



Adding Chapter 6-20 Regulation of Retail Tobacco Sales

May 21, 2024

Jason Nutt, Assistant City Manager

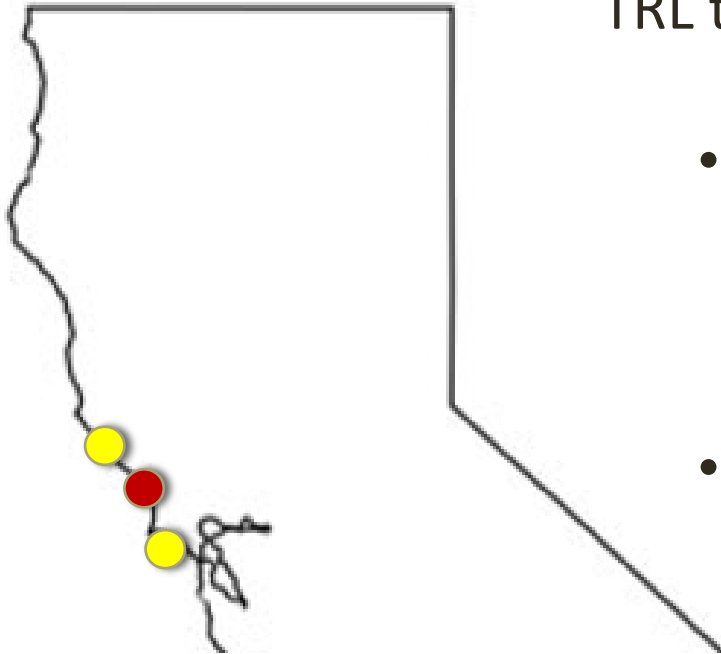
TRL Purpose

Licenses provide important public safeguards in the regulation of hazardous and potentially harmful products and businesses.

- Proactive rather than reactive compliance monitoring
- Improves compliance with business standards and laws
- For tobacco sales, research confirms that TRLs can:
 - Reduce youth access and use of tobacco
 - Reduce illegal sales of banned products
 - Reduce tobacco-related health inequities
- Create a mechanism for policy adoption that is nimble and responsive to our local issues.
- Create an even playing field for tobacco retailers
- Council directed focus to reduce youth sales and use

Statewide Tobacco Retail Policies

226 (47%) CA municipalities require a TRL to sell tobacco



- 7 of 10 jurisdictions in **Sonoma County** impose additional local restrictions on the sale of tobacco, mostly via TRL.
- **North of Sonoma County:** Most of Mendocino County covered by TRL (Fort Bragg is the exception)
- **South of Sonoma County:** All of Marin County is covered by TRL

