



Memorandum

TO: Honorable Mayor &
City Council Members

FROM: Lee Price, MMC
City Clerk

SUBJECT: The Public Record
January 12-18, 2007

DATE: January 19, 2007

ITEMS TRANSMITTED TO THE ADMINISTRATION

ITEMS FILED FOR THE PUBLIC RECORD

- (a) Letter from the Coalition Against Teen Tobacco to Mayor Reed dated January 11, 2007 following up with San Jose's Tobacco control efforts in which the 2006 Report Card Grade C is based on.
- (b) Letter from Mark Trout to Mayor Reed and Council dated January 12, 2007 regarding extending the speaking time at Open Forum from two minutes to three.
- (c) Letter from Nirvana Anoosheh to Mayor and Council received on January 14, 2007 regarding Coyote Valley Proposal.
- (d) Letter from David S. Wall to Mayor Reed and Council dated January 17, 2007 regarding Reform #34 Expansion of Auditor's Staff.

Lee Price, MMC
City Clerk

LP/np

Distribution: Mayor/Council
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770 South Bascom Avenue
San Jose CA 95128

January 11, 2007

Honorable Chuck Reed
Mayor
City of San Jose
200 E. Santa Clara St.
San Jose, CA 95113

Dear Mayor Reed:

We hope all is well with you and the City of San Jose.

The Coalition Against Teen Tobacco (CATT) is a diverse group of teens that work together and advocate for healthier and safer lifestyle choices. CATT is a unique club that offers a fun and safe space to learn and promote healthier lifestyles as well as teaches and reaches out to other teens and the whole community.

We are writing to the San Jose City Council again to follow-up with San Jose's tobacco control efforts in which we base our 2006 Report Card Grade, C.

Our youth group, together with the Tobacco Control Coalition of Santa Clara has concluded preparing our second annual Youth Tobacco Ordinance Report Card, in which the cities in Santa Clara County are graded on the quality and enforcement of their youth tobacco control ordinances.

We are wanting to partner with all cities and towns of Santa Clara County to make Silicon Valley a healthier place to grow up and live by cutting down on tobacco advertising blight, encouraging our peers and community members to consider quitting tobacco use and creating more smoke-free places for everyone to be free of secondhand smoke.

We have done our homework by surveying 120 sites that sell tobacco in San Jose, noting how much tobacco and alcohol ads are in areas where many youth live and must pass by to go to school. We also looked into how many stings or undercover youth purchases were done because there is much evidence that says the more a store is held accountable to NOT selling tobacco to youth under 18 years olds, there is less of us underage teens that smoke. That to us in CATT is a better and healthier outcome for the entire community.

The Coalitions, together with staff from the Tobacco Prevention and Education Program will evaluate municipalities with respect to 13 different criteria regulating the sale and promotion of tobacco products as well as the enforcement of these measures (see enclosed summary of criteria). We believe that well-designed youth tobacco control ordinances, coupled with strong enforcement, will help reduce youth smoking in the cities in Santa Clara County.

The Tobacco Control Coalition of Santa Clara County together with the Coalition Against Teen Tobacco will release the results of the 2006 Report Card at a press conference in the spring of 2007 (exact date, time and location TBA).

- **2006 Report Card** – please review and make any corrections to the information pertaining to your city. Please submit data or information to support you correction.

Our mission is to expose the tobacco industry's deliberate media targeting to youth, young adults and even specific cultural groups to use and eventually become addicted to tobacco products. We now know that tobacco related-diseases make up for almost half a million deaths in the United States EVERY YEAR.

We sincerely hope the San Jose City Council will take action this year to upgrade its "C" grade by enforcing the existing San Jose City ordinances that limits window advertising of any type to 25%. Some of the stores we surveyed had ads covering nearly 100% of their windows. The City of San Jose could also improve its grade by performing youth decoy operations or stings as we talked about earlier. Passing an ordinance to require a license for all tobacco retailers would provide the means to fund such operations. Enclosed for your review are copies of model ordinances that address:

- Land use to regulate the locate of tobacco retailers
- Requiring a tobacco retailer license
- How to strengthen your local sign laws.

Please review our findings and consider our proposals and suggestions. We much appreciate your time.

Thank you for your cooperation on this important project. Please feel free to call Francis Capili, Health Education Specialist, Tobacco Prevention & Education Program at (408) 494-7833, if you would like more information on this project or have any questions.

Sincerely,



Arianna Trujillo-Robnett
Co-Chair, Coalition Against Teen Tobacco, Countywide Chapter, District 5



Cam Bui
Co-Chair, Coalition Against Teen Tobacco, Countywide Chapter, District 7



Ronnel Corre
Coalition Against Teen Tobacco, member, District 4



Jasmine Askew
Coalition Against Teen Tobacco, member, District 8



Emily Romero
Coalition Against Teen Tobacco, member, District 2



Carlo Francisco
Coalition Against Teen Tobacco, member, District 5

cc: City Attorney
City Clerk
City Manager
Chief of Police
City Council Members



Tobacco Control Coalition of Santa Clara County

770 South Bascom Avenue, San José, California 95128

(408) 494-7830

(408) 494-7831 FAX

January 11, 2007

Chuck Reed
Mayor
City of San Jose
200 E. Santa Clara St.
San Jose, CA 95113

Dear Mayor and City Council:

The Santa Clara County Tobacco Control Coalition together with the Coalition Against Teen Tobacco is working on a media project to inform the Santa Clara County community regarding the status of tobacco control.

