



# COUNTY OF SAN DIEGO

## AGENDA ITEM

### BOARD OF SUPERVISORS

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**DATE:** August 16, 2022

**03**

**TO:** Board of Supervisors

### SUBJECT

**TOBACCO RETAIL LICENSE PROGRAM UPDATE FOR FISCAL YEAR 2021-22  
(DISTRICTS: ALL)**

### OVERVIEW

The San Diego County Board of Supervisors (Board) has demonstrated a commitment to reducing the sale of tobacco products to minors and limiting the initiation of tobacco use. On October 15, 2019 (2), the Board directed the Chief Administrative Officer to return with recommendations to establish a tobacco retail licensing program within the unincorporated area of San Diego County, to strengthen enforcement of minimum age sale laws, and to facilitate compliance monitoring of retailers. Further, on December 8, 2020 (8), the Board adopted Ordinance No. 10699 (N.S.) entitled: AN ORDINANCE ADDING AND REPEALING PROVISIONS IN THE SAN DIEGO COUNTY CODE REGARDING THE SALE OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY (Ordinance), which went into effect on July 1, 2021.

The Ordinance established the Tobacco Retail Licensing Program and mandates that retailers in the unincorporated region of San Diego County apply for and receive an annual Tobacco Retail License to sell tobacco products. It also includes tobacco pricing and packaging requirements, prohibits the sale of flavored tobacco products, and mandates certain operating requirements. Oversight of the Tobacco Retail Licensing Program including requirements established within the Ordinance is provided by the County of San Diego (County) Health and Human Services Agency, Public Health Services, Tobacco Control Resource Program.

On October 27, 2020 (4), the Board directed the Chief Administrative Officer to return in one year with an evaluation of the Tobacco Retail Licensing Program for consideration of potential modifications. In October 2021, a Tobacco Retail Licensing Program update was provided to the Board, reflecting progress, challenges faced, key discoveries made, and planned future actions.

Today's actions request the Board receive an update on the Tobacco Retail Licensing Program for Fiscal Year 2021-22, including the proposed evaluation plan, and authorize a report to the Board within 12 months for further updates. Additionally, today's action requests the Board authorize

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the Agency Director, Health, and Human Services Agency, to apply for additional funding opportunities to support tobacco prevention and control projects in San Diego County.

Today's actions support the County's vision of a just, sustainable, and resilient future for all, specifically those communities and populations in San Diego County that have been historically left behind as well as our ongoing commitment to the regional *Live Well San Diego* vision of healthy, safe, and thriving communities. This will be accomplished by aligning services, activities, and policies in support of ending the commercial tobacco epidemic and ensuring all residents have access to the resources they need.

**RECOMMENDATION(S)**

**CHIEF ADMINISTRATIVE OFFICER**

1. Receive an update for the Tobacco Retail Licensing Program for Fiscal Year 2021-22 and the Evaluation Plan.
2. Direct the Chief Administrative Officer to report back within 12 months with a Tobacco Retail Licensing Program update.
3. Authorize the Agency Director, Health and Human Services Agency, to apply for additional funding opportunities, if available, to support tobacco prevention and control activities in San Diego County.

**EQUITY IMPACT STATEMENT**

The initiation of tobacco use in youth and early adulthood is a longstanding problem and has been identified as a major factor in long-term adult tobacco use. Despite California's efforts to limit youth access to tobacco, youth and young adults under age 21 are still able to easily access tobacco products. During the February 2020 Young Adult Tobacco Purchase Survey, conducted with tobacco retailers in the unincorporated area of San Diego County, 19.7% of stores surveyed (or approximately 1 in 5) sold tobacco products to underage investigators. Implementing a tobacco retail licensing policy is an evidence-based practice that can reduce underage tobacco sales. The Tobacco Retail License Ordinance is intended to help reduce tobacco use initiation, foster health equity, and reduce access to nicotine and tobacco through improved compliance with current laws and regulations. The work of the Tobacco Retail Licensing Program helps to support these efforts. Ultimately, the Tobacco Retail Licensing Program will help advance the goal of tobacco-free living by countering the tobacco industry's targeting of the region's most vulnerable communities including youth, communities of color, and low-income communities.

