



## **BOARD OF SUPERVISORS AGENDA ITEM REPORT**

**Requested Board Meeting Date:** 01/19/2016

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**Title:** An Ordinance Amending Pima County Code Title 8 by adding a new Chapter 8.52 "Tobacco Retailers"

### **Introduction/Background:**

Pima County has seen a significant increase in tobacco sales to minors over the past 4 years. With no authority or devoted resources to address the problem, Pima County has had to rely on limited state and federal retail inspections to educate, monitor, and enforce tobacco sales laws. At the request of and in collaboration with a grass roots group lead by American Lung Association, American Heart Association and the American Cancer Society, the Health Department Tobacco and Chronic Disease prevention staff have prepared the attached Tobacco Retailer Ordinance to more effectively address the issue in order to protect our youth from the harms associated with tobacco use and exposure.

### **Discussion:**

The proposed Tobacco Retailer Point of Sale ordinance has been developed in response to an alarming rise in tobacco sales to minors by retailers conducting business in Pima County. The Pima County Health Department in collaboration with the Arizona Attorney General's Office and the Arizona Department of Health Services, has conducted tobacco compliance inspections throughout the County since 2010. From January of 2012 through December of 2015, Pima County has seen a 16% increase in tobacco sales to minors. Regrettably, 2015 marks the highest annual fail rate to date at 21.5%. Addressing this problem is critical because tobacco use in Pima County today, is the single most preventable cause of death and disability. Nationally, more than 3,200 youth younger than 18 years of age smoke their first cigarette each day. Additionally, the entry of electronic nicotine delivery systems (e.g. e-cigarettes) in the market and the targeting of minor consumers is a critically important issue for the Health Department.

The most effective way to protect and prevent tobacco use among youth is to implement an evidence-based approach. The Center for Disease Control and Prevention recommends three components for an effective approach to preventing tobacco use among youth; 1) Increase the unit price of tobacco products; 2) Conduct mass-media education campaigns in combination with other community interventions; 3) Mobilize the community to restrict minors' access to tobacco products in combination with additional interventions. Items 1 and 2 are and have been in place for some time, but item 3 has yet to be fully addressed.

Comprehensive tobacco prevention efforts must include prevention education in conjunction with enforcement. Active enforcement of retailer sales laws, retailer education with reinforcement, and stronger local laws directed at retailers are all elements of an effective enforcement program. All elements must be present and accompanied by prevention education efforts to be truly successful in reducing youth tobacco initiation and prevalence.

With the proposed Tobacco Retailer Point of Sale ordinance, Pima County will fulfill the final component of a comprehensive tobacco prevention program by creating a low cost licensing regime for any vendor who sells tobacco or nicotine products. This license will provide the county the ability to conduct education with and inspection of vendors with the role of ensuring compliance and eliminating the sales of tobacco products to minors in Pima County. Key provisions of the ordinance include:

- \$300 annual licenses fee that will support retailer education and enforcement efforts of the ordinance.
- Transfer of licenses between parties is prohibited.
- Retailers with a brick and mortar retail space will be the only retailers permitted to obtain a Tobacco Retailer

License. All mobile and/or temporary sales of tobacco products are prohibited.

- Tobacco Retailers must obtain a Tobacco Retail License to sell tobacco products; including items containing nicotine that are not FDA approved NRTs.
- Limits and assists the future reduction of tobacco retailers residing within 1000 ft of a school.
- For first violations, Tobacco Retailers in possession of license will be ordered to attend a mandatory Tobacco Retailer Education Class. Additional violations will lead to a suspension/revocation of a license depending on the amount of violations that retailer commits within a 12 month period from its last violation.
- Tobacco Retailers conducting business without a license will be subject to a moratorium on their ability to acquire a license and will be subject to monetary penalties starting with a first violation.
- There will be a one year introductory and educational period to allow retailers to become fully informed and compliant with the ordinance if passed.

The Pima County Board of Health considered the proposal at their December 9, 2015 meeting. The Board of Health passed a motion to support the ordinance.

Pursuant to Arizona Revised Statute 11.251.13, the draft ordinance and fee schedule has been available for public viewing on the Pima County Proposed Taxes and Fees webpage since November 18, 2015.

The ordinance is scheduled to be advertised in the Daily Territorial on December 30 and 31, 2015.

**Conclusion:**

The proposed ordinance creates a point of sale tobacco retailer licensing and enforcement system in Pima County. The system would be supported by a low cost licensing fee paid annually by any vendor selling tobacco or nicotine products to consumers within the county's jurisdiction. This ordinance will provide the county the ability to conduct education with and inspection of vendors with the goal of ensuring compliance and eliminating tobacco sales to minors.