Tobacco Retail Policies

GREEN: STRONG POLICY

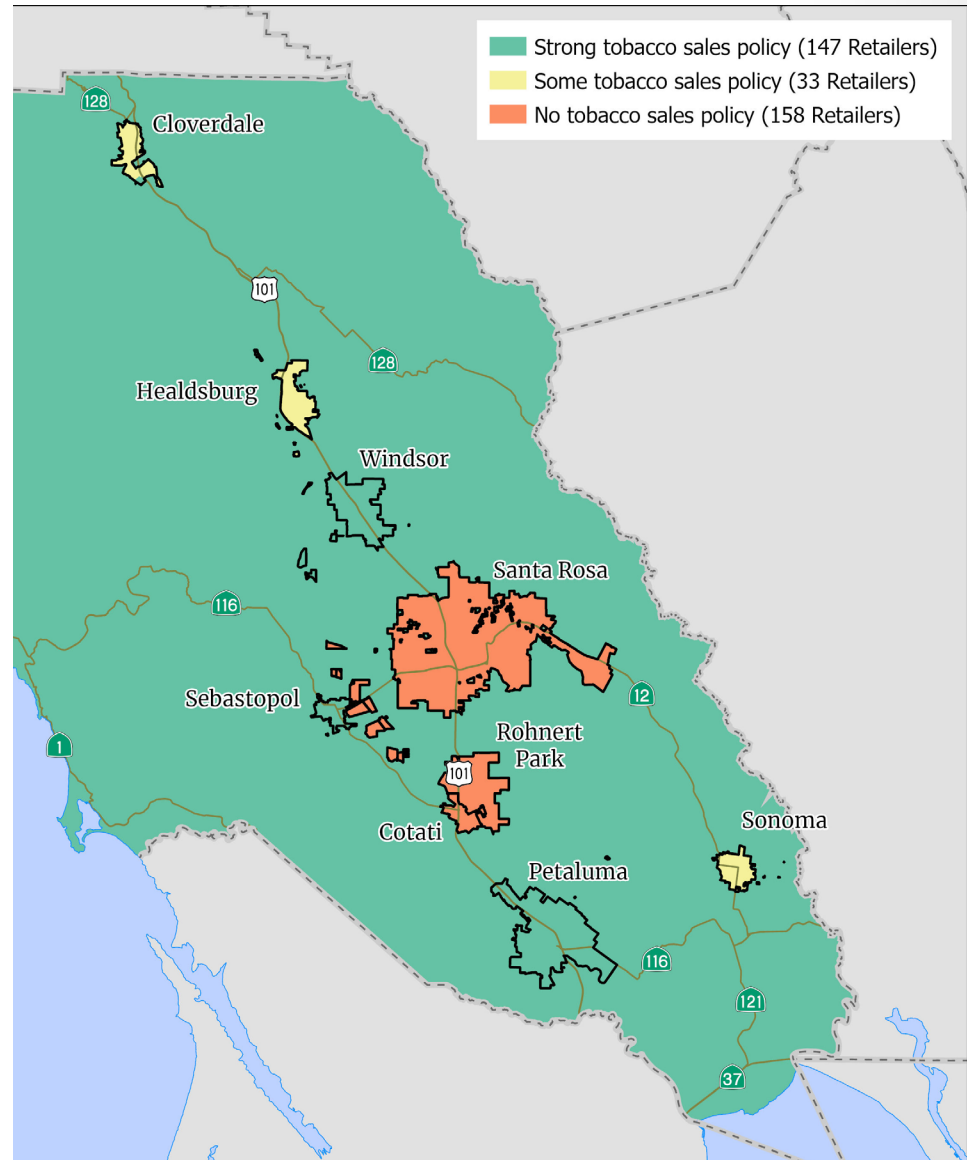
- Petaluma
- Sebastopol
- Windsor
- Unincorporated Sonoma County*

YELLOW: MODERATE POLICY

- Cloverdale
- Healdsburg
- Sonoma (City)

RED: NO POLICY

- Cotati
- Rohnert Park
- Santa Rosa



Youth Electronic Smoking Device Use Statistics

- Sonoma County's **youth*** EDS use rate is currently **13%**
- Adult EDS *and* cigarette use **combined** is just **9%**.
- At the peak of the youth EDS use epidemic (2017-19), **29%** of high-schoolers were using EDSs *regularly*
- Sonoma use rates exceed national rates



*Youth are in high school, generally under 18.

Tobacco vs Cannabis

	Cannabis	Tobacco
Sale of Flavored Products	Prohibited	Prohibited
No Online Sales	On-site & Delivery	On-site
Transfer of License	Restricted	No Limitations
Sale of Electronic Devices	ESDs w/ THC&CBD Allowed	ESDs w/ Tobacco Prohibited
Proximity to Youth Areas/Other Tobacco Retailers	600 feet	600 feet
Density Restrictions	No	Lesser of 118 or 1 per 2,500
Minimum Price	No	Yes
Minimum Pack Size	No	Yes
No Discounts/Coupons	Included	Included
Suspension & Penalty	Strong Approach	Greatest Allowed

Draft Ordinance Summary

	Study Session	Proposed
Sale of Flavored Products	Prohibited	Prohibited
No Online Sales	Prohibited	Prohibited
Transfer of License	Limited Rights	No Limitations
Sale of Electronic Devices	Prohibited	Prohibited
Proximity to Youth Areas/Other Tobacco Retailers	1,000 feet	600 feet
Density Restrictions	Current @ 118	Lesser of 118 or 1 per 2,500
Minimum Price	Included @ \$10	Included @ \$10
Minimum Pack Size	Included	Included
No Discounts/Coupons	Included	Included
Suspension & Penalty	Strong Approach	Greatest Allowed