The joint Coalitions will release a "Santa Clara Counties Communities on Tobacco Health Report Card" later this year. As a part of this project, Coalition members would like to work with your City Council and Chief of Police to review the Report Card findings and make recommendations as to how the city may improve upon its grade.

Each day, 3,000 underage youth begin smoking across the country. In 2002, \$645 million was spent on health care costs in Santa Clara County, with 9,033 deaths directly attributed to tobacco use. Of these mortalities, 90% of the smokers became addicted before the age of 18. The tobacco industry spends billions of dollars advertising their deadly products in our communities.

One of the most effective ways to counter the negative impact of tobacco advertising is to enforce laws that restrict window advertising, portable signs, as well as monitor and enforce the required placement of warning signs, self-service tobacco displays. Communities that have regular and ongoing youth decoy operations have the lowest rates of unlawful tobacco sales to underage minors.

Smoke-Free, Tobacco-Free: Keep Kids Healthy



The Communities on Tobacco Health Report Card will measure the amount of work done by each city in enforcing and monitoring its individual tobacco control policies. Also graded will be the enactment of any ordinances that have been passed by the city that are stricter than current California state law requirements. This project is being done to educate both local decision-makers and the general public that tobacco use by underage youth is still a problem in our communities.

If you have any questions or concerns please feel free to contact me at (408) 272-6775.

Sincerely,

A handwritten signature in cursive script that reads "Jeannette Ferris".

Jeannette Ferris, MPH
Program Manager
Santa Clara County Public Health Department
Tobacco Prevention & Education Program
770 South Bascom Avenue
San Jose, CA 95128
Phone (408) 272-6775
Fax (408) 494-7831



COALITION AGAINST TEEN TOBACCO BACKGROUND

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Background: Coalition Against Teen Tobacco (CATT) formed in 1997 as a countywide youth advocacy group. CATT has since been expanded to different areas in Santa Clara County including chapters in the following cities: San Jose, Milpitas, Morgan Hill, Mt. View, Palo Alto, Santa Clara and Gilroy.

Focus: CATT is a high school-aged youth development program. Youth development is the ongoing growth process in which all youth are engaged in attempting to meet their basic personal and social needs to be safe, feel cared for, be valued, be useful, and be grounded, and to build skills and competencies that allow them to function and contribute in their daily lives.

Students involved in CATT plan and implement tobacco prevention and education projects in their schools and community.

Funding Source: A portion of the 25-cent tax per cigarette pack to fund tobacco education and prevention programs from Proposition 99.

Accomplishments and Activities:

- Planned and implemented numerous youth summits, trainings and conferences
- Collaborate with other youth groups and community based organizations throughout the County
- Work alongside the adult coalition in advocating for policy change
- Participate and plan events that coincide with Red Ribbon Week, Halloween, Great American Smokeout, Winter Holiday, Vietnamese TET Festival, Valentine's Day, Kick Butts Day, Earth Day, Cinco de Mayo, Juneteenth, San Jose LGBT Pride and World Tobacco Free Day
- Conduct outreach at health fairs throughout Santa Clara County
- Created and produce a youth mini-magazine publication, "The Beat", at least four times a year
- Created "The Game"- a life-sized board game that is used to teach youth in grades 3rd-5th about tobacco (1999-present)
- Developed a Healthy Haunted Lounge during Halloween at three different schools (2002-2005)

Incentives

- Youth receive letters of recommendation for participating with CATT to help them earn scholarships, internships for great work opportunities, and life experiences.



SANTA CLARA COUNTY TOBACCO CONTROL COALITION BACKGROUNDER

Background: The Santa Clara County Tobacco Control Coalition was created by voter passage of Proposition 99 in November 1988. Funding to Santa Clara County community projects began in 1990.

Focus: Advocacy, policy, media, cessation, and prevention education.

Funding source: A portion of the 25-cent tax per cigarette pack to fund tobacco education and prevention programs from Proposition 99.

As an advisory partner to the Santa Clara County Public Health Department's Tobacco Prevention and Education Program, the Tobacco Control Coalition works to reduce and prevent tobacco use, and to protect people from the dangers of secondhand cigarette smoke. Since 1990, the coalition has recommended more than \$5 million in funding for community-based organizations for tobacco education and prevention projects targeting youth, women and ethnic and cultural minorities.

