SALES OF TOBACCO TO MINORS

FINAL EVALUATION REPORT

Mendocino County, 2004-2007 Contract Period

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Report Submitted: June 30, 2007
The Mendocino County Tobacco Control Program (TCP) has been collecting data on the underage buy rate in Mendocino County for years. This data, along with other data collected through the Communities of Excellence (CX) needs assessment process, prompted project staff and coalition members to address the problem of the availability of tobacco to minors.

TCP developed the following objective for this 3-year project: By, June 30, 2007, the Mendocino County Board of Supervisors and the Ukiah City Council will adopt and implement a policy requiring all tobacco retailers to obtain a license in order to sell tobacco products, which will include provisions for fines and license suspension for businesses found to be out of compliance with policy requirements. This is TCS priority area Reduce the Availability of Tobacco; it is a primary objective and addresses Communities of Excellence (CX) indicator #3.2.1.

Project activities focused on first the Mendocino County Board of Supervisors then the Ukiah City Council members because they were the decision-makers with the authority to adopt and monitor implementation of a tobacco-licensing ordinance in the unincorporated areas of Mendocino County and the City of Ukiah, respectively. Project activities included creating a Coalition to focus on tobacco-licensing; providing technical assistance to the Coalition in development of an ordinance; educating all tobacco retailers after the ordinance was passed; and monitoring compliance via underage buying surveys. Activities specific to the underage buying surveys included recruiting and training youth to perform the surveys; and communicating the results of the underage buying surveys to the general public through print and radio media releases, to law enforcement agencies, to city councils, the Board of Supervisors, County Counsel, and the District Attorney's office. In each of the two areas that adopted a tobacco-licensing ordinance, press releases were developed to announce the new policy and recognize the Mendocino County Board of Supervisors and the Ukiah City Council, respectively. Letters were sent to tobacco retailers and tobacco retailer licenses were then issued.

Evaluation of this project included collecting pre- and post-intervention data. The underage buying surveys provided pre-intervention data on the extent to which youth were able to buy tobacco products. The underage buying surveys also served as post-intervention data as it reflected the level of tobacco sales to minors after the tobacco-licensing policies were adopted. Process data included key informant interviews of individuals that had been directly involved in getting the tobacco-licensing ordinances adopted – city council members, district supervisors, tobacco retailers, youth and coalition members.

The Tobacco Control Program's objective was met: the Mendocino County Board of Supervisors and the Ukiah City Council each adopted and implemented tobacco-licensing ordinances in the unincorporated areas of Mendocino County and the City of Ukiah, respectively. Compared to pre-ordinance adoption data, evident were significant decreases in the underage buying rate in the unincorporated areas of Mendocino County, from 63% to 30%; and in the City of Ukiah, from a high of 30% to 17%. The data on the underage buying rate as well as the coalition’s support for the ordinance were vital in getting the tobacco licensing ordinance adopted.
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Project Description

Background. Mendocino County is a rural community located in northern California. It has a population of about 90,000\(^1\) people spread out geographically over 3,500 square miles. The county contains 4 incorporated cities and approximately 22 unincorporated towns that have local tobacco-retail businesses.

Objective. TCP developed the following objective for this 3-year project period 7/01/04 – 6/30/07: By June, 30, 2007, the Mendocino County Board of Supervisors and the Ukiah City Council will adopt and implement a policy requiring all tobacco retailers to obtain a license in order to sell tobacco products, which will include provisions for fines and license suspension for businesses found to be out of compliance with policy requirements. This is TCS priority area Reduce the Availability of Tobacco; it is a primary objective and addresses Communities of Excellence (CX) indicator #3.2.1.

This objective was chosen during the Communities of Excellence needs assessment process in the spring of 2004. Members of the community, including staff, adult and youth Coalition members, and partners representing law enforcement, the schools, and youth groups participated in a 3-hour community forum. Of the CX indicators discussed, attendees rated a tobacco-licensing ordinance as a high priority to be included in the upcoming comprehensive three-year county tobacco control plan. Compelling data presented at the forum included youth access studies, which showed that there had been an increase in the underage youth buying rate between the 2001 and 2004 surveys countywide, from 49% to 51%. Additionally, an ordinance had already been passed in one incorporated area, Willits, and Coalition members asserted that “tobacco licensing in Willits [had] increased the level of awareness of this issue tenfold.” Finally, the concern about local youth access to tobacco resulted in demand for stricter policies to protect their health.

Project Activities/Methods. The intervention activities included creating a Coalition to focus on tobacco-licensing and providing technical assistance to the Coalition in creating and implementing a strategic plan to support and adopt a tobacco-licensing policy; providing technical assistance in the development of an ordinance; educating all tobacco retailers after the ordinance was passed; and monitoring compliance via underage buying surveys.

Activities specific to conducting the underage buying surveys included recruiting youth to assist in conducting the underage buying surveys and performing the surveys; conducting an educational campaign that includes contact with all retailers, and communication of the results of the underage buying surveys to the general public through print and radio media releases, to law enforcement agencies and to the District Attorney’s office.

\(^1\) California Department of Finance, January 2005.
The intervention had two phases; the first consisted of targeting the unincorporated areas of Mendocino County and the second was targeting the City of Ukiah for adoption of a tobacco-licensing ordinance. For each phase, educational materials regarding youth access to tobacco, youth smoking rates and the results of the local underage buying survey were provided and a sample policy was obtained from the Technical Assistance Legal Center (TALC). The TALC model policy was modified first for Mendocino County and then for the City of Ukiah by adding the appropriate local information. This strategy of targeting only areas perceived to be interested was used in order to focus limited resources and maximize the potential for success.

In each of the two areas that adopted a tobacco-licensing ordinance, press releases were developed to announce the new policy and recognize the Mendocino County Board of Supervisors and the Ukiah City Council, respectively. Letters were sent to tobacco retailers and tobacco retailer licenses were administered.

**EVALUATION METHODS**

**Evaluation Design**

The evaluation for this objective was two-fold. To evaluate the effectiveness of the policy-adoptions intervention, a baseline underage buying survey was conducted in year 1 of the project, then semi-annually in years 2 and 3 of the project period. These underage buying surveys also served to provide information useful when advocating for policy change with the Mendocino County Board of Supervisors and the Ukiah City Council as this pre- and post-intervention data provided evidence of tobacco being sold to underage youth.

Because of resource limitations, there were no pre-intervention interviews or a comparison group for the assessment of policy implementation. Instead, in the two areas that passed tobacco-licensing ordinances, process data, specifically key informant interviews, was collected post-intervention to determine the key elements that attributed to the successful adoption of the ordinance. Because multiple measurements were taken as part of this project, the evaluation design is quasi-experimental. More information on each of the surveys is provided in the following pages.

The major strength of the evaluation design is the collection of outcome data. Attempts to buy tobacco by underage youth provided evidence of the degree of youth access to tobacco in local communities in the pre-intervention phase and, in the post-intervention phase, evidence of implementation in the areas that adopted the tobacco-licensing ordinance. The collection of process data from interviews of city council members, district supervisors, etc., is another strength of this design; it helped the project learn which aspects of the intervention were particularly effective. The major limitation of this design is that policy adoption factors were only measured after the intervention was successful.

**Sampling, Data Collection, and Analysis**

Data were collected in all areas of Mendocino County for the underage buying surveys and the key informant interviews were conducted in the two areas that received the intervention. The
samples, data collection procedures, and data analyses for each method are described in detail in the following pages.

