TOBACCO RETAILER LICENSING
PROPOSED ORDINANCE

NOVEMBER 18, 2019
CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL
Presenting Problem

- Over 90% of adult smokers started before age 18
- Flavored tobacco initiates youth tobacco use
  - 4 out of 5 youth smokers started with a flavored product
  - Adolescents are more likely than adults to use flavored e-cigs
- Fruit and candy flavors are designed to appeal to youth users by masking the harsh taste of tobacco
Flavored products threaten to undermine efforts to reduce youth tobacco use, putting a new generation of kids at risk of nicotine addiction and serious health harms that result from tobacco use.
Presenting Problem

FLAVORS POPULAR AMONG HIGH SCHOOL USERS OF E-CIGARETTES*

* Preliminary NYTS data
MENTHOLS

MENTHOL CIGARETTES ARE POPULAR WITH TEEN SMOKERS.
54% of current smokers in high school and 48.4% of current smokers in middle school smoked menthols.

48.4% of current smokers in middle school smoke menthol
54% of current smokers in high school smoke menthol

MENTHOL SMOKING RATES AMONG TEEN SMOKERS

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American</td>
<td>95%</td>
</tr>
<tr>
<td>Asian</td>
<td>61%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>58%</td>
</tr>
<tr>
<td>White</td>
<td>51%</td>
</tr>
</tbody>
</table>

NEARLY ALL AFRICAN AMERICAN TEEN SMOKERS SMOKE MENTHOLS.
95% of African American teens who are current smokers smoke menthol.
Presenting Problem

- Cheap tobacco products are affordable and attractive to youth
- More available in low-income communities of color
IT'S NOT JUST "HARMLESS WATER VAPOR"

E-cigarette aerosol contains at least 10 chemicals on California’s Prop 65 list of chemicals known to cause cancer, birth defects or other reproductive harm.

- Toluene
- Acetaldehyde
- Benzenene
- Cadmium
- Formaldehyde
- Isoprene
- Lead
- Nickel
- Nicotine
- N-Nitrosonornicotine

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Presenting Problem

For every adult who quits smoking using e-cigarettes, 80 youth initiate daily tobacco use through e-cigarettes.
Presenting Problem

- **2017-2018 California Healthy Kids Survey Results for Castro Valley and San Lorenzo Unified School Districts:**

  - Over 1 in 4 (28%) SLUSD 11th graders and over 1 in 5 (21%) CVUSD 11th graders have used e-cigarettes.

  - 58% of CVUSD 11th graders & 57% of SLUSD 11th graders believe it’s very or fairly easy to obtain e-cigarettes.

  - 44% of SLUSD 11th graders and 42% CVUSD 11th graders perceive little to no harm in using e-cigarettes compared to smoking cigarettes.
Presenting Problem

- **2017-2018 California Student Tobacco Survey Results for Alameda County:**

  - 1 in 4 teens have used e-cigarettes.
  - **87.6% of current youth tobacco users report using a flavored tobacco product.**
  - Flavored tobacco product use was high across all genders, race/ethnicities and grades.
  - **69% of high school students who purchased e-cigs reported buying them from the store themselves or from someone else; only 6.5% purchased online.**
  - Fruit or sweet was the most popular flavor.
YOUTH WHO USED JUUL FLAVOR PODS IN THE PAST 30 DAYS SAID THEY OBTAINED THE DEVICE IN THE FOLLOWING WAYS.

- **74%** PHYSICAL RETAIL LOCATION
- **52%** SOCIAL SOURCE
- **6%** INTERNET

*Youth could select multiple answers*
Percent of Retailers Selling Tobacco to Underage Young Adults by Store Type, 2018

- **STATEWIDE**: 19.1%
- **Drug Stores / Pharmacies**: 6.9%
- **Supermarket**: 12.1%
- **Liquor Store**: 12.6%
- **Convenience Store with Gas**: 14.7%
- **Other**: 22.2%
- **Small Market**: 24.8%
- **Convenience Store without Gas**: 25.3%
- **Vape Shop**: 30.2%
- **Tobacco Store**: 36.0%

Note: Tobacco stores include vape shops/lounges. Store types with small sample sizes were grouped together with the “other” category (e.g., delis, discount stores, gift stores, hotels, car washes, restaurants, cafes, donut shops). Young adults are defined as 18-19 years old. Source: California Department of Public Health, California Tobacco Control Program. Young Adult Tobacco Purchase Survey, 2018. Sacramento, CA: California Department of Public Health; October 2018.
Unincorporated Alameda County Tobacco Retailer Store Observation Survey Results

In September 2019, La Familia and the Alameda County Public Health Department conducted observation surveys in 72 stores within Alameda County Unincorporated that sell tobacco products.