Milestones:

- ◆ Funding for community based organizations begins (1990)
- ◆ Secondhand Smoke Helpline founded and coordinated by American Lung Association (1991)
- ◆ Advocated for and ensured a Smoke-Free San Jose Arena Policy (1994)
- ◆ First multi-county Youth Summit was planned and conducted (1995)
- ◆ Coalition Against Teen Tobacco (CATT) formed (1997)
- ◆ CATT members planned and implemented Youth Summit (1997)
- ◆ Secured a Smoke-Free Fairgrounds Policy (1998)
- ◆ Implemented Smoke-Free Doorways Policy at all County-owned Health Buildings (1998)
- ◆ Tobacco Control Ordinance enacted in San Jose (1998)
- ◆ Tobacco Self-Service Display Ban Ordinance passed in Santa Clara (1999)
- ◆ Youth Summit 1999 recognized by California Parks and Recreation as exemplary (1999)
- ◆ Master Settlement Agreement funds secured for community tobacco control programs (2000)
- ◆ Tobacco Self-Service Display Ban Ordinance enacted in Mountain View (2001)
- ◆ Free Zyban and Nicotine Patches available through Public Health Pharmacy (2001)



2006 Santa Clara County Communities on Tobacco Health Report Card



Grading Scale: A=10-13; B= 5-9; C=3-4; D=1-2; F=0

City of San Jose		Points	Source
Enforcement of Sales to Minors Laws			
Enforcement of PC 308(a) in previous 12 months (youth decoy operations)	No		Law Enforcement Survey
Elimination of Self-Service Sales			
Self-service display ban	Yes	1	Municipal Code
Vending machines ban	Yes (partial)	1	Municipal Code
General Regulation of Tobacco			
Requires licensing of tobacco retailers	No		Municipal Code
Bans tobacco sales from mobile vendors	No		Municipal Code
Enforces sales to minors warning signage	No		Storefront Surveys
Eliminates free sampling and promo items	No		Municipal Code
Enforces ban on loose cigarettes	Yes	1	Municipal Code
Regulation of Advertising			
Enforces window advertising limits	No		Storefront Surveys, Municipal Code
Bans/enforces ban on portable signs, banners.	No		Storefront Surveys, Municipal Code
Prohibits tobacco advertising product placement below 4 ft.	No		Storefront Surveys, Municipal Code
Prohibits tobacco advertising product placement within 3 ft. of candy	No		Storefront Surveys, Municipal Code
Enforces Cal. Labor Code 6404.5 <i>Smoke-free Bars Law</i>	No		Law Enforcement Survey
Extra Credit: Local Secondhand Smoke Ords. (CH&SC) 118910	No		
	Total	3	



Storefront Data for San Jose 2006



Health educators and youth advocates collected data during site visits of tobacco retailers in the City of San Jose in February and March of 2006. 120 stores were included in the survey. Data collected included compliance with local window advertising limits, displaying of required warning signs, tobacco license, and location of tobacco advertising.

Compliance with Local and State Laws:

STAKE Act – this law requires posting of the STAKE Act sticker, which warns customers that the legal age to purchase tobacco products is 18, and gives a toll-free number to report violations.

89.0% of stores were compliant with this law.

Penal Code 308 – this law requires that merchants ask for identification of customers who request tobacco products and outlines fines. The posting of the law is required.

88.2% of stores were not compliant with this law.

Window Coverage Laws – The City of San Jose limits window advertising to 25% of total window area.

71.7% of stores were not compliant with this law.

Posting of Required State Tobacco License– The California Cigarette and Tobacco Products Licensing Act of 2003 requires every tobacco retailer to possess and display a license from the State Board of Equalization.

54.2% of the stores did not have a license posted.

60.5% of San Jose stores have any where from 1 to 28 tobacco window ads.

22.5% of the stores had portable signs that advertise tobacco or alcohol

Advertising Recommendations:

The Tobacco Prevention & Education Program (TPEP) and the Coalition Against Teen Tobacco (CATT) recommends that all tobacco advertising be removed from areas that target young people. These locations include ads placed near candy and below three feet.

Tobacco Ads Below Three Feet –

23.3% of stores were not compliant with this recommendation.

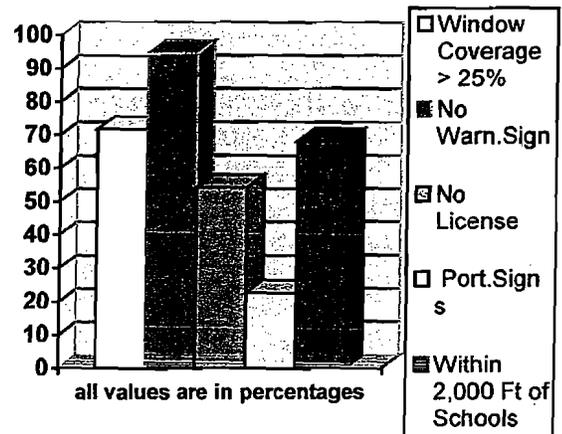
Tobacco Ads Near Candy –

20.8% of stores were not compliant with this recommendation.

Stores Near Schools:

Studies show that tobacco advertising is more prominent in stores that are near schools (within 2,000 feet). **68% (82)** of the tobacco retailers surveyed in San Jose during this survey period are near schools (within 2000 ft.).