**Underage Buying Surveys - Observational Survey and Collection of Outcome Data.** To provide data pertinent to pre- and post-intervention activities, underage buying surveys were conducted. A baseline survey was conducted in the first year of the project; the survey was conducted semi-annually in project years 2 and 3. This information was relevant to pre-intervention activities and used to advocate for policy adoption. The same information was also used post-intervention to determine whether or not implementation of the tobacco-licensing ordinance had been successful at reducing youth access to tobacco.

**Sample Selection.** The entire population of tobacco retailers in Mendocino County was chosen to participate in each of the underage buying surveys. The size of the tobacco retailer population varied over the 3-year project period from n=93 in 2004 to n=115 in 2007, as did the net sample size, which varied from n=91 in 2004 to n=113 in 2007. For a more information, please see Table 1 below.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td># of Sites Surveyed</td>
<td>n=93</td>
<td>n=107</td>
<td>n=113</td>
<td>n=113</td>
<td>n=115</td>
</tr>
<tr>
<td># of Sites Not Surveyed</td>
<td>n=2</td>
<td>-</td>
<td>n=4</td>
<td>n=5</td>
<td>n=2</td>
</tr>
</tbody>
</table>

**Data Collection Instrument and Procedure.** The Youth Purchase Survey Data Form\(^2\), available at the Strategic Tobacco Retail Effort (S.T.O.R.E.) website, was used without modification for the underage buying surveys. All underage buying surveys were performed by one or two youth surveyors who were accompanied by an adult chaperone. An anonymous visit to the establishment was performed under the pretext of trying to buy cigarettes or smokeless tobacco. If the youth surveyor or adult chaperone became aware that they had been identified by the store clerk, any remaining site visits were rescheduled. For more information regarding the underage buying survey procedure, please see Table 2.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Day</td>
<td>Weekday 100%</td>
<td>Weekday 10%</td>
<td>Weekday 50%</td>
<td>Weekday 100%</td>
<td>Weekday 41%</td>
</tr>
<tr>
<td>Time</td>
<td>12 noon and 8 p.m.</td>
<td>12 noon and 8 p.m.</td>
<td>12 noon and 8 p.m.</td>
<td>12 noon and 8 p.m.</td>
<td>12 noon and 8 p.m.</td>
</tr>
</tbody>
</table>

\(^2\) A copy of the Youth Purchase Survey Data Form is provided in Appendix A.
After the observations were completed, staff entered the data into a database developed in Microsoft Access by Public Health’s IT staff. Data from the pre-intervention observations were used in presentations to the Mendocino County Board of Supervisors and the Ukiah City Council to describe the extent of the problem of underage youth having access to tobacco. Post-intervention data was used to assess the extent of compliance with the tobacco-licensing ordinance. Data on the underage buys were dichotomous: the youth were able to purchase tobacco or not. Data on signage was also analyzed as a yes/no variable, with “yes” indicating signs were present and “no” indicating that signs had not been observed.

Data from the underage buying surveys was analyzed by calculating frequencies and percentages for yes/no questions. Responses were analyzed for the unincorporated towns in Mendocino County, for the unincorporated areas of the four cities, and for the four incorporated cities, as well as combined for overall totals.

Key Informant Interviews and Collection of Process Data. Key informant interviews were conducted with various key stakeholders two months after the Mendocino County tobacco-licensing ordinance was passed and a month after the City of Ukiah’s ordinance was passed. Of the estimated 20 people directly involved in the passage of each ordinance - youth advocates, coalition members, community members, tobacco retailers and policy makers - the evaluator was able to interview seven people regarding the Mendocino County ordinance and six people vis-à-vis the City of Ukiah ordinance.

The key informant interviews were conducted by telephone. The questions, which were developed by the local evaluator, asked about key factors that contributed to the successful adoption of the policy; any barriers or opposition that emerged; and, if so, how it was overcome.

Content analysis of the open-ended responses was used to identify the key elements of the project’s intervention, and recommendations for the future.

Evaluation Results

Adoption and Implementation of Tobacco-Licensing Ordinances - Outcome Data. As shown in Table 3 on the next page, both of the areas that received the intervention adopted and implemented the tobacco-licensing policy by the end of the project period.

<table>
<thead>
<tr>
<th>INTERVENTION</th>
<th>POLICY ADOPTED?</th>
<th>DATE ADOPTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mendocino County - Unincorporated Areas⁴</td>
<td>YES</td>
<td>December 2004</td>
</tr>
<tr>
<td>City of Ukiah⁵</td>
<td>YES</td>
<td>November 2005</td>
</tr>
</tbody>
</table>

³ See Appendix B for a copy of the Key Informant Survey form.
⁴ A copy of the Mendocino County Tobacco Licensing Ordinance is provided in Appendix D.
⁵ A copy of the City of Ukiah’s Tobacco Licensing Ordinance is provided in Appendix E.
Underage Buying Surveys - Outcome Data. Figure 1 summarizes the percentage of stores that sold tobacco to minors over the 3-year project period 7/1/04 - 6/30/07. While there is some variation in sales rate, evident is a decline in the percentage of stores that sold tobacco to minors in the unincorporated areas of Mendocino County, from 63% at the 2004 baseline survey to 30% at the time of the 2007 survey. A similar decline is observed in the sales rate after adoption of the City of Ukiah’s tobacco-licensing ordinance in November 2005; there has been an overall decline in the buy rate from a high of 30% in 2005 to 17% in 2007. The underage buy rate artificially dropped during the 2006 survey. This was because of the repeated identification of the survey teams. Although the surveys were rescheduled numerous times over the course of months, the tobacco retailers were on alert of potential stings. Consequently, the sales rate was more representative of actual underage buying. More information regarding the underage buy rate is provided in Appendix C.6

As shown in Figure 2, there was some fluctuation in buy rate within the unincorporated areas of Mendocino County. Nonetheless, there was an overall decline in sales rate from 54% to 35% over the 3-year project; and a decline in the unincorporated area of Ukiah, from 55% to 18%. For more information regarding the buy rate in the incorporated areas of Mendocino County, please see Figure 3.

6 Important to note is that a tobacco-licensing ordinance was passed in the City of Willits in October 2003. Due to ongoing monitoring and enforcement activities by TCP, the sales rate to minors continues to decline, from 38% in 2004 to 6% in 2007.
ID Checking and Compliance With State and Local Signage Laws. In addition to attempting to buy cigarettes, the underage buyers also noted whether or not clerks asked for identification and whether or not tobacco retailers posted warning signs, e.g., “WE CARD.” Figure 4 shows that there was a decline from 88% to 84% in the number of stores with warning signs; an overall increase from 76% to 81% in the percentage of stores that checked IDs; and, as already noted, an overall decrease from 41% to 25% in the percentage of stores that sold tobacco to underage youth.

Process Results

Key Informant Interviews - Process Data. The responses to the key informant survey from the 13 total city council members, district supervisors, tobacco retailers, youth, community members and Tobacco Control Program staff were analyzed. A total of seven elements were identified and considered key to the adoption of the tobacco-licensing ordinances; these are summarized in Table 4 below.

<table>
<thead>
<tr>
<th>TABLE 4 - KEY ELEMENTS THAT CONTRIBUTED TO SUCCESSFUL POLICY ADOPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Relationships and Network</strong></td>
</tr>
</tbody>
</table>
The Tobacco Control Program and American Cancer Society have aligned missions and have worked together for years on various efforts. Ukiah Valley Medical Center is run by a religious group, the Seventh Day Adventists, and promotes healthy lifestyles. The American Cancer Society has a volunteer structure which results in the ability to tap a wider audience when necessary; the Tobacco Control Program trains youth advocates, the Peer Health Educators, to engage in policy work; the Ukiah Valley Medical Center has staff dedicated to cancer-prevention efforts.

