



# City of Woodland

## REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR  
AND CITY COUNCIL

DATE: November 17, 2009

SUBJECT: Presentation on the Tobacco Retail License

### **Report in Brief**

Staff has been contacted by the Youth Anti-Tobacco Coalition and the Yolo County Health Department Tobacco Prevention Program with a request to present information regarding a Tobacco Retailers License (TRL) ordinance. These ordinances have been adopted in other cities within Yolo County and the Sacramento region and supporters believe the program is an effective way to reduce the incidence of under age tobacco sales and the rate of teen smoking. A presentation on the TRL has been scheduled for the November 17 City Council meeting.

Staff recommends that the City Council receive the presentation regarding the Tobacco Retailers License ordinance and provide comments regarding the Council's interest in developing such an ordinance for consideration in Woodland.

### **Background**

The Youth Anti-Tobacco Coalition contacted City officials in 2008 regarding their desire to have the Woodland City Council consider a Tobacco Retailers License ordinance. A TRL ordinance would require all tobacco retailers to apply for a license and pay fees that would be utilized by the Yolo County District Attorney's Office to conduct enforcement actions in order to facilitate compliance with California tobacco laws. All state tobacco laws would be the focus of the program although the primary target of the enforcement actions is associated with underage tobacco sales. Utilizing trained youth as "decoys", the District Attorney's Office would conduct sting operations to determine if a tobacco retailer would sell tobacco products to minors less than eighteen years of age.

Since the initial contact in 2008, the Youth Anti-Tobacco Coalition has appeared before the City Council twice to renew their request, most recently at the July 28, 2009 joint Council meeting with the Davis City Council. Following that meeting, the City Manager and the Chief of Police met with representatives of the group and agreed to schedule a formal presentation for the City Council. The

Youth Anti-Tobacco Coalition is supported by the Yolo County Health Department Tobacco Prevention Program managed by Steven Jensen.

While staff certainly supports the prevention of tobacco sales to underage minors, the development of an ordinance that would establish a license program and fees for retailers represents a serious undertaking. Prior to initiating such action, staff believed it was appropriate for the City Council to receive the presentation from the youth and Mr. Jensen. Following the presentation, it would be appropriate for the Council to provide staff with direction regarding the interest in considering a TRL ordinance.

Additional information regarding the TRL submitted by the Youth Anti-Tobacco Coalition is included as attachments to this report.

**Recommendation**

Staff recommends that the City Council receive the presentation regarding the Tobacco Retailers License ordinance and provide comments regarding the Council's interest in developing such an ordinance for consideration in Woodland.

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Mark G. Deven  
City Manager

Attachments

## REGIONAL TOBACCO RETAIL LICENSING ORDINANCES – 2004-2007

*These ordinances were based on a model created by a legal assistance project of the Tobacco Control Section of the State Department of Health and Human Services.*

City of Sacramento – passed on March 31, 2004 with a unanimous vote.

- Cost - \$300
- License issued by Code Enforcement

County of Sacramento – passed on May 18, 2004 with unanimous vote.

- Cost - \$287 (fee will also fund annual youth purchase surveys)
- License issued by Finance Department

City of Elk Grove – passed on September 15, 2004 unanimously

- Cost - \$270
- License issued by City Manager

County of Yolo – passed on May 16, 2006 unanimously by the Board of Supervisors

- Cost - \$340
- License issued by Health Department (Environmental Health)
- Penalty for first violation of any local, state, or federal law is 10-day license suspension.
- Active Enforcement started September 2006 – District Attorney's Office enforces the law and organizes "stings".
- Approximately 18 tobacco retail outlets.

City of Davis – passed on August 1, 2007 unanimously by the Davis City Council

- Cost - \$340
- City entered into an agreement with the County to adopt the same ordinance and have the County issue licenses and conduct enforcement activities.
- Active Enforcement started October 2007.
- Approximately 34 tobacco retail outlets.

*All jurisdictions provided extensive merchant education for one to three months before issuing the licenses.*

*The City of Sacramento's illegal sales rate fell from 27% to only 7% in one year. Between 2004 and 2005, the Sacramento County illegal sales rate dropped from 20.6% to 10.6%, and Elk Grove's declined from 17% to 10%.*

## CALIFORNIA LAWS – ILLEGAL TOBACCO SALES TO MINORS 2008

Although it has been illegal to sell tobacco products to minors for over 100 years, the hurdles of consistent enforcement and meaningful penalties have reduced, but not eliminated, this practice that harms our youth.