- **67.3% of the stores near schools had window ads in excess of 25% (San Jose ad limit).**



STATE AND LOCAL LAWS YOU SHOULD KNOW ABOUT

- **SELF-SERVICE TOBACCO DISPLAYS *California Business and Professions Code § 22962***

As of January 1, 2005, the self-service display of tobacco products is against the law.

Tobacco products include cigarettes, chewing tobacco, dipping tobacco, snuff, cigars, bidis, pipe tobacco, roll your own tobacco, and any other product containing tobacco. The self-service display of tobacco paraphernalia is also against the law. Tobacco paraphernalia includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products. The only exceptions apply to "tobacco stores" that make more than 60% of their sales from tobacco products. These stores do not sell food or alcohol, nor do they allow unaccompanied minors on their premises.

- You must be 18 to purchase tobacco products (including cigarettes, cigars, chewing tobacco, pipe tobacco," bidis", etc.)
- Identification must be checked for anyone who seems to be 27 or younger.
- A STAKE Act warning sign must be posted at each register where tobacco is sold. *California Business and Professions Code § 22952(c)*
- A copy of Penal Code 308 must be posted. *Penal Code Section 308(c)*
- Cigarettes must be sold in a pack only. The sale of single cigarettes (loosies) is prohibited. [*Senate Bill No. 757 (Ortiz), adding California Penal Code section 308.3*]
- If you have a license from the Department of Alcohol Beverage Control Cal. Business & Prof. Code § 25612.5(c)(7).
Current state law provides that no more than one-third of the square footage of windows and clear doors of an alcohol retailer may have advertising signs of any sort. This includes advertisements for everything from soft drinks to alcohol and tobacco products. The law specifies that the state Department of Alcoholic Beverage Control and local law enforcement agencies are responsible for the enforcement of the state law.

City of San Jose: (Chapter 23.02.0820)

- Signs must not cover more than 25% of window space.
- Portable signs are prohibited except in the Lincoln/Willow Glen area; the Downtown Core; and parts of the Alameda.
- Signs mounted on poles or streetlights are prohibited throughout the City of San Jose.

PENALTY: The penalties for selling tobacco to minors in violation of the STAKE Act remain: \$200-300 for the first violation; \$600-\$900 for the second violation within a five year period; \$1200-\$1800 for a third violation within a five-year period; \$3000-\$4000 for a fourth violation within a five year period; or \$5000-\$6000 for a fifth and for each subsequent violation within a five-year period.

Fact Sheet provided by the Santa Clara County Department of Public Health, Tobacco Prevention and Education Program. 770 South Bascom Avenue, San Jose CA. Phone: 408.494.7830

Licensing Requirements for Tobacco Retailers

The California Cigarette and Tobacco Products Licensing Act of 2003 requires every retailer who sells cigarettes or tobacco products in California to possess and display a retailer's license from the State Board of Equalization (BOE) in order to engage in the sale of cigarettes or tobacco products. A separate license is required for each retail location in the State of California. A retail location is a building or a vending machine from which cigarettes or tobacco is sold.

Posting Requirements

Every retailer must conspicuously display the license where it is visible to the public (e.g., near the main checkout area or adjacent to tobacco product shelving or displays at the point of sale).

Penalties

The penalties for violating the licensing law are substantial:

- Any retailer who fails to display the license is liable for a penalty of five hundred dollars (\$500), any other applicable penalties, and may be subject to license suspension and revocation.

Sample Retailer License

CALIFORNIA STATE BOARD OF EQUALIZATION		
CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003 RETAILER'S LICENSE		
LICENSE NUMBER		
BUSINESS MAILING ADDRESS		EFFECTIVE DATE:
LOCATION ADDRESS		<small>THIS LICENSE HAS BEEN ISSUED TO YOU UNDER DIVISION 20 COMMENCING WITH SECTION 22970 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE</small>
I/WE HEREBY AUTHORIZED TO ENGAGE IN THE SALE OF CIGARETTES AND TOBACCO PRODUCTS		NOT VALID AT ANY OTHER LOCATION ADDRESS.
THIS LICENSE IS VALID FOR THE EFFECTIVE DATE OR UNTIL SUSPENDED, REVOKED, OR CANCELED, AND IS NOT TRANSFERABLE.		
BOE-442-LR (4-04)		



2006 Santa Clara County Communities on Tobacco Health Report Card Project



Project Description

Over 480,000 people die annually in American from the effects of tobacco use and indirect smoking. With over 3000 youth become addicted to nicotine daily, policies that address the hazards of tobacco use in general, and the problems with youth and smoking in particular, were sorely needed. Laws that protect individuals from exposure to second hand smoke, reduce the access of underage youth to all forms of tobacco products, and counter the influence the tobacco industry has in our communities through marketing have also been passed at both the State and the community level. There have been many new policies enacted since the passage of Proposition 99 that funded state anti-smoking programs in 1988. The purpose of this document, or report card, is to measure and list the level of compliance and enforcement among the 13 communities, and the Sheriff's Department of Clara County. What the report card measures is the level of community monitoring and enforcement of those laws and policies that govern and regulate the sales and advertising of tobacco products. Also measured is each community's performance in enforcing current clean air legislation as required by the smoke-free bar law as well as the more recent smoke-free doorway act for public buildings. The passage of any local city or county ordinance stronger than the State requirement is also noted. Several communities such as San Jose, Santa Clara and Palo Alto have passed strong ordinances banning all forms of tobacco from self-service displays. The State, in January of 2005 passed a similar ban with only a few exceptions. Communities can still pass stronger policy to ban these exceptions. The report card format was modified and used with the permission of the American Lung Association of San Diego County who originated the use of a report card for their communities.