The advocacy group was a diverse body composed of representation from the Tobacco Control Program and the American Cancer Society. Each member contributed unique experience that contributed to the success of the endeavor. For example, the American Cancer Society Director is experienced at doing policy work including developing white papers and coordinating presenters. The Tobacco Control Program staff conducted research on strategic planning and policy language, and provided technical assistance in terms of navigating the county system or city bureaucracy, as applicable. With respect to the City of Ukiah ordinance, the Advocacy Committee spent about 8 months meeting with the City Manager and City Attorney in an effort to build support for the tobacco-licensing ordinance. The City Manager, who was supportive of the policy adoption, met with city department heads in order to garner their buy-in. The ordinance was modified by city personnel, adding the city code and specifying in greater detail the grievance process thereby addressing the concerns regarding legality raised by the City Attorney.

There was an established history of keeping up with the underage buy surveys. Data was previously collected annually and during the 3-year project was collected semi-annually. This data indicated that the buy rate was consistently high in the unincorporated areas of Mendocino County and that it fluctuated dramatically for the incorporated area of Ukiah, i.e., sometimes it was high, sometimes it was low. The fluctuation in buy rate indicated a problem. Furthermore, research among other programs within California indicated that tobacco-licensing policies were effective at keeping tobacco out of the hands of youth. Finally, the recent tobacco buy survey indicated that an ordinance was successful at reducing the buy rate - the Willits results showed a decrease in underage tobacco sales from 46% in the spring of 2004 to 7% in July 2005. This data was very persuasive and helped “sell” the positive aspects of tobacco licensing for Mendocino County.

There were several champions of adopting the tobacco-licensing ordinance: 1) the ACS Director who is well known in the community and enjoys doing policy work, 2) the Tobacco Control Program Director who has relationships within the County, as well as the support of the Public Health Director, 3) the initial support of at least two Supervisors for the countywide ordinance; and the initial support of one City Councilmember for the city ordinance; and, of course, 4) the Coalition members focusing on tobacco-licensing policy adoption. Each of these champions was able to leverage their personal and professional relationships to help in the adoption of the ordinances.
Community Education and Involvement

There was an established history of communicating the survey results on an annual basis to local law enforcement, the Board of Supervisors, city councils, County Counsel, the media, etc. For the countywide policy, support was also solicited from various commissions and boards, such as FIRST 5 Mendocino, during the course of a year and which helped minimize opposition when the policy was finally presented. There was also coverage in the local print media as well, with an editorial discussing positively the need for a tobacco-licensing ordinance.

Policy Adoption

There were other factors that also contributed positively to the successful adoption of the tobacco licensing policy. First, tobacco-licensing policies were being adopted all over California, “so it was wasn’t as if we were the only ones doing this.” Second, the Tobacco Control Program provided technical assistance, coordinated logistics and helped navigate the county system or city bureaucracy, as appropriate. Third, the City of Willits had already implemented a tobacco-licensing policy and was beginning enforcement activities, which did not produce a public outcry. In fact, tobacco buy surveys reflected a reduction in sales rate from 46% to 7% in Willits as a result of its adoption of the ordinance. Fourth, the presentations were well balanced regarding the pros and cons of adopting such an ordinance, and the ordinance was modified in subcommittee based on feedback. A policy was presented which enabled the BOS and, subsequently, the City of Ukiah to be decisive. The Mayor of Willits presented to the Ukiah City Council and addressed its concerns about staff time and costs, eliminating the only barrier to policy adoption. Finally, the policy in and of itself made sense. It is difficult to argue with trying to stop illegal sales of tobacco to minors.

CONCLUSIONS AND RECOMMENDATIONS

TCP’s objective was met: the Mendocino County Board of Supervisors and the Ukiah City Council adopted and implemented policies requiring a license to sell tobacco products in the unincorporated areas of Mendocino County and in the City of Ukiah, respectively. It is clear that the intervention resulted in the decrease in the underage buy rate in these areas.

Lessons learned from this project and recommendations for future projects include the following:

♦ The two areas deemed likely to adopt and implement a tobacco-licensing policy were targeted for the intervention. The advantage of this method is that it increases the likelihood of a positive outcome and is less likely to waste resources.

♦ Conducting key informant interviews after successful implementation of the tobacco licensing ordinance with the Mendocino County Board of Supervisors during the first phase of the intervention was informative. Key informant interviews with the City of Ukiah during the second phase produced virtually identical results and raised the question of whether or not it was necessary. However, the key informant interviews indicated why the intervention was effective.
The preexisting personal, professional and working relationships among organizations that have similar missions contributed positively to moving the ordinance forward and building community support.

The fact that the City of Willits had already adopted a tobacco-licensing ordinance made evident that this was a policy that already had significant support and paved the way for the County of Mendocino, which subsequently paved the way for the City of Ukiah, to also adopt a tobacco-licensing ordinance.

The licenses of two Willits businesses were being suspended at the beginning of this project due to sales to underage youth, and there was no public outcry as a result. This made evident that this was a policy that made sense, even to business owners.

The two businesses included in the key informant interviews were not aware of the tobacco-licensing ordinance process before its adoption, as they received a letter afterward to apply for a license. It appears that lack of merchant outcry was helpful in getting this passed. It may also indicate that merchant buy-in is not a key factor in determining successful adoption.

Media support was important in getting the policy accepted by the public and helping the Mendocino County Board of Supervisors and the Ukiah City Council recognize that, because there was no public outcry, that there was sufficient support.

Because of the pre- and post-intervention data in the form of the underage buy surveys, the evidence of the effect of the policy on reducing access to minors was strong.

This project shows that City Councils and Boards of Supervisors are open to adopting and implementing tobacco-licensing policies as they reduce the availability of tobacco to minors. Future work should focus on getting tobacco licensing ordinances passed in the Cities of Fort Bragg and Point Arena. The lessons learned from this project would be useful in accomplishing this goal.
Youth Purchase Survey Data Form

Minor ID: ___________________ Accompanying adult: ___________________
Store Name: ___________________ Survey date: ____________
Address: _______________________ Time of visit: ____________

I. PURCHASE ATTEMPT

1. Sale outcome: ☐ Yes, a “sale” was made ☐ No, a “sale” was not made
2. Amount of sale: $__________
3. Type of tobacco attempted to purchase:
   ☐ Cigarettes ☐ Smokeless tobacco/chew ☐ Other (specify): ____________
   ☐ Gas station only ☐ Convenience (w/gas) ☐ Convenience (w/o gas)
   ☐ Tobacco stores ☐ Supermarket ☐ Drug store/pharmacy
   ☐ Liquor store ☐ Discount store ☐ Other (specify): ____________
4. Type of outlet:
   ☐ Gas station only ☐ Convenience (w/gas) ☐ Convenience (w/o gas)
   ☐ Tobacco stores ☐ Supermarket ☐ Drug store/pharmacy
   ☐ Liquor store ☐ Discount store ☐ Other (specify): ____________
5. Clerk characteristics: Gender: ☐ Male ☐ Female Approximate Age: ______
   Ethnicity: ☐ Caucasian ☐ African American ☐ Asian
   ☐ Hispanic/Latino ☐ Middle Eastern ☐ Other: ____________
   Brief description of clerk: _____________________________________________
6. How many other people were within 10 feet from where you were standing? Customers: ___ Clerks: ___
7. The tobacco you attempted to purchase was (choose only one):
   ☐ Requested from the clerk ☐ Self-service ☐ In a vending machine
8. When you attempted to purchase tobacco:
   Were you asked your age? ☐ Yes ☐ No
   Were you asked for an identification? ☐ Yes ☐ No
   Were you asked whom the tobacco product was for? ☐ Yes ☐ No