**FISCAL IMPACT**

There is no fiscal impact associated with today's actions. Future related recommendations may have fiscal impacts, upon which staff will return to the San Diego County Board of Supervisors for consideration and approval. There is no change in net General Fund costs and no additional staff years.

**BUSINESS IMPACT STATEMENT**

N/A

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### **ADVISORY BOARD STATEMENT**

The Health Services Advisory Board reviewed this item on August 2, 2022, and recommended approval of the recommendations.

### **BACKGROUND**

The San Diego County Board of Supervisors (Board) has demonstrated a commitment to reducing the sale of tobacco products to minors and limiting the initiation of tobacco use. On October 15, 2019 (2), the Board directed the Chief Administrative Officer (CAO) to return with recommendations that would apply to the unincorporated area, to establish a tobacco retail licensing program to strengthen enforcement of minimum age sale laws and to facilitate compliance monitoring of retailers. On December 8, 2020 (8), the Board adopted Ordinance No. 10699 (N.S.) entitled: AN ORDINANCE ADDING AND REPEALING PROVISIONS IN THE SAN DIEGO COUNTY CODE REGARDING THE SALE OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY (Ordinance), which established a Tobacco Retail Licensing Program and assigned general oversight of the requirements set forth in the Ordinance to the County of San Diego (County) Health and Human Services Agency, Public Health Services (PHS). Additionally, the Board directed the CAO to return at a future date with an evaluation of the Tobacco Retail Licensing Program.

The Ordinance mandates retailers to apply for and receive an annual Tobacco Retail License (TRL) to sell tobacco products. It requires retailers to pay an annual licensing fee, applies penalties to retailers who violate the law, and includes best practice provisions to reduce the harm of tobacco use, including:

- Banning flavored tobacco products,
- Prohibiting sales of tobacco products at sites with pharmacies,
- Requiring at least 500 feet between tobacco retailers (effective for new retailers on January 1, 2022),
- Capping the number of licensed retailers to no more than 330,
- Setting minimum price and pack size requirements, and
- Creating a barrier between youth and tobacco usage by setting minimum age requirements for clerking and possessing a license.

The Ordinance went into effect on July 1, 2021 and applies to the unincorporated region of San Diego County. All tobacco retailers in this area were required to apply for a TRL. County TRL enforcement includes annual (at least one time per 12-month period) decoy operations to monitor compliance with Minimum Legal Sales Age Laws and unannounced store inspections conducted by code enforcement officers to monitor compliance with other operating and tobacco product requirements.

In October 2021, an update on the Tobacco Retail Licensing Program was provided to the Board. The report included initial implementation findings reflecting the first four months of program operation, including progress, challenges faced, key discoveries, and planned future actions.

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*Tobacco Retail Licensing Program Update (Fiscal Year 2021-22)*

In Fiscal Year 2021-22, programmatic elements, including retailer education and compliance, and infrastructure for issuance of licenses and conducting enforcement activities were developed. To ensure thorough education and outreach, a phased approach was implemented to bring retailers into compliance before routine enforcement of the Ordinance began. Processing of applications began in July 2021, and to ensure retailers were engaged, program staff conducted onsite visits to all of the nearly 300 retailers who were eligible for a TRL during Fiscal Year 2021-22. During the visits, staff informed retailers about the Ordinance and established provisions, conducted observations of the retailers' facilities, and provided guidance on any changes retailers needed to make to ensure compliance. This allowed time for program staff to assess retailer awareness of the new law and its components, answer questions about the licensing process, and provide individualized technical assistance to retailers to help them restructure their businesses and bring them into compliance. This also allowed staff to determine the baseline levels of retailer compliance and sales to minors, as well as the extent of education needed to further assist retailers.

A Code Enforcement Officer classification was added within PHS, which enabled the Tobacco Retail Licensing Program to secure staff with the appropriate compliance enforcement skillset. Metrics on licenses and compliance rates are detailed below:

- As of June 30, 2022, the Tobacco Retail Licensing Program received a total of 267 applications:
  - 246 (92%) of applications have been processed;
  - 246 (92%) retailers have been issued a license; and
  - 21 (8%) of applications were incomplete and missing required documentation. Tobacco Retail Licensing Program staff continue to follow-up and provide technical assistance.
- Decoy operations were conducted among unincorporated area tobacco retailers from March to June 2022 to establish a baseline for compliance with Minimum Age Sales Law requirements.
  - 55% retailers sold tobacco products to the underage investigators; and
  - 68% of retailers were in compliance of the Ordinance.