Retailer Feedback

- Hosted two meetings with Retailers
 - May 13, 2024 @ UFO - 12 Retailers and 1 retail customer
 - May 14, 2024 via Zoom – 3 Retailers
- Walked through the main ordinance components and encouraged feedback, discussion and alternate proposals.
- Primary areas of concern:
 - ESD sales – recommended alternative language allowing FDA authorized products, CBD and essential oils.
 - Increase education for students and families
 - Concern with jurisdictional equity
 - Concern with broad-brush approach rather than focused

Tobacco Retailer Eligibility

Section 6-20.060

- Currently 118 locations tobacco retailers within city limits
- Council requested strategy to:
 - Support existing businesses
 - Focus on sales to youth
 - Establishing a buffer between new tobacco retailers and Youth Oriented Areas
- Transfers are allowed
 - Family and companies with related shareholders - No change in compliance with ordinance
 - Arms-Length – Allowed with full compliance to ordinance
- Designation of eligible retailers

Youth Oriented Areas

Section 6-20.060(G)

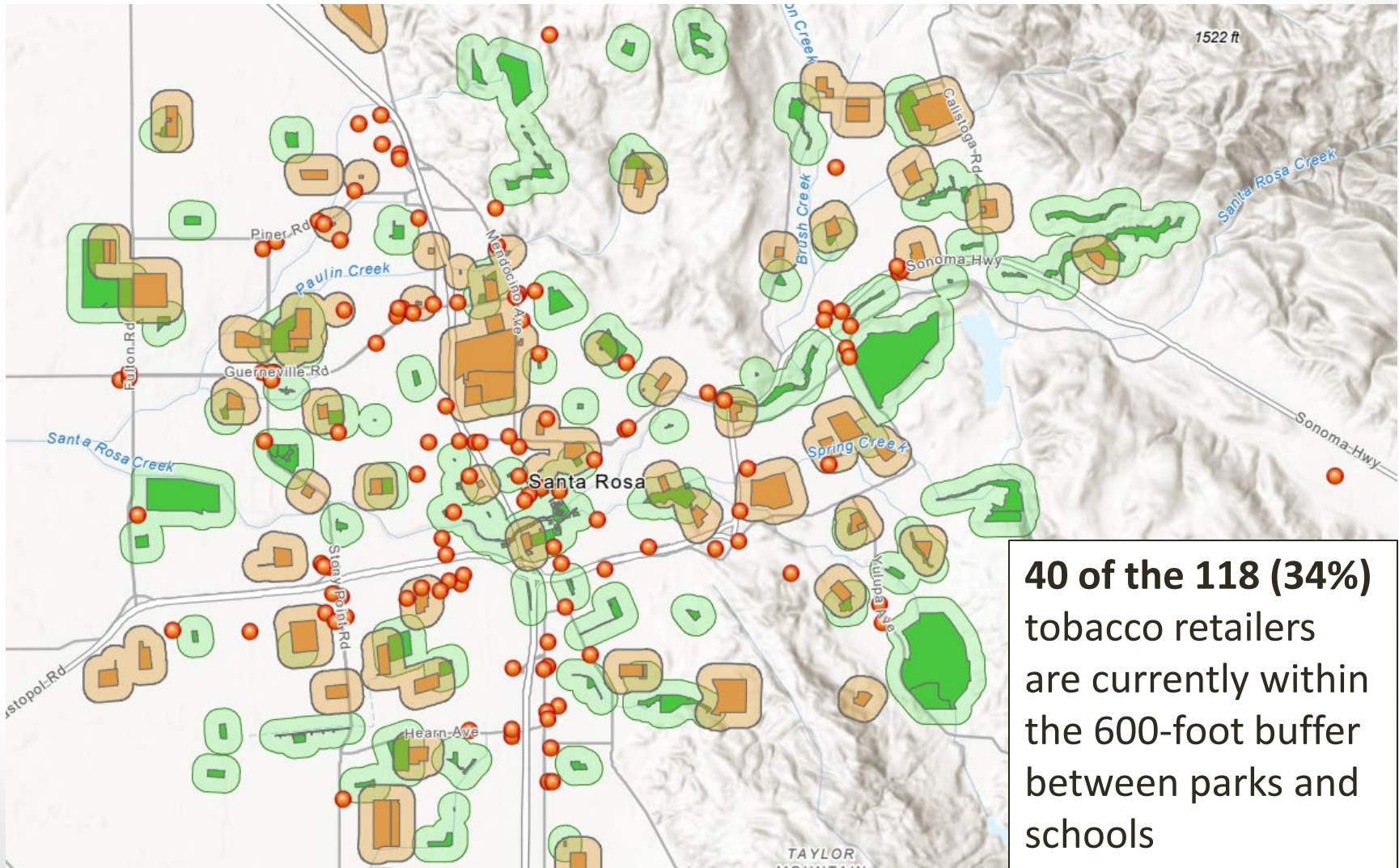
No new license may be issued to authorize tobacco retailing within 600 feet of a youth-oriented area as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented area is located to the nearest point of the property line of the parcel on which the applicant's business is located.