8a. If the youth was asked any of the above questions, indicate at which point in time the question was asked by placing a check mark in the corresponding box.
   After youth asked for tobacco product or placed tobacco product on the counter (before cashier rang up tobacco) Age ID Who is tobacco for?
   After cashier rang up tobacco product ☐ ☐ ☐
   Electronic prompt on cash register when tobacco product was rung up ☐ ☐ ☐
   After a customer comment ☐ ☐ ☐
   After comment from another clerk ☐ ☐ ☐
   Other (specify): ☐ ☐ ☐
II. OBSERVATIONS

10. Location of tobacco products in the store (check all that apply):

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Near cash register</th>
<th>Behind counter</th>
<th>Open shelves/racks in store/self-service area</th>
<th>Locked cases/enclosed (clerk access only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cartons</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Single packs</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Single cigarettes</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Kiddie packs</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Cigars</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Chewing tobacco</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Bidis</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Candy look alike</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

11. Location of signs stating that sales to minors are unlawful (check all that apply):

**FEDERAL, STATE AND LOCAL SIGNS:**

<table>
<thead>
<tr>
<th>Sign Type</th>
<th>Checkout counter</th>
<th>Tobacco display site</th>
<th>Doors/windows</th>
<th>Other (specify)</th>
</tr>
</thead>
<tbody>
<tr>
<td>STAKE Act sign</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>1-800-5ASK4ID</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Penal code 308</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>FDA signs</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Other (specify)</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

**TOBACCO INDUSTRY SIGNS:**

<table>
<thead>
<tr>
<th>Sign Type</th>
<th>Checkout counter</th>
<th>Tobacco display site</th>
<th>Doors/windows</th>
<th>Other (specify)</th>
</tr>
</thead>
<tbody>
<tr>
<td>If You Ask/We Ask</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>It’s the Law</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>We CARD</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Support the Law: It Works</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Other (specify)</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

12. Comments and additional observations: ___________________________________________________________
**APPENDIX B**

Mendocino County Health & Human Services Agency Public Health Branch

**Tobacco Licensing Policy Adoption and Implementation**

**KEY INFORMANT SURVEY**

Date__________________________

Name_________________________________________________________________ Title__________________________

1. **Background**—when did you get involved with the Tobacco Licensing Policy Adoption and Implementation for the (Unincorporated Areas of Mendocino County or the City of Ukiah) and why? (Coalition? Subcommittee? Concerned Citizen?)

2. What do you think contributed to the **successful adoption** of the Tobacco Licensing Policy by the Board of Supervisors in December, 2004?

3. Was there opposition to adoption of the policy or any barriers that threatened its adoption?

4. If so, how were these **barriers or opposition overcome**?

5. Anything else about the successful adoption of the Tobacco Licensing Policy that stood out for you?

• • • • • • • • • • • • • •
### APPENDIX C

#### SUMMARY DATA

<table>
<thead>
<tr>
<th>Unincorporated Areas of Mendocino County</th>
<th>August - November 2004</th>
<th>July 2005</th>
<th>February - May/ August 2006</th>
<th>August - November 2006</th>
<th>May - June 2007</th>
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<td># of Stores Sold</td>
<td>Sales Rate</td>
<td># of Stores Surveyed</td>
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<tr>
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<td>-</td>
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<td>1 1 1 1 100%</td>
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<td></td>
</tr>
<tr>
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</tr>
<tr>
<td>Talmao</td>
<td>-</td>
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<td>10 8 10 2 20%</td>
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<tr>
<td>Willits Uninc.</td>
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<tr>
<td><strong>Subtotal</strong></td>
<td>38 22 34 24 63%</td>
<td>55 44 50 23 42%</td>
<td>53 47 46 8 15%</td>
<td>53 36 39 13 25%</td>
<td>56 44 46 17 30%</td>
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<tr>
<td><strong>Incorporated Areas of Mendocino County</strong></td>
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<td>14 10 12 4 29%</td>
<td>15 15 14 3 20%</td>
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<td>15 14 12 5 33%</td>
</tr>
<tr>
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<td>2 1 1 1 1 100%</td>
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<td>26 23 21 3 12%</td>
<td>25 15 20 4 16%</td>
<td>24 19 21 4 17%</td>
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<tr>
<td>Ukiah</td>
<td>13 12 8 5 38%</td>
<td>14 14 14 1 7%</td>
<td>13 10 9 1 8%</td>
<td>14 11 12 3 21%</td>
<td>16 14 15 1 6%</td>
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<tr>
<td><strong>Subtotal</strong></td>
<td>53 47 46 13 25%</td>
<td>52 42 48 13 25%</td>
<td>56 50 45 7 13%</td>
<td>55 41 45 9 16%</td>
<td>57 48 49 11 19%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>91 69 80 37 41%</td>
<td>107 86 98 36 34%</td>
<td>109 97 91 15 14%</td>
<td>108 77 84 22 20%</td>
<td>113 92 95 28 25%</td>
</tr>
</tbody>
</table>
APPENDIX D

TOBACCO RETAIL LICENSING ORDINANCE – MENDOCINO COUNTY

ORDINANCE NO. 4135

ORDINANCE OF THE BOARD OF SUPERVISORS

ADDING CHAPTER 6.20 TO THE MENDOCINO COUNTY CODE

PROVIDING FOR THE LICENSURE

OF TOBACCO RETAILERS

The Board of Supervisors of the County of Mendocino ordains as follows:

“SECTION I. FINDINGS AND DECLARATIONS:

The Board of Supervisors of the County of Mendocino hereby finds and declares as follows:

WHEREAS, state law prohibits the sale or furnishing of cigarettes, tobacco products
and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of
Tobacco products by minors (Penal Code §308); and

WHEREAS, state law requires that tobacco retailers check the identification of
tobacco purchasers who reasonably appear to be under 18 years of age (Business &
Professions Code §22956) and provides procedures for using persons under 18 years
of age to conduct onsite compliance checks of tobacco retailers (Business &
Professions Code §22952); and

WHEREAS, state law requires that tobacco retailers post a conspicuous notice at
each point of sale stating that selling tobacco products to anyone under 18 years of age
is illegal (Business & Professions Code §22952, Penal Code §308); and

WHEREAS, state law prohibits the sale or display of cigarettes through a self-
service display and prohibits public access to cigarettes without the assistance of a
clerk (Business & Professions Code §22962); and

WHEREAS, state law prohibits the sale of “bidis” (hand-rolled filterless cigarettes
imported primarily from India and Southeast Asian countries) except in adult-only
establishments (Penal Code §308.1); and

WHEREAS, state law prohibits the manufacture, distribution, or sale of cigarettes in
packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-
your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Penal
Code §308.3); and
WHEREAS, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Education Code §48901(a)); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates. Each year, an estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry $480 million in profits from underage smokers; and

WHEREAS, in a 2001 California youth-buying survey, 17.1% of retailers surveyed unlawfully sold tobacco product to minors; and

WHEREAS, within the County of Mendocino, a youth-buying survey in 2003 showed that over 54% of retailers unlawfully sold tobacco products to minors in the unincorporated areas of the County; and

WHEREAS, 88% of adults who have ever smoked tried their first cigarette by the age of 18 and the average age at which smokers try their first cigarette is 14½; and

WHEREAS, the County of Mendocino has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as Cohen v. Board of Supervisors, 40 Cal. 3d 277 (1985), and Bravo Vending v. City of Rancho Mirage, 16 Cal. App. 4th 383 (1993), have affirmed the power of the cities and counties to regulate business activity in order to discourage violations of law; and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the County of Mendocino to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

NOW THEREFORE, it is the intent of the Board of Supervisors of the County of Mendocino, in enacting this ordinance, to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided therefore.

