

**AGENDA**  
**WORK SESSION OF THE VENETA CITY COUNCIL**  
**MONDAY, APRIL 27, 2015 – 6:00 P.M.**  
Veneta Administrative Center, 88184 8th Street, Veneta, Oregon

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- 1. PRESENTATION FROM LANE COUNTY PUBLIC HEALTH ON COUNTY'S RESTRICTION ON E-CIGARETTE AND TOBACCO RETAIL LICENSING**
- 2. OTHER**
- 3. ADJOURN**



## AGENDA COVER MEMO

Memorandum Date: March 26, 2015

TO: Veneta City Council

FROM: Karen Gaffney, Assistant Director  
Dr. Patrick Luedtke, Senior Health Officer

AGENDA ITEM TITLE: Discussion of E-cigarette and Tobacco Retail Licensing

After more than a year of discussion, including recommendations from citizen advisory committees and staff review of research from other communities, on December 16, 2014 the Lane County Board of Health/Commissioners passed an ordinance that prohibits the sale of e-cigarettes to minors and requires stores that sell tobacco and e-cigarettes to obtain a license. Ordinance No. 14-19 took effect January 15, 2015 in unincorporated areas of the county. This action was taken with the knowledge that this is a critical health issue for people across Lane County, and that the best approach to this issue would be to work together with each local jurisdiction to review the issue and model language and hopefully have this ordinance adopted by all jurisdictions in the county. We have attached a copy of this ordinance so that you can see the language that was adopted.

This ordinance was crafted to help protect youth from nicotine addiction, and is part of Lane County's work to implement strategies from the current Community Health Improvement Plan (developed collaboratively by PeaceHealth, Trillium, United Way and Lane County) which identifies tobacco use as a priority health issue to address. This is based on the significant economic and health costs of tobacco (the leading cause of preventable death), as well as the data about levels of use across Lane County. One of the key strategies in the plan is to decrease youth access to and use of tobacco—if we can effectively keep young people from using and becoming addicted to tobacco, it is a cost-effective way to significantly improve the health of residents across the County. And, in a 2014 Lane County community survey, 71% of respondents indicated that they support requiring retailers to have a license in order to sell tobacco.

Additionally, at the urging of two citizen advisory committees, the Board held a work session to learn more about the health impacts of e-cigarettes, which are currently unregulated by state and federal law. After that work session, the Board directed staff to include in the ordinance provisions that prohibit youth use and possession of these products in the same way that access to tobacco is currently prohibited.

### **Youth Tobacco Use and Retailer Licensing**

Tobacco is the leading cause of preventable death, and costs the City significantly in terms of medical expenses and lost productivity. The evidence is clear that policies that regulate access to tobacco, particularly for youth, are effective strategies in reducing the use of tobacco in communities. A tobacco retail licensing program could

be constructed to be cost-neutral for administration, and have a significant positive impact in the community. Data from similar policies in California demonstrated a significant reduction in illegal sales of tobacco to minors. The literature identifies four specific elements in a strong and effective program:

- A license that all retailers must obtain in order to sell tobacco products, and it must be renewed annually;
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated;
- Coordination of tobacco regulations so that a violation of any existing local, state, or federal tobacco regulation violates the license;
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

The most recent student wellness survey for Lane County indicates that 9.9% of 11<sup>th</sup> graders, and 6.6% of 8<sup>th</sup> graders smoke cigarettes. Additionally, data from the federally-required Synar inspections regarding sales of tobacco to youth, 1 in 5 of the retailers in Lane County made a sale to someone under age 18.

### **Electronic Cigarettes**

E-cigarettes, or electronic cigarettes, are devices that allow users to mimic the act of smoking cigarettes while inhaling nicotine. Instead of smoke from burning tobacco, users inhale vapor consisting of nicotine, flavor additives, and other chemicals. The FDA and many public health organizations generally agree that more scientific study is needed to assess unproven safety claims about e-cigarettes, and to determine the overall public health impact of these products. Potentially harmful components are found in many of the cartridges, including diethylene glycol, genotoxins, and animal carcinogens. Additionally, the nicotine in these products is highly addictive, and in high doses can be fatal. Given the fact that the production is unregulated, the concentration of these chemicals and even the nicotine varies among brands.

Currently, e-cigarettes are largely unregulated in Oregon. While the FDA has the authority to regulate them, they have not yet put regulations in place, and there are no state regulations. Some local health boards, public bodies, and businesses have taken steps to limit them by including them in tobacco-free campus policies. The Lane County Board of Health/Commissioners adopted the attached ordinance which prohibits the possession, use, and sale of these products to youth under age 18 in unincorporated Lane County.

From 2011 to 2013, use of e-cigarettes nearly tripled among Oregon 11<sup>th</sup> graders. In Veneta, all tobacco retailers sell e-cigarettes.

## **Overview of Ordinance Adopted by County Board of Health/Commissioners**

The ordinance language is based on ordinances from other communities and the research about effective practices. The ordinance includes the following elements, and the full text is attached. The licensing program will be managed through Lane County Public Health's Environmental Health program.