### STAKE ACT (1994) (Stop Tobacco Access to Kids Enforcement)

- Requires Stake Act signs at all retailers that sell tobacco products.
- Creates a complaint line reporting illegal sales to minors.
- Fines store owners \$200-300 for first violation: \$600-900 for 2<sup>nd</sup> violation in a year – up to \$5,000-6,000 for **fifth violation in 5 year period**.
- Enforced by only nine inspectors statewide who respond to complaints, and work with youth on illegal sales surveys for statewide rate. (Every county also conducts youth purchase surveys biennially.)

### AB 71 (Horton) 2003

The purpose of this bill is to increase tobacco tax revenues by decreasing counterfeiting and smuggling.

- A one-time only retail licensing fee of \$100 will be collected by the Board of Equalization by June 1, 2004.
- No funds are provided for enforcement of laws to stop minors from buying tobacco. Inspectors will check for licensing and tax violations.
- Penalties for selling to minors under this law are remotely possible. *If* the state illegal sales rate is greater than 13% (now 12.2%) and *if* a retailer has been convicted of selling to minors four times in 1 year, the license could be suspended. It takes eight convictions in 2 years to revoke a license.
- The law specifically allows local government to enact and enforce tobacco retail licensing. "Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law."

## TOBACCO RETAIL LICENSING

### City of Woodland

#### *Questions and Answers*

- ✓ Refer to the Yolo County Tobacco Retailer Licensing Fact Sheet for information about illegal sales rates and basic research findings.
- ✓ The proposed ordinance would require all businesses that sell tobacco products to be licensed annually. There are about 44 locations in Woodland.

#### Q. [Isn't merchant education working?](#)

A. No, it is not. The illegal sales rate for the Woodland is 26.7% - more than twice the state average. The county and state have frequently communicated with merchants through brochures and direct education for ten years. There is a high turnover in clerks in some types of businesses and the fine for selling to minors is only \$100 to \$200 - just a small business expense.

#### Q. [How will licensing make a difference?](#)

A. The city will have the power to suspend a license for 30 days for the first violation. Additional violations will result in longer suspensions and revocation of the license. Research shows this is a very effective method to reduce illegal sales.

#### Q. [Why not just increase the fine?](#)

A. State law preempts local ordinances in the matter of financial penalties.

#### Q. [How much will it cost?](#)

A. The law prohibits the city from making a profit on enforcement. The cost of the license is based on real costs determined by city staff calculating the overall cost of consistent, pro-active enforcement and administration. The license fee will equal the cost of enforcement annually.

#### Q. [Will enforcement be limited to illegal sales to minors?](#)

A. No, all tobacco laws will be enforced. For example, although State law requires a STAKE Act sign be posted in all businesses that sell tobacco. There is no systematic enforcement now for these and other laws such as the self-service cigarette ban.

#### Q. [Does the proposed ordinance address tobacco sales from ice cream vans, etc.?](#)

A. Yes, the ordinance provides for licensing for fixed locations so sales from vehicles are not permitted. This will also make enforcement checks easier and less costly.

Q. Is there public support for this ordinance?

A. Polling in Woodland in Fall 2007, revealed that 86% favored licensing storeowners who sell tobacco.

Q. Will each location be required to have a license?

A. Yes. This will ensure compliance with the law at every tobacco outlet whether independent or part of a chain. Each location will be cited separately.

Q. Are the big chains with resources for employee training less likely to sell cigarettes to minors?

A. STAKE Act statewide data 1996-2003 indicates a 35.1% illegal sales rate for all supermarkets. The largest national fines for illegal sales have been against Walgreen's and Wal-Mart. Applying this ordinance to all locations assures a level playing field and a better chance for effective enforcement to reduce illegal sales significantly.

Q. Can businesses appeal a suspension?

A. Yes, this is provided through the city's administrative process.

Q. Have other local governments passed tobacco retail licensing ordinances?

A. Yes, over 40 cities and counties have done so including the City of Sacramento and Sacramento County, Elk Grove and Rancho Cordova, Yolo County and Davis. Those that include a license fee equal to the cost of enforcement and require a specific number of inspections annually are the most effective in reducing violations of tobacco laws.

Q. What about the state licensing law (AB 71) that went into effect on Jan. 1, 2004?

A. This law was written to combat tobacco tax evasion, smuggling and counterfeiting in order to increase the collection of tobacco taxes by the state. Retailers will pay \$100 **one time only** to the state by June 2004. A license can be suspended by the state for illegal sales *only if* the retailer is convicted four times within a 12-month period. There is no money for inspections for illegal sales to minors so the responsibility remains with local government. This new law specifically allows local government to pass strong, effective ordinances.

Q. Isn't another license requirement an unfair burden on small businesses?

A. Business, alcohol and other licenses are part of the cost of doing business. The purpose of licensing is to assure compliance with laws for the public's benefit.