


2/9/2021

item 3.I




City Council Meeting

Item 3.I: Action on the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age")
(RTC #21-99)

February 9, 2021

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City of Santa Clara
The Center of What's Possible

Background

- On Feb. 5, 2019, Council adopted Smoking and Tobacco Regulations Ordinance No. 1996 to expand smoking restrictions in many public areas and multi-unit residences
- Section 8.35.130 "Possession of Tobacco by Persons Under 21 Years of Age", intended to educate and raise awareness
- Community and stakeholder concerns about Section 8.35.130 and potential to result in criminalization of youth in possession of tobacco products

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POST MEETING MATERIAL

1



Training and Implementation

- Added Section 411.6 – Juvenile Citations to the 411 Cite and Release Policy to address contacts due to tobacco possession
 - No criminal or administrative citations shall be issued
- In the first year of implementation, only one instance of Section 8.35.130 of the Ordinance was applied.

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Moving Forward

- Police Department will continue to build bridges within the community, and when possible, provide information related to the dangers of smoking
- Implement strategies proven to reduce youth tobacco use



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Recommendation

- Approve the Introduction of an Ordinance Repealing Section 8.35.130 (“Possession of Tobacco by Persons Under 21 Years of Age”)

From: [Simrat Dhadli](#)
To: [Melissa Meslo](#)
Subject: FW: Item 3.1
Date: Tuesday, February 9, 2021 6:02:43 PM
Attachments: [PUPinSmoke_FINAL_2019-04-17\(1\).pdf](#)
[image001.png](#)

PMM

From: Julie Minot <JMinot@SantaClaraCA.gov>
Sent: Tuesday, February 9, 2021 4:00 PM
To: Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>
Cc: Simrat Dhadli <SDhadli@SantaClaraCA.gov>; Nora Pimentel <NPimentel@SantaClaraCA.gov>; Deanna Santana <DSantana@SantaClaraCA.gov>; Genevieve Yip <GYip@SantaClaraCA.gov>; Kathleen McGraw <KMcGraw@SantaClaraCA.gov>; Nadine Nader <nnader@SantaClaraCA.gov>; Robyn Sahid <RSahid@SantaClaraCA.gov>
Subject: FW: Item 3.1

Dear Mayor and Council,

For your review and consideration, our office received the following correspondence regarding agenda item 3. I - 20-99 Action on the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age"). Please note this correspondence is considered post meeting material and will form part of the public record for the February 9, 2021 City Council meeting.

Best regards,

Julie Minot, SPHR | Executive Assistant, Mayor and City Council
Mayor & Council Offices | City of Santa Clara
1500 Warburton Avenue, Santa Clara, CA 95050
Tel: 408-615-2252 | www.santaclaraca.gov



From: Public Comment <PublicComment@santaclaraca.gov>
Sent: Tuesday, February 9, 2021 3:54 PM
To: Julie Minot <JMinot@SantaClaraCA.gov>
Subject: FW: Item 3.1

From: Carol McGruder <cmcgruder@usa.net>
Sent: Tuesday, February 9, 2021 3:11 PM
To: Public Comment <PublicComment@santaclaraca.gov>
Cc: cmcgruder@usa.net

POST MEETING MATERIAL

Subject: Item 3.1

The African American Tobacco Control Leadership Council (AATCLC) strongly supports removing all administrative, civil, and criminal penalties for personal use and possession of nicotine products. Personal use of these products (even by youth) is a public health issue and not one that should involve law enforcement.

We applaud the city of Santa Clara for proactively removing these penalties. The Tobacco Industry actually uses the sometimes unequal enforcement of these policies to block public health policies that would benefit the Black community.

Formed in 2008, the African American Tobacco Control Leadership Council is composed of a cadre of dedicated community activists, academics, public health advocates and researchers. Even though based in California, we are national in our scope and reach. We have partnered with community stakeholders, elected officials, and public health agencies, from Chicago, Boston and Minneapolis to Berkeley and San Francisco. Our work has shaped the national discussion and direction of tobacco control policy, practices, and priorities, especially as they affect the lives of Black Americans, African immigrant populations and ultimately all smokers. The AATCLC has been at the forefront in elevating the regulation of mentholated and other flavored tobacco products on the national tobacco control agenda.