**Recommendation:**

Staff recommends the Board adopt Ordinance 2015-\_\_\_ amending Pima County Code Title 8 by adding a new Chapter 8.52 to establish a Point of Sale Tobacco Retailer Licensing and Enforcement system in Pima County.

**Fiscal Impact:**

Currently, no program or funding exists. Through the collection of Tobacco Retailer Licenses fees, penalties, and reimbursed hearing costs, the Department will generate an estimated \$255,000 budget neutral income stream to create a full cost recovery system that supports program activities.

**Board of Supervisor District:**

1                       2                       3                       4                       5                       All

Department: Health

Telephone: 724-7776

Department Director Signature/Date: *Marjorie Hunayan* 12.23.2015

Deputy County Administrator Signature/Date: *[Signature]* 12-23-2015

County Administrator Signature/Date: *C. Deibel* 12/23/15

ORDINANCE 2016-\_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA,  
RELATING TO THE REGULATION OF TOBACCO RETAIL SALES; AMENDING THE PIMA  
COUNTY CODE BY ADDING A NEW CHAPTER 8.52**

**The Board of Supervisors of Pima County, Arizona finds that:**

1. The Board of Supervisors of Pima County, Arizona, has authority under A.R.S. §§ 11-251(17) and 36-186 et seq to adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.
2. It is in the public interest to protect minors from the health risks associated with tobacco use by licensing tobacco retailers and regulating their locations in order to discourage illegal sales to minors of cigarettes and other tobacco products and paraphernalia.

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:**

**SECTION 1.** The Pima County Code is amended by adding a new Chapter 8.52, to read as follows:

**Chapter 8.52  
TOBACCO RETAILERS**

**8.52.010 Definitions**

- (A) "Arm's length transaction" means a sale between two or more informed and willing parties for valuable consideration that reflects the subject property's fair market value. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter, is not an arm's length transaction.
- (B) "Department" means the Pima County Health Department and its Consumer Health and Food Safety Division, including any agency or person designated by the director of the department to enforce or administer the provisions of this chapter.
- (C) "Owner" means a person or entity having a ten percent or greater interest in the stock, assets or income of a tobacco retailer, other than a security interest for the repayment of debt.

- (D) "School" means a public, charter, or private elementary, middle, junior high or high school.
- (E) "Tobacco point of sale area" means the specific physical location within a tobacco retail establishment where tobacco products are sold or exchanged.
- (F) "Tobacco product" means any product containing tobacco or nicotine intended for human consumption, including liquid nicotine solution. The term "tobacco product" does not include any nicotine replacement therapy product approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependency, such as nicotine gum, transdermal nicotine patches, and nicotine lozenge products.
- (G) "Tobacco retail establishment" means a single location with a fixed, permanent structure with its own physical address where tobacco retailing takes place.
- (H) "Tobacco retail license" means a license issued by the department authorizing a tobacco retailer to operate a tobacco retail establishment in Pima County, Arizona.
- (I) "Tobacco retailer" means a person or entity that engages in tobacco retailing.
- (J) "Tobacco retailing" means selling, exchanging, or offering to sell or exchange, tobacco products of any quantity directly to consumers.

#### **8.52.020 Conditions of Licensure**

(A) License Required. It is unlawful to engage in tobacco retailing in any location within Pima County, Arizona without a valid tobacco retail license issued by the department. Any tobacco retailer that sells, exchanges, or offers to sell or exchange tobacco products of any quantity directly to consumers must obtain a tobacco retail license or cease all tobacco retailing by January 1, 2017.

(B) License Non-Transferable. A tobacco retail license issued under this chapter is non-transferable and non-assignable, and is valid only for the named tobacco retailer for a single tobacco retail establishment at the address indicated on the license.

(C) Duration of License. A tobacco retail license is valid for one year unless suspended or revoked. A tobacco retailer is not entitled to any refund of the fee for a license that is suspended or revoked.

(D) Status, Rights or Privileges. Nothing in this chapter grants any tobacco retailer any right in the continued possession of a tobacco retail license other than the limited, conditional privilege to engage in tobacco retailing at the tobacco retail establishment identified on the license.

(E) Adherence to Tobacco Laws. It is a violation of this chapter for any tobacco retailer to violate any local, state or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

(F) Public Display of License. When engaging in tobacco retailing, a tobacco retailer must display its license in a conspicuous manner visible from outside the tobacco retail establishment's main public entrance.

(G) Persons Authorized to Engage in Tobacco Retailing. No person younger than eighteen years old may engage in tobacco retailing.