- Applies to unincorporated Lane County
- Defines tobacco product, smoking, and electronic smoking device broadly to encompass the current technology
- Prohibits sales of e-cigarettes to youth under age 18
- Prohibits possession, distribution, and use of e-cigarettes by youth
- Requires valid license to sell products or paraphernalia
- Establishes requirements for retailer (display license, check identification, no underage sales, no self-service, no free samples, no coupons/discounts, display health warnings and quit-line information, not located close to child serving establishments, no mobile vending)
- Establishes the license application procedures
- Sets expectations for compliance monitoring and enforcement
- Sets both incentives for compliance (discounts on renewals) and sanctions for non-compliance (suspension/revocation and fines)

### **Attachments**

Text of Lane County Ordinance 14-19

Tobacco Use in Veneta

Oregon Health Authority E-cigarette Primer

Center for Tobacco Policy & Organizing: Tobacco Retail Licensing is Effective



BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 14-19

IN THE MATTER OF AMENDING LANE  
CODE CHAPTER 9 TO ADOPT TOBACCO  
LICENSE AND ELECTRONIC  
CIGARETTE REGULATIONS

Following a joint meeting and joint hearing before the Board of County Commissioners of Lane County and the Lane County Board of Health, the Board of County Commissioners of Lane County **ORDAINS** as follows:

1. Lane Code Chapter 9 is amended by adding the following sections:

**REMOVE THESE SECTIONS**

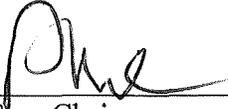
none

**INSERT THESE SECTIONS**

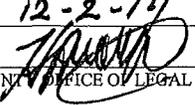
9.700 through 9.774

2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion is deemed a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions.

ENACTED this 16th day of December, 2014.

  
\_\_\_\_\_  
Pat Farr, Chair  
Lane County Board of Commissioners

  
\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM  
Date 12-2-14  
  
\_\_\_\_\_  
LANE COUNTY OFFICE OF LEGAL COUNSEL

FOOD AND BEVERAGE SERVICE WORKER'S PERMIT

9.690 Effective Date.

TOBACCO REGULATIONS

- 9.700 Definitions.
- 9.705 Purpose and Findings.
- 9.710 Requirements and Prohibitions.
- 9.715 Possession, Distribution and Use by Minors.
- 9.720 Non-Retaliation.
- 9.725 Penalties and Enforcement.
- 9.752 Requirements and Prohibitions.
- 9.754 Limits on Eligibility for a Tobacco Retailer License.
- 9.756 Application Procedure.
- 9.758 Issuance of License.
- 9.760 License Renewal and Expiration.
- 9.762 Licenses Nontransferable.
- 9.764 License Conveys a Limited, Conditional Privilege.
- 9.766 Fee for License.
- 9.768 Compliance Monitoring.
- 9.770 Suspension or Revocation of License.
- 9.772 Tobacco Retailing Without a Valid License.
- 9.774 Penalties and Additional Remedies.

## TOBACCO REGULATIONS

### 9.700 Definitions.

As used in sections 9.700 through 9.774, the following words or terms have the following meanings:

(1) "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 informed and willing parties, neither 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 these regulations' sections 9.700 through 9.774 is not an Arm's Length Transaction.

(2) "Business" means any sole proprietorship, partnership, joint venture, corporation, company, association, or other entity formed for purposes that include profit-making.

(3) "County" or "Lane County," for the purpose of this ordinance, means unincorporated areas of Lane County.

(4) "Department" means the Lane County Health & Human Services Department, and any agency or Person designated by the Department to enforce or administer the provisions of sections 9.700 through 9.774.

(5) "Electronic Smoking Device" means any electronic means any electronic product that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic Smoking Device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(6) "Employee" means any Person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers services for an Employer.

(7) "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.

(8) "Independent Contractor" means any Person who is retained with a contract by any Employer in consideration for direct or indirect monetary wages or profit.

(9) "Nominal Cost" means the cost of any item imposed for the transfer from one person to another for less than the total of: (1) twenty-five percent (25%) of the fair market value of the item exclusive of taxes and government fees; plus (2) all taxes and government fees previously paid and all taxes and government fees still due on the item at the time of transfer.

(10) "Nonsale Distribution" means to give, furnish, or cause or allow to be given or furnished, wholly or for sampling, within Lane County, a Tobacco Product at no cost or at Nominal Cost to a Person who is not a Tobacco Retailer.

(11) "Person" means any natural person, Business, employer, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

(12) "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest is 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 is deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

(13) "Self-Service Display" means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the Tobacco Retailer or employee of the Tobacco Retailer and a direct person-to-person transfer between the purchaser and the

Tobacco Retailer or employee of the Tobacco Retailer. A vending machine is a form of Self-Service Display.

(14) “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 Electronic Smoking Device which creates an aerosol, in any manner or in any form.

(15) “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, cigarette rolling machines, and any other item specifically designed for the consumption or preparation of Tobacco Products.

(16) “Tobacco Product” means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an Electronic Smoking Device. Tobacco product does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(17) “Tobacco Retailer” means any Person who holds a license to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.  
*(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

## **Electronic Smoking Devices and Minors**

### **9.705 Purpose and Findings.**

In addition to Oregon State regulations on the sale, possession, and use of tobacco and tobacco products to and by persons under 18 years of age, LC 9.700 through 9.774 are enacted to regulate the sale, possession, and use of Electronic Smoking Devices in Lane County to and by persons under 18 years of age.

Lane County passes this ordinance out of a desire to promote a wholesome environment where children are encouraged to make healthful choices that allow them to grow up to lead healthy, productive and prosperous lives. Nicotine is a highly addictive toxic substance, the use of which is initiated primarily by young people. Nicotine use is associated with the risk of numerous adverse health consequences, including increased susceptibility of addiction to other drugs of abuse and the use of tobacco, and with serious neurobehavioral problems and nicotine use in children of mothers that use during pregnancy. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

### **9.710 Requirements and Prohibitions.**

(1) Sale to minors prohibited. All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, an Electronic Smoking Device to a person under 18 years of age in any place within Lane County.

(2) Positive identification required. Tobacco Retailers are prohibited from selling, giving or furnishing an Electronic Smoking Device to a person who appears to be under 27 years of age without first examining identification to confirm that the recipient is at least 18 years of age.