A brief description of each of the report card categories and a justification of why it is included in the report card follows:

Enforces Sales to Minors Laws

Since 1891, California state law prohibits the sale of, or in any way furnishing tobacco products to minor youth under the age of 18. To ensure tobacco retailers are complying with this state policy, local law enforcement agencies conduct youth undercover purchase operations or "stings". During a sting, a minor decoy youth attempts to purchase tobacco products from a tobacco retailer. An undercover officer is nearby to view the transaction. If the sale is made, then the officer will cite the clerk who made the illegal sale. Fines range from \$200 for a first offense to several thousand dollars for repeat offenses. Research has shown that in communities with active enforcement of tobacco sales to minors, underage youth have a more difficult time in obtaining tobacco products from retail outlets. (PC 308 a)

Bans Self-Service Displays

Youth survey data shows that a significant percentage of underage youth smokers have shoplifted tobacco products at least once. Banning self-service displays makes it more difficult for underage youth to obtain tobacco products if they have to ask a clerk for the tobacco product. Apart from eliminating the possibility of shoplifting, the clerk must make a conscious decision to sell tobacco products to a youth for each transaction. As of January 1, 2005, California state law (Business and Professions Code section 22962) bans the self service display of almost all tobacco products and

tobacco paraphernalia. For tobacco products, very limited exceptions exist for specific types of specialty tobacco shops and tobacco vending machines in bars. For tobacco paraphernalia, no exceptions exist at all.

State law specifically grants local governments authority to eliminate the few remaining exceptions in state law by passing a local ordinance. For assistance in drafting such an ordinance, please contact TALC at 510.444.8252 or at talcc@phi.org.

Bans Vending Machines

Current state law allows vending machines to be located in a business that has an on-premise license to sell alcoholic beverages provided that the machine is at least 15 feet away from the entrance and inside the premises. Local governments may pass a law completely banning tobacco vending machines. *California Business and Professions Code Sections 22960, 22958 (b)*

Requires Licensing of Tobacco Retailers

A retail tobacco license requires retailers to obtain a license to sell tobacco products. If the retailer sells tobacco to minors, or violates other local and state laws relating to tobacco, the license can be suspended or revoked. The license fee should reflect the costs of administering and enforcing the licensing program; retailers can be charged a required a flat fee or a fee based on the volume of tobacco they sell.

Currently, 24 California communities require tobacco retailers to be licensed.

Licensure increases compliance with laws designed to eliminate the sale of tobacco to minors by creating a greater deterrent than fines alone for violating the law.

Bans Tobacco Sale from Mobile Vendors

The Board of Equalization stated recently that mobile tobacco sales are banned under AB 71. This clarifies some disagreement as to whether the language in the law actually banned mobile tobacco sales. Local law enforcement can cite unlicensed tobacco retailers, including mobile vendors, that have not obtained a license under the new law. Violation is a misdemeanor punishable by either a fine not to exceed \$5,000, imprisonment not exceeding one year in a county jail, or both. Every retail location must have a license posted by June 30, 2004. Local governments are advised to follow The Technical Assistance Legal Center (TALC) model ordinance and include a ban on mobile sales.

Enforces Sales to Minors Warning Signage

Statistics reveal retail stores that only display a tobacco industry sponsored sign, such as "We Card" and "It's the Law ", sell to minors at a rate equivalent to not having any signs. In contrast, stores with only the government-sponsored signs sell at a significantly lower rate than the stores with no signs.

- A STAKE Act warning sign must be posted at each register where tobacco is sold. *California Business and Professions Code § 22952(c.)*
- A copy of Penal Code 308 must be posted. *Penal Code Section 308(c.)*

Eliminates Free Sampling and Promotional Items

Current state law prohibits the distribution of free or nominal cost cigarettes, smokeless tobacco products, coupons, or rebate offers for such products on public grounds (such as a state or county-owned fairground). Also, free or nominal cost cigarettes or smokeless tobacco products, coupons and rebate offers may not be distributed on private grounds that are open to the public (such as a racetrack or retail outlet). Local governments may pass ordinances that are stricter than state law. (*California Health and Safety Code § 118950*)

Enforces Ban on Loose Cigarettes

Cigarettes may not be sold in packages of less than 20 cigarettes. The sale of single cigarettes (“Loosies”) is prohibited. *California Penal Code 308.3*

Bans Tobacco Advertising & Promotion on City/County Property

There is no current state or federal law that prohibits tobacco advertising on property owned by a county or a municipality. Communities such as the City of San Jose and counties such as Santa Clara have passed ordinances that prohibit such advertising. The general public and youth in particular are bombarded daily with tobacco advertising in magazines, storefront advertising, portable signs, and tobacco logos on everything from clocks, change trays, push/pull signs, shopping baskets and display cases. Local governments can take a stand and protect their communities from the seven billion dollars tobacco companies spend in tobacco advertising annually.