Sincerely

Carol McGruder, Co-Chair
African American Tobacco Control Leadership Council
www.SavingBlackLives.org

Carol McGruder

PUP in Smoke

Why Youth Tobacco Possession and Use Penalties Are Ineffective and Inequitable



Laws prohibiting the possession, use, and purchase of tobacco products by minors — also known as *PUP laws* — are ineffective as deterrents to youth smoking and are often enforced inequitably. This fact sheet provides tobacco control advocates with effective alternatives, best practices, and resources.

What Are PUP Laws?

The early 1990s saw a large increase in laws prohibiting the possession, use, and purchase of tobacco products by minors — also known as *PUP laws*. In 1988, only 6 states prohibited possession of cigarettes by minors. By 1995, that number had tripled, and by 2001, 32 states prohibited youth possession.¹ The numbers and trends are similar for youth use and purchase prohibitions. Today, all 50 states and the District of Columbia have laws restricting the sale of tobacco to minors, and all but 7² also have PUP laws.³

Many states adopted PUP laws in response to escalating tobacco use by youth and a growing body of evidence on tobacco-related harms. However, the rise in PUP laws is also linked to Big Tobacco's response to the Synar amendment,⁴ which required states to enact and enforce laws prohibiting distribution and sale of tobacco products to minors. As states imposed restrictions on tobacco retail sales, the tobacco industry and retail merchants associations pressured lawmakers to penalize buyers and users as well as vendors.^{5,6}

Advocates for PUP laws hoped that the laws would play a central role in a multi-pronged approach to reducing youth initiation and smoking rates, but studies show little evidence of a deterrent effect over time.

Enforcement of PUP Laws

Big Tobacco targeted youth for decades, seeking to create new generations of customers addicted to its products. Instead of holding industry and retailers accountable, PUP laws shift responsibility to their victims – young consumers who are purchasing and using a deadly and highly addictive product. Enforcement mechanisms vary by jurisdiction, and penalties range from education and community service to fines and incarceration. Many jurisdictions suspend (or refuse to issue) driver's licenses for PUP law violations. Some jurisdictions require participation in smoking cessation or tobacco education classes, which are chronically underfunded and often insufficient to meet public health goals. Some jurisdictions even use school suspension as an enforcement tool.

For a policy to have a lasting deterrent effect, a potential offender must believe there is a high likelihood of detection and resulting punishment.⁷ There is no systematic surveillance of PUP laws, but existing data show that PUP laws are inconsistently and selectively enforced. Furthermore, data show that PUP laws are 4 times more likely to be enforced than the laws prohibiting retailers from selling tobacco products to youth in the first place.⁸ Finally, psychologists have found that punishment is not an optimal strategy for behavior change – a finding that is even more relevant when the behavior in question is addictive.⁹



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PUP Laws Are Ineffective and Inequitable

ChangeLab Solutions does not include youth PUP provisions in its model ordinances because they are both ineffective and inequitable. PUP laws are unlikely to reduce youth initiation and smoking prevalence at the population level. Some researchers suggest that they are counterproductive, actually increasing smoking rates among youth who seek to engage in behavior deemed deviant or behavior associated with adulthood.

PUP laws are inequitable because they disproportionately affect youth of color. Youth of color – as well as LGBT youth, youth with disabilities, and boys – are more likely to smoke because these populations have been targeted via advertising and retailer placement by the tobacco industry.^{10,11} In addition to carrying a higher burden of tobacco-related harm, African American and Hispanic youth report higher citation rates than their white peers even after accounting for smoking frequency.¹² These findings mirror disparities recorded throughout criminal justice and school disciplinary systems.