SECTION II. A new Chapter 6.20 entitled “Licensure of Tobacco Retailers” is hereby added to the Mendocino County Code and shall provide as follows:
CHAPTER 6.20

LICENSURE OF TOBACCO RETAILERS

6.20.010 DEFINITIONS. The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “Department” means the County Health Department or the duly authorized designee of the County Health Department.

(b) “Grievance Committee” means a Committee of three persons appointed by the Director of Public Health to hear appeals filed pursuant to the provisions of this Chapter. One member shall be an employee of the Public Health Department, one member shall be a member of the Public Health Advisory Board and one member shall be affiliated with the American Cancer Society. Grievance Committee members serve at the will and pleasure of the Director of Public Health.

(c) “Person” shall mean any person, firm, partnership, trust, estate, association, corporation, or organization of any kind. Where a principal acts through an agent, the word “person” shall include both such principal and agent.

(d) “Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(e) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or Tobacco Products; “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco or Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

6.20.020 REQUIREMENT FOR TOBACCO RETAILER LICENSE.

(a) It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this Chapter for each location at which that activity is to occur. No license may issue to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from vehicles is prohibited.

(b) The payment of the license fee designated in Section 6.20.060 confers paid status upon a license for a term of one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer’s license no later than thirty (30) days prior to expiration of the payment term.

(c) Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer’s license any status or right other than the right to act as a Tobacco Retailer at the location in the County of Mendocino identified on the face of
the permit. For example, nothing in this Chapter shall be construed to render
inapplicable, supersede, or apply in lieu of any other provision of applicable law,
including, without limitation, any condition or limitation on smoking in enclosed places of
employment made applicable to business establishments by Labor Code §6404.5.

6.20.030 APPLICATION PROCEDURE. Application for a Tobacco Retailer’s license
shall be submitted in the name of each Person proposing to conduct retail tobacco sales
and shall be signed by each Person or an authorized agent thereof. It is the
responsibility of each Person to be informed of the laws affecting the issuance of a
Tobacco Retailer’s license. A license that is issued in error or on the basis of false or
misleading information supplied by a Person may be revoked pursuant to Section
6.20.090(c) of this Chapter. All applications shall be submitted on a form supplied by
the Department and shall contain the following information:

1. The name, address, and telephone number of each Person.

2. The business name, address, and telephone number of each location for which a
Tobacco Retailer’s License is sought.

3. The name and mailing address authorized by each Person to receive all license-
related communications and notices (the “Authorized Address”). If an Authorized
Address is not supplied, each Person shall be understood to consent to the provision
of notice at the business address specified pursuant to subparagraph 2 above.

4. Whether or not any Person has previously been issued a license pursuant to this
Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the
suspension period or the date of revocation.

5. Such other information as the Department deems necessary for the
administration or enforcement of this ordinance.

6.20.040 ISSUANCE OF LICENSE. Upon the receipt of an application for a Tobacco
Retailer’s license, the Department shall issue a license unless substantial record
evidence demonstrates one of the following bases for denial:

(a) the application seeks authorization for Tobacco Retailing by a Person for which or
whom a suspension is in effect pursuant to Section 6.20.090 of this Chapter; or by a
Person which or who has had a license revoked pursuant to Section 6.20.090 of this
Chapter.

6.20.050 DISPLAY OF LICENSE. Each license shall be prominently displayed in a
publicly visible location at the licensed premises.

6.20.060 FEE FOR LICENSE. The fee to issue or to renew a Tobacco Retailer’s
license shall be established by resolution of Board of Supervisors of the County of
Mendocino.
6.20.070 LICENSES NONTRANSFERABLE. A Tobacco Retailer’s license is nontransferable. If the information required in the license application pursuant to Section 6.20.030, items 1, 2, or 3, changes, Tobacco Retailer must notify the Department within 14 days, and update all information on the license application form in order to continue to act as a Tobacco Retailer. For example, if a Tobacco Retailer to whom a license has been issued changes business location, that Tobacco Retailer must supply updated license information within 14 days of acting as a Tobacco Retailer at the new location. If a business is sold, the new owner must apply for a license for that location before acting as a Tobacco Retailer. The current licensee shall notify the Department of the Sales of the business.

6.20.080 LICENSE VIOLATION.

(a) VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a Tobacco Retailer’s license for a Person or his or her agent or employee to violate any local, state, or federal tobacco-related law.

(b) LICENSE COMPLIANCE MONITORING. The County anticipates that compliance checks of each Tobacco Retailer will be conducted at least 2 times during each twelve-month period by the Department, County shall not enforce any tobacco-related minimum-age law against a person who otherwise would be in violation of such law because of the person’s age (hereinafter “youth decoy”) if the violation occurs when:

1. the youth decoy is participating in a compliance check supervised by a law enforcement official, a code enforcement official, or any peace officer; or

2. the youth decoy is participating in a compliance check funded or supervised in part by County or, funded or supervised in any part by the California Department of Health Services.

6.20.090 SUSPENSION, TERMINATION OR REVOCATION OF LICENSE.

(a) SUSPENSION, TERMINATION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a Tobacco Retailer’s license shall be suspended or revoked if the Department finds, after notice to the Person and opportunity to be heard, that the Person or his or her agents or employees has or have violated the requirements of this Ordinance or other conditions of the license imposed pursuant to Section 6.20.080 above. A person who loses his license for one location does not lose it for all locations if those locations are in compliance with this Chapter, and may renew licenses for other conforming locations. A person cannot obtain a new license for a new location so long as there is a suspension in effect for any location.

(1) Upon a finding by the Department of a first license violation within any thirty-six (36) month period, the license shall be suspended for fourteen (14) days. However, prior to imposing the suspension, the Department shall by letter advise the Person that if Person trains all sales employees at the location of the sale in the laws pertaining to the sale of tobacco products to minors and techniques to ensure future compliance with said laws the suspension will not go into effect. Person must file
with the Department, within 30 days of the issuance of the letter advising Person of this, an affidavit signed by Person and the sales employees that said training has been completed. If Person fails to timely submit the affidavit, the Department shall notify Person that the permit is suspended for 14 days.

(2) Upon a finding by the Department of a second license violation within any thirty-six (36) month period, the license shall be suspended for twenty-one (21) days.

(3) Upon a finding by the Department of a third license violation within any thirty-six month (36) period, the license shall be suspended for thirty (30) days.

(4) Upon a finding by the Department of a fourth license violation within any thirty-six (36) month period, the license shall be revoked and the Person or Persons who had been issued the license shall not be issued a Tobacco Retailer’s license pursuant to this Chapter for a period of three (3) years from the date of revocation.

(b) TERMINATION OF LICENSE FOR FAILURE TO PAY RENEWAL FEES. A Tobacco Retailer’s license that is not timely renewed pursuant to §6.20.020(b) shall automatically be deemed terminated by operation of law.

(c) REVOCATION OF LICENSE ISSUED IN ERROR. A Tobacco Retailer’s license shall be revoked if the Department finds, after notice and opportunity to be heard, that one or more of the bases for denial of a license under §6.20.040 existed at the time application was made or at anytime before the license issued. The revocation shall be without prejudice to the filing of a new application for a license.

(d) APPEAL OF SUSPENSION OR REVOCATION. A decision of the Department to revoke or suspend a license is appealable to the Grievance Committee of the County of Mendocino and must be filed with the Department within ten (10) calendar days of personal service of the notice of the decision on the Person or Persons subject to the decision or within fifteen (15) calendar days if the Person or Persons subject to the decision are served by mail. An appeal shall stay all proceedings in furtherance of the appealed action. A suspension or revocation pursuant to Section 6.20.090(b) is not subject to appeal.