Enforces Window Advertising Limits

Most communities in Santa Clara County have limits that restrict the allowable amount of retail window advertising. The limit most communities have for window advertising is 25%. This is done to both provide a level of safety for the shopkeepers and to prevent the blight caused by unchecked and unregulated advertising. Tobacco billboard advertising (over 14 square feet) was banned in 1998 by the Master Settlement Agreement. This agreement was between the Attorney Generals of 46 states (including California) and the major tobacco companies. After this, the five largest cigarette manufacturers spent \$8.24 billion on advertising and promotional expenditures in 1999, a 22.3 percent increase from the \$6.73 billion spent in 1998. Point-of-sale, or storefront advertising increased from \$290.7 million in 1998 to \$329.4 million in 1999. Communities can counter this barrage of storefront tobacco advertising by enforcing current limits on window advertising. Recent surveys of tobacco retailers found almost all communities in Santa Clara County had tobacco retailers out of compliance with this regulation. In some instances, window advertising and signs approached 100 percent coverage of the windows.

Bans/Enforces Ban on Portable Signs, Banners.

The STORE Campaign recommends the following strategies to decrease the tobacco industry’s deceptive advertising in the retail environment:

Addressing multiple aspects of the tobacco retail environment includes:

- Self service display bans on all tobacco products, not just cigarettes.
- Local ordinances banning exterior “sandwich board” ads and restricting the percentage of exterior store space that can be covered by posters, neon lights or other ads. Advertising of

all products will be covered by these policies.

- Conditional use permits or zoning ordinances that limit the number and location of new tobacco retail outlets.
- Enforcement of existing laws to decrease the proliferation of tobacco ads in stores

Prohibits Tobacco Advertising or Product Placement Below 3 Feet or Within 3 Feet of Candy

Advertising for tobacco products that are placed at a child's eye level, which is at or below three feet from the floor, or next to candy, give the impression that cigarettes and other tobacco products are no more dangerous and addictive than other consumer goods on display, such as fruit or candy.

While there are no current laws or ordinances that prohibit the display of advertising at children's eye level, communities are encourage to pass ordinances that require tobacco merchants to remove all ads placed at such a level. This will help in lessening the attraction of tobacco products to children who are too young to understand the serious health consequences tobacco use poses.

Enforces California Labor Code 6405.5 "Smoke-free Bars Law"

The California State Legislature passed Labor Code 6404.5 (Assembly Bill 13) also known as the California Smoke-Free Workplace Act in 1994 making all restaurants and nearly all other workplaces 100% smoke-free. Labor Code 6404.5 took effect in restaurants and other workplaces January 1, 1995 and in bars and casinos on January 1, 1998.

Local Secondhand Smoke Ordinance- California Health and Safety Code Sec. 118910

A local governing body may ban completely the smoking of tobacco, or may regulate smoking in any manner not inconsistent with state law. Several states permit cities and counties to pass secondhand smoke ordinances that have stricter restrictions than those in the state law. For example, some local jurisdictions have passed ordinances banning smoking on outdoor restaurant patios, within 30 feet of government buildings, on beaches and on golf courses.

Reference:

Tobacco Laws Affecting California, Technical Assistance Legal Center, Oakland, CA, 2004

Tobacco Retail Licensing, Questions And Answers, STORE, Strategic Tobacco Retail Effort, Fact sheet, website: http://www.tecc.org/store/stages/5_communication.html

Campaign Chronicles, A Campaign Newsletter, The Center for Tobacco Policy and Organizing. Sacramento, CA., No. 9 March 2004



**Model California Ordinance
Requiring a Tobacco Retailer License
Summary – May 2005**

This Model Ordinance was developed by the Technical Assistance Legal Center (TALC) to help California cities and counties that wish to reduce youth access to tobacco and to limit the negative public health effects associated with tobacco use.

A licensing ordinance requires merchants to obtain a license to sell tobacco products and provides for the suspension or revocation of the license if the merchant sells tobacco to minors or violates other local, state, or federal laws related to tobacco sales. In this way, a licensing ordinance is a tool that can be used to encourage compliance with *all* existing laws that apply to tobacco sales. For merchants who continue to violate these laws, licensing offers a means to eliminate their unfair and unlawful practices from the marketplace.

Although state law requires tobacco retailers to obtain a license to sell tobacco products, the purpose of the state law is to protect tax revenue by reducing counterfeit and black-market tobacco sales. Recognizing the need for tobacco retailer licensing focusing on the *public health* impact of tobacco, state law explicitly grants local governments the right to enact *local* tobacco retailer licensing laws and to suspend or revoke the local license for a violation of any state tobacco control law. (California Business and Professions Code section 22970.)