(H) Accessibility of Tobacco Products. All tobacco products at any tobacco retail establishment to which persons under eighteen years old are permitted entry must be maintained:

- (1) behind a counter in an area accessible only to employees of the tobacco retailer; or
- (2) in a locked container accessible only to employees of the tobacco retailer; or
- (3) otherwise out of physical reach of any consumer and only accessible to employees of the tobacco retailer.

#### **8.52.030 Eligibility for License**

(A) Any tobacco retailer with a valid tax identification number is eligible to apply for a tobacco retail license from the department. Only tobacco retail establishments are eligible for licensure; tobacco retailing by any other means such as on foot or by vehicle is prohibited.

(B) No tobacco retail license will be issued:

- (1) for single, temporary, or recurring events including, but not limited to, fairs, flea markets, conventions, conferences, fundraisers, or farmers markets;
- (2) for any tobacco retail establishment that has not previously been issued a license to engage in tobacco retailing at its current physical address, where the applicant is barred from applying for a tobacco retail license pursuant to section 8.52.070(A)(1)(d) or owes a fine for any violation of this chapter; or
- (3) for any tobacco retail establishment located within 1,000 feet of a school, as measured by the shortest distance from any public entrance of the proposed location for tobacco retailing to the parcel boundary of the school. This prohibition does not apply to:
  - (a) a tobacco retail establishment operating lawfully and continuously that is already located within 1,000 feet of a school on January 1, 2017; or
  - (b) a tobacco retail establishment with a valid tobacco retail license that is otherwise ineligible for a tobacco retail license due to the creation or relocation of a school to within 1,000 feet; or
  - (c) a tobacco retailer that acquires through an arm's length transaction a tobacco retail establishment that is located within 1,000 feet of a school and has a valid tobacco retail license, and applies to obtain a tobacco retail license within thirty days from the date of the transaction.
  - (d) Exemptions. Any exemption granted under (a) through (c) above ceases to apply to any tobacco retail establishment that fails to maintain a current license for thirty days or more.

#### **8.52.040 Application for and Issuance of License**

(A) It is the responsibility of each tobacco retailer to be informed of all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retail license. The issuance of a tobacco retail license is not a determination by the county or the department that the tobacco retailer has complied with any laws applicable to tobacco retailing.

(B) An application for a tobacco retail license shall be submitted in writing to the department on

a form supplied by the department's consumer health and food safety division. The department may require the application form to be signed and verified by the tobacco retailer applying for licensure or by an authorized agent. The tobacco retailer must identify and list all of its owners on the application.

(C) A tobacco retailer must notify the department of a change in any of the information submitted on its application for a tobacco retail license in writing within fifteen days of the change.

(D) The department will issue a tobacco retail license for a tobacco retail establishment within ten business days of receipt of a complete application and the payment of the application fee, unless the information presented in the application is incomplete, inaccurate, false, or misleading, or the application seeks authorization for tobacco retailing for a location or applicant that is prohibited by this chapter or any other law.

(E) The department will revoke any tobacco retail license that it finds was wrongly issued. Such a revocation is without prejudice to the filing of a new license application.

#### **8.52.050 Required Fee**

(A) Each application for a tobacco retail license must be accompanied by an annual fee of \$300. The fee is nonrefundable except as required by law.

(B) The department will calculate the fee to allow for the recovery of the cost of administration, implementation, and enforcement of this chapter, including costs associated with issuing licenses, administering the license program, educating retailers, conducting retailer inspection, re-inspection and compliance checks, documenting violations, and prosecuting violators. The department may modify the fee on an annual basis when warranted by changes in such costs. No review of the annual fee will be conducted prior to January 1, 2018. All fee increases/decreases must be board of supervisors approved. All fees shall be deposited in a special permanent, nonlapsing, and nonreverting fund to be used to fund administration, implementation, enforcement, and education under this chapter.

#### **8.52.060 Inspections for Compliance**

The department shall conduct compliance checks to certify tobacco retailers are complying with all laws applicable to tobacco retailing, all provisions of this chapter, and any other law relating to tobacco products, tobacco paraphernalia, or tobacco retailing. The department or any peace officer may issue citations and enforce the penalty provisions for violations of this chapter to the extent authorized by law. Nothing in this paragraph shall create a right of action in any tobacco retailer or other person against the department or its agents.

#### **8.52.070 Penalties**

(A) Committing a violation while in possession of a valid tobacco retail license.

If any court of competent jurisdiction determines, or the department finds, that a tobacco retailer, or any of its agents or employees, has violated a local, state, or federal law regulating tobacco sales or does not comply with this chapter, the following penalties apply, in addition to any other

penalties imposed by a court of competent jurisdiction or the department:

(1) Tobacco retail license suspension and revocation.