(e) LICENSE SUSPENSION REQUIRES THE REMOVAL OF ALL TOBACCO PRODUCTS FROM PUBLIC VIEW. Tobacco retailers whose license is suspended must remove from public view all tobacco products and tobacco advertising for the duration of their suspension. Failure to remove such items pursuant to this section from view will be regarded as a violation of this ordinance equivalent to that of selling to minors.

(f) REVOCATION OF LICENSE OBTAINED UNDER FALSE PRETENSES. Tobacco Retailers whose license is obtained under false pretenses shall have that license revoked. This revocation shall be with prejudice to one calendar year must elapse between any revocation pursuant to this subsection and any subsequent application.

6.20.100 ADMINISTRATIVE FINE.
(a) GROUNDS FOR FINE. If the Department finds, based on substantial record evidence, that any unlicensed person, including a person named on a revoked or suspended license, has engaged in Tobacco Retailing in violation of this Chapter, the Department shall fine that Person as follows:

1. a fine not exceeding one hundred dollars ($100) for a first violation in any thirty-six (36) month period; or

2. a fine not exceeding two hundred dollars ($200) for a second violation in any thirty-six (36) month period; or

3. a fine not exceeding five hundred dollars ($500) for a third or subsequent violation in any thirty-six (36) month period.

Each day that such a Person engages in Tobacco Retailing shall constitute a separate violation.

(b) NOTICE OF VIOLATION. A notice of violation and of intent to impose a fine shall be personally served on, or sent by certified mail to, the Person or Persons subject to the fine. The notice shall state the basis of the Department’s determinations and include an advisement of the right to request a hearing to contest the fine. Any request for a hearing must be in writing and must be received by the Department within ten (10) calendar days of personal service of the notice on the Person or Persons subject to a fine or within fifteen (15) calendar days if the Person or Persons subject to a fine are served by mail.

(c) IMPOSITION OF FINE. If no request for a hearing is timely received, the Department’s determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) calendar days of written demand made in the manner specified above for a notice of violation. If the fine is not paid within that time, the fine may be collected, along with interest at the legal rate, in any manner provided by law. In the event that a judicial action is necessary to compel payment of the fine and accumulated interest, the Person or Persons subject to the fine shall also be liable for the costs of the suit and attorney’s fees incurred by the County in collecting the fine.

(d) NOTICE OF HEARING. If a hearing is requested pursuant to subsection (b) of this section, the Department shall provide written notice, within forty-five (45) calendar days of its receipt of the hearing request, to the Person or Persons subject to a fine of the date, time, and place of the hearing in the manner specified above for a notice of violation.

(e) HEARING DECISION. The chairperson of the Grievance Committee shall render a written decision and findings within twenty (20) working days of the hearing. Copies of the decision and findings shall be provided to the Person or Persons subject to a fine in the manner specified above for a notice of violation.
(f) FINALITY OF THE GRIEVANCE COMMITTEE’S DECISION. The decision of the Grievance Committee shall be the final decision of the County.

(g) APPEAL TO SUPERIOR COURT OF LIMITED JURISDICTION. Notwithstanding the provisions of §1094.5 or §1094.6 of the Code of Civil Procedure, within twenty (20) days after personal service of the Grievance Committee’s decision and findings, or within twenty-five (25) days if served by mail, any Person subject to a fine may seek review of the hearing officer's decision and findings by the Superior Court of limited jurisdiction. A copy of the notice of appeal to the Superior Court shall be timely served in person or by first-class mail upon the Department by the contestant. The appeal shall be heard de novo, except that the contents of the Department’s file in the case shall be received in evidence. A copy of the records of the Department of the notices of the violation and of the Grievance Committee’s decision and findings shall be admitted into evidence as prima facie evidence of the facts stated therein.

(h) FAILURE TO PAY FINE. If no timely notice of appeal to the Superior Court is filed, or the Department is not timely served with a copy of a notice of appeal, the Grievance Committee’s decision and findings shall be deemed confirmed and the fine shall be collected pursuant to subsection (c) of this Section.

6.20.110 ENFORCEMENT. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

(a) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation.

(b) In addition to the administrative enforcement procedures provided by §6.20.090 of these Chapter violations of this ordinance may, at the discretion of the District Attorney, be prosecuted as misdemeanors.

(c) Violations of this ordinance are hereby declared to be public nuisances.

(d) Violations of this ordinance are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.

(e) In addition to other remedies provided by this Chapter or by other law, any violation of this ordinance may be remedied by a civil action brought by the County Counsel or the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(f) Any Person acting for the interests of itself, its members, or the general public may bring an action for injunctive relief to prevent future such violations or to recover such actual damages as he or she may prove.

6.20.120 SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or
circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Board of Supervisors of the County of Mendocino hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION III. EFFECTIVE DATE, PUBLICATION. The Clerk of the Board shall publish this Ordinance as required by law. This Ordinance shall take effect thirty (30) days after passage.”

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this __7th__ day of ___December___, 2004, by the following roll call vote:

AYES: Supervisors Shoemaker, Campbell, Colfax, Wagenet
NOES: Supervisor Delbar
ABSENT: None
WHEREUPON, the Chairman declared the Ordinance passed and adopted and SO ORDERED.

_____________________________
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST: KRISTI FURMAN
Clerk of Said Board

By: _______________________
Deputy

APPROVED AS TO FORM:

H. PETER KLEIN, County Counsel

By: _______________________

APPENDIX E

TOBACCO RETAIL LICENSING ORDINANCE – UKIAH, Mendocino County

ORDINANCE NO. 1072

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH ADDING A NEW ARTICLE 7, ENTITLED “TOBACCO RETAILERS” TO DIVISION 1, ARTICLE 2 OF THE UKIAH CITY CODE

The City Council of the City of Ukiah ordains as follows:

SECTION ONE. FINDINGS AND DECLARATION OF INTENT:

The City Council of the City of Ukiah hereby finds and declares as follows:

1. Penal Code Section 308 prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors.

2. Business & Professions Code Sections 22952 and 22956 require that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age and provide procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers.

3. Business & Professions Code Section 22952 and Penal Code Section 308 require that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 18 years of age is illegal.

4. Business & Professions Code Section 22962 prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk.

5. Penal Code Section 308.1 prohibits the sale of “bidis” (hand-rolled filterless cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments.

6. Penal Code Section 308.3 prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco.

7. Education Code Section 48901(a) prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees.
8. Despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates.

9. A survey in 2004 of the ability of minors to buy tobacco products in the City of Ukiah showed that 41% of City retailers unlawfully sold tobacco products to minors.

10. 88% of adults who have ever smoked tried their first cigarette by the age of 18 and the average age at which smokers try their first cigarette is 14½.

11. The City of Ukiah has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

12. The California courts in such cases as Cohen v. Board of Supervisors, 40 Cal. 3d 277 (1985), and Bravo Vending v. City of Rancho Mirage, 16 Cal. App. 4th 383 (1993), have affirmed the power of the cities and counties to regulate business activity in order to discourage violations of law.

13. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City of Ukiah to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

14. It is the intent of the City Council of the City of Ukiah, in enacting this ordinance, to monitor progress in preventing minors from purchasing tobacco products, to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties imposed for the violation of such laws.

SECTION TWO. A new Article 7, entitled “Tobacco Retailers” is hereby added to Article 2, Division 1 of the Ukiah City Code to read as follows.