- Conforms with cannabis ordinance
- Reduces the number of non-conforming retailers
- Retains areas in all Districts where tobacco retailers can locate along more industrial and commercial corridors

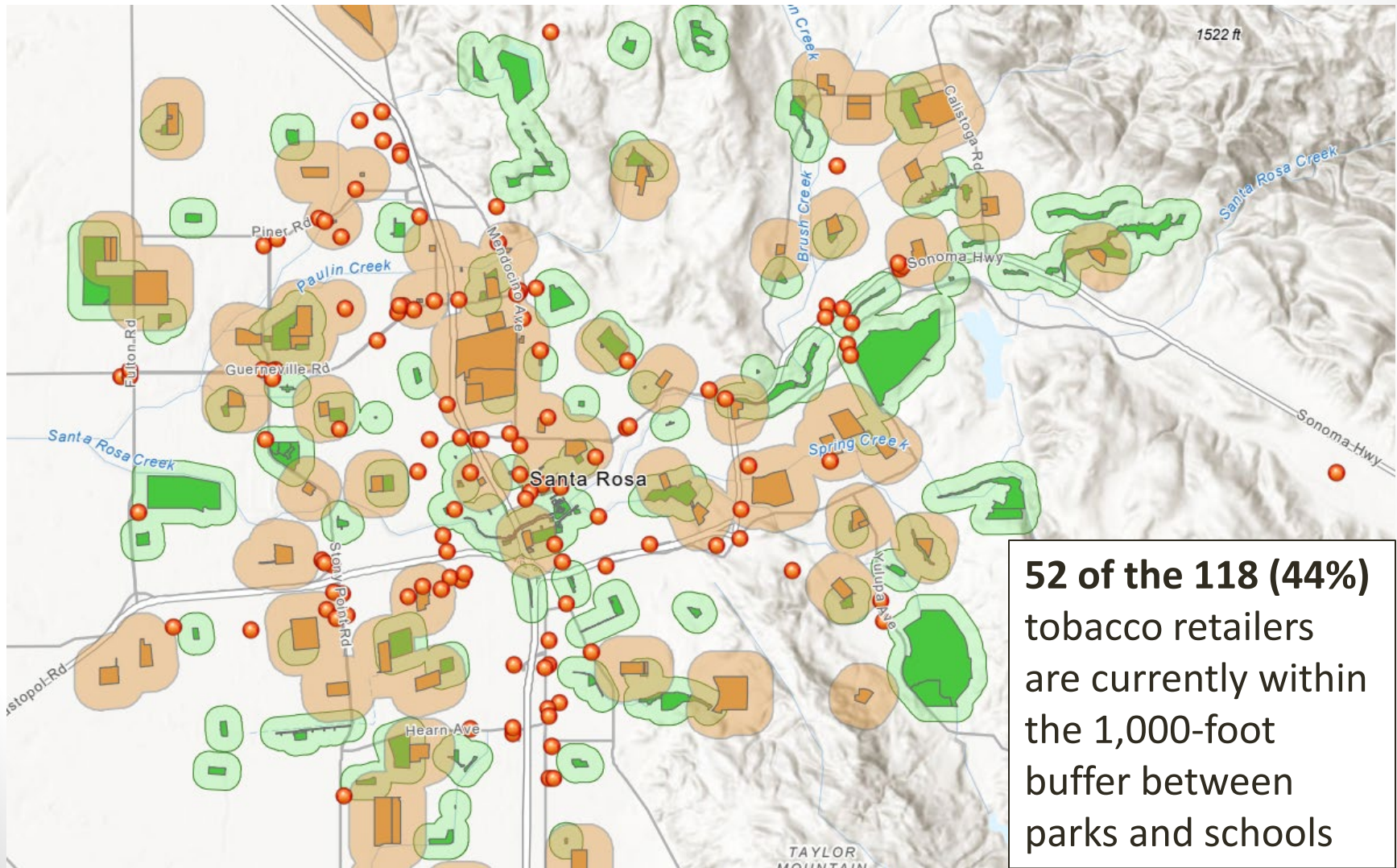
Youth Oriented Areas

- Any public or private school providing instruction in kindergarten or any grades one (1) to twelve (12), inclusive, but does not include any private school in which education is primarily conducted in private homes.
- Properties and areas owned or operated by the City and open to the general public for recreational purposes, including:
 - Parks
 - Gardens
 - Playgrounds
 - Picnic areas
 - Barbeque areas
 - Sporting facilities
 - Bleachers
 - Dugouts
 - Ball fields
 - Sport courts
 - Golf courses
 - Swimming pools
 - Trails and pathways
 - associated parking areas

Parks & Schools Buffer - 600 ft



Parks & Schools Buffer – 1,000 ft



52 of the 118 (44%) tobacco retailers are currently within the 1,000-foot buffer between parks and schools

Flavored Tobacco

Section 6-20.040 - It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

A taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, including but not limited:

- Fruit