**Flavored Tobacco Products**

- 99% of stores surveyed sell flavored tobacco products including fruit, candy, alcohol, and mint/menthol flavors.
- 97% of stores surveyed sell menthol cigarettes.
- 50% of stores surveyed sell flavored electronic smoking devices.
Unincorporated Alameda County
Tobacco Retailer Store Observation Survey Results

In September 2019, La Familia and the Alameda County Public Health Department conducted observation surveys in 72 stores within Alameda County Unincorporated that sell tobacco products.

**PRICE & PACK SIZE**

83% of stores surveyed that sell little cigars / cigarillos...

...sell them in pack sizes as small as 1 or 2...

...for prices less than $2 (before taxes)

The lowest price for a single flavored cigarillo is $0.49.
Tobacco Retailer Density

Places with greater density of tobacco retailers have higher tobacco use rates, leading to greater health inequities.

Up to 71% of homes in the Eden Area have walking access (0.5 miles or less) to tobacco stores; up to 61% of these stores are close to schools.
Overview of Proposed TRL Ordinance

- **Purpose is to reduce youth access to tobacco**, and to limit negative public health effects of tobacco use.

- Would require businesses in Unincorporated Alameda County that sell tobacco to **obtain a local license annually** in order to sell tobacco.

- **Provides enforcement mechanism**; holds retailers accountable to comply with local requirements, as well as state and federal tobacco laws.
Why a Tobacco Retail Licensing Program?

- Established model to reduce youth access to tobacco products.

- 10 Cities in Alameda County have adopted TRLs:
  - Alameda, Albany, Berkeley, Dublin, Fremont, Hayward, Livermore, Oakland, San Leandro & Union City

- Allows for local jurisdictions to set meaningful penalties for non-compliance.
Why a Tobacco Retail Licensing Program?

- Holds businesses accountable for behavior of clerks.
- Provides ongoing consistent enforcement to prevent tobacco sales to minors.
TRL Requirements for Retailers

- Comply with all federal and state tobacco laws
- Obtain license annually in order to sell tobacco
- Follow local requirements set forth in the ordinance
Federal and California Laws

- No sale of tobacco to persons under age 21 (CA)
- All appropriate taxes must be paid on tobacco products sold in California [ATF and CDTFA]. (Fed + CA)
- No self-service displays or vending machines for tobacco (CA)
- No sale of single cigarettes or in packs less than 20 (Fed + CA)
Proposed Local TRL Requirements *

- No selling tobacco without a valid local TRL

- Prohibits the sale of all flavored tobacco products
  - Includes menthol cigarettes, flavored little cigars, flavored e-cigs

- Prohibits the sale of all Electronic Smoking Devices
  - Includes all e-cigarettes, e-juices, e-devices
  - Does not include FDA-approved tobacco cessation products
  - Does not regulate devices used for cannabis

* Would apply to areas of Unincorporated Alameda County
Proposed Local TRL Requirements *

- Creates pricing requirements for the sale of tobacco:
  - Establishes a minimum sales price of $8.00 per package of cigarettes, little cigars and single large cigars
  - Establishes a minimum package size of at least 20 little cigars
  - Prohibits the redemption of tobacco discounts and coupons

* Would apply to areas of Unincorporated Alameda County
Proposed Local TRL Requirements *

- Creates tobacco retailing density requirements:
  - Prohibits tobacco sales (new retailers) within 1,000 ft of youth populated areas and 500 feet of existing tobacco retailers
  - Limits the total number of tobacco retail licenses to 1 per 2,500 residents

- Prohibits pharmacies from obtaining a TRL

* Would apply to areas of Unincorporated Alameda County
Youth-Populated Areas include:

- Schools (private or public K-12)
- Libraries
- Parks
- Playgrounds
- Youth centers
- Recreation facilities
- Licensed child-care facilities or preschools
Locations of Tobacco Retailers in Unincorporated Alameda County (n=115)

Black = Tobacco retailers
Retailer Proximity to Youth-Populated Sites

- Black = Tobacco retailers

- Blue = 1,000 ft. buffer around Youth-Populated Sites
Locations of Tobacco Retailers in Central County Unincorporated Areas