(3) Self-Service Displays of Electronic Smoking Devices are prohibited.

(4) Nonsale Distribution Prohibited. All persons are prohibited from the Nonsale Distribution of any Electronic Smoking Device to a Person who is not a Retailer.

*(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.715 Possession, Distribution and Use by Minors.**

(1) It is unlawful for any person under 18 years of age to possess, receive, purchase, sell, distribute, use or consume Electronic Smoking Devices. It is unlawful for any person under 18 years of age to have personal possession of an Electronic Smoking Device, except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian.

(2) A minor acting under the supervision of an authorized adult may purchase, attempt to purchase or acquire Electronic Smoking Devices for the purpose of testing compliance with local law or Tobacco Retailer management policy limiting or regulating the delivery of Electronic Smoking Devices to minors. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.720 Non-Retaliation.**

Under the County’s enforcement efforts, Persons, Tobacco Retailers, and Employers are prohibited from intimidating, threatening any reprisal, or effecting any reprisal, for the purpose of retaliating against another Person that seeks to attain compliance with LC 9.710 to 9.725. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.725 Penalties and Enforcement.**

(1) The penalty and enforcement provisions are cumulative and in addition to any other remedies available at law or in equity.

(2) Violations of LC 9.710 to 9.720 are subject to a civil action brought by Lane County, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation.

(3) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC9.710 to 9.720 constitutes a violation of those sections.

(4) In addition to other remedies provided by this section 9.725, the county can seek appropriate, equitable relief including but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and injunctive relief. A person who is convicted of a first violation of subsections (1) or (2) of LC 9.715 may be ordered to appear in teen court or participate in a tobacco education program or a tobacco use cessation program. A person who is convicted of a second or subsequent violation of subsections (1) or (2) of LC 9.715 is subject to a civil action brought by Lane County, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**Tobacco Retail Licensing and Sale Regulations Ordinance**

**9.752 Requirements and Prohibitions.**

(1) A person commits a violation of these Tobacco Retail Licensing and Sale Regulations (LC 9.752 to 9.774) if the Person knowingly engages in the following conduct:

(a) Selling, offering for sale, or exchanging or offering to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia in Lane County without first obtaining and maintaining a valid Tobacco Retailer’s license under

LC 9.752 to 9.774 for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

(b) Violating any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing in the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license was issued. Failing to ensure that Employees know how to comply with tobacco control laws. Tobacco Retailers can be held responsible for violations committed by Employees.

(c) Failing to prominently display a Tobacco Retailer license in a publicly visible location at the licensed location.

(d) Failing to examine the identification and confirm that the holder is at least 18 years of age, before selling or transferring Tobacco Products or Tobacco Paraphernalia to a natural person who appears to be under 27 years of age.

(e) Selling, giving, or furnishing, or causing to be sold, given or furnished, a Tobacco Product or Tobacco Paraphernalia to a natural person who is younger than 18 years of age.

(f) Permitting a natural person who is younger than 18 years of age or younger than the minimum age established by state law for the purchase or possession of Tobacco Products to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia.

(g) Engaging in Tobacco Retailing by means of a Self-Service Display.

(h) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, failing to keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this subsection constitutes Tobacco Retailing without a valid license under LC 9.772.

(i) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, displaying any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(j) Engaging in the Nonsale Distribution of Tobacco Products or Tobacco Paraphernalia in Lane County.

(k) Honoring or accepting a price reduction instrument in any transaction related to the sale of Tobacco Products or Tobacco Paraphernalia to a consumer.

(l) Selling or offering for sale Tobacco Products or Tobacco Paraphernalia to a consumer through any multi-package discount or otherwise provide to a consumer any Tobacco Products or Tobacco Paraphernalia for less than the listed price in exchange for the purchase of any other Tobacco Products or Tobacco Paraphernalia by the consumer.

(m) Selling, offering for sale, or otherwise providing any product other than Tobacco Products or Tobacco Paraphernalia to a consumer for less than the listed price in exchange for the purchase of Tobacco Products or Tobacco Paraphernalia by the consumer.

(n) Selling, offering for sale, or otherwise providing Tobacco Products or Tobacco Paraphernalia to a consumer for less than the listed price.

(o) Failing to conspicuously post a tobacco health warning approved by the Department in an area visible to all customers.

(p) Failing to conspicuously post signage provided by the Department that discloses current referral information about the Oregon Tobacco Quitline 1-800-QUIT-NOW.

(q) Engaging in Tobacco Retailing within 1000 feet of any school, child care center, or other establishment serving children or from other than a fixed retail location in violation of 9.754 below

(2) Tobacco Retailer's will be eligible for an incentive program reducing the annual license fee by \$75 if they: 1) have no tobacco retail violations in the previous year and 2) use a cash register that reads the magnetic strip on drivers' licenses to verify age. (Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)

**9.754 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 Lane County that is occupied by:

(i) a private or public kindergarten, elementary, middle, junior high, or high school;

(ii) a library open to the public;

(iii) a playground open to the public;

(iv) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;

(v) 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;

(vi) an arcade open to the public;

(vii) a park open to the public or to all the residents of a private community;

(viii) a licensed child-care facility or preschool;

(b) A Tobacco Retailer in operation as of October 21, 2014 is exempt from the requirements of section (1) above.

(2) MOBILE VENDING. Tobacco Retailing is only permitted at a fixed location. For example, Tobacco Retailing by natural persons on foot or from vehicles or mobile units is prohibited. (Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)

**9.756 Application Procedure.**

Application for a Tobacco Retailer's license must be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and will be signed by each Proprietor or an authorized agent thereof.