- Chocolate
- Vanilla
- Honey
- Candy
- Cocoa
- Dessert
- Alcoholic beverage
- Mint
- Wintergreen
- Menthol
- Herb
- Spice

A cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product that includes a minty or cooling effect, such as describing the product as:

- “chill”
- “ice”
- “fresh”
- “arctic”
- “frost”

Electronic Smoking Devices

Section 6-20.045

It shall be unlawful for any tobacco retailer to sell any electronic tobacco smoking device.

- Health and Safety:
 - High use rates by youth, high levels of toxic nicotine, highly addictive.
 - Field of research is growing, finding more negative health outcomes.
- Prohibiting the sale of electronic smoking devices for tobacco retailers has no overlap with products sold by cannabis dispensaries.



Electronic Smoking Devices

- Only 7 nicotine ESDs are authorized for sale by FDA:
 - NJOY (Altria) – Daily and ACE (+ pod refills)
 - Vuse (R.J. Reynolds) – Ciro and Vibe (+ cartridges, power units)
 - Logic (Japan Tobacco Inter.) – Vapeleaf, Power, and Pro (+ cartridges, chargers)
- Recent FDA enforcement on brick-and-mortar stores have resulted in civil penalties of \$20,000 issued to 20 retailers.
- Localities can fully restrict ESD sales.