Enforcement of PUP laws also disproportionately affects youth from low-income communities. High smoking rates are correlated with low income, and there are more tobacco retailers and advertisements in less affluent areas.¹³ Consequently, low-income youth are more likely to smoke and to be affected by PUP laws. A child with a job, a single parent, or 2 parents who work outside the home may struggle to complete community service or pay fines. If a violation results in suspension of a driver's license, travel to school, a job, or a community service site becomes more difficult. A child who is unable to complete community service or pay fines may be subject to escalating penalties that are increasingly difficult to resolve. Further, the resulting stress takes a toll on health and increases the likelihood of risky behaviors or involvement with juvenile justice, mental health, substance use, or other systems.¹⁴

PUP laws stigmatize youth who smoke, yet smoking is an addictive behavior promoted by a billion-dollar industry that directly and deliberately targets them. Stigma is not an effective public health intervention,

and it may keep kids from seeking cessation treatment or education. Problematic behaviors such as smoking may be more likely to continue in the face of punishment (as opposed to cessation interventions) because punishment provides an incentive to hide the behavior and protect those engaged in it. In addition, long-term behavior correction is more likely to occur when those addressing the behavior are loved or trusted; thus, parents and teachers – not law enforcement – are best positioned to deter smoking by youth.¹⁵

Finally, PUP laws may divert law enforcement and policy resources away from more effective strategies, some of which are described in the next section.¹⁶

Alternatives and Best Practices

Jurisdictions that wish to curb youth smoking have a wide variety of effective, equitable options. ChangeLab Solutions offers model policies that incorporate many of these provisions:

Retailer-focused policies, including compliance checks with youth decoys

Comprehensive tobacco retailer licensing (TRL) policies imposed by states or local jurisdictions place responsibility on retailers rather than young consumers. With appropriate funding and enforcement, TRL policies have proven more effective than PUP laws in reducing youth initiation and ongoing tobacco use. Ideally, enforcement should include regular compliance checks that use youth decoys.

California's Department of Justice recently awarded a new wave of [tobacco control grants](#) to combat illegal sale and marketing of cigarettes and other tobacco products to minors. While these funds can be used in different ways, Oroville City Elementary School District's approach aligns with our recommended best practices. The district will use grant funds to implement a tobacco prevention program for students in grades 4-8 and to conduct retail enforcement operations near school campuses, targeting retailers who prey on youth rather than penalizing kids.

Limits on advertising

Although legal considerations make it difficult to eliminate all tobacco advertisements, local governments can effectively reduce youth exposure to Big Tobacco's advertising by limiting the amount of window signage of any kind.

Minimum pricing and pack size

Youth are particularly price-sensitive, and studies show that price controls reduce smoking prevalence and initiation. Combining policies that require both a minimum pack size and a minimum price for all tobacco products can make items that are particularly appealing to youth (such as single flavored cigarillos) more expensive and less accessible to youth.

Restrictions on flavored tobacco products

Most young people report that they used flavored products when they started smoking. Restricting flavored tobacco products to adult-only stores or prohibiting them entirely can reduce youth initiation of smoking.

In 2014, the City of Santa Cruz adopted [Ordinance 2014-04](#), which prohibited the use of e-cigarettes in smokefree areas, the sale of e-cigarettes to minors, and the possession or use of e-cigarettes by minors. Four years later, the City of Santa Cruz adopted [Ordinance 2018-19](#), repealing youth possession and use penalties and adopting robust prohibitions of flavored tobacco products in their place. Banning the sale of flavored tobacco products is an effective and equitable strategy that can reduce youth initiation and tobacco use rates.

Cessation resources

Finally, cessation and tobacco education programs are often under-resourced and tailored for adults. Programs that are sufficiently funded, youth-specific, and free of charge are crucial elements of a comprehensive anti-tobacco strategy aimed at youth.¹⁷



What's Next?

ChangeLab Solutions and many tobacco control organizations agree that PUP penalties are outdated, misguided, and ineffective. But it's important not to replace one bad policy with another. Getting rid of PUP laws could shift enforcement from police to schools. Research shows bias in school discipline practices, which disproportionately affect youth of color and low-income youth.¹⁸ Further, schools that primarily serve low-income youth are more likely to impose harsh punishments and use intense surveillance measures associated with higher suspension rates. These practices also have a disparate impact on students of color. For example, a black student's odds of being suspended have been found to be 2.7 times higher than those of a white student.¹⁹

As communities and school districts begin to address increasing use of vapor and electronic smoking devices by youth, it is important to consider the equity implications of different approaches. Decisionmakers must ask whether policies address the inequities that lead to different youth populations' use of tobacco products – and whether enforcement will lead to equitable outcomes rather than worsening inequities.

