**Anticipated questions from the Board of Health related to TRL**

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# Why TRL?

**Why should Clackamas County pass tobacco retail licensing (TRL)?**

* State tried and failed to pass TRL
* Maintain local government control over specific elements of licensing including fees, education and enforcement
* Local jurisdictions with TRL in place generates momentum and demonstrates support for statewide legislation.
* Concern that the state may preempt local jurisdictions from implementing stronger policies that limit youth access to tobacco.
* TRL is most effective when implemented county-wide rather than cities implementing a patchwork of ordinances
* Clackamas County Public Health Division (CCPHD) is best suited to conduct retailer education and to enforce TRL. Public Health understands the nexus of the complex tobacco retail and regulatory environments. Public Health will apply its experience regulating and enforcing code with restaurants and other businesses, enforcing the Indoor Clean Air Act, and assessing tobacco retailers in Clackamas County to build and implement TRL.

**What does TRL mean for cities?**

CCPHD is mapping known retailers in every city in relation to schools, highest densities of youth under 21, and poverty to illustrate the need to ensure compliance with Tobacco 21 through TRL.

Implementing TRL in your community will reduce youth access to and initiation of tobacco and nicotine products, ultimately ending the burden of tobacco-related diseases and death.

Allocating responsibility to the Board of Health to pass TRL shifts the implementation and administration, to the Local Public Health Authority resulting in consistent education and enforcement county-wide.

**What is the argument against TRL? Is there anything negative to approving TRL?**

It’s no surprise that the tobacco industry opposes TRL. Their revenue relies on young people developing a life-long addiction to tobacco and nicotine products.

# Local Efforts

**What other Oregon counties have TRL? What can be learned from them?**

Benton County: implemented October 1997.

* Their current license fee ($35) only covers cost of administration and is not enough to cover enforcement.
* Cities do not want to be responsible for enforcement; they are working on a plan for how to better enforce.
* Corvallis passed own TRL ordinance

Lane County: implemented January 2015

* $200 license fee for new retailer, $125 for renewing. Fee is insufficient to cover decoy inspections.
* Unincorporated. Veneta and Cottage Grove passed own TRL ordinance
* County thoroughly explains to retailers how TRL prevents youth from buying tobacco.

Multnomah County: implemented July, 2016.

* $580 license fee.

Klamath County: Implemented January 1, 2018.

* Unincorporated. Klamath Falls passed a resolution that gives Klamath County Health Department the authority to implement TRL in the city.
* $275 license fee.
* Most retailers understood the reasoning behind TRL in their retailer engagement process.
* County ordinances have to match up with city ordinances for consistency.

Main themes: the licensing fee has to be sufficient to cover the cost of administration and enforcement. County-wide policy allows for consistency and enforcement of TRL (easier than individual city models). Communication has been essential to explain the purpose and to prepare retailers of what to expect. Retailers have been generally understanding of TRL.

**Why hasn’t Oregon been able to pass TRL (what happened in 2017 legislative session)?**

* Challenges around Revenue Department’s difficulty designing a financial structure that could be fairly applied across counties that vary in population size and wealth
* Sticking points around Minors in Possession
* Industry opposition at state level, less at county level.

**Based on the experiences of other counties in Oregon that have implemented TRL, what impact has TRL had on illegal sales to youth?**

Multnomah and Klamath Counties have not had TRL in place long enough to measure change in underage sales. The license fees in Benton & Lane Counties are not high enough to support compliance checks.

A recent assessment of 33 communities in California that implemented a tobacco retail license showed dramatic decreases in illegal sales to youth since passing TRL.

**Is TRL being pursued across the metro area?**

TRL was implemented in Multnomah County in 2017. Washington County is considering TRL but is not yet ready to move forward. If TRL passes in Clackamas County, it will help build the case to approve TRL across the tri-county area.

# Role of BCC/BOH

**What is the Board of Health’s authority to pass a county-wide TRL?  What do cities have to do to support TRL?’**

The County as the Local Public Health Authority, has broad authority under state law (ORS 431A.010 and ORS 431.413) to adopt and implement public health programs to protect the public health and safety. Cities should follow their own governing processes if a city wishes to support TRL in their city, for example, by resolution or an IGA with the County.

**What role, if any, should the BCC have in the community engagement plan?**

CCPHD is asking the BCC to champion TRL. County leadership will help garner support from constituents as we move forward with TRL outreach and education.

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# Cost of Tobacco

**What are the tobacco-related costs in Oregon? What is directly related to tobacco?**

The estimated costs of tobacco-related medical treatment and lost productivity in Clackamas County in 2013 was $213.8 million. The productivity-related cost is $95.1 million, and the medical cost is $118.7 million.[[1]](#footnote-1)

**What is Oregon’s tobacco tax?**

Oregon’s tobacco tax is ranked 31st in the nation. The tax on a pack of 20 cigarettes in Oregon is $1.33 with the national average of $1.72. Our neighbors in Washington rank 8th in the nation, taxing $3.025 per pack. The highest tax on a pack of cigarettes is $4.35 in New York, the lowest is $.30 in Virginia.

Excise taxes are imposed on the distribution of all tobacco products in Oregon, levied on each cigarette and as a percent of the wholesale price of other tobacco products (like cigars and moist snuff).[[2]](#footnote-2) Inhalant delivery systems, such as e-cigarettes and vapor products, are not subject to tobacco taxes.

**What is the State’s revenue from tobacco taxes? How is the revenue from tobacco taxes allocated? How much does Clackamas County receive from the state?**

In the fiscal year 2015-2016, the total revenue from the excise tax on cigarettes and other tobacco products was $267.2 million.[[3]](#footnote-3) State wide, Counties receive around 1.5% of the total revenue from tobacco taxation. Counties receive additional funding from the Tobacco Use Reduction Account (TURA), which funds the Tobacco prevention and Education Program (TPEP). Clackamas County’s annual TPEP budget is $223,158.

The following figure is the approximate tax distribution of the previous $1.32 tax on a pack of cigarettes, as of January, 2017. The excise tax was raised by $0.01 in 2018.

Note: The sum of the numbers in this figure do not add up to the former tax rate of $1.32 due to rounding.

# Cost of TRL (Budget)

**How is TRL different from a tobacco tax?**

A tax represents money that a government charges an individual or business when they perform a particular action or complete a specific transaction. This tax is often assessed as a percentage of an amount of money involved in the transaction. For example, a tax is often placed on the sale of goods.

A fee is related to a tax, in that it is also a charge paid to the government by individuals or by a business. However, a fee is specifically applied for the use of a service. The fee rate is directly tied to the cost of maintaining the service. Money from the fee is generally not applied to uses other than to providing the service for which the fee is applied. For example, a government may charge a fee to visit a park.[[4]](#footnote-4)

**How many new employees will the County have to hire to operate Tobacco Retail Licensing?**

The Public Health Division would hire one Program Coordinator for a Tobacco Retail License Program.

**What is the anticipated budget to implement TRL? How many FTE is needed?**

Licensing fees will cover the cost of implementing this program. See separate budget narrative.

**What will be the cost of the license?**

Based on 232 tobacco retailers within Clackamas County, we estimate the licensing fee will be around $500-600 to provide the level of support for all retailers in the county.

**Will a small mom and pop store get charged the same as a larger entity such as Fred Meyer or Winco? Can the fee be sliding based on the retailer size or amount of sales?**

A flat fee between $500 - $600 is based on the cost to administer the license, educate retailers and conduct inspections with the 232 known retailers in the county. The total cost of the program will be divided among all retailers. Every retailer, regardless of the size, will receive the same level of service in order to comply with laws governing sale of tobacco and nicotine products.

The licensing fee must be set no higher than the actual costs incurred by the government to operate the program. We have learned from other jurisdictions that a tiered based fee structure has been challenged in court.

In 2009, the New York State Legislature adopted legislation to replace the licensing fee of $100/year with a graduated fee of between $1,000 and $5,000/year, depending on the volume of sales by a retailer. The amount of the proposed new fee was not based on any precise calculation of program costs. A trade association filed a lawsuit alleging that the fee increase was an unconstitutional tax, and the appellate court issued an order allowing the retailers to pay the $100 fee until the court decided the case. The lawsuit was ultimately dismissed when the State Legislature adopted legislation to impose a flat licensing fee of $300/year.

*Long Island Gasoline Retailers Ass’n v. Paterson, 83 A.D.3d 913 (App. Div. 2011). Case summarized by ChangeLab Solutions, Tobacco Retailer Licensing Playbook | changelabsolutions.org/tobacco-control*

A flat fee is easiest to administer and less burden to retailers. A tiered fee would require retailers to prepare documentation of profit that would need to be reviewed prior to any license or renewal.

There are options for retailers to recoup the cost of a TRL. A $500 - $600 fee amounts to $1.37 - $1.64 per day to sell tobacco products. The impact on store revenue would be minimal as retailers are able to raise tobacco prices and/or adjust the prices of other store items to offset the cost of the license fee.

**What is the economic impact of TRL on businesses?**

* CCPHD contracted with Portland State University’s Northwest Economic Research Center (NERC) to determine the economic impact of TRL in Clackamas County. NERC concluded in its report that:
* Overall, tobacco retail licensing is unlikely to have a significant adverse effect on the Clackamas County economy. If TRL goes into effect, Clackamas County would see a reduction in employment of 4.12 FTE positions and a corresponding decrease in gross wages of $129,185. Putting these numbers in perspective, in 2016 there were 7,127 FTE employees included in the analysis, labor income was $204,899,969.
* An annual license fee of $500 - $600 amounts to $1.37 and $1.64 per day to sell tobacco and nicotine products.
* The impact of a TRL on store revenue would be minimal because retailers are able to raise tobacco prices and/or adjust the prices of other store items to offset the cost of the license fee.
* Economic trend analysis indicates that a $500 licensing fee would raise the price of a pack of cigarettes by $.12 for a smaller retailer (Upstream Public Health, Health Equity Impact Analysis)

**Would paraphernalia and non-nicotine liquid be included?**

Any store that sells products containing tobacco or nicotine would need to maintain a tobacco retail license, any taxes on products are a separate matter. However, it is infrequent that a retailer would sell only paraphernalia and non-nicotine liquids separate from other tobacco and nicotine products.

**Will the cost to operate TRL sustainably cover the increased training/inspection requirements? Will there be flexibility to increase the fee and/or adjust the program requirements to some extent if there are extenuating conditions impacting the ability of successful implementation of TRL?**

The cost to operate a Tobacco Retail License program is based on the projected cost to administer the license, educate retailers and conduct two annual inspections with 232 known retailers in the county. If the Board of County Commissioners / Board of Health adopts a tobacco retail license, we will facilitate a Rules Advisory Committee to help determine the details around a fee schedule, including financial penalties if retailers do not comply with tobacco laws.

**How is public health positioned with the cities to implement TRL? How is the partnership being established? Is there 100% buy-in from them?**

CCPHD has engaged all cities in Clackamas County and have presented TRL to 10 city councils. They have raised thoughtful questions and vocalized their support. West Linn, Milwaukie and Gladstone have signed resolutions in support of TRL. Sandy submitted a letter of support for TRL.

The Board of County Commissioners is considering a county-wide TRL proposal that, if adopted, would be implemented by CCPHD. The Public Health Division would retain 100% of the fee to administer the license, uniformly educate retailers and enforce tobacco-related laws across the county, alleviating the burden from cities. A county-wide TRL would avoid a patchwork of city ordinances. Cities would follow their own governing process to support TRL in their city, by resolution or an IGA with the County to implement TRL.

**You mentioned during the presentation that all proceeds collected must be used for the program. How many jobs will this create to enforce it? What are the salaries and overall cost for those employees (including benefits)?**

The Public Health Division would hire one permanent, full-time, Program Coordinator for the Tobacco Retail License Program in calendar year 2020 and one temporary adult, between 18 – 20 years of age, to implement annual Minimum Legal Sales Age Inspections in calendar year 2021. Please see the attached budgets for more details.

**Will all funds be held in a stand-alone account, co-mingled with no others, that is audited and transparent?**

“Tobacco Retail License” will be a separate program where the revenues and expenses will be tracked. Revenue from fees and fines will be posted separately. Clackamas County general funds will also be used to supplant whatever expenses the fees and fines don’t cover, particularly in the first couple years of operation. The detailed budgets are designed to be transparent and all Public Health Programs/Project Budget to Actual reporting is audited annually by an external auditor.

# Youth Impact

**How does TRL prevent youth access to tobacco?**

Through TRL, tobacco retailers receive information & education about:

* tobacco-related laws
* how to verify legal sales age with a photo ID
* consequences if tobacco is sold to a person illegally

TRL enables jurisdictions to monitor compliance with laws and enforce penalties if tobacco is sold to persons under the age of 21. Sanctions, such as fines and suspending retailers’ ability to sell tobacco, deter retailers from selling tobacco to youth.

**Why are we concerned about tobacco addiction in youth?**

Nicotine, the addictive substance in tobacco, primes the brain for addiction and is considered a “gateway drug” to illicit drugs like cocaine.[[5]](#footnote-5) The 2015 Institute of Medicine (IOM) report found that “the parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood. Adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction. The US Surgeon General stated that “the potential long-term cognitive effects of exposure to nicotine in this age group are of great concern.” Because adolescence and young adulthood are critical periods of growth and development, exposure to nicotine may have lasting, adverse consequences on brain development.”[[6]](#footnote-6)

**How will licensing retailers lead to more positive health outcomes for youth?**

Delaying the age when people first experiment with tobacco and nicotine products can reduce the risk that they transition to regular or daily tobacco use.

Reducing the number of youth who purchase tobacco through tobacco retail licensing will:

* reduce youth initiation of tobacco use
* reduce youth addiction to nicotine
* reduce life-long use of tobacco
* reduce tobacco-related deaths

Raising the tobacco sales age to 21, if enforced, can reduce the access to tobacco and nicotine products, number of adolescents and young adults who start smoking; reduce the smoking-caused deaths; and immediately improve the health of adolescents and young adults who would be deterred from smoking.[[7]](#footnote-7)

Reduce tobacco-related deaths

Reduce life-long tobacco use

Reduce youth addiction to tobacco

Reduce youth initiation of tobacco use

Implement TRL

**Besides stores, how else are youth getting tobacco and nicotine products?**

Adolescents who purchase cigarettes are the primary social sources of tobacco for other youth.[[8]](#footnote-8) By enacting TRL and enforcing current restrictions on sales to minors, youth will not be able purchase tobacco to share with their peers.[[9]](#footnote-9)

According to the Oregon Healthy Teens Survey, youth feel like tobacco is easy to access. Disrupting the supply chain by enforcing age restrictions (T21) will make tobacco and nicotine products more difficult to purchase.

**How effective is TRL in preventing youth access?**

TRL is one element of a coordinated tobacco control strategy to reduce tobacco use among young people and prevent its deleterious effects on their future health.

The American Lung Association Center for Tobacco Policy and Organizing studied the effects of a strong TRL ordinance in 33 California communities in 2013. They found significant decreases in illegal sales to minors in nearly every community; 14 communities saw decreases of 30% or more in the time since a strong TRL ordinance was adopted.[[10]](#footnote-10) TRL is a mechanism to reduce youth access to tobacco and nicotine products by enforcing age restrictions on the purchase of tobacco and nicotine products.[[11]](#footnote-11)

An analysis of FDA compliance checks across the country found that state police significantly affect the sale of tobacco products to minors. Stores located in states with fewer/weaker compliance policy measures were 36 percent more likely to illegally sell tobacco to minors than stores located in states with more effective measures.[[12]](#footnote-12)

Within Oregon, The license fees in Benton & Lane Counties are not high enough to support compliance checks. Multnomah and Klamath Counties have not had TRL in place long enough to measure change in underage sales.

**Are any proceeds from the license fee being set aside for education of youth on the consequences of tobacco and nicotine products?**

The revenue generated from TRL fees and fines will be committed to sustain the TRL program, not for youth education. CCPHD partners with prevention coalitions to deliver prevention messages and education around a variety of substances through social media and community-based programming.

TRL is a health-enhancing policy that limits youth access to and use of tobacco and nicotine products. Although education is important, changing policy is a far-reaching intervention that will benefit every youth in Clackamas County, which education alone cannot guarantee.

# E-Cigarettes & Juuls

**What are Juuls?**

Juul is a brand of e-cigarettes that has skyrocketed in popularity among teens across the United States, commanding over half the e-cigarette market.

* High tech, looks like a USB flash drive, and charges in a computer.
* Available in sweet flavors and small enough to fit into a closed hand, making it easy for youth to use inconspicuously in school.
* A Juul pod contains as much nicotine as a pack of cigarettes although a recent student found 63% of Juul users, ages 15 – 24, did not know the product always contains nicotine.[[13]](#footnote-13)
* Recent research has demonstrated that vaping can be addictive and may lure teens to smoking.[[14]](#footnote-14) Young adults who use electronic cigarettes are more than four times as likely to being smoking tobacco cigarettes within 18 months as their peers who do not vape. These findings from the University of Pittsburgh demonstrate that e-cigarettes are serving as a gateway to traditional smoking.[[15]](#footnote-15)
* The most common way youth got Juul is through physical retail locations. Nearly three quarters (74%) of youth said they obtained Juul at a store or retail outlet.[[16]](#footnote-16)

*COST:* A starter kit, including the Juul device and four flavor pods, costs around $50. Vaping devices such as e-cigarettes and Juuls are not taxed

**E-cigarettes have been in the news lately as being a safer alternative to smoking. Is that true?**

Electronic Nicotine Devices (ENDS), commonly known as E-cigarettes, deliver nicotine. There is **insufficient evidence** from **randomized controlled trials** about the effectiveness of e-cigarettes as cessation aids compared with no treatment or to Food and Drug Administration-approved smoking cessation treatments. Moreover, there is **moderate evidence** from **observational studies** that more frequent use of e-cigarettes is associated with an increased likelihood of cessation although the overall evidence from observational trials is mixed.[[17]](#footnote-17)

**What about online sales? Aren’t kids buying Juul online?**

Online retailers can verify age by requesting birth date information, however youth can easily lie or provide a false identification for this verification method. The 2009 PACT Act preserves state authority to prohibit the shipment of tobacco to individual consumers and personal residences. This act has not been well enforced and does not include e-cigarettes. There are many loop-holes in this policy to how tobacco products are delivered as well.

While online sales may seem like an easy way to evade the system, the most common way youth get Juul is through physical retail locations. Nearly three quarters (74%) of youth said they obtained Juul at a retail outlet.

**Why isn't vaping taxed? Is there a plan to do so? Why are ingredients not listed on vape pens? To what extent are vape sales to minors regulated?**

There were at least seven bills introduced in the state legislature in 2017 to impose a tax on “inhalant delivery devices” as well as increase taxes on all tobacco products. Strong industry opposition defeated those bills. No tobacco-related bills were considered in the 2018 short session. We expect the legislature will consider taxes on tobacco and inhalant delivery devices again in 2019.

Clackamas County’s legislative agenda consistently includes Youth Tobacco Prevention - supporting legislation aimed at reducing youth tobacco use. This priority directs public health to monitor proposed bills and educate our representatives in Salem about the tobacco-related issues and the impact of their decisions on tobacco use in our communities.

Oregon revised statutes (ORS) and Oregon administrative rules (OARs) regulate the sale and distribution of tobacco products and inhalant delivery systems to persons under 21 years old. These statutes and rules require retailers to post a notice about the prohibition of selling tobacco products and inhalant delivery systems to persons under 21 years old; and require retailers to place tobacco products and inhalant delivery systems in a location where customers cannot access them without assistance from an employee. [Tobacco and Inhalant Delivery Systems Sales to Minors, OAR 333-015-0200 to 0220](https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1230)

Inhalant delivery systems retailers are required to comply with Oregon packaging standards (e.g. prohibitions on “packaging that is attractive to minors” and requirements for child-resistant packaging) and all federal rules regulating inhalant delivery systems. [Packaging and Labeling Standards for Inhalant Delivery Systems, OAR 333-015-0300 to 0375](https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=89) <https://www.oregon.gov/OHA/PH/PreventionWellness/TobaccoPrevention/Pages/retailcompliance.aspx>

FDA Deeming Rule: Effective August 8, 2016, the U.S. Food and Drug Administration (FDA) authority extends to all tobacco products, including e-cigarettes, cigars, hookah tobacco and pipe tobacco, among others. The FDA is now able to:

* Prohibit free samples;
* Require warning labels;
* Prevent misleading health claims by tobacco product manufacturers;
* Evaluate the ingredients of all tobacco products and how they are made; and,
* Communicate the potential risks of tobacco products.

Tobacco companies must provide FDA with detailed information about the ingredients in their products, however, the industry is not required to list ingredients on any tobacco products, including inhalant delivery systems. For a summary of the FDA rules for tobacco retailers, visit: <https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm205021.htm>

# Enforcement & Monitoring

**What is the proposed enforcement strategy? How would it be different than current enforcement? What are the current penalties for illegal sales? What is the role of local law enforcement?**

Proposed enforcement would include two inspections per year for every business selling tobacco and nicotine products. One would be with Public Health staff to help retailers understand and comply with laws; the other would use minor decoys to ensure retailers do not sell to people under 21 years of age. Clackamas County Public Health Division would provide the education and operate the compliance checks with youth.

Currently, the Oregon Health Authority enforces the tobacco minimum sales age law and coordinates with the Oregon State Police to conduct compliance inspections. A clerk may be cited for Endangering the Welfare of a Minor if caught selling tobacco or nicotine products (e-cigarettes) to a person under 21 years. Minimum fine of $200, maximum of $2000. Due to the State’s limited capacity and resources, a random sample of retailers are inspected. A TRL in Clackamas County would augment the state’s system so that every tobacco retailer is inspected annually.

Local law enforcement is able to issue citations for “Endangering the welfare of a minor” ORS 163.575 to store owners for illegal sales. Class A violation, minimum fine for each violation is $100.

**Who regulates tobacco?**

For many of the Oregon laws, there is no specific enforcement authority, which typically means that the enforcement falls on local authorities. The Oregon Health Authority (OHA) administers and funds the state’s Tobacco Prevention and Education Program.

|  |  |
| --- | --- |
| **Oregon Health Authority - State** | **Clackamas County Public Health Division -Local** |
| * Enforces the Indoor Clean Air Act (ICAA) by enacting penalties for violations * Administers annual inspections to ensure compliance with no sales to minors. Does not penalize violators. | * Enforces the Indoor Clean Air Act by inspecting businesses that have reportedly violated the law. |

**How are tobacco retailers monitored for compliance with the minimum legal sales age?**

The *Oregon Health Authority* contracts with the *Oregon State Police Drug Enforcement Section* to conduct unannounced inspections to retailers of tobacco products using minor decoys.

* Due to the State’s limited capacity, a small random sample of retailers are inspected annually.
* Inspections do not include education, enforcement for violations are inconsistent, penalties vary.
* Synar inspections revealed that Oregon is one of the easiest states for youth to illegally purchase tobacco from retailers. It takes teens in Oregon less than five attempts to purchase tobacco; nationally, it takes teens an average of ten attempts before successfully purchasing tobacco.[[18]](#footnote-18)
* In Clackamas County, between 1995-2014, illegal sales of tobacco to minors ranged from 1.5% to 54.8%. The large variation is due in part to small sample sizes (at most, 40% of retailers are inspected each year)

*Role of local law enforcement*

Aside from the State’s annual compliance checks, local law enforcement is able to issue citations for “Endangering the welfare of a minor” ORS 163.575 to store owners for illegal sales. Class A violation, minimum fine for each violation is $100.

*Clackamas County’s proposal*

If TRL is passed in Clackamas County, CCPHD proposes two inspections per year, one with PH staff to ensure compliance with local, state and federal laws and one to ensure retailers are following minimum legal sales age laws. Inspections would include education and penalties for violations.

**How does Oregon enforce penalties for illegal tobacco sales to minors?**

* The Enforcement Inspections program:  Clerk is cited for endangering the welfare of a minor.  The minimum fine is $200, and maximum fine is $2,000.  Presumptive fine is $435.  Additional civil penalties may be assessed to the store owner.
* FDA inspections program imposes graduated penalties beginning with a warning letter to the owner, to civil penalties of up to $11,000 for a sixth offense within a 48-month period.
* Synar inspections do not issue citations.

**How does the enforcement for underage liquor sales compare to enforcement for underage tobacco sales?**

The OLCC is responsible for ensuring compliance with liquor laws.  One way in doing so is through minor decoy operations to ensure retailers do not sell or serve alcohol to people under 21 years.  The OLCC is woefully under staffed to adequately ensure compliance with State liquor laws.  Their capacity has been further stressed since the legalization of marijuana as they are responsible for ensuring compliance with marijuana laws as well.  For example, the last inspection in Estacada was to one business in 2015.  The OLCC posts inspection results on their website <https://www.oregon.gov/olcc/Pages/reg_program_overview.aspx>

The penalty for failing to verify the age of a minor (category III offense) is a 10 day suspension of license or $1650.  The second offense is a 30 day suspension or $4950. A summary of common violations and penalties is available here <https://www.oregon.gov/OLCC/pages/laws_and_rules.aspx#Penalty_Schedule/Sanction_Schedule>

If adopted, a Tobacco Retail License would include two inspections per year for every business selling tobacco & nicotine products.  One with a Public Health staff to help retailers understand and comply with tobacco-related laws and the other using minor decoys to ensure retailers do not sell to people under 21 years.

**If retailers are caught, what are the fines and punishment?  Where does that money go?  Is it general fund or remain in a separate fund to offset the cost of this proposed program?**

Retailers found selling tobacco and nicotine products to minors will face a civil penalty. The penalty structure for violating a tobacco-related law will be developed under the guidance of a Rules Advisory Committee. The following *examples* are civil penalties tobacco retailers face for violating any provision of Multnomah County’s TRL:

* 1st violation: $500 Fine and mandatory training
* 2nd violation within 60 months: $500 Fine and 30 day license suspension
* 3rd violation within 60 months: $750 Fine and 90 day license suspension
* 4th violation within 60 months: $1,000 Fine and license revocation for 2 years

The money collected through fines will be committed to support the operations of TRL. There will be different account line items in the budget to support this program (e.g. general fund, licensing fees, and fines). The Rules Advisory Committee will provide input on how money collected from fines will be used.

**Are there penalties for minors in possession of tobacco products, like Juul?**

ORS 167.785 states that it is unlawful for a person under 18 years of age to possess tobacco products or inhalant delivery systems. A person who violates this section commits a Class D violation.

# 

# Retailer Identification

**How many tobacco retailers are within Clackamas County?**

Based on a list from the Oregon Health Authority, it is estimated there are 232 tobacco retailers in Clackamas County. While the list is 88.5% accurate, Multnomah County continues to identify new retailers while in the field conducting TRL related site visits with known retailers.

**How did the Oregon Health Authority (OHA) establish the list of tobacco retailers in Clackamas County?**

The OHA is responsible for enforcement inspections for sales to those under the legal age of purchase for tobacco products and inhalant delivery systems. Because Oregon does not have statewide tobacco retail licensing, multiple methods are used to maintain a list of tobacco retailers. In summary, OHA maintains the tobacco retailer list annually by:

* Using enforcement inspections to maintain the status of those retailers currently on the list; by
* Merging the current OHA list with Oregon jurisdictions with tobacco retail licensing; by
* Merging the current OHA list with the current Oregon Liquor Control Commission (OLCC) list of licensed off-site alcohol sales locations; by
* Merging the current OHA list with the U.S. Food and Drug Administration tobacco enforcement list (when available); by
* Conducting coverage studies every three years across the state to determine the accuracy of the OHA list (physically searching for and adding missing retailers in randomly selected areas); by
* Adding missing retailers where there was a public complaint for the Oregon Indoor Clean Air Act; and by
* Sharing tobacco retailer lists with county Tobacco Prevention and Education coordinators for review and input.

**Why can’t Department of Revenue records be used to identify retailers?**

In Oregon, tobacco taxes are levied at the distributor or wholesaler level, rather than at the retail level.  Some retailers, like Costco, might have a license through the Dept. of Revenue so they can distribute to other retailers. Most retailers get their tobacco from the tobacco company distributors themselves (RJR and Altria sales reps grease the wheels for this process by visiting stores and signing them up on distribution contracts).  The distributors are responsible for paying for and applying the Oregon tax stamp.  The distributors don’t inform the Dept. of Revenue who they distribute products to.  Therefore, the Department of Revenue doesn’t have a comprehensive list of who sells tobacco in the state of Oregon, only who “distributes” tobacco.

There are three kinds of licenses:

* Cigarette Distributor's License: For people who bring untaxed cigarettes into Oregon for resale. This license allows you to purchase Oregon tax stamps from us.
* Cigarette Wholesaler's License: For people who buy stamped cigarettes from licensed distributors. This license allows you to resell these cigarettes to other retailers.
* Tobacco Products Distributor's License: For people who bring untaxed tobacco products into Oregon for resale.

**Your Economic Impact piece states that this shouldn’t have much of an economic impact to the County as it may relate to a total loss of 4.12 FTE’s – but you also stated that you don’t know “who” all are selling tobacco products.  So this isn’t clear how job losses can be estimated when we don’t know who is selling.**

The Economic Impact Analysis, completed by the Northwest Economic Research Center (NERC), is based on a list of 242 known tobacco retailers Clackamas County Public Health Division (CCPHD) received from the Oregon Health Authority (OHA) in spring 2018. NERC used the list and the modeling software IMPLAN to estimate the Economic Impact of a county-wide tobacco retail license (TRL).

Because Oregon does not have statewide TRL, OHA applies multiple methods to maintain a list of tobacco retailers including coverage studies and retail assessments. Public health staff used to the list from OHA to complete an assessment of all known tobacco retailers in July 2018. We confirmed 232 businesses in Clackamas County sell tobacco and nicotine products.

We have learned from the Tobacco Retail License program in Multnomah County that the number of tobacco retailers fluctuates as new businesses open, change ownership, and close.

# Comparison to Alcohol and Marijuana

**How is TRL different from marijuana laws?**

The OLCC applied many of the lessons learned from the tobacco retail point-of-sale best practices when drafting rules for recreational marijuana. The state has not applied these same point-of-sale best practices to tobacco retail as they have to regulate recreational marijuana.

**Can Clackamas County license marijuana?**

Cities and Counties are able to require licenses to operate marijuana-related businesses. However, local jurisdictions (cities and counties) are preempted from passing ordinances that are not consistent with those of the OLCC. Municipalities and local government have the authority to adopt “reasonable regulations” regarding recreational marijuana use and can impose taxes in addition to the state’s 17% tax.5 They can also opt-out of marijuana production, processing wholesale, and/or retail.[[19]](#footnote-19),[[20]](#footnote-20) CCPHD recommends consulting with County Counsel to learn more about local authority to regulate marijuana.

**Why are bars and adult venues required to have a license to sell tobacco if youth under 21 years are not permitted on the premise?**

While youth are legally not allowed into bars and adult venues, they occasionally manage to skirt the system to enter. Multnomah County had a couple failed minimum legal sales age inspections in places that are restricted to adults only. The tobacco retail license enables CCPHD to provide compliance checks as well as help retailers know and understand tobacco retail laws.

Oregon law preempts any local jurisdiction from regulating vending machines. So if a bar / adult venue has only a vending machine, CCPHD cannot require them to get a tobacco retail license. Oregon Revised Statutes §167.404 Cities and counties by ordinance or resolution may not regulate vending machines that dispense tobacco products or inhalant delivery systems. [1991 c.970 §3; 2015 c.158 §10]

**What is the fee for a liquor license and how does it compare to the fee proposed for TRL?**

The liquor license fee ranges from $100 for Distilleries to $500 for Breweries.  The fee for a full on-site commercial sale is $400.  A list of licensing types and fees is available online <https://www.oregon.gov/olcc/LIC/Pages/index.aspx>

We are proposing a licensing fee of $500-$600 annually. This amount is necessary to provide adequate education and enforcement to the 232 known tobacco retailers in Clackamas County.

**How does the enforcement for underage liquor sales compare to enforcement for underage tobacco sales?**

The OLCC is responsible for ensuring compliance with liquor laws.  One way of doing so is through minor decoy operations to ensure retailers do not sell or serve alcohol to people under 21 years.  The OLCC is under staffed to adequately ensure compliance with State liquor laws.  Their capacity has been further stressed since the legalization of marijuana as they are responsible for ensuring compliance with marijuana laws as well.  For example, the last inspection in Estacada was to one business in 2015.  The OLCC last conducted minor decoy operations to 28 alcohol retailers (includes restaurants, bars, liquor stores) in Clackamas and Happy Valley on **March 8, 2017**. Eight businesses sold alcohol to minors. The OLCC posts inspection results on their website <https://www.oregon.gov/olcc/Pages/reg_program_overview.aspx#Alcohol_Minor_Decoy_Operations>

For businesses licensed by the OLCC, the penalty for failing to verify the age of a minor (category III offense) is a 10 day suspension of license or $1650.  The second offense is a 30 day suspension or $4950. A summary of common violations and penalties is available here <https://www.oregon.gov/OLCC/pages/laws_and_rules.aspx#Penalty_Schedule/Sanction_Schedule>

If adopted, a Tobacco Retail License would include two inspections per year for every business selling tobacco & nicotine products.  One inspection with a Public Health staff to help retailers understand and comply with tobacco-related laws and the other using minor decoys to ensure retailers do not sell to people under 21 years.

Penalties for selling tobacco to people under 21 years would be determined with the guidance of a Rules Advisory Committee. Currently under the state’s inspections, clerks may be cited for Endangering the Welfare of a Minor. Minimum fine of $200, maximum fine of $2000.

# TRL v. Business License

**Why do cities have business licenses? How does the cost of a TRL compare to other business licenses?**

Cities require licenses for anyone operating a temporary or permanent business in a rented / owned facility or in-home. The license fee varies by city and the number of employees however, they all generate revenue for the city to maintain infrastructure and basic services such as zoning, police and fire. Some cities, such as Happy Valley, Milwaukie, Oregon City, West Linn and Wilsonville, and Lake Oswego have a more developed ‘Business / Economic Development’ website with resources for businesses. Registered or licensed businesses also generate tax revenue for the city. Businesses in Sandy and Canby pay a transit tax. See table below.

**Why is a tobacco retail license separate from any business license requirement?**

Tobacco is a hazardous product that causes disease and death, there are no safe levels of tobacco use. Tobacco retail licensing is the mechanism to identify stores that sell tobacco so they can be monitored for compliance. It is similar to the licenses required to sell alcohol and marijuana.

**How can TRL be coordinated with the cities’ business license?**

Clackamas County Public Health Division will administer the TRL, similar to the license for food facilities. Cities will continue to administer their respective business license. The Public Health Division could coordinate with cities to educate tobacco and nicotine retailers about the new license. Cities could emulate Estacada, Happy Valley, Sandy, Lake Oswego by including information about TRL on their websites and/or business license application like they do for marijuana, restaurants and bars.

**Why don’t we license all businesses like fast food, candy and grocery stores?**

Tobacco is a hazardous product that causes disease and death when used as directed. Secondhand smoke has been classified as a toxic air contaminant. There are no safe levels of tobacco use. As a result, public health has a strong interest in ensuring that tobacco products are not sold or marketed to minors. Candy is not regulated for this nature of health danger.[[21]](#footnote-21)

The proliferation of the fast food industry and lack of availability and affordability of healthy food contribute to the obesity epidemic.  Laws and policies that promote healthy food and limit access to unhealthy food are critical tools in addressing the obesity epidemic. Public health departments across the country have invested in obesity prevention initiatives, beyond business licensing, that focus on the fast food industry to make food healthier, require menu labeling, and using regulatory and planning measures to address the proliferation of fast food restaurants.[[22]](#footnote-22)

Policy is one of the most effective ways that public health agencies prevent chronic disease in our community.  When a health threat is identified, it is our responsibility to do what we can to protect our constituents.  A thriving business economy is also essential to protecting the health of our community, which is why working with businesses to protect health is our goal, which is more likely to work at a local level.

# Engagement & Timeline

**What is the timeline to implement TRL? What is the process for implementation?**

The plan to adopt and implement TRL in Clackamas County is based on other successful TRL programs in Oregon. The Board of Health and Rules Advisory Committee may influence the details of implementation and operations as well as the following timeline:

**2018**

* CCPHD engages community and stakeholder May – December 2018
* Cities sign Inter-Governmental Agreements / Resolutions in support of TRL

**2019**

* Board of County Commissioners / Board of Health adopts county-wide TRL.
* Cities sign Inter-Governmental Agreements / Resolutions in support of TRL
* CCPHD convenes Rules Advisory Committee March – May 2019
* Board of Health adopts finalized TRL rules by June 2019
* CCPHD educates tobacco retailers on TRL July – December 2019
* CCPHD finalizes operational systems, protocols and database

**2020**

* Launch TRL January 1, 2020
* Tobacco retailers apply for licenses by June 30, 2020
* CCPHD educates tobacco retailers on TRL January – December (ongoing)
* CCPHD conducts annual TRL inspections with tobacco retailers starting July 2020

**2021**

* TRL education (ongoing)
* Tobacco retailers renew licenses (annually)
* CCPHD continues annual TRL inspections
* CCPHD starts annual Minimum Legal Sales Age (MLSA) Inspections
* Fines / civil penalties begin

**How has the business community been engaged? How have chambers of commerce received TRL?**

We are working with PGA to coordinate conversations with our partners in business and economic development. Public Health staff have presented to five chambers of commerce and are gathering input from tobacco retailers through listening sessions and an online survey through November 2018.

There are examples of chambers supporting TRL in other places. Driven by the economic benefits of a healthy workforce, Kansas City Chamber of Commerce is leading the Tobacco 21 initiative in Kansas to reduce tobacco-related tobacco illness.

**What can city councils do to demonstrate their support for a county-wide TRL?**

Sign a resolution to support the Clackamas County Board of County Commissioners as the Board of Health to adopt a tobacco retail license requiring all businesses located in the County to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes.

**Are schools in support of TRL?**

Public Health presented TRL to school superintendents November 14th. Collectively they agreed to sign one letter of support for TRL.

**Would the citizens vote on something like this?**

While Clackamas County Public Health Division values community input, ballot measures are expensive. Instead of a vote in the mid-term election, Public Health will invite citizens and business owners to provide oral and written comments during the County Commissioners’ public hearings.

**Explanation for 2014 data**

2018 Oregon Tobacco Facts recently released, Tobacco & Alcohol Retail Assessment just completed. Fact sheet will be updated soon however, we don’t anticipate significant changes.

**TRL Presentations to date**

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Audience** | **Purpose** | **Outcome** |
| 01/19/16 | BCC | This session is to provide information to the Board of County Commissioners as the governing body of the Local Public Health Authority related to retail marijuana and tobacco. | BCC directed H3S and its Public Health Division to develop a framework for how the BCC, acting as the Local Public Health Authority, might regulate retail marijuana and tobacco sales and set fees. |
| 9/6/16 | BCC | Consider adopting a framework to license marijuana and tobacco retailers. | The BCC voiced strong support for the concept, but chose to wait for the outcome of similar legislation proposed in the 2017 Oregon legislative session (SB 235). The BCC asked H3S to return with a similar TRL proposal if the state legislation did not pass, which it did not. |
| 01/30/18 | BCC | H3S is seeking approval from the Board of County Commissioners (BCC) on its community engagement plan for implementing a county-wide tobacco retail license (TRL). | Directed Public Health to work with PGA and the Commissioners’ policy advisers to develop and implement a community engagement plan to build and assess community support for tobacco retail licensing. |
| 5/7/18 | City Managers | Explain how TRL can reduce youth access to and consumption of tobacco. Desired outcomes: City managers understand the need for TRL to enforce T21. Identify next steps for continuing the conversation about TRL within each community | City managers recommended presenting to TRL to City Councils. |
| 7/2 – 8/14 | City Councils | Explain how TRL can reduce youth access to and consumption of tobacco. Desired outcomes: City councils understand the need for TRL to enforce T21 and support a county-wide TRL | Sandy City Council signed LOS  West Linn signed resolution  Milwaukie signed resolution  Gladstone signed resolution  Wilsonville, HV, LO, OC, Estacada, Molalla |
| Aug – Sept | Chambers of Commerce | Explain how TRL can reduce youth access to and consumption of tobacco. Make the business case for TRL. Desired outcomes: Chambers understand the need for TRL to enforce T21, see the value of TRL for a future healthy workforce and support a county-wide TRL |  |
| 9/18/18 | BCC | Request BCC to sign resolution proclaiming themselves at the BOH | Signed resolution. BCC, acting as the BOH, can adopt ordinances to protect public health |
| 10/2/18 | BCC | Updated BCC on community engagement. Shared results of economic impact assessment. Request permission to move forward developing an ordinance. | BCC supports TRL. Directed Public Health to engage tobacco retailers directly. Present input from retailers and a draft ordinance in December. |
| November | Tobacco Retailers | Explain how TRL can reduce youth access to and consumption of tobacco. Desired outcomes: retailers understand the need for TRL to enforce T21 and support a county-wide TRL |  |
| 1/8/19 | BCC | Present the findings from tobacco retailer outreach process. Request support to proceed with creating a countywide TRL | BCC directed Public Health and County Counsel to present a TRL resolution during the 1/24/19 business meeting. |

|  |  |  |
| --- | --- | --- |
| **City** | **Business License Fee** | **Notes** |
| Canby | $50 flat fee, regardless of number of employees. Same for inside and outside city limits | Transit tax applies. Requires signatures from planning, police & fire |
| Estacada | Pre-Application meeting $545 - $1090  On-line fee schedule | Well-developed website for businesses.  Application includes “marijuana dispensary” as ‘Type of Business’ |
| Gladstone | $100 + $5 / employee |  |
| Happy Valley | $100 for commercial | All businesses licensed in the City are included in our online Business Directory and included in our annual Happy Valley magazine business listings. Robust website for businesses. Separate pages for marijuana businesses. |
| Lake Oswego | Fee schedule: $80 / $110 / $150 depending on # employees | Application asks for “additional information”  Is this a restaurant or bar? Separate section dedicated to licensing requirements (OLCC)  Does your business involve cannabis in any way? No additional section |
| Milwaukie | $125 + $7 / employee |  |
| Molalla | $70 | Application is short. Links to Clackamas County’s Economic Development. |
| Oregon City | Fee schedule: $162 - $606  Application fee: $50 | Application asks, “Marijuana business?” If yes, supplemental questionnaire required. |
| Sandy | Fee schedule on website, based on # of employees. Base fee = $41 | Website links to CC Economic Development & Sandy Chamber of Commerce. Transit tax is assessed on all businesses. Includes “other licenses” that could be of interest to business owners including OLCC, Clack Co EH, DHS Child Care, ODA. |
| West Linn | “Inside City” range based on number of employees $56 for 1 – 2 employees; $106 for over 10 employees. Fees higher for businesses “Outside City”. No business shall be charged an annual business license fee greater than $200. | Prohibits marijuana production, processing, retail. Application is electronic/online. Liquor license = $100 |
| Wilsonville | $100 + $3 / employee |  |

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