(a) For a first violation at a tobacco retail establishment, the department will issue the tobacco retailer with a written notice of violation requiring a representative of that retailer to attend and complete a mandatory education course.

(b) For a second violation at a tobacco retail establishment within one year of a first violation at that establishment, the tobacco retailer shall have its tobacco retail license for that establishment suspended for thirty days.

(c) For a third violation at a tobacco retail establishment within one year commencing from the completion date of the previous penalty, the tobacco retailer shall have its tobacco retail license for that establishment revoked and neither the tobacco retailer nor any of its owners will be eligible to apply for a tobacco retail license for that establishment for one year.

(d) For a fourth violation within one year commencing from the completion date of the previous penalty, the tobacco retailer shall have its tobacco retail license revoked and neither the tobacco retailer nor any of its owners will be eligible to apply for a tobacco retail license for that establishment for three years.

(2) Conditions of suspension/revocation.

During any period that a tobacco retail license is expired, suspended, or revoked, a tobacco retailer must:

(a). Remove all tobacco products from the relevant tobacco retail establishment's retail area;

(b). Remove the tobacco retail license from public view;

(c). Display signage, provided by the department, in a conspicuous manner visible to the general public and within a 5 foot radius of any tobacco product point of sale area, indicating that the tobacco retailer does not possess a current license to sell tobacco products. If multiple tobacco product point of sale areas exist in a single tobacco retail establishment, such signage must be displayed in each area.

(d). Remove all tobacco advertising that is not permanently affixed to the tobacco retail establishment's structure.

(B) Committing a violation while not in possession of a valid tobacco retail license.

If any court of competent jurisdiction determines, or the department finds, that any tobacco retailer or any of its owners has violated a local, state, or federal law regulating tobacco sales, or does not comply with the requirements, conditions, or prohibitions established in this chapter, it will be subject to the following penalties:

(1) Amount of fine. Each violation shall subject the tobacco retailer to an administrative fine as follows:

(a) For a first violation, \$2,500;

(b) For a second violation within one year of a first violation, \$5,000.00;

(c) For each additional violation within one year of any second or subsequent violation, \$7,500.

(2) Time period for license ineligibility.

(a) After a first violation, no tobacco retail license may be issued for that tobacco retail establishment for thirty days.

(b) After a second violation within one year of a first violation, no tobacco retail license may be issued for that tobacco retail establishment for ninety days.

(c) After any additional violation within one year of a prior violation, no tobacco retail license may be issued for that tobacco retail establishment until a one-year period has passed from the date of the most recent violation.

(d) The periods of ineligibility in subsections (a) to (c) above apply to any tobacco retail establishment located at the physical address where the violation occurred, unless ownership of the establishment has been transferred in an arm's length transaction.

**(C) Counting of Violations for a Tobacco Retailer.**

(1) Prior violations at the same tobacco retail establishment are counted against a tobacco retailer until one year after the completion date of any previously imposed penalty.

(2) If multiple violations of this chapter or any other local, state or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing are identified during a single inspection, infractions are counted as a single violation with respect to penalties imposed under this chapter.

**(D) Aiding or Abetting. Causing, permitting, aiding, abetting, or concealing a violation of this chapter constitutes a separate violation and is subject to the following administrative fines:**

(1) For a first violation, \$2,500;

(2) For a second violation within one year of a first violation, \$5,000;

(3) For each additional violation within one year of any second or subsequent violation, \$7,500.

**(E) Applicability of Other Laws. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Nothing in this chapter prohibits the prosecution of criminal offenses under any applicable law. The department may enforce this chapter in a civil action, including administrative or judicial proceedings, civil code enforcement proceedings, and suits for injunctive relief.**

**8.52.080 Right to Hearing and Appeal**

**(A) Notice. The department shall issue a citation, either in person or by mail, to any tobacco retailer:**

(1) whom it reasonably believes has violated this chapter; or

(2) who has been issued a citation under A.R.S. §13-3622 for furnishing tobacco to a minor; or

(3) whom it reasonably believes has violated any other applicable local, state, or federal law regulating tobacco sales.

The citation shall set forth the alleged violation, and notify the tobacco retailer of his or her right to a hearing on the matter pursuant to subsection (B) below and how to request such a hearing.

**(B) Hearings. A tobacco retailer may request a hearing no later than 15 days after receipt of a citation. The department shall set the hearing. Written notice of the hearing date, time and location shall be delivered to the tobacco retailer at least 15 calendar days before the hearing. The formal rules of evidence in civil or criminal judicial proceedings do not apply to such hearings. At the hearing, the hearing officer may admit any relevant evidence, including**

testimony of witnesses. The department must make a record of the hearing and make a copy available to the tobacco retailer in the event of an appeal.

(C) Hearing Officer. The director of the department shall designate a county official or another impartial person to conduct the hearing and issue a decision.

(D) Minors Not Required to Testify. If evidence of a violation of this chapter is obtained in any part through the participation of a person under eighteen years old, such a person shall not be required over his or her objection to appear or give testimony in any proceeding brought to enforce this chapter.

(E) Decision. The hearing officer shall issue a written decision and mail a copy to all parties within 30 days of the hearing. The decision shall include findings of fact, conclusions of law, any penalty imposed under this chapter, and notification of the time for appeal. The decision of the hearing officer shall be a final administrative decision.

(F) Costs. If the hearing officer finds the tobacco retailer to be responsible for a violation, the tobacco retailer shall be liable for the actual expenses of the hearing.

(G) Appeal. The decision of the hearing officer may be reviewed by the superior court in accordance with Title 12, Chapter 7, Article 6 of the Arizona Revised Statutes. Filing an appeal shall stay enforcement of the appealed decision.

**8.52.100 Severability**

The provisions or sections of this chapter are declared to be severable. If any provision or section of this chapter is held to be invalid, such invalidity shall not affect the other provisions or sections of this chapter that can be given effect without the invalidated provision or section.

**SECTION 2.** This Ordinance is effective 30 days after the date of its adoption, with the exception of the penalty section 8.52.070 which takes effect January 1, 2017.

**PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

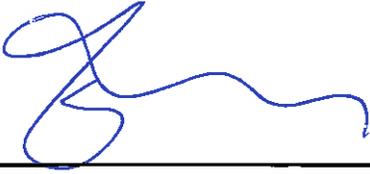
\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

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Deputy County Attorney



## POS Ordinance Budget and Narrative

TOBACCO ORDINANCE YEARLY BUDGET PROJECTION					
<b>STAFFING COSTS</b>	<b>CLASS</b>	<b>NAME</b>	<b>SALARY</b>	<b>BENEFITS</b>	<b>TOTALS</b>
1 FTE	1841	PROG SRVCS SPEC	\$38,210	\$15,284	\$53,494
1 FTE	1841	PROG SRVCS SPEC	\$38,210	\$15,284	\$53,494
0.05 FTE EACH	VARIOUS	EXISTING CHEFS STAFF	\$71,074	\$26,060	\$97,134
<b>STAFFING TOTALS</b>			<b>\$147,494</b>	<b>\$56,628</b>	<b>\$204,122</b>
<b>OPERATIONS COSTS</b>					
		<b>EST ANNUAL COST</b>			
2 SUV 4X2 HYBRID		TOTAL PER YEAR	660/MO/EA		\$15,840
GASOLINE		TOTAL PER YEAR	36K/15*2.75		\$6,600
2 SURFACE PRO/2 DESKTOP		TOTAL PER YEAR	532/359		\$1,782
2 SMARTPHONES		TOTAL PER YEAR	60/mo/ea		\$1,440
HEARINGS		TOTAL PER YEAR			\$15,000
POSTAGE		TOTAL PER YEAR			\$1,000
PRINTING/COPYING		TOTAL PER YEAR			\$1,500
EDUCA/PROMO MATLS		TOTAL PER YEAR			\$4,500
YOUTH VOLUN INCENTIVES		TOTAL PER YEAR			\$960
MISCELLANEOUS		TOTAL PER YEAR			\$2,256
<b>OPERATIONS TOTALS</b>					<b>\$50,878</b>
<b>TOTAL EXPENSES</b>					<b>\$255,000</b>
<b>REVENUES</b>					
			<b>EST #</b>	<b>COST/EA</b>	<b>TOTALS</b>
<b>LICENSE REVENUE</b>			<b>850</b>	<b>\$300</b>	<b>\$255,000</b>
<b>FINES REVENUE</b>				<b>≥\$2500</b>	<b>UNKNOWN</b>

### Staff Costs

**Two Program Service Specialists (PSS):** These two positions are hourly at 40 hours per week and will be responsible for the issuing of licenses, enforcement of the ordinance, retailer outreach education, and organization of the youth volunteer program that conducts tobacco retailer compliance checks.

**Consumer Health and Food Safety Staff:** Sanitarian positions will assist with ordinance compliance by doing checks while on routine food establishment inspections. Office and supervisory staff will play a support role by processing payments, sending out correspondence, completing reports, and performing other related activities. Sanitarians will do approximately 12 to 24 field visits per week, spending roughly 5 to 10 minutes at each applicable site to complete ordinance compliance activities and education. Tobacco retailing regularly takes place in the same establishments that CHFS staff inspect which will allow for more efficient enforcement, more regularly.

*\*The program goal is to conduct a minimum of 30%-40% in-person license compliance checks annually.*

## **Operations Costs**

**Two SUV 4x2 Hybrid Vehicles:** Vehicles will be used daily by program staff to conduct ordinance compliance, enforcement, and education. SUVs have been selected as they will best accommodate the transport of large amounts of materials, large sized materials, and additional personnel for undercover inspections. Due to daily use, a hybrid model was selected to reduce both fuel consumption costs and environmental impact. Expenses come in the form of a lease between the Pima County Health Department and Pima County Fleet Services. Leases include unlimited mileage and all maintenance and repair needs.

**Gasoline:** Annual estimated gasoline expense for daily travel to complete daily work activities such as ordinance compliance checks, enforcement and education.

**Two Desktop Computers:** Desktop computers will be assigned to each PSS position to conduct daily work activities. Expenses come in the form of a lease and includes; maintenance, IT support, software licenses, and replacement of nonfunctioning/damaged hardware.

**Two Surface Pros:** Surface Pros with data plans will be issued to each PSS position to conduct ordinance compliance checks, enforcement, and education while in the field.

**Smartphones:** Smartphones will be issued to each PSS position for the purpose of communicating with department staff, retailers, the public, and emergency personnel while in the field.

**Hearings:** Administrative hearings will be held if a tobacco retailer disputes a citation/violation. Retailers found responsible will incur the cost of the hearing but if the department loses its argument against the retailer, the department will cover the costs. This section will cover unreimbursed expenses associated with arranging and holding the administrative hearings. Expenses include but are not limited to hearing location costs, hearing officer wages, process servers, miscellaneous non-departmental staff reimbursements, summons/subpoena fees, etc.

**Postage:** Postage will be used for the purpose of sending official correspondences to retailers and/or other program related affiliates.

**Printing and Copying:** For the purpose of purchasing paper and ink products for regular business printing/copying needs. Special printing projects will be needed at times and will also be covered under this section.

**Educational and Promotional Materials:** For the purpose of creating and purchasing materials that will be used for tobacco retailer education, trainings, and promotion of ordinance adherence.

**Youth Volunteer Incentives:** Incentives will be purchased for youth volunteers that participate in compliance checks as a gesture of appreciation and to encourage future participation. Incentives usually come in the form of a meal for youth volunteers during inspection periods but can also be used to supply prizes for quarterly and/or annual raffles.

**Miscellaneous:** This portion is set aside to cover items such as staff development, miscellaneous office supplies, or unforeseen expenses associated with program activities.

## **Revenues**

**License Revenues:** 850 is the a best estimation of the number of current Tobacco Retailers in Pima County based on a Tucson Metro sampling conducted by the Pima County Health Department. The estimated revenue from 850 retailers is balanced with the expected expenditures to simply offset the costs to maintain the program. Any excess revenues will remain in program and will not be used to supplement any other Pima County Health Department Programs.

**Fine Revenues:** Fines revenues are currently unknown due to the fact there is no current baseline. Revenues would come in the form of penalties for establishments that are selling tobacco products but who do not hold a Tobacco Retailer License. These revenues would remain in the program and be expended as needed or carried forward to future years.

Fees collected from Tobacco Retailers that fail to prove their case during an administrative hearing will be responsible for the costs incurred by Pima County Health Department. This fee would offset the exact cost to Pima County Health Department for arranging and holding a hearing.

***\*This budget is a best estimate of expected program expenses. The license fee price point has been designed to only cover the costs needed to maintain an effective, efficient enforcement program. If the ordinance is passed, the funding level would remain the same for a minimum of two years. After two years, a review of budget needs and the license fee schedule will be conducted. If findings lend themselves to lowering or raising the license fee schedule, a recommendation will be made before the Pima County Board of Supervisors to adjust as needed.***

# Pima County Proposed Tobacco Point of Sale Ordinance

## Frequently Asked Questions

In Pima County, tobacco sales to minors have been on an upward trend annually since 2011. Retail tobacco licensing laws in several jurisdictions have been shown to prevent tobacco sales to minors when the prohibition against tobacco sales to minors is actively enforced. Licensing tobacco retailers will therefore promote the health, safety and welfare of the residents of Pima County under eighteen years of age. Currently, Arizona is only 1 of 12 states without a tobacco licensing law. Currently Pima County does not have any enforcement role or responsibility in this arena and is not able to take any action against vendors who sell tobacco products to minors.