While youth tobacco use remains a pressing public health problem, public health agencies should promote effective solutions that place the blame where it belongs: on the tobacco industry and retailers who sell to youth.

Resources

Stanford University's research on the impact of tobacco advertising

http://tobacco.stanford.edu/tobacco_main/index.php

Stanford School of Medicine's fact sheets and educational units on vaping

<https://med.stanford.edu/tobaccopreventiontoolkit/E-Cigs.html>

ChangeLab Solutions' Comprehensive TRL Model Ordinance

www.changelabsolutions.org/publications/model-TRL-Ordinance

California Smokers' Helpline resources, including a mobile app and support via text message

www.nobutts.org/free-services-for-smokers-trying-to-quit

Campaign for Tobacco-Free Kids' fact sheet on youth PUP laws

www.tobaccofreekids.org/assets/factsheets/0074.pdf

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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Photos courtesy of iStockPhoto (cover), California Department of Public Health, California Tobacco Control Program (pages 2, 4), and ChangeLab Solutions (page 5).

Notes

- ¹ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ² CA, MD, MA, NV, NJ, NY, DC.
- ³ States without PUP laws may still have local PUP ordinances.
- ⁴ U.S. Department of Health & Human Services. About the Synar Amendment and program. www.samhsa.gov/synar/about. Updated September 2017. Accessed March 5, 2019.
- ⁵ Lantz PM, Jacobson PD, Warner KE, et al. Investing in youth tobacco control: a review of smoking prevention and control strategies. *Tobacco Control*. 2000;9(1):47-63.
- ⁶ Jacobson PD, Wasserman J. *Tobacco Control Laws: Implementation and Enforcement*. Santa Monica, CA: RAND Corporation. www.rand.org/pubs/monograph_reports/MR841.html. 1997. Accessed March 5, 2019.
- ⁷ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ⁸ Forster JL, Komro KA, Wolfson M. Survey of city ordinances and local enforcement regarding commercial availability of tobacco to minors in Minnesota, United States. *Tobacco Control*. 1996;5(1):46-51.
- ⁹ Volkow ND, Baler RD, Goldstein RZ. Addiction: pulling at the neural threads of social behaviors. *Neuron*. 2011;69(4):599-602.
- ¹⁰ Bach, L. *Tobacco Company Marketing to Kids*. Washington, DC: Campaign for Tobacco-Free Kids. www.tobaccofreekids.org/assets/factsheets/0008.pdf. Accessed on March 5, 2019.
- ¹¹ American Lung Association, Campaign for Tobacco-Free Kids, American Cancer Society, et al. *Achieving Health Equity in Tobacco Control*. truthinitiative.org/sites/default/files/Achieving%20Health%20Equity%20in%20Tobacco%20Control%20-%20Version%201.pdf. Published December 8, 2015. Accessed on March 5, 2019.
- ¹² Gottlieb NH, Loukas A, Corrao M, McAlister A, Snell C, Huang PP. Minors' tobacco possession law violations and intentions to smoke: implications for tobacco control. *Tobacco Control*. 2004;13(3):237.
- ¹³ American Lung Association, Campaign for Tobacco-Free Kids, American Cancer Society et al. *Achieving Health Equity in Tobacco Control*. truthinitiative.org/sites/default/files/Achieving%20Health%20Equity%20in%20Tobacco%20Control%20-%20Version%201.pdf. Published December 8, 2015. Accessed on March 5, 2019.
- ¹⁴ Rew L, Horner SD. Youth resilience framework for reducing health-risk behaviors in adolescents. *J Pediatr Nurs*. 2003;18(6):379-388.
- ¹⁵ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ¹⁶ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ¹⁷ California Smokers' Helpline currently offers free alternative methods of cessation counseling such as a text message support system, available at www.nobutts.org/free-services-for-smokers-trying-to-quit.
- ¹⁸ Nance J. Student surveillance, racial inequalities, and implicit racial bias. *Emory Law J*. 2017;66(4):765-837.
- ¹⁹ Finn JD, Servoss, TJ. Misbehavior, suspensions, and security measures in high school: racial/ethnic and gender differences. *J Appl Res Child*. 2014;5(2).



