

NSE AGENDA: 10/13/11  
ITEM: d(1)

# Memorandum

**TO:** NEIGHBORHOOD SERVICES  
AND EDUCATION COMMITTEE

**FROM:** Joseph Horwedel

**SUBJECT:** REPORT ON TOBACCO RETAIL  
LICENSING YOUTH DECOY  
PROGRAM

**DATE:** September 26, 2011

Approved

Date

10-3-11

**COUNCIL DISTRICT:** Citywide  
**SNI AREA:** All

## RECOMMENDATION

It is recommended that the Neighborhood Services and Education (NSE) Committee accept this report on the development and implementation of San Jose's Youth Decoy Program (YDP).

## BACKGROUND

On December 14, 2010, the City Council adopted the Tobacco Retail License (TRL) Ordinance, a comprehensive approach to the licensing and regulation of businesses selling tobacco products and tobacco paraphernalia. As part of the TRL implementation, a youth decoy program was developed to ensure that those with a TRL were complying with the State prohibition against selling tobacco to minors.

## ANALYSIS

The State of California prohibits the sale of tobacco products to any person under the age of 18. In 2010, the California Department of Public Health and the Attorney General's Office prepared and provided guidelines to assist tobacco retailers in maintaining compliance with rules and regulations regarding the sale of tobacco products. The following recommendations were made to assist employees on "how to prevent sales to minors" and "how can you help employees comply with the law":

- **MAKE SURE** your employees always ask customers who look younger than 27 years old for IDs and check the birthdates carefully;

- ACCEPT only valid government-issued photo IDs (drivers license, state ID, passport, military ID);
- POST the required "Stop Tobacco Access to Kids Enforcement (STAKE) Act" age-of-sale warning signs. Also post signs to remind employees and inform customers that anyone who looks under age 27 will be asked for ID.

In adopting the TRL Ordinance, the City Council recognized the importance of ensuring that tobacco products are not sold to person(s) who are not of legal age, as proscribed under state law, and went further in requiring tobacco retailers to examine identifications for all persons seeking to purchase tobacco products or paraphernalia. Specifically, 6.87.330 of the Municipal Code states the following:

No tobacco retailer shall sell or transfer a tobacco product or tobacco paraphernalia to any person without first examining the identification of that person to confirm that person is at least a minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.

In developing the YDP, staff from the Code Enforcement Division met with representatives from the County of Santa Clara's Public Health Department (SCPHD). The SCPHD advised Code Enforcement that youths who have volunteered for the county-wide decoy program could also provide assistance to San Jose.

#### Youth Decoy Program Implemented

With this partnership with the SCPHD, Code Enforcement has established inspection protocols and conducted two tobacco decoy operations. The operations utilized youth decoys and staff from SCPHD.

The first decoy operation occurred on August 30, 2011. Seven tobacco retailers were visited and in each situation, the youth decoy attempted to independently purchase cigarettes from the retailer. One of the seven retailers failed to ask the youth for identification and sold the decoy a package of cigarettes. As a result, the retailer received an Administrative Citation for \$2,500.

A press release was developed and released on September 6, 2011 to highlight the success of this new County / City partnership and to serve as a reminder to tobacco retailers of their responsibilities for ensuring that sales are made to customers that meet the age requirements and possible consequences. It also asked for the public's assistance in identifying irresponsible retailers. A copy of the press release has been attached to this memorandum, and staff interviews were conducted and broadcast on KLIV1590.

A second decoy operation occurred on September 20, 2011. An additional nine tobacco retailers were visited. One of the nine youth decoys was able to purchase flavored tobacco from a "smoke shop." This retailer received a \$2,500 administrative citation.

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If these businesses are found in the future to be selling tobacco products to underage youth, Code Enforcement will issue an additional citation and concurrently commence the process to revoke the retailer's Tobacco Retail License.

Letters to Those Involved in the Operation

Those tobacco retail businesses that have asked for identification and have not sold to the youth decoy will receive a letter from Code Enforcement advising them that an inspection was performed and that their employees properly asked for identification and refused to sell to the minor. A copy of this letter has been attached to this memorandum.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney and the Police Department.

*/s/*  
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions, please contact Michael Hannon, Code Enforcement Official, at (408) 535-7884.

