



# County of Monterey

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

## Board Report

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**File #:** 12-257, **Version:** 1

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Introduce, waive the reading, and set May 15, 2012 at 10:30 a.m. as the date and time to consider adoption of an ordinance adding Chapter 7.80 to the Monterey County Code to establish licensing requirements for tobacco retailing within the unincorporated area of Monterey County. **(Added via Addendum)**

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

Introduce, waive the reading, and set May 15, 2012 at 10:30 a.m. as the date and time to consider adoption of an ordinance adding Chapter 7.80 to the Monterey County Code to establish licensing requirements for tobacco retailing within the unincorporated area of Monterey County.

### SUMMARY/DISCUSSION:

On January 20, 2012, the Health and Human Services Committee recommended that the draft Tobacco Retailer License (TRL) ordinance be submitted to the Board of Supervisors. The purpose of the TRL ordinance is to reduce illegal sales of tobacco products to minors. Compliance checks conducted by the California Department of Public Health, Food and Drug Branch, Stop Tobacco Access to Kids Enforcement (STAKE) Act Enforcement Unit show that from 2000 to 2010, retailers in Monterey County illegally sold tobacco products to underage youth 33% of the time. In 2010, the illegal tobacco sales rate to youth was 48% in Monterey County. These figures are similar to results from recent Youth Tobacco Purchase Surveys (YTPS) conducted in Monterey County by the Tobacco Control Program, Sunrise House, Safe Teen Empowerment Project, and Sun Street Centers, Inc.

According to The Center for Tobacco Policy and Organizing, results from studies overwhelmingly demonstrate that local TRL ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, in almost every California community that has passed a strong TRL ordinance. Currently, over 80 communities throughout the State have passed similar TRL ordinances.

The American Lung Association states that a strong local tobacco licensing law is defined as one that includes the following four components:

- A license that all retailers must obtain in order to sell tobacco products; must be renewed annually.
- A fee that would sufficiently fund an effective program including the administration of the program and enforcement efforts and a plan outlining enforcement efforts, including 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 TRL ordinance incorporates the above components in an effort to ensure success in reduction of illegal sales of tobacco products to minors. The ordinance will require retailers in unincorporated areas of Monterey

County to pay an annual license fee to obtain a license in order to sell tobacco products. The fee is calculated to recover the reasonable regulatory costs of issuing and administering licenses, retailer education, performing investigations, inspections, and the administrative enforcement and adjudication of the provisions of the TRL ordinance. The license is valid for one year and only at the location specified in the application. Denial of a license application is subject to administrative review.

The Health Department's Public Health and Environmental Health Bureaus will issue licenses, conduct annual audits to ensure license compliance, and report data requirements on activities. An organization focused on youth with collaboration from the Sheriff's Office will conduct the YTPS and compliance checks related to point of sale regulations.

Law enforcement may enforce penal provisions of the TRL ordinance, violations of which may be prosecuted as infractions or misdemeanors.

The TRL ordinance specifies that violation of the Chapter for selling to minors or using false information in the application may lead to suspension or revocation of the license. Administrative penalties for violation of any state, federal, or local tobacco retailing law include suspension or revocation of the license. Such penalties are graduated, from 60 days to 180 days, depending on the number of violations. The retailer may pay a stipulated fine in lieu of a hearing. Fines will range from \$1,000 to \$5,000.

Administrative penalties for tobacco retailing at a location without a license also are graduated, rendering a person ineligible to apply for or be issued a license from 60 days to 180 days, depending on the number of violations at the location of the violation.

The Health Department proposes July 1, 2012 as the implementation date to coincide with Environmental Health Bureau's current permitting processes.

Pursuant to the California Environmental Quality Act (CEQA), the draft ordinance does not involve the approval of a "project" because the ordinance and its implementation do not result in a direct or indirect physical change in the environment or in a reasonably foreseeable indirect physical change in the environment. (See Pub. Resources Code Section 21065; CEQA Guidelines Sections 15357, 15377, 15378.) No further CEQA analysis is required.

#### OTHER AGENCY INVOLVEMENT:

County Counsel has approved the ordinance as to form and legality. The County District Attorney and the Sheriff's Office have reviewed and approved the ordinance. The Environmental Health Bureau provided input to the permit process and compliance component. The Technical Assistance Legal Center, the Center for Tobacco Policy and Organizing, and the Santa Cruz County Health Department provided information and assistance in relation to this ordinance. The Sun Street Centers and Sunrise House agencies provided input on conducting youth tobacco purchase surveys and compliance checks. A copy of the Ordinance is on file with the Clerk of the Board.

#### FINANCING:

The proposed permit fee will fund 100% of the costs associated with implementing this program. There will be no financial impact to the General Fund.

Prepared by: Kathy Robinson, Management Analyst II, 1286

Approved by: Ray Bullick, Director of Health, 4526

Attachments:

Ordinance in on file with the Clerk of the Board