(1) It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. The Proprietor will also train all employees in the applicable laws, and is required to provide proof of training with annual recertification.

(2) No Proprietor may rely on the issuance of a license as a determination by the County that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to LC 9.758, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor will be revoked pursuant to LC 9.770. Nothing in LC 9.758 will be construed to vest in any Person obtaining and

maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

(3) All applications will be submitted on a form supplied by the Department and will contain the following information:

(a) The name, address, and telephone number of each Proprietor of the business seeking a license.

(b) The business name, address, and telephone number of the single fixed location for which a license is sought.

(c) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of LC 9.752 to 9.774. If an Authorized Address is not supplied, each Proprietor will be understood to consent to the provision of notice at the business address specified in subparagraph (b) above.

(d) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, LC 9.752 to 9.774 and, if so, the dates and locations of all such violations within the previous five years.

(4) Such other information as the Department deems necessary for the administration or enforcement of LC 9.752 to 9.774 as specified on the application form required by this section.

(5) A licensed Tobacco Retailer must inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.

(6) All information specified in an application pursuant to this section is subject to disclosure under the Oregon Public Records Act or any other applicable law, subject to the laws' exemptions. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

#### **9.758 Issuance of License.**

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by LC 9.766, the Department will issue a license to the applicant that demonstrates by substantial evidence that one or more of the following bases for denial does not exist:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information will be a violation punishable under LC 9.774.

(2) The application seeks authorization for Tobacco Retailing at a location for which LC 9.754 prohibits issuance of Tobacco Retailer licenses.

(3) The application seeks authorization for Tobacco Retailing for a Proprietor to whom LC 9.752 to 9.772 prohibits a license to be issued.

(4) The application seeks authorization for Tobacco Retailing that is prohibited or unlawful pursuant to this Code or that is unlawful pursuant to any other law. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

#### **9.760 License Renewal and Expiration.**

(1) RENEWAL OF LICENSE. A Tobacco Retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is one year. Each Tobacco Retailer will apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

(2) EXPIRATION OF LICENSE. A Tobacco Retailer's license that is not timely renewed expires at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

(a) Submit the license fee and application renewal form; and

(b) Submit a signed affidavit affirming that the Proprietor:

(i) has not sold and will not sell or display any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or

(ii) Has waited the period of time required by LC 9.772 for Tobacco Retailing without a valid license before seeking renewal of the license. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.762 Licenses Nontransferable.**

(1) A Tobacco Retailer’s license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer’s license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

(2) Notwithstanding any other provision of LC 9.752 to 9.774, prior violations at a location will continue to be counted against a location and license ineligibility periods will continue to apply to a location unless:

(a) The location has been transferred to new Proprietor(s) in an Arm’s Length Transaction; and

(b) The new Proprietor(s) provide the County with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm’s Length Transaction. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.764 License Conveys a Limited, Conditional Privilege.**

Nothing in LC 9.752 to 9.774 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 in the County identified on the face of the license. Nothing in LC 9.752 to 9.774 renders inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment under ORS 433.847and 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 433.847and OAR 333-015-0068. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.766 Fee for License.**

The fee to issue or to renew a Tobacco Retailer’s license will be set annually by Order of the Board of Commissioners. The fee will be calculated so as to recover the cost of both the administration and enforcement of this Code, including the cost of issuing the license, administering the license program, Tobacco Retailer and community education, Tobacco Retailer inspection and compliance checks, documentation of violations, adjudications, convictions, and prosecution of violators. All fees are nonrefundable except as required by law and are permitted to be used exclusively to fund the program. Fees will not be prorated. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.768 Compliance Monitoring.**

(1) The Department will monitor compliance with LC 9.752 to 9.774and may designate any number of additional Persons to assist monitoring compliance. In addition, any peace officer may enforce the penal provisions of LC 9.752 to 9.774.

(2) The Department 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 or its agents.

(3) The County will not enforce any law establishing a minimum age for Tobacco purchases or possession against a natural person serving as a Youth Decoy. A Youth Decoy is a natural person under the age of 18 who:

(a) Is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the County to monitor compliance with LC 9.752;

(b) Is acting as an agent of a Person designated by the County to monitor compliance with LC 9.752; or

(c) Is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the Oregon Health Authority.

*(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.770 Suspension or Revocation of License.**

(1) **SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.** 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 Department 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 LC 9.752 to 9.774 or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in LC 9.764 above.

(a) Upon a finding by the Department of a first violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for thirty days.

(b) Upon a finding by the Department of a second violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for ninety days.

(c) Upon a finding by the Department of a third violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for one year.

(d) Upon a finding by the Department of four or more violations of LC 9.752 to 9.772 at a location within any sixty-month (60) period, the license will be revoked.

(2) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to the Director of the Department and any appeal must be filed in writing with the Director within ten days of mailing of the Department’s decision. If such an appeal is timely made, it will stay enforcement of the appealed action. An appeal to the Director is not available for a revocation made pursuant to subsection (3) below.

(3) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer’s license will be revoked if the Department 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 Section 9.758 existed at the time application was made or at any time before the license issued. The decision by the Department will be the final decision of the County. Such a revocation will be without prejudice to the filing of a new license application.

*(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

**9.772 Tobacco Retailing Without a Valid License.**

(1) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department 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 may issue 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 may issue 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 may issue 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.