Electronic Smoking Devices

- Some jurisdictions have limited ESD bans, such as
 - San Francisco - Prohibits the sale of all ESDs; however, does not apply to:
 - FDA-approved products marketed for therapeutic purposes
 - Laws or regulations regarding medical cannabis
 - Alameda County – Prohibits the sale of all ESDs; however, does not apply to:
 - FDA-approved tobacco cessation products
 - Devices used for cannabis
- Retailer feedback indicated an interest in excluding:
 - FDA authorized non-flavored/clear/“free” ESDs
 - ESDs containing CBD
 - ESDs containing wellness products (essential oils, vitamins)

Minimum Pack Size and Price

Section 6-20.050

- Prohibits issue and use of any coupons and discounts
- Little cigars shall be sold in a package size of at least five (5)
- Minimum prices shall be set as follows:
 - Cigarettes, package of 20 – not less than \$10 per package
 - Little Cigars – not less than \$10 for minimum package size or \$2 each for larger packages
 - Full Size Cigar – full retail price but not less than \$10 each
 - Smokeless Tobacco – not less than \$10 each

Enforcement and Penalties

Section 6-20.130; 6-20.140; 6-20.150 & 6-20.160

- At least one (1) compliance check annually
- Reinspection will occur if violations are documented
- Penalties and suspension will occur if within a five (5) year period:
 - First Violation – if not rectified by reinspection, up to \$600 fine for each violation and thirty (30) day suspension.
 - Second Violation – if not rectified by reinspection, up to \$1,000 fine for each violation and sixty (60) day suspension.
 - Third Violation – if not rectified by reinspection, up to \$1,800 fine for each violation and ninety (90) day suspension.
 - Fourth Violation – up to \$4,000 fine for each violation and license is revoked.

Enforcement

- The City Manager will identify the “Department” responsible for compliance and enforcement.
- Currently, the Sonoma County Department of Health Services Tobacco-Nicotine Prevention Program (Impact Sonoma) provide compliance inspections and preliminary enforcement for Petaluma, Windsor, and Unincorporated Sonoma County through their TRLs.



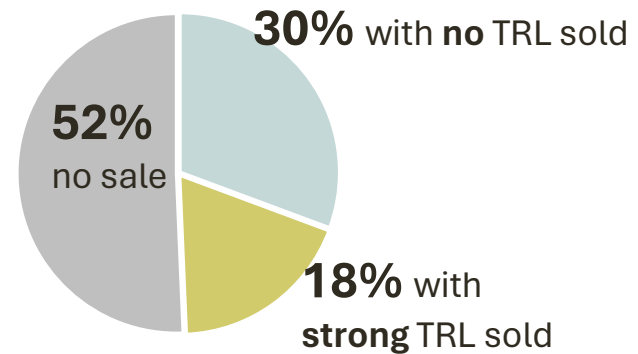
- Santa Rosa also intends to contract with Impact Sonoma for compliance inspections and preliminary enforcement.
- Code Enforcement will be the primary enforcement agent where suspensions and fines are required due to violations of the Code.

Enforcement Outcomes

- Reduces underage sales
- Responsible retailing-adherence to tobacco laws
- Shifts social norms
- Reduces tobacco use helps reduce smoking attributable deaths in Sonoma County

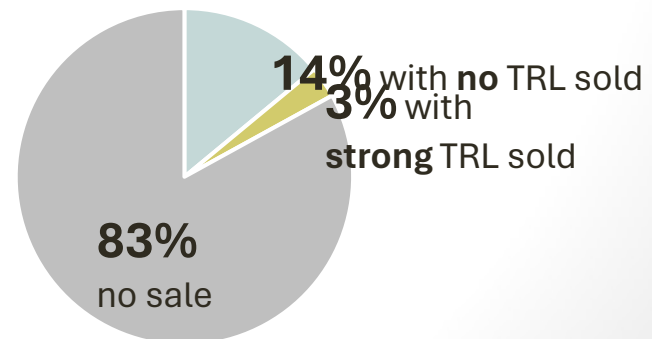
Underage Sales

DHS Purchase Survey 2021, n=156



Underage Sales

DHS Purchase Survey 2023, n=100



Recommendation

It is recommended by the City Manager's Office that the Council: 1) hold a public hearing to discuss regulation of retail tobacco sales; 2) introduce an ordinance adding Chapter 6-20 to the Santa Rosa City Code titled "Regulation of Retail Tobacco Sales"; and 3) by motion, authorize the City Manager to negotiate and execute an agreement with the County of Sonoma for compliance monitoring and enforcement.