This Model Ordinance was revised extensively in May 2005. It replaces the March 2002 version of the Model Ordinance. Following is a summary of the current version of the Model Ordinance.

Findings

This section is part of the ordinance but it does not become part of the local government code. It contains extensive statistical information, presented in the form of “Whereas” clauses, documenting the importance of regulating tobacco retailers.

Section 1: Definitions

This section contains definitions of key words and phrases used in the model ordinance. When these words appear later in the text of the ordinance, they are capitalized to signal they have been specially defined.

Section 2: Tobacco Retailer License Required

This section requires a retailer to obtain a license for each location at which tobacco products or paraphernalia are to be sold. Retailers may not display or advertise tobacco products or paraphernalia if they do not have a license.

Section 3: Limits on Tobacco Retailer Licenses

This section prohibits certain types of businesses from ever obtaining a license:

- mobile vendors;
- new “significant tobacco retailers” (e.g., retailers that primarily sell tobacco products or paraphernalia and that open after the ordinance is adopted—retailers that sell a variety of products, like gas station mini-marts, can still get a license); and
- restaurants and bars (this means, for example, that providing tobacco product samples at industry sponsored “bar nights” would be prohibited).

Section 4: Application Procedure

This section sets forth the basic information required to apply for a tobacco license, such as the retailer’s contact information and whether the retailer has ever been found to be in violation of the licensing law.

Section 5: Issuance of License

This section requires local government staff to issue a license unless there is evidence that: (1) the application is incomplete or inaccurate; (2) the application is for a location or a person with a revoked license; or (3) the application seeks a license for a location or person that can not legally sell tobacco or paraphernalia (e.g., a mobile vendor).

Section 6: License Renewal and Expiration

This section establishes that a license is valid for one year and must be renewed annually. It provides a penalty for tobacco retailers who allow a license to lapse.

Section 7: Licenses Nontransferable

This section provides that licenses cannot be transferred between owners or between retail locations. Whenever ownership changes or a business moves, a new license is required.

Section 8: Fees for License

This section establishes a basic formula for how the licensing fee will be established. The actual dollar amount of the fee does not appear in the ordinance. Instead, the fee is set by a separate resolution because a resolution is more easily adopted than an ordinance and the fee amount can be changed more easily over time. The section requires that the licensing fee be calculated to include all the costs of administration and enforcement.

Sections 9: Other Requirements and Prohibitions

This section establishes requirements for all tobacco retailers such as:

- a retailer and its employees must abide by all local, state, and federal laws applicable to tobacco, tobacco paraphernalia, and tobacco sales (*note: this requirement is the heart of the licensing ordinance and must be included*);
- a retailer must abide by all applicable sign laws because many of the storefront signs at a tobacco retail outlet are likely to be tobacco ads;
- a license must be prominently displayed in a publicly visible place;
- identification must be checked if a tobacco purchaser appears to be under 27 years old;
- clerks selling tobacco must be at least 18 years old;
- all forms of self-service display of tobacco products and paraphernalia are prohibited; and
- smoking is prohibited inside and outside (in certain areas) of a tobacco retailer.

Section 10: Compliance Monitoring

This section designates which government agency will have the primary role in enforcing the ordinance and establishes a minimum number of compliance checks of retailers per year. It also provides limited immunity for youth decoys.

Section 11: Revocation of License

This section contains four main provisions:

- **Revocation**—subsection (a) directs that a license shall be *revoked* for any violation of the licensing ordinance, including the provision requiring the retailer to abide by all laws applicable to tobacco sales (see section 9). Revoking a license rather than suspending it puts the burden and cost on the retailer to reapply for a license and it avoids potential legal technicalities that could be exploited by a tobacco retailer facing suspension. This subsection also provides that if a retailer pleads “no contest” to a violation of any law applicable to tobacco sales, that plea may be used to revoke a tobacco retailer’s license.
- **Ineligibility Period**—subsection (b) establishes the period of time the retailer must wait after his license is revoked before applying for a new license. This “ineligibility period” is essentially the same thing as a “suspension” period in licensing laws that suspend, rather than revoke, a license. The ineligibility period depends on how many violations the retailer has committed in the past five years; it begins with a 10-day ineligibility period for a first violation, followed by a 30-day period, a 90-day period, and finally a five year period for successive violations.
- **Appeals**—subsection (c) provides for appeals of license revocations.
- **Errors**—subsection (d) provides for the revocation of a license issued in error.

Section 12: Tobacco Retailing Without a License

This section provides that a tobacco retailer who is found operating without a license is ineligible to receive a license for a certain period of time. The ineligibility period for selling tobacco products or paraphernalia *without* a license is longer than the ineligibility period for violating an existing license. The longer period is designed to discourage retailers from continuing to sell tobacco after a license revocation or from failing to obtain a license in first place. Tobacco products and paraphernalia offered for sale without a license are subject to seizure and destruction.

Section 13: Settlements in Lieu of Hearing

This section authorizes the city attorney or county counsel to settle claims against tobacco retailers before an administrative hearing takes place so long as the settlement contains certain minimum terms.