**Why does Pima County need a Tobacco Retailer Licensing Ordinance?**

### **Pima County Retail Fail Rate**

Year	2010	2011	2012	2013	2014	2015
# Inspections	710	228	486	458	488	185
# Failed	56	13	25	47	58	38
% Failed	8%	6%	5%	10%	12%	20.5%

**How much is the Tobacco Retailer License fee and what does it go towards?**

The fee is \$300 per Tobacco Retail Establishment, annually. The fee schedule is based on the estimated number of tobacco retailers in Pima County and the cost associated with administering the ordinance. Costs include: personnel for licensing, retailer outreach education, enforcement and the related materials. Collected revenues should create a full cost recovery system and will be expended solely for the purposes of enforcing the ordinance.

**When would this ordinance take effect?**

The ordinance would become effective 30 days from the date of its adoption with the exception of the penalty section, which will not take effect until January 1, 2017. The period beginning from effective date through January 1, 2017 will be devoted to program development, retailer education, public awareness, and the building of the Tobacco Retailer database. In addition, application submissions will be accepted and licenses issued during this period.

**Who must obtain a Tobacco Retailer License?**

Any business that makes tobacco and/or nicotine products available for consumption must have a license. This includes all forms of tobacco and/or nicotine products such as prefilled electronic nicotine delivery devices, nicotine solution, hookah, shisha, snus, dissolvable tobacco products, etc. Retailers who exclusively sell FDA approved nicotine replacement therapies and/or smoking paraphernalia free from nicotine are exempt.

- A Tobacco Retailer must have a tax ID number.
- A Tobacco Retailer must conduct its tobacco retailing in a single location with a fixed, permanent structure having its own physical address. Mobile retailing is prohibited.
- A Tobacco Retailer must be in good standing with the Department.
- Tobacco Retailers must be a minimum of 1000ft from a school. Tobacco Retailers that are in continuous operation prior to January 1, 2017 will be exempt from this provision.

**Penalties for Violations Committed by License Holders**

Violation	Mandatory education course
First violation	
Second violation within one year of a first violation	License suspended for 30 days
Third violation within one year of a first violation	License revoked for 1 year
Additional violations within one year of third violation or subsequent violation	License revoked for 3 years

**Penalties for Violations Committed by Non-License Holders**

First violation	\$2,500.00
A second violation within one year of first violation	\$5,000.00
Additional violation within one year of any second violation or subsequent violation(s)	\$7,500.00

**Penalties for Violations of Aiding and Abetting**

First violation	\$2,500.00
Second violation - within one year of first violation	\$5,000.00
Additional violation within one year of any second violation or subsequent violation(s)	\$7,500.00

*\*The Tobacco Retailer shall be liable for the actual expenses of a hearing if the hearing officer finds the retailer responsible for a violation.*

*\*From the date the ordinance goes into effect through January 1, 2017 no penalties will be issued for violations. Advisory forms may be issued as part of the first year educational and awareness campaign effort*

**Aren't there already laws restricting tobacco sales to minors?**

Yes, however currently the Pima County does not have a mechanism to enforce these. The purpose of this ordinance is to supplement current state law to allow for better identification, monitoring, and enforcement of tobacco sales to minors.

**A.R.S.13-3622.** Furnishing of tobacco product, vapor product or tobacco or shisha instruments or paraphernalia to minor; minor accepting or receiving tobacco product, vapor product or tobacco or shisha instruments or paraphernalia; illegally obtaining tobacco product, vapor product or tobacco or shisha instruments or paraphernalia by underage person; classification; definitions

**What are the Arizona state laws that prohibit tobacco sales to minors?**

A. A person who knowingly sells, gives or furnishes a tobacco product, a vapor product or any instrument or paraphernalia that is solely designed for the smoking or ingestion of tobacco or shisha, including a hookah or waterpipe, to a minor is guilty of a petty offense.

**A.R.S.13-802.** Fines for misdemeanors

D. A sentence to pay a fine for a petty offense shall be a sentence to pay an amount, fixed by the court, of not more than three hundred dollars.

<p><b>What enforcement efforts are being conducted in Pima County already?</b></p>	<p>At the state level, the Arizona Attorney General's Office has steadily increased its enforcement efforts but the program has limitations:</p> <ul style="list-style-type: none"> <li>➤ The AGO is responsible for completing compliance inspections statewide with only two agents which limits the amount of inspections that can be completed in Pima County.</li> <li>➤ There is no way to officially identify Tobacco Retailers to inspect</li> <li>➤ The current AGO program does not have a sustainable funding source</li> </ul> <p>Locally, Pima County does not have an ordinance addressing tobacco sales to minors. All violations of tobacco sales to minors fall under A.R.S.13-3622, A.R.S.13-802, and/or federal tobacco control regulations. Other than state certified peace officers, no other entity has the authority to conduct enforcement activities. This leaves Pima County reliant on the AGO's compliance program, which can vary in its frequency and consistency. In addition, PCHD does not have the resources to effectively operate an enforcement program, thus leaving between 50%-70% of retailer, annually to "voluntarily" self-regulate tobacco sales to minors.</p> <p>This ordinance will permit Pima County personnel to identify legitimate tobacco retailers, conduct compliance inspections on a consistent basis, and more effectively enforce current laws.</p>
<p><b>Doesn't Pima County receive funding from state tobacco tax revenues to support enforcement of tobacco laws restricting sales to minors?</b></p>	<p>No. The portion of state tobacco tax revenues received by PCHD to fund the Tobacco and Chronic Disease unit as well as the Smoke Free Arizona Enforcement unit are narrowly limited, by law.</p> <p>-In 2002, Arizona voters approved <i>Prop 303</i> which retitled and amended the original <i>Arizona Tobacco Tax and Healthcare Act of 1994</i>. The Act increased tax on certain tobacco products and established several fund accounts, one of which was for Health Education. The Act states that the Health Education funding must be used for "programs for the prevention and reduction of tobacco use, through public health education programs, including community based education, cessation, evaluation and other programs to discourage tobacco use among the general population as well as minors and culturally diverse populations".</p> <p>-In 2006, Arizona voters approved <i>Prop 201</i> which established the <i>Smoke Free Arizona Act (SFA)</i>. As part of the act, the Smoke Free Arizona Fund was created and financed by a \$.02 state tobacco tax. The Act states that, "All money in the smoke-free Arizona fund shall be used to enforce the provisions of this section provided however that if there is money remaining after the department has met its enforcement obligations, that remaining money shall be deposited in the tobacco products tax fund and used for education programs to reduce and eliminate tobacco use and for no other purpose."</p>
<p><b>Would education alone be a better effort than licensing?</b></p>	<p>Enforcement in conjunction with education is the best policy and the most effective protection for youth. Tobacco prevention education and cessation, for both youth and adults, has been the primary focus of tobacco programs at the State and local level for many years. In addition, organizations such as American Lung, Heart, and Cancer Association, the Arizona Cancer Coalition, Centers for Disease Control (CDC), Health and Human Services, Campaign for Tobacco Free-Kids, etc., all provide varying degrees of tobacco prevention education-but education alone isn't enough. Proof of this is that the self-reported rate of tobacco use for Arizona has remained at about 15.3% for the last decade. More importantly the best way to prevent chronic tobacco use is to intervene before an individual starts smoking.</p> <p>As a best practice, promulgated by the Centers for Disease Control and Prevention, comprehensive tobacco prevention efforts include <b>prevention education in conjunction with enforcement</b>. Active enforcement of retailer sales laws, retailer education with reinforcement, and stronger local laws directed at retailers are elements of an effective enforcement program but must be done in unison to be truly successful in reducing youth tobacco prevalence.</p>

Tobacco Retailer compliance inspections in Pima County reveal an unsettling trend in retailers selling tobacco products to minors. Although parents and families may have some part in reducing a minor's attempt at purchasing tobacco, the tobacco retailer, by law, has the obligation to refuse the sale. *The Community Guide states, "Overall, minors' access reflects the availability of tobacco products within the community, the willingness of retailers to sell them, and the efforts of minors to obtain them... Access to tobacco products by minors contributes to the initiation and regular use of tobacco by children and adolescents."* To ensure we do what we can to protect youth from initiating tobacco use, a multifaceted, evidence-based approach is needed. With prevention education for both youth and adults, and the strengthening of local tobacco laws with enhanced enforcement, we hope to eliminate a common access point thus making it more difficult for minors to obtain tobacco products. By creating barriers for minors to access tobacco, a reduction in youth initiation and prevalence will follow.

Arizona's current tobacco tax rate is tied with several other states for the 12<sup>th</sup> highest tobacco tax rate nationwide. At \$2.00 per pack, Arizona's tobacco tax rate exceeds the overall average at \$1.58 a pack. A significant state tobacco sales tax is one of the key components of an effective tobacco control program but is only one part of a whole system approach.

**Why not hold the parents/families responsible?**

**Why not increase state level taxes?**