Black = Tobacco retailers
Retailer Proximity to Youth-Populated Sites in Central County Unincorporated Areas

Black = Tobacco Retailer
Blue = Youth site with 1000’ buffer
Penalties: Suspensions or Revocation
During a 5-Year Period

- 1\textsuperscript{st} violation – 30 day license suspension
- 2\textsuperscript{nd} violation – 90 day license suspension
- 3\textsuperscript{rd} violation – 1 year license suspension
- 4\textsuperscript{th} violation – license revocation
Penalties: Suspensions or Revocation
During a 5-Year Period

- Retailers alleged to have violated the ordinance may request a hearing before the Board of Zoning Adjustments.

- Violations stay on a retailer’s record for 5 years.
# Comparison to Other Cities Min. Price

<table>
<thead>
<tr>
<th>Proposed</th>
<th>Pack size</th>
<th>Minimum Price</th>
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<tbody>
<tr>
<td>Alameda City</td>
<td>5</td>
<td>$7 cigarettes $5 little cigars or $5 premium cigar</td>
</tr>
<tr>
<td>Albany</td>
<td>20</td>
<td>$8 cigarettes $8 little cigars</td>
</tr>
<tr>
<td>Berkeley</td>
<td>20</td>
<td>$8 cigarettes $8 little cigars or $7 premium cigar</td>
</tr>
<tr>
<td>Dublin</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Fremont</td>
<td>5</td>
<td>$8 cigarettes $8 little cigars or $5 premium cigar</td>
</tr>
<tr>
<td>Hayward</td>
<td>5</td>
<td>no</td>
</tr>
<tr>
<td>Livermore</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Oakland</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>San Leandro</td>
<td>5</td>
<td>$7 little cigars or $5 premium cigar</td>
</tr>
<tr>
<td>Union City</td>
<td>5</td>
<td>$5 premium cigar</td>
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### Comparison to Other Cities Fees & Fines

<table>
<thead>
<tr>
<th>City</th>
<th>Period</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>Annual Fee</th>
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</thead>
<tbody>
<tr>
<td><strong>Proposed</strong></td>
<td>5 years</td>
<td>30 days</td>
<td>90 days</td>
<td>1 year</td>
<td>revocation</td>
<td>TBD</td>
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<tr>
<td>Alameda City</td>
<td>5 years</td>
<td>$1,500</td>
<td>15 days</td>
<td>30 days</td>
<td>revocation</td>
<td>$750?</td>
</tr>
<tr>
<td>Albany</td>
<td>5 years</td>
<td>10 days</td>
<td>30 days</td>
<td>90 days +</td>
<td>Revocation +</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$250</td>
<td>$1,000</td>
<td>$250</td>
</tr>
<tr>
<td>Berkeley</td>
<td>5 years</td>
<td>30 days</td>
<td>90 days</td>
<td>1 year</td>
<td>revocation</td>
<td>$427</td>
</tr>
<tr>
<td>Dublin</td>
<td>3 years</td>
<td>warning</td>
<td>$750</td>
<td>7 days +</td>
<td>revocation</td>
<td>$237</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>$1000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fremont</td>
<td>5 years</td>
<td>30 days</td>
<td>90 days</td>
<td>1 year</td>
<td>revocation</td>
<td>None set yet</td>
</tr>
<tr>
<td>Hayward</td>
<td>3 years</td>
<td>$1,500 or</td>
<td>$3,000 or</td>
<td>$5,000 or</td>
<td>revocation</td>
<td>$400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30 days</td>
<td>30 days</td>
<td>30 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Livermore</td>
<td>5 years</td>
<td>30 days</td>
<td>1 year</td>
<td>revocation</td>
<td>n/a</td>
<td>none set yet</td>
</tr>
<tr>
<td>Oakland</td>
<td>5 years</td>
<td>10 days</td>
<td>30 days</td>
<td>90 days</td>
<td>revocation</td>
<td>$1,500 + $50</td>
</tr>
<tr>
<td>San Leandro</td>
<td>3 years</td>
<td>warning</td>
<td>$2,500</td>
<td>20 days</td>
<td>revocation</td>
<td>$500</td>
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<tr>
<td>Union City</td>
<td>5 years</td>
<td>warning</td>
<td>30 days</td>
<td>90</td>
<td>revocation</td>
<td>$665</td>
</tr>
</tbody>
</table>
Thank You

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