(2) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and will be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of LC 9.752 to 9.772. The decision by the Department may be appealed under LC 9.770. Forfeited Tobacco Products and Tobacco Paraphernalia will be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to Oregon law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(3) For the purposes of the civil remedies provided in LC 9.774 the following constitute separate violations:

(a) Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of LC 9.752 to 9.772; or

(b) Each instance in which an individual retail Tobacco Product or item of Tobacco Paraphernalia distributed, sold, or offered for sale in violation of LC 9.752 to 9.772. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

#### **9.774 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) Violations of LC 9.752 to 9.772 are punishable by a fine per violation as follows: after a first violation, a \$500 fine; after a second violation, a \$1,000 fine; after a third violation, a \$1,500 fine. Those in violation will be responsible for all costs associated with prosecutions of violations.

(3) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.752 to 9.772 is punishable according to subsection (3) above.

(4) Violations of LC 9.752 to 9.772 are hereby declared to be public nuisances.

(5) In addition to other remedies provided by LC 9.752 to 9.772 or by other law, any violation of LC 9.752 to 9.772 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. *(Revised by Ordinance No. \_\_\_\_, Effective \_\_\_\_)*

## TOBACCO REGULATIONS

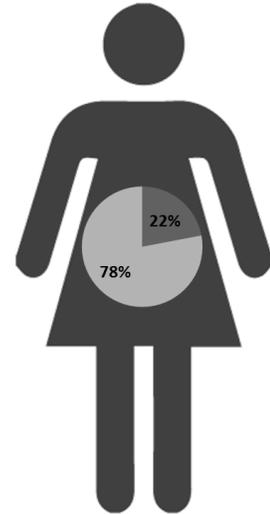
- 9.700 Definitions.
- 9.705 Purpose and Findings.
- 9.710 Requirements and Prohibitions.
- 9.715 Possession, Distribution and Use by Minors.
- 9.720 Non-Retaliation.
- 9.725 Penalties and Enforcement.
- 9.752 Requirements and Prohibitions.
- 9.754 Limits on Eligibility for a Tobacco Retailer License.
- 9.756 Application Procedure.
- 9.758 Issuance of License.
- 9.760 License Renewal and Expiration.
- 9.762 Licenses Nontransferable.
- 9.764 License Conveys a Limited, Conditional Privilege.
- 9.766 Fee for License.
- 9.768 Compliance Monitoring.
- 9.770 Suspension or Revocation of License.
- 9.772 Tobacco Retailing Without a Valid License.
- 9.774 Penalties and Additional Remedies.



# Tobacco Use in Veneta

February 2015

Every child deserves to live in a community where they have the best opportunity to make choices that lead to good health. Lane County's Community Health Improvement Plan identifies tobacco as a priority health issue<sup>1</sup>. Tobacco is the leading cause of preventable death and imposes a significant economic burden on Lane County communities<sup>2</sup>. Most adults smokers started before age 18<sup>3</sup>. **Preventing youth access** to tobacco is an important part of a comprehensive approach to reduce youth initiation and use<sup>4</sup>.



## Tobacco Use Among Youth & Adults

In Lane County, **9.9% of 11th graders and 6.6% of 8th graders smoke cigarettes**<sup>5</sup>, and most become addicted and continue using into adulthood<sup>6</sup>. The most recent data shows that in Veneta, 14% of adults use tobacco<sup>7</sup>, and about **22% of women smoke during pregnancy**<sup>8</sup>. In a year's time, 9 people die of tobacco-related diseases, and 180 people suffer from a serious illness caused by tobacco, such as heart disease, lung cancer, and COPD<sup>9</sup>.



**Tobacco Retailers**

**Fresh Fruit and Vegetable Retailers**

## Retail Access to Tobacco

Veneta has 1 tobacco retailer for every 670 people<sup>10</sup>, which is more than Lane County's one for every 1100. It is **3.5 times easier to get tobacco than fresh fruits and vegetables**<sup>11</sup>. Additionally, 2012-13 Synar inspections showed that about **1 in 5 tobacco retailers made a sale to a minor** in Lane County<sup>12</sup>. In the 2014 Lane County Health & Human Services survey, **71% of people said they support requiring a license to sell tobacco**<sup>13</sup>.

## E-cigarettes

E-cigarettes (e-cigs) allow users to mimic the act of smoking cigarettes while inhaling nicotine aerosol, or "vapor," instead of smoke. There are over 7,700 flavors available<sup>14</sup>, such as Gummy Bear, which entice youth to "vape"<sup>15</sup>. Currently, minors can legally buy e-cigs. From 2011 to 2013, **use of e-cigs nearly tripled among Oregon 11th graders**<sup>16</sup>. In Veneta, **6 in 7 tobacco retailers sell e-cigarettes**<sup>10</sup>.

## E-cigarettes:

- Encourage smoking initiation<sup>15</sup>
- Contain some of the same carcinogens and toxic chemicals as tobacco smoke<sup>15</sup>
- Pose potential health risks<sup>15</sup>
- Have not been shown to be effective to help people quit tobacco<sup>15</sup>
- Counter effectiveness of smoke-free policies<sup>15</sup>
- Pose safety issues from poisonings<sup>17</sup> & fires<sup>18</sup>