Attachments: Press Release  
Letter to Tobacco Retailers



## News Release

### **For Immediate Release**

September 6, 2011

#### **Contact:**

Jamie Matthews, Code Enforcement Division Manager

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### **City's first youth decoy tobacco operation cites one retailer for selling cigarettes to a minor**

SAN JOSE, Calif. – During its first youth decoy tobacco operation, the City of San José cited one business for selling cigarettes to a minor. During last week's code enforcement operation, a youth decoy visited seven retailers in San José. One business was issued a \$2,500 citation for selling tobacco products to a person under the age of 18. The program, in partnership with the County of Santa Clara Health Department, was initiated to help identify retailers selling tobacco products to youth.

"This successful operation demonstrates that the City of San José is serious about keeping tobacco out of the hands of youth," explained Michael Hannon, Deputy Director of Planning, Building and Code Enforcement. "I am glad to see that the majority of retailers are abiding by the law, and are checking IDs to make sure that they don't mistakenly sell cigarettes or other tobacco products to minors."

Residents are encouraged to report any illegal tobacco sales to youth by calling the City's Code Enforcement Division at (408) 535-7770.

In December 2010, the City adopted the Tobacco Retail Licensing Program which requires the retailers of tobacco products to ask for identification to ensure that the tobacco products, and in this case, cigarettes, are not sold to minors. San José is one of 96 cities statewide to require all retailers selling tobacco products to obtain a San José Tobacco Retail License and be subject to inspection. The San José ordinance also allows for some of the highest fines in the state for non-permitted retailers as well as those who illegally sell tobacco to youth. In addition to the fines, repeat violators will lose their ability to sell any tobacco products.

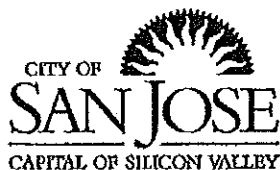
"Continuing to monitor retailers closely is extremely important to the health of our community," said County Health Officer, Dr. Martin Fenstersheib. "With Santa Clara County's middle school and high school students reporting that it's easy to get cigarettes, they are in danger of developing a lifetime addiction and serious health problems as a result. We must make it tougher than ever for youth to get their hands on tobacco products. By doing so, we are working towards a healthy Santa Clara County."

--- MORE ---

According to the American Lung Association, adoption of local tobacco retail licensing programs and active enforcement dramatically reduces youth access to tobacco and smoking. For more information, visit [www.center4tobaccopolicy.org/localpolicies-licensing](http://www.center4tobaccopolicy.org/localpolicies-licensing).

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*This news release is available online at [www.sanjoseca.gov](http://www.sanjoseca.gov).*



*Department of Planning, Building and Code Enforcement*  
JOSEPH HORWEDL, DIRECTOR

September 21, 2011

Dear Tobacco Retailer,

The City of San Jose, in partnership with the County of Santa Clara's Public Health Department recently sent in a customer, under the age of eighteen (18) years of age, to purchase tobacco and/or tobacco paraphernalia. You and/or your employee requested that the under age customer present identification, and when you determined that the customer was not of legal age you refused to sell the tobacco product.

**You are to be commended** for complying with 6.87.330 of the *Tobacco Retail License Ordinance* which states,

No tobacco retailer shall sell or transfer a tobacco product or tobacco paraphernalia to any person without first examining the identification of that person to confirm that person is at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.

The State of California prohibits the sale of tobacco products to any person under the age of 18.

To ensure that this goal is achieved, the City of San Jose will continue to perform periodic youth decoy operations throughout the City of San Jose. The purpose of these unannounced visits are to determine if tobacco retailers are complying with both State Law and the Municipal Code which requires verification of age when selling tobacco or tobacco paraphernalia to ensure that the customer is of a legal age to purchase.

For your information our youth decoy operation discovered that some tobacco retailers are selling tobacco products to minors. These businesses will be issued administrative citations which carry a \$2,500 fine.

If you have any questions or need further assistance, please contact Code Enforcement Supervisor Mollie McLeod at (408) 535-7785 or by e-mail at [mollie.mcleod@sanjoseca.gov](mailto:mollie.mcleod@sanjoseca.gov).

Michael K Hannon  
Code Enforcement Official  
City of San Jose