Section 14: Enforcement

This section provides a variety of methods for local government to enforce the ordinance, including: civil (i.e., non-criminal) fines, citations by law enforcement, and injunctive relief (a court order to do or not do something). It also allows any private citizen to enforce the ordinance through a lawsuit. For example, a local resident could bring a suit in small claims court against a tobacco retailer operating without a license in order to enforce the ordinance. A city or county agency also can use the “private enforcer” provision to enforce the licensing law in small claims court if desired. Additionally, this section provides that youth decoys cannot be required to testify in non-criminal proceedings such as a license revocation hearing.

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Sari Jose City Clerk

2007 JAN 12 P 12: 20

Mark Trout
2924 La Jolla
San Jose
95124

Phone #
(264-0419)

I would like to add an item
to the Agenda, to extend the talking
time of the "Open Forum" to 3 minutes.
Thank you.

Honorable Mayor Reed
and Council,

Public Record 6
1/12/07



Take Action
updated 4/06
**Protect Coyote Valley
From Sprawl**

◆ Coyote Valley Proposal will Cost San Jose MILLIONS of Dollars. ◆

San Jose should invest in existing neighborhoods NOT deficit finance the conversion of 2,000 acres of farmland and open space.

The recently released Fiscal Impact Analysis found that the first 10-20 years of the proposed project will run a fiscal deficit costing the city of San Jose millions of dollars. The consultants recommend that this problem be fixed with "fiscal mitigation" measures. These recommendations will compete directly with funding for environmental mitigation measures. The city's general plan requires development in Coyote Valley to pay for itself; it cannot be a burden on the general fund. The City Council's vision for Coyote Valley claims to prioritize environmental protection. Both of these goals are violated by the current project proposal.

→ What You Can Do ←

Write a letter or Send this one:

X -----

Mayor Gonzales and Council Members,

I am writing to urge you to follow through on your commitment to a specific plan for Coyote Valley that provides maximum environmental protection. The recently released Fiscal Impact Analysis found a fiscal deficit for at least the first 17 years of the project. Clearly it is not a good investment for the City. Furthermore, the proposed fiscal mitigations will compete directly with the environmental mitigations for a limited pool of funds. The City of San Jose should not mortgage the rest of San Jose to make up for the shortfall in financing development of Coyote Valley. The City should instead focus on revitalizing existing neighborhoods and promote infill over the financial drain of developing Coyote Valley.

Please do not allow developer interests shortchange the environmental mitigations that development in Coyote Valley will require.

Thank you,

Nirvana Anoooskeh

14840 Las Flores Lane Los Gatos

Name

Street Address/City CA 95032

X -----

Mail your letter to City Council, 200 East Santa Clara Street, San Jose, CA 95113. OR email your letter to cityclerk@sanjoseca.gov and ask to have it distributed to the entire council. Or fax to 408) 292-6207.

- ✓ To learn more about Coyote Valley Specific Plan visit www.sanjoseca.gov/coyotevalley
- ✓ To get involved with the Sierra Club's work to save Coyote Valley contact Melissa Hippard at 650-390-8414 or melissa.hippard@sierraclub.org OR visit lomaprieta.sierraclub.org

Public Record d

David S. Wall
455 North San Pedro Street
San José, California 95110
Phone (408) - 287 - 6838
Facsimile (408) - 295 - 5999

RECEIVED
San Jose City Clerk

2007 JAN 17 P 2:49

January 17, 2007

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Reform #34 Expansion of Auditor's Staff

Reported in the San José Mercury News yesterday, January 16, 2007 the "State of Reforms" championed by Mayor Reed was publicly put forth for the citizens to review.

Reform #34- The Expansion of the Auditor's Staff is being "put off" for discussion until June for budgetary concerns. **This is unacceptable.**

The only way to implement, "No lying, No cheating and No stealing" by corrupt City Administrators, is to immediately begin discussion and implementation of increasing the Auditor's Staff. This will expedite the much needed and unacceptably overdue necessity for the increase in performance audits (*in real time accounting*) of all City operations. Only through this policy will YOU begin to root out corruption and make efficient City operations to best serve the citizenry.

Putting off discussion of Reform #34 until June of 2007 is sending a message to corrupt officials and their respective administration of City operations, "Breathe easy children and continue to gorge yourselves at taxpayer expense, it is still business as usual".

Please amend your timetable to immediately discuss, plan for and implement the expansion of the Auditor's staff and authority to reign in corrupt and incompetent City Administrators.

Funding for Reform #34 should be realized through a significant reduction of the Office of the City Manager's staff of overpaid and useless brownnosers. YOU do not have to wait to June to do so.

Initiate Reform #34 now or face unbridled and unrelenting chastisement for impliedly shielding, protecting and coddling the corrupt and incompetent administrators who continue to evade detection and the day of accountability as they gorge themselves in an ongoing, unfettered and unabated feeding frenzy at the taxpayer trough.

Respectfully submitted,

David S. Wall 01.17.2007

Cc: City Attorney / City Auditor / Interim City Manager