ARTICLE 2

SPECIAL BUSINESS REGULATIONS

ARTICLE 7. TOBACCO RETAILERS

§2350: Definitions
§2351: License Requirements
§2352: Application Procedure
§2353: Issuance of License
§2354: Display of License
§2355: License Fee
§2356: License Not Transferable
§2357: License Violation
§2358: Suspension, Termination or Revocation
§2359: Administrative Fine
§2360: Grievance Committee hearing
§2361: Enforcement

§2350: DEFINITIONS: The following words and phrases, whenever used in this article, shall have the meaning provided in this section unless the context clearly requires otherwise:

(a) “Appellant” means a Person who appeals a Department decision to the Grievance Committee.

(b) “Department” means the City Manager and/or the duly authorized designee of the City Manager.

(c) “Grievance Committee” means a Committee of two (2) persons, one City Council member, selected by the City Council, and one City employee selected by the City Manager. No member of the Committee shall have participated in a decision appealed to the Committee.

(d) “Person” shall mean any natural person, firm, partnership, trust, estate, association, corporation, or organization of any kind. Where a principal acts through an agent, the word “person” shall include both such principal and agent.

(e) “Tobacco Product” means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(f) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or Tobacco Products. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco or Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

§2351: REQUIREMENT FOR TOBACCO RETAILER LICENSE:

(a) It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this Article for each location at which that activity is to occur. No license may issue to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from vehicles are prohibited.

(b) The term of a license is one year from January 1\textsuperscript{st} through December 31\textsuperscript{st} unless earlier suspended, terminated or revoked pursuant to Section 2358. Each
Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer’s license no later than thirty (30) days prior to its expiration.

(c) Nothing in this Article shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer’s license any status or right other than the right to act as a Tobacco Retailer at the location in the City of Ukiah identified on the face of the license. For example, nothing in this Article shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by Labor Code §6404.5.

§2353: **APPLICATION PROCEDURE:** Application for a Tobacco Retailer’s license shall be submitted in the name of each Person proposing to conduct retail tobacco sales and shall be signed by each Person or an authorized agent thereof. It is the responsibility of each Person to be informed of the laws affecting the issuance of a Tobacco Retailer’s license. A license that is issued in error or on the basis of false or misleading information supplied by a Person may be revoked pursuant to Section 2358. All applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, and telephone number of each Person.

2. The business name, address, and telephone number of each location for which a Tobacco Retailer’s License is sought.

3. The name and mailing address authorized by each Person to receive all license-related communications and notices (the “Authorized Address”). If an Authorized Address is not supplied, each Person shall be understood to consent to the provision of notice at the business address specified pursuant to subparagraph 2 above.

4. Whether or not any Person has previously been issued a license pursuant to this Article that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

5. Such other information as the Department deems necessary for the administration or enforcement of this Article.

§2353: **ISSUANCE OF LICENSE:** Upon the receipt of an application for a Tobacco Retailer’s license and the license fee, the Department shall issue a license, unless:

(a) the application is incomplete or inaccurate; or

(b) the application seeks authorization for Tobacco Retailing by a Person for which or whom a suspension is in effect pursuant to Section 2358, or by a Person which or who has had a license revoked pursuant to Section 2358.
§2354: **DISPLAY OF LICENSE:** Each license shall be prominently displayed in a publicly visible location at the licensed premises.

§2355: **LICENSE FEE:** The fee to issue or to renew a Tobacco Retailer's license shall be established by resolution of City Council.

§2356: **LICENSES NOT TRANSFERABLE:** A Tobacco Retailer's license is not transferable. If the information required in the license application pursuant to 2353, items 1, 2, or 3 changes, the Tobacco Retailer must notify the Department within 14 days, and update all information on the license application form in order to continue to act as a Tobacco Retailer. For example, if a Tobacco Retailer to whom a license has been issued changes business location, that Tobacco Retailer must supply updated license information within 14 days of acting as a Tobacco Retailer at the new location. If a business is sold, the new owner must apply for a license for that location before acting as a Tobacco Retailer. The current licensee shall notify the Department of the sale of the Tobacco Retailing business.

§2357: **LICENSE VIOLATION:**

(a) **VIOLATION OF TOBACCO-RELATED LAWS.** It shall be a violation of a Tobacco Retailer's license for a Person or his or her agent or employee to violate any local, state, or federal tobacco-related law.

(b) **LICENSE COMPLIANCE MONITORING.** The City of Ukiah anticipates that compliance checks of each Tobacco Retailer will be conducted at least two times during each twelve-month period by the Mendocino County Public Health Department. The City shall not enforce any tobacco-related minimum-age law against a person who otherwise would be in violation of such law because of the person's age (hereinafter "youth decoy") if the violation occurs when:

   1. the youth decoy is participating in a compliance check supervised by a law enforcement official, a code enforcement official, or any peace officer; or

   2. the youth decoy is participating in a compliance check funded or supervised in part by the County of Mendocino or, funded or supervised in any part by the California Department of Health Services.

§2358: **SUSPENSION, TERMINATION OR REVOCATION OF LICENSE:**

(a) **SUSPENSION, TERMINATION OR REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a Tobacco Retailer's license may be suspended or revoked, if the Department determines that the Person or his or her agents or employees have violated the requirements of this Article or other conditions of the license imposed pursuant to Section 2357. A Person who loses his license for one location does not lose it for all locations, if those locations are in compliance with this Article, and may renew licenses for other conforming locations. A
Person cannot obtain a new license for a new location so long as there is a suspension in effect for any location.

(1) NOTICE REQUIRED. The licensee shall be served with written notice of all determinations or decisions under this Section affecting his or her license. Notice shall be served by personal service, overnight courier, certified mail return receipt requested, or U.S. Mail with First Class postage affixed. The notice shall be sent to the Authorized Address. All notices shall be deemed served, when received, except for notices sent by first class mail which shall be deemed served two days after deposit in the U.S. Mail if addressed to a location within Mendocino County and five days if addressed to a location outside Mendocino County. The notice shall describe the legal and factual basis for the decision. A decision imposing a fine shall specify the amount of the fine. A decision to suspend or revoke a license shall specify the beginning and ending dates of the suspension or the effective date of the revocation. No decision shall become effective in less than 10 days from the date of service.

(2) DURATION OF SUSPENSIONS.

i. Upon a finding by the Department of a first license violation within any thirty-six (36) month period, the license shall be suspended for fourteen (14) days. However, prior to imposing the suspension, the Department shall by letter (an “Advice Letter”) advise the Person that if Person trains all sales employees at the location of the sale in the laws pertaining to the sale of tobacco products to minors and techniques to ensure future compliance with said laws, the suspension will not go into effect. Within 30 days of the issuance of the Advice Letter, the Person must file with the Department an affidavit signed by the Person and the sales employees that said training has been completed. If the Person fails to timely submit the affidavit, the Department shall notify the Person that the permit is suspended for 14 days.

ii. Upon a finding by the Department of a second license violation within any thirty-six (36) month period, the license shall be suspended for twenty-one (21) days.

iii. Upon a finding by the Department of a third license violation within any thirty-six month (36) period, the license shall be suspended for thirty (30) days.

iv. Upon a finding by the Department of a fourth license violation within any thirty-six (36) month period, the license shall be revoked and the Person or Persons who had been issued the license shall not be issued a Tobacco Retailer’s license pursuant to this Article for a period of three (3) years from the date of revocation.

(b) FAILURE TO PAY RENEWAL FEES. A Tobacco Retailer’s license which is not timely renewed pursuant to Section 2352(b) is an expired license. The Tobacco
Retailer shall not engage in Tobacco Retailing at the licensed location until a new license has been issued for that location.