# References

1. Lane County Pubic Health, PeaceHealth, Trillium Community Health Plan, & United Way of Lane County. Lane County Community Health Improvement Plan (CHIP). April 2013. Available at <http://www.preventionlane.org/chip>
2. Centers for Disease Control and Prevention, Chronic Disease Prevention and Health Promotion. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011. Available at <http://www.cdc.gov/chronicdisease/resources/publications/aag/osh.htm>
3. U.S. Department of Health & Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health & Human Services, Centers for Disease Control & Prevention, National Center for Chronic Disease Prevention & Health Promotion, Office on Smoking and Health, 2012. Available at <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>
4. Guide to Community Preventive Services. Community mobilization with additional interventions to restrict minors' access to tobacco products. Available at <http://www.thecommunityguide.org/tobacco/communityinterventions.html>. Last updated: June 2001.
5. Oregon Health Authority, Addictions and Mental Health Division. Student Wellness Survey, 2014.
6. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General, 2014. Available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>
7. Oregon Health Authority, Public Health Division. Oregon Behavioral Risk Factor Surveillance System (BRFSS) Survey, 2008-2012.
8. Oregon Center for Health Statistics, Vital Records Office. Birth Certificates, 2009-2013.
9. Extrapolated from Oregon Tobacco Facts by County: Lane County. Available at <https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/countyfacts/lanefac.pdf>; Computations based upon Hyland A, Vena, C, Bauer, J et al Cigarette Attributable Morbidity-United States 2000, *MMWR* 2003, September 5, 52(35) 842-843.
10. Lane County Tobacco Prevention & Education Program. Retail Assessment, 2014.
11. Computed using Lane County Site Addresses (RLID, 2013), ACS 2008 to 2012 Household Size Estimates (US Census Bureau), Lane County Roads (RLID, 2013), Supermarkets, (Reference USA, 2013), Farmers Markets, Farm Stands (Willamette Farm and Food Coalition, 2013).
12. Oregon Health Authority, Addictions & Mental Health Division. Synar Inspection Results: Lane County, 2012-2013.
13. Johnson S, McCaslin C. Lane County Health & Human Services 2014 Survey.
14. Zhu SH et al. Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation, *Tob Control* 2014;23(suppl 3):iii3-iii9. Available at [http://tobaccocontrol.bmj.com/content/23/suppl\\_3/iii3.full](http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full)
15. Oregon Health Authority, Public Health Division. E-Cigarette Primer. Available at <http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Documents/E-cigFactSheet.pdf>
16. Oregon Health Authority, Public Health Division. Oregon Healthy Teens Surveys, 2011 & 2013. Available at <https://public.health.oregon.gov/BirthDeathCertificates/Surveys/OregonHealthyTeens/Pages/index.aspx>
17. Chatham-Stephens, K et al. *Notes from the Field: Calls to Poison Centers for Exposures to Electronic Cigarettes – United States, September 2010-February 2014*, *MMWR*, April 4, 2014/63(13);292-293. Available at [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6313a4.htm?s\\_cid=mm6313a4\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6313a4.htm?s_cid=mm6313a4_w)
18. FEMA, U.S. Fire Administration. Electronic Cigarette Fires and Explosions, October 2014. Available at [https://www.usfa.fema.gov/downloads/pdf/publications/electronic\\_cigarettes.pdf](https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf)

# E-cigarette Primer

## What are e-cigarettes?

E-cigarettes, or electronic cigarettes, are devices that allow users to mimic the act of smoking cigarettes while inhaling nicotine. Instead of smoke from burning tobacco, users inhale vapor consisting of nicotine, flavor additives and other chemicals. When users inhale from the end of an e-cigarette, a battery operated device heats a liquid solution into a vapor.<sup>1</sup>



## Smokeless does not mean harmless

The risks posed by e-cigarettes are not fully understood, but we do know that smokeless does not mean harmless. Preliminary testing of e-cigarettes has identified chemicals known to cause cancer and birth defects in first and secondhand e-cigarette vapor. However, e-cigarettes remain under-studied and unregulated.

Because e-cigarettes are unregulated, two e-cigarettes produced on the same line can be dramatically different. Manufacturers can make, market and sell their e-cigarettes without transparency or consistency. Most e-cigarettes currently are being manufactured overseas where manufacturing and safety standards may differ; making it more difficult to know what is in e-cigarettes without regulation.

Many public health professionals are concerned that e-cigarettes may:

- Have an adverse impact on users' health;
- Encourage smoking initiation;
- Perpetuate the use of nicotine and tobacco products among tobacco users who might otherwise quit, and even those who have quit; and
- Counter the effectiveness of smoke-free policies

## Nicotine

<sup>1</sup> U.S. Food and Drug Admin., FDA Warns of Health Risks Posed by E-Cigarettes (2009), available at <http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM173430.pdf>

Different brands of e-cigarettes contain varying amounts of nicotine, which impacts the cardiovascular system and is the primary addictive drug in all tobacco products.

E-cigarette advocates have promoted these products as smoking cessation tools, although little evidence exists that they are effective cessation aids. In contrast, there are 7 FDA-approved medications that are tested and regulated, and a toll-free quitline (800-QUIT NOW) that tobacco users can use to improve their chance of successfully quitting.

### **Carcinogens and Toxins**

E-cigarette proponents argue that the vapor produced by e-cigarettes is nothing more than water vapor. There is a lack of scientific data to support this argument while there is evidence that the vapor contains carcinogens and other toxic chemicals.

The FDA has analyzed samples of e-cigarettes and found known carcinogens, and detectable levels of other toxic chemicals.<sup>2</sup> Center for Tobacco Control Research and Education at University of California San Francisco analyzed recent studies and concluded Benzene, Cadmium, Isoprene, Lead, Nickel, Formaldehyde, Acetaldehyde, and Toluene are present in many brands of e-cigarettes.<sup>3</sup>

A risk associated with e-cigarettes is that children may consume e-cigarette solutions, which are not manufactured in child safe protection containers and can contain fatal doses of nicotine and harmful chemicals. E-cigarettes are advertised in kid-friendly flavors, such as strawberry, chocolate and mint, and in packaging and smaller sizes that appeal to young people. Since 2011, the Oregon Poison Control Center has responded to 12 calls regarding unintentional nicotine poisoning in children that consumed e-cigarette solutions. Five of these cases included visits to the emergency room.

### **E-cigarette use is on the rise**

The use of e-cigarettes by teens and adults is on the rise, potentially creating new addictions to nicotine among Oregon's youth, deepening the addiction for current smokers, and renewing addiction for former smokers.