As the Tobacco Retail Licensing Program progressed, quality improvement strategies were implemented for each program component, including determining eligibility, processing the license, pre-issuance visit, determination, and escalation. Quality improvement projects involving process mapping, identification of programmatic challenges, testing of solutions, and adoption of new or enhanced processes to improve program delivery and customer service have been implemented. Technology solutions are also being assessed to automate tracking functions and maximize program efficiency. The Tobacco Retail Licensing Program developed a program data management system to streamline, monitor, and track activities; and generate detailed data dashboards and reports.

Additionally, on June 14, 2022 (17), the Board adopted a TRL fee, which became effective July 14, 2022. The fee will be used to recover costs associated with implementing the program and will be reevaluated annually.

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*Program Evaluation Overview*

The Tobacco Retail Licensing Program is actively engaged in evaluation efforts to measure program effectiveness, streamline operations, improve service to retailers, and help contain operational costs.

The proposed Tobacco Retail Licensing Program evaluation plan involves a multi-year approach to monitor the program over time. The evaluation will examine program components to determine opportunities for process improvements and efficiencies and ensure that desired long-term outcomes of reduced youth tobacco use is achieved. It will involve process, impact, and outcome evaluation components. The evaluation objectives include:

<b>Objectives</b>	<b>Overview</b>	<b>Metrics will Include</b>
Process Evaluation	<ul style="list-style-type: none"><li>• Focuses on examining processes for program initiation efforts</li></ul>	<ul style="list-style-type: none"><li>• Number of licenses issues</li><li>• Compliance rate of retailers</li></ul>
Programmatic Evaluation	<ul style="list-style-type: none"><li>• Focuses on examining the efficiencies and effectiveness of program efforts after full implementation</li></ul>	<ul style="list-style-type: none"><li>• Rate of youth access to tobacco</li><li>• Community support</li></ul>
Outcome Evaluation	<ul style="list-style-type: none"><li>• Focuses on examining programmatic maintenance and expansion efforts</li></ul>	<ul style="list-style-type: none"><li>• Rates of initiation of tobacco use among youth in unincorporated area of San Diego County</li><li>• Overall rate of tobacco related death and disease in unincorporated area of San Diego County</li></ul>

The evaluation will span a minimum of five years and will be reassessed for longer-term evaluation efforts. The first two years will focus on process evaluation to ensure that the program is being implemented as intended. The evaluation will assess effectiveness of early retailer education efforts, TRL fee determination, data collection strategies and management, application processing procedures, and license issuance approaches. During this timeframe compliance baselines will be established for the minor decoy operations and inspections.

An impact evaluation component will be added for years three and four to assess key program elements, including impact of the fee implementation, effectiveness of fee collection processes, effectiveness of retailer education strategies, development and implementation of enforcement strategies and management, and findings of compliance monitoring.

By the fifth year, an outcome evaluation will assess the impact and effectiveness of routine enforcement activities, impact and effectiveness of routine compliance checks, overall rate of compliance, and rate of sales to minors. Continuous quality improvement will be conducted

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throughout the five-year period to be able to streamline procedures and ensure that the program is operating at maximum efficiency toward achievement of compliance goals.

Today's action requests the Board receive the Tobacco Retail Licensing Program update, including the proposed evaluation plan, authorize a subsequent report to the Board within 12 months, and authorize the Agency Director, Health and Human Services Agency, to apply for additional funding opportunities to support tobacco prevention and control projects in San Diego County. This action ensures an increase in protections for youth and reduces the need for enforcement and staff time in the future.

**LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN**

Today's proposed actions support the Equity (Health) and Community (Quality of Life) initiatives in the County of San Diego's 2022-2027 Strategic Plan, as well as the regional *Live Well San Diego* vision by ensuring that services, activities, and policies align in their support of ending the commercial tobacco epidemic using proven evidence-based approaches and ensuring all residents have access to the resources they need.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Robbins-Meyer', with a stylized flourish at the end.

HELEN N. ROBBINS-MEYER  
Chief Administrative Officer

**ATTACHMENT(S)**

N/A