(c) REVOCATION OF LICENSE ISSUED IN ERROR. A Tobacco Retailer’s license shall be revoked if the Department determines that one or more of the bases for denial of a license under Section 2353 existed at the time application was made or at anytime before the license issued. The revocation shall be without prejudice to the filing of a new application for a license.

(d) LICENSE SUSPENSION REQUIRES THE REMOVAL OF ALL TOBACCO PRODUCTS FROM PUBLIC VIEW. A Tobacco Retailer whose license is suspended must remove from public view all Tobacco Products and tobacco advertising for the duration of the suspension. Failure to remove such items from view will be regarded as a violation of this ordinance equivalent to that of selling to minors.

(e) REVOCATION OF LICENSE OBTAINED UNDER FALSE PRETENSES. Tobacco Retailers whose license is obtained under false pretenses shall have that license revoked. A licensee whose license is revoked pursuant to this subsection may not apply for a new license for a period of one year from the date the license is revoked.

§2359: ADMINISTRATIVE FINE.

(a) GROUNDS FOR FINE. If the Department determines that any unlicensed person, including a person named on a revoked or suspended license, has engaged in Tobacco Retailing in violation of this Article, the Department shall fine that Person as follows:

1. a fine not exceeding one hundred dollars ($100) for a first violation in any thirty-six (36) month period; or

2. a fine not exceeding two hundred dollars ($200) for a second violation in any thirty-six (36) month period; or

3. a fine not exceeding five hundred dollars ($500) for a third or subsequent violation in any thirty-six (36) month period.

Each day that such a Person engages in Tobacco Retailing shall constitute a separate violation.

(b) IMPOSITION OF FINE. If no request for a hearing is timely received in accordance with Section 2360, the Department’s determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) days after notice of the fine was served in accordance with Subsection 2358(a)(1). If the fine is not paid within that time, the fine may be collected, along with interest at the legal rate, in any manner provided by law. In the event that a judicial action is necessary to compel payment of the fine and accumulated interest, the Person or Persons subject to the fine shall also be liable for the costs of the suit and attorney’s fees incurred by the City in collecting the fine.
§2360: GRIEVANCE COMMITTEE APPEALS:

(a) APPEAL OF FINE, SUSPENSION OR REVOCATION. A decision of the Department to impose a fine or to revoke or suspend a license may be appealed to the Grievance Committee. The Appellant must file a written notice of appeal with the Department within ten (10) days after service of the notice of the decision. Failure to file a timely notice of appeal waives any right to further challenge the Department’s decision. “File” means delivered to the City Manager’s office in the Ukiah Civic Center at 300 Seminary Ave., Ukiah, CA. The filing of a notice of appeal automatically stays the Department’s decision, until the Grievance Committee has served its final decision on the appeal. The Committee may reverse, modify or uphold the Department’s decision.

(b) NOTICE OF HEARING. If a notice of appeal is timely filed, the Department shall provide written notice to the Appellant of the date, time, and place of the hearing in the manner specified in Subsection 2358(a)(1). A hearing may not be conducted less than twenty (20) days after notice is given to the Appellant.

(c) HEARING. The Grievance Committee may adopt rules governing the conduct of its hearings. Those rules shall include, at least, the following:

1. The Department shall submit evidence at the hearing substantiating its decision. Such evidence may include testimony, police or other reports of the incident, witness statements and other documents. Not less than 10 days prior to the scheduled hearing, the Department must notify the Appellant of the name, address and phone number of any witness to the violation, and furnish Appellant with a copy of any document it intends to submit at the hearing. Not less than seven (7) days prior to the hearing, the Appellant may request the Department to produce at the hearing any witness the Department intends to rely upon to substantiate the violation. The written request must name the witness or witnesses who are requested to attend the hearing. The Department may not rely on the testimony of any witness (including such testimony contained in reports or written witness statements) whose appearance at the hearing is required by this subsection, if that witness fails to appear.

2. Not less than 10 days prior to the hearing, the Appellant must notify the Department in writing of the name, address and phone number of any witness the Appellant intends to call as a witness at the hearing, provide a brief description of the proposed testimony, and furnish the Department with a copy of any document the Appellant intends to offer as evidence at the hearing. The Appellant may not call any witness to testify at the hearing who was not identified as required by this subsection or offer any document as evidence at the hearing that was not provided to the Department as required by this subsection.

3. At the hearing, the Appellant may be represented by an attorney, at Appellant’s expense. Both the Department and the Appellant shall have the right to examine and cross-examine any witness produced at the hearing. The rules of evidence that normally apply in court shall not apply in a hearing before the Committee, but the Grievance Committee shall only consider evidence which would be relied upon
by reasonable people making an important decision, and shall disregard evidence which
by its nature is unreliable or not credible.

4. The entire hearing shall be electronically or stenographically recorded. The
Grievance Committee shall base its decision exclusively on the evidence presented at
the hearing and shall issue a written decision, which includes a statement of the
relevant facts which the Committee finds to be true and explains how the facts support
its decision. For example, if the Department finds that the Appellant sold cigarettes to a
minor, but this was the first violation committed by the Appellant within 36 months, the
decision would explain that Section 2358(a)(2)i requires a 14 day suspension of the
Appellant’s license to sell Tobacco Products at the licensed location, and on that basis
the facts support a 14 day suspension of the license for that location. The record of the
hearing shall be preserved for not less than six months after the decision is served on
the Appellant.

(d) HEARING DECISION. The chairperson of the Grievance Committee shall
issue the written decision required by subsection 4, above. Copies of the decision shall
be served in accordance with Subsection 2358(a)(1). The hearing decision shall include
notice of the Appellant’s right to seek review of the decision pursuant to California Code
of Civil Procedure Section 1094.5 and 1094.6, including the statute of limitations for
seeking review pursuant to Section 1094.6.

(a) FINALITY OF THE GRIEVANCE COMMITTEE’S DECISION. The
decision of the Grievance Committee shall be the final decision for the City of Ukiah.

(b) APPEAL TO SUPERIOR COURT. Judicial review of the Grievance
Committee’s decision shall be governed by the Code of Civil Procedure Sections 1094.5
and 1094.6.

(c) ENFORCEMENT OF DECISION. Unless stayed by a court, any final
decision of the Grievance Committee is effective immediately and may be implemented
and enforced by the Department.

2361: ENFORCEMENT. The remedies provided by this Article are cumulative
and in addition to any other remedies available at law or in equity.

(a) Causing, permitting, aiding, abetting, or concealing a violation of any
provision of this ordinance shall constitute a violation.

(b) Violations of this Article are hereby declared to be public nuisances.

(c) Violations of this Article are hereby declared to be unfair business
practices and are presumed to at least nominally damage each and every resident of
the community in which the business operates.

(d) A violation of this Article constitutes a misdemeanor punishable by a fine
of $1,000 or by imprisonment in the County jail for six months, or both.
(e) In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the City Attorney or the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, other legally authorized enforcement proceedings, and suits for injunctive relief.

SECTION THREE.

1. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Ukiah hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

2. EFFECTIVE DATE.

This Ordinance shall be published as required by law in a newspaper of general circulation in the City of Ukiah, and shall become effective thirty (30) days after its adoption.

Introduced by title only on October 19, 2005, by the following roll call vote:
AYES: Councilmembers Crane, McCowen, Rodin, Baldwin, and Mayor Ashiku
NOES: None
ABSENT: None
ABSTAIN: None

Adopted on November 2, 2005 by the following roll call vote:
AYES: Councilmembers Crane, McCowen, Rodin, Baldwin, and Mayor Ashiku
NOES: None
ABSENT: None
ABSTAIN: None

Mark Ashiku, Mayor

ATTEST:

Marie Ulvila, City Clerk