- CDC data from the National Youth Tobacco Survey showed that e-cigarette use doubled among U.S. middle and high school students during 2011-2012.<sup>4</sup>
- 1 in 5 youth trying e-cigarettes are not conventional cigarette smokers and are potentially becoming addicted to nicotine through e-cigarettes.
- Additional data analyzed by the CDC showed that the number of Americans who used e-cigarettes quadrupled from 2009 to 2010.<sup>5</sup>
- According to the Legacy Foundation, 7.2% of quit smokers returned to nicotine addiction via e-cigarettes in 2012.

<sup>2</sup> In 2009, the FDA released an analysis of 18 electronic cigarettes and found that half of the vapor samples "contained carcinogens, and that [one contained diethylene glycol](#), a toxic chemical used in antifreeze."

<sup>3</sup> <http://tobaccocontrol.bmj.com/content/early/2013/03/05/tobaccocontrol-2012-050859.abstract>  
<http://www.tobacco.ucsf.edu/10-chemicals-identified-so-far-e-cig-vapor-are-california-prop-65-list-carcinogens-and-reproductive>

<sup>4</sup> ConsumerStyles, 2009-2010 data: <http://tobaccocontrol.bmj.com/content/22/1/19.abstract>

<sup>5</sup> <http://www.ncbi.nlm.nih.gov/pubmed/23449421>

## Marketing

The greatest danger of these products lies in the marketing. The unlimited promotion of e-cigarettes as nicotine maintenance products has the potential to foster the norm that addiction to nicotine is acceptable, and is of little health consequence to the user or the population as a whole.

The growing and unregulated e-cigarette market has attracted the attention of The Big Three (Reynolds American, Lorillard, Phillip Morris/Altria), who have recently invested in e-cigarette products and put significant dollars into marketing them. The marketing of e-cigarettes in magazines and on television—where cigarette ads have been banned since 1971—could undermine decades of efforts to deglamorize smoking.

E-cigarettes may be particularly appealing to young adults due to: celebrity endorsements and portrayals of e-cigarette use as rebellious, fashionable and fun; high-tech design; wide array of available flavors, including candy-and fruit-flavored cartridges; easy availability online and in shopping malls<sup>6</sup>; and decrease in price in recent years.

## Policy

The Food and Drug Administration (FDA) has the authority to regulate e-cigarettes as tobacco products, but has yet to do so. They indicated that they would put forward a deeming regulation in October 2013, however no action has been taken to date. If and when the FDA acts, it is expected that regulations will be minimal and unlikely to address advertising and flavors.

E-cigarettes are largely unregulated in Oregon. The CDC does not recommend opening up the state ICAA to include e-cigarettes: this would make the ICAA vulnerable to tobacco companies' efforts to weaken it. There may be some opportunity regulate e-cigarettes through the Oregon tax code as "other tobacco products," but this may take quite some time. The E-cigarette lobby is pressuring legislators to either regulate them separately as vaping products—differentiating them and weakening opportunities to regulate them federally as tobacco products—or simply not to tax and regulate them at all.

In the absence of Federal and state regulation, several local health boards, universities, businesses, and state government have taken steps to protect Oregonians from e-cigarettes. In 2012, Governor Kitzhaber signed the Tobacco-Free Campus Executive Order prohibiting the use of tobacco products, including e-cigarettes, in state agency buildings and on state agency grounds. The University of Oregon included e-cigarettes as part of their recent tobacco-free campus policy. Lane Transit Authority does not allow riders to use e-cigarettes on buses. Fred Meyer has included electronic cigarettes as part of their no smoking policy. They don't allow electronic cigarette use in their stores or where smoking is prohibited by state law. Starbucks included e-cigarettes as part of their tobacco free worksite policy.

There are local, regulatory policy efforts that can be effective and is something to consider. The Tobacco Control Legal Consortium (TCLC) is a resource that can help local communities draft good e-cigarette policies. Funded by the CDC, the TCLC provides legal technical assistance on emerging tobacco

<sup>6</sup> American Legacy Foundation. (2009). *Electronic Cigarettes ("E-cigarettes")*.  
[http://www.legacyforhealth.org/PDFPublications/ECIGARETTE\\_0909\\_temp.pdf](http://www.legacyforhealth.org/PDFPublications/ECIGARETTE_0909_temp.pdf)

issues at the state and local level. Following are some TCLC considerations for e-cigarettes at the local level.

### **Coupons, Discounts, & Rebates**

Coupons and other price discounts for electronic cigarettes are utilized in the retail environment and discounted e-cigarettes are extensively promoted online. Local governments could consider restricting or prohibiting the retail redemption of coupons for tobacco products, including e-cigarettes and similar nicotine delivery systems, or restricting other price-related practices in the retail environment, such as payments from e-cigarette manufacturers and distributors to retailers resulting in price discounts; tobacco retailer incentive programs; and retail value-added deals (e.g., buy-one-get-one-free offers).

### **Free Samples**

Under the Tobacco Control Act, tobacco manufacturers are restricted from distributing free samples of “cigarettes, smokeless tobacco or other tobacco products.” At present, this restriction does not apply to e-cigarettes. Local governments could prohibit the distribution of all free samples of tobacco products, including e-cigarettes and other nicotine delivery systems.

### **Flavoring**

E-cigarette manufacturers can continue to market e-cigarette cartridges in a variety of candy-like flavors that appeal to youth (such as bubble gum, chocolate, and mint), and sell them at mall kiosks, where young people often congregate, as well as online, where safeguards against youth access can be breached more easily than in face-to-face purchases.

### **Youth Access**

Local governments could consider passing stronger, more comprehensive youth access laws to prohibit the sale of e-cigarettes to minors, require these products to be kept behind the counter, allow them to be sold only in places adults are permitted to enter, or raise the minimum legal age to purchase them.

### **Use Restrictions**

Many smoke-free laws define the act of “smoking” as inhaling or carrying a lighted tobacco or plant product intended for inhalation. E-cigarettes, which are not burned, but “vaped,” are generally not covered under these laws. Local governments could include e-cigarettes in their smoke- and tobacco-free restrictions by revising definitions of “smoking” or “tobacco products” to expressly cover e-cigarettes and other electronic nicotine delivery systems.

### **Point-of-Sale Warnings, Marketing Restrictions, & Broad Sales Prohibitions**

No federal statute limits the authority of local or state governments to regulate the advertising and promotion of non-cigarette tobacco products. Local governments are able to warn consumers of the dangers of using electronic cigarettes, regulate the advertising or promotion of e-cigarettes, and regulate the sale of e-cigarettes without risking federal preemption concerns. Possible policy options include posting health warnings at the point-of-sale, imposing marketing restrictions, and prohibiting the sale of all electronic cigarettes. Although federal statutes should not pose a barrier for state and local policies restricting the sale and marketing of e-cigarettes, such laws will most certainly be challenged on the basis that they violate state or federal constitutional provisions related to free speech or interstate commerce.



## Tobacco Retailer Licensing Is Effective

SEPTEMBER 2013

More than 100 communities in California have adopted strong local tobacco retailer licensing ordinances in an effort to reduce illegal sales of tobacco products to minors. This table includes strong policies defined as one that includes the following four components:

- License that all retailers must obtain in order to sell tobacco products and that must be renewed annually.
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

The table below lists illegal sales rates to minors before and after a strong licensing law was enacted in communities where data is available and enough time (usually at least a year) has passed after the ordinance was enacted to determine results. These sales rates were determined by youth tobacco purchase surveys administered by local agencies. It is important to note that results from the youth tobacco purchase surveys are somewhat dependent on certain factors that differ in each community, such as the age of the youth and the number of stores surveyed.

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 retailer licensing ordinance where there is before and after youth sales rate data available. However, a licensing ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws are always needed.

**Before and after youth sales rate data is available for the following 33 California communities with strong licensing ordinances -** Banning, Baldwin Park, Beaumont, Berkeley, Burbank, Calabasas, Coachella, Contra Costa County, Corona, Davis, Delano, Desert Hot Springs, El Cajon, Elk Grove, Grass Valley, Grover Beach, Kern County, La Canada Flintridge, Los Angeles County, Murrieta, Norco, Pasadena, Riverside, Sacramento, Sacramento County, San Fernando, San Francisco, San Luis Obispo, Santa Barbara County, Tehachapi, Vista and Yolo County.

For more resources on these ordinances, including the Matrix of Strong Local Tobacco Retailer Licensing Ordinances with policy and enforcement details for every strong ordinance in the state, visit [www.Center4TobaccoPolicy.org/localpolicies-licensing](http://www.Center4TobaccoPolicy.org/localpolicies-licensing).

For model tobacco retailer licensing ordinance language, visit ChangeLab Solutions at [changelabsolutions.org](http://changelabsolutions.org).

## Table of youth sales rates before and after the adoption of a strong tobacco retailer licensing ordinance

City/County	Date Passed	Annual Fee	Youth Sales Rate Before Ordinance	Most Recent Youth Sales Rate
Banning	August 2006	\$350	77%	21%
Baldwin Park	October 2008	\$342	34%	9%
Beaumont	December 2006	\$350	63%	20%
Berkeley	December 2002	\$427*	38%	4.2%
Burbank	February 2007	\$235	26.7%	4%
Calabasas	June 2009	\$0*	30.8%	5%
Coachella	July 2007	\$350	69%	11%
Contra Costa County	January 2003	\$160*	37%	3.8%
Corona	October 2005	\$350	50%	17%
Davis	August 2007	\$344	30.5%	7.8%
Delano	June 2008	\$165	23%	5.6%
Desert Hot Springs	August 2007	\$350	48%	4%
El Cajon	June 2004	\$698	40%	1%
Elk Grove	September 2004	\$270	17%	16.7%
Grass Valley	November 2009	\$100	27%	0%
Grover Beach	September 2005	\$224	46%	0%
Kern County	November 2006	\$165	34%	13.3%
La Canada Flintridge	June 2009	\$50*	47.1%	0%
Los Angeles County	December 2007	\$235	30.6%	8%
Murrieta	May 2006	\$350	31%	7%
Norco	March 2006	\$350	40%	6%
Pasadena	January 2004	\$225	20%	0%
Riverside	May 2006	\$350	65%	31%
Sacramento	March 2004	\$324	27%	15.1%
Sacramento County	May 2004	\$287	21%	7.1%
San Fernando	October 2008	\$250	38.5%	3%
San Francisco	November 2003	\$175*	22.3%	13.4%
San Luis Obispo	August 2003	\$255	17%	15.5%
San Luis Obispo County	October 2008	\$342	33.3%	5%
Santa Barbara County	November 2010	\$235	21%	9%
Tehachapi	February 2007	\$165	8%	16.7%
Vista	May 2005	\$250	39%	1.9%
Yolo County	May 2006	\$344	28%	11.1%

\*City or County fee does not fully cover administration and enforcement of the tobacco retailer license. Rather, the fee is supplemented with another stable source of funds, such as Master Settlement Agreement (MSA) funds or general funds. See the Center's Matrix of Strong Local Tobacco Retailer Licensing Ordinances for full details about the administration and enforcement of these ordinances.