarah Present said kids often don't realize that nicotine is a powerful drug that can seriously affect their health throughout their lives.

"We have a public health epidemic that is happening with our young people right before our eyes, but hard to detect due to stealthy smoke-free e-cigarettes that look like thumb drives that kids get a hold of and even take to school," Present said.

Tobacco retailers in Clackamas County will sell e-cigarettes to people under 21 in 35% of cases, at a much higher rate than the statewide average of 21.3%, according to recent stings by the Oregon Health Authority.

OHA, in collaboration with Oregon State Police, sent minors to attempt to purchase tobacco products from a random selection of 1,100 retailers statewide, or slightly less than a third of retailers who sell tobacco and e-cigarette products in each county.

The state inspected 94 retailers in Clackamas County, and 23.4% failed for tobacco products of all types, a higher rate than the statewide average of 16%, according to an OHA report coming out July 19. Retailers received \$250 fines for first or second

offenses, \$500 if they had been caught three or more times selling to minors.

Oregon is one of only nine states that doesn't require a license to sell tobacco. Only a few counties in Oregon require a license.

Clackamas County's Public Health Department officials have conducted surveys within the community on possible enforcement solutions that determined many retailers support licensing. State and county health officials said that licensing could help them track who is selling tobacco and educate retailers on how to comply with the law.

"We are actively working with our leaders, educators, families and community partners to reduce youth access to these addictive and harmful products," said Richard Swift, director of Clackamas County's health department. "Giving our kids a head start by protecting them from tobacco requires a solution that involves all of our communities."

In January 2018, the OHA started enforcing a tobacco sales age of 21, up from 18. County officials say illegal tobacco sales by retailers create risks for young people in Clackamas County and require the strong enforcement of Oregon's new tobacco laws.

Big Tobacco, stop poisoning our children



**CITIZEN'S
VIEW**
David
Jacques

Since e-cigarettes arrived on the market in 2007, young people across the country have been attracted to the addictive products. No surprise. E-cigarette manufacturers like Juul intentionally target youth through predatory marketing. That's why teens have an inaccurate perception that e-cigarettes are without harm. Despite significant advancements in reducing tobacco addiction among youth in recent decades, e-cigarettes have undone much of that progress.

Evidence shows that when e-cigarettes no longer quench the nicotine addiction among teens, they are likely to move to deadly

combustible cigarettes. The business model of Big Tobacco is time tested. Because their current customers die every day, Big Tobacco depends on addicting today's youth to be tomorrow's smoker. About 95% of lifetime smokers begin their addiction before age 21.

What is equally egregious as targeting young people is the tobacco industry specifically targets certain vulnerable communities. Big Tobacco intentionally addicts communities of color, the LGBT community and folks experiencing mental illness.

As a volunteer goodwill ambassador for the National Alliance on Mental Illness (NAMI) in Clackamas County and the uncle of an

11-year-old niece addicted to e-cigarettes, I have seen the harmful impact first-hand. I believe tobacco control is a matter of healthy equity. It's clear youth and marginalized communities are under constant attack, and our lawmakers have the power to better protect our community.

Requiring tobacco retailers to obtain a license is a proven strategy to discourage well-intentioned clerks from selling a young person their first tobacco product underage. Similar ordinances around the country have been proven to reduce youth access and initiation to addictive and potentially deadly products. It is clear our community supports

the policy. When surveyed, 66% of retailers indicated support or a neutral position on the ordinance, according to Clackamas County's recently assembled taskforce on the issue. That is why I urge Clackamas County commissioners to pass a robust retail license ordinance.

County commissioners have the responsibility to protect our kids from the exploitative tactics of Big Tobacco. Our kids are worth it; do it!

David Jacques is a volunteer ambassador for the National Alliance on Mental Illness in Clackamas County and also works with homeless communities of color.

READERS' LETTERS

Ending illegal tobacco sales in Clackamas County

The Oregon Health Authority reported recently that the state's overall violation rate for retail tobacco and e-cigarette sales to underage individuals has decreased slightly since last year. However, in Clackamas County the rates have gone up considerably and are now among the highest in the state: one in five Clackamas County retailers who were visited sold

tobacco cigarettes to minors, and one in three sold them e-cigarettes.

Beginning in January 2018, the legal age in Oregon to buy tobacco and vaping products was raised from 18 to 21. This is a proven strategy to help prevent young people from starting to use tobacco and nicotine products, in order to avoid a lifetime of addiction and health problems. It is especially important as our youngest generation faces a soaring e-cigarette epidemic. Rigorous enforcement of the law prohibiting sales of these products to those under 21 is cru-

cial, and more needs to be done.

Since Oregon does not require retailers to obtain a state-level license in order to sell tobacco and vaping products, several counties have instituted their own tobacco retail licensing programs. One of these is neighboring Multnomah County, whose program has been very successful and their rate of illegal sales is now one of the lowest in the state. Clackamas County's Board of Commissioners is currently considering establishing its own tobacco retail licensing program. The ordinance would re-

quire businesses to purchase a license to sell tobacco, nicotine and/or vaping products, and the proposed licensing fees would pay for two unannounced inspections of every tobacco retailer in the county each year (in addition to retailer education and support). The certainty of these compliance checks will provide greater incentive to follow the law.

Please support the Board of Commissioners in addressing this most important health issue.

Arlene Kantor
Lake Oswego