Photo by Changelab Solutions

2/9/21

Item# 3.I

Julie Minot

From: Caroline Baker <cbaker8942@icloud.com>
Sent: Saturday, February 6, 2021 2:00 PM
To: Mayor and Council
Cc: Carol Baker; Vanessa Marvin
Subject: Santa Clara ordinance vmedits.docx
Attachments: Santa Clara ordinance vmedits.docx

Follow Up Flag: Follow up
Flag Status: Flagged



February 5, 2021

To the members of Santa Clara City Council,

Thank you for considering the repeal of Section 8.35.130 from the current City of Santa Clara municipal code, which outlines the punishment for children who are lured into using vapes and cigarettes with childish flavors such as cotton candy.

Your proposal would move towards protecting, not punishing the youth of the City of Santa Clara. We support a shift in focus towards ensuring tobacco retailers are following all local and state point of purchase laws.

The Tobacco-Free Coalition of Santa Clara County is in support of your efforts to remove the punishment sections of the ordinance. We look forward to continuing to work with you and your city on future tobacco control efforts that protect the health of community residents.

Thank you again,

Carol Baker and Vanessa Marvin, Co Chairs,
Tobacco Free Coalition of Santa Clara County
1775 Story Road Suite 120
San Jose, CA 95122



TOBACCO-FREE COALITION
of Santa Clara County

February 5, 2021

To the members of Santa Clara City Council,

Thank you for considering the repeal of Section 8.35.130 from the current City of Santa Clara municipal code, removal which outlines the of punishment for children who are lured into using vapes and cigarettes with childish flavors such as cotton candy.

Your proposal ~~The return to the original comprehensive proposal~~ would move towards protecting, not punishing the youth of the City of Santa Clara. We support a shift in focus towards ensuring tobacco retailers are following all local and state point of purchase laws.

~~The organizations of the~~ Tobacco-Free Coalition of Santa Clara County are in support of your efforts to remove the punishment sections of the ordinance. We look forward to continuing to work with you and your city on future tobacco control efforts that protect the health of community residents.

Thank you again,

Carol Baker and Vanessa Marvin, Co Chairs,
Tobacco Free Coalition of Santa Clara County
1775 Story Road Suite 120
San Jose, CA 95122

2/9/21

Item # 3.1

County of Santa Clara
Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.5040



2/5/2021 – RE: Section 8.35.130 - Youth Possession

Dear Mayor Gillmor and Santa Clara City Council Members,

On behalf of the County of Santa Clara Public Health Department, I am writing in support of the recommendation to repeal Section 8.35.130 from City of Santa Clara Code. I applaud city leadership for their consideration to remove the Youth Purchase, Use and Possession (PUP) laws that are currently written into the city's second-hand smoke ordinance.

The Public Health Department's mission is to protect and improve the health of our community. We work to prevent disease and injury, promote healthy lifestyles, create healthy environments and advocate for policy and system changes that advance department priorities. By including and maintaining a lens based on racial and health equity we strive for an upstream public policy agenda across all sectors and for guiding principles that are in alignment with public health priorities and values.

In 2019, the California Student Tobacco Survey report for Santa Clara County revealed that more than 2 in 5 teens (45.4%) reported purchasing their own e-cigarettes; with over a quarter of this group saying they bought them directly from a local store. Among those who purchased e-cigarettes from a local store, 62.5% reported purchasing them at an adult-only vape shop.

To best protect the youth from the negative impacts of tobacco; it is best to adopt a proactive strategy based on fostering collaborative partnerships and preventative policies. Youth Purchase, Use, and Possession (PUP) Laws are NOT an effective evidence-based strategy for reducing youth smoking and vaping. These types of laws often create many unintended consequences as they unfairly target and punish youth, who are primary targets of aggressive tobacco industry marketing. We would like to see the focus shift towards tobacco retailers to ensure that these businesses are following all local and state point of purchase laws.

In closing, we strongly urge you to move forward with the consideration to remove the Youth PUP clause from city code. Through the Healthy Cities Grant, we are encouraged by the current partnership between the City of Santa Clara and SCC PHD's Tobacco Free Communities Program and look forward to our continued collaboration as we address other tobacco issues. We thank you for your leadership and dedication towards the health of all residents within the City of Santa Clara.

Sincerely,

Sara H. Cody, MD
Health Officer and Public Health Director

POST MEETING MATERIAL

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith