

Flavored Tobacco Ordinance and Nitrous Oxide Work Plan Status Report

Neighborhood Services and Education Committee
October 12, 2023

Presenter:
Rachel Roberts
Deputy Director, Code Enforcement



*Planning, Building and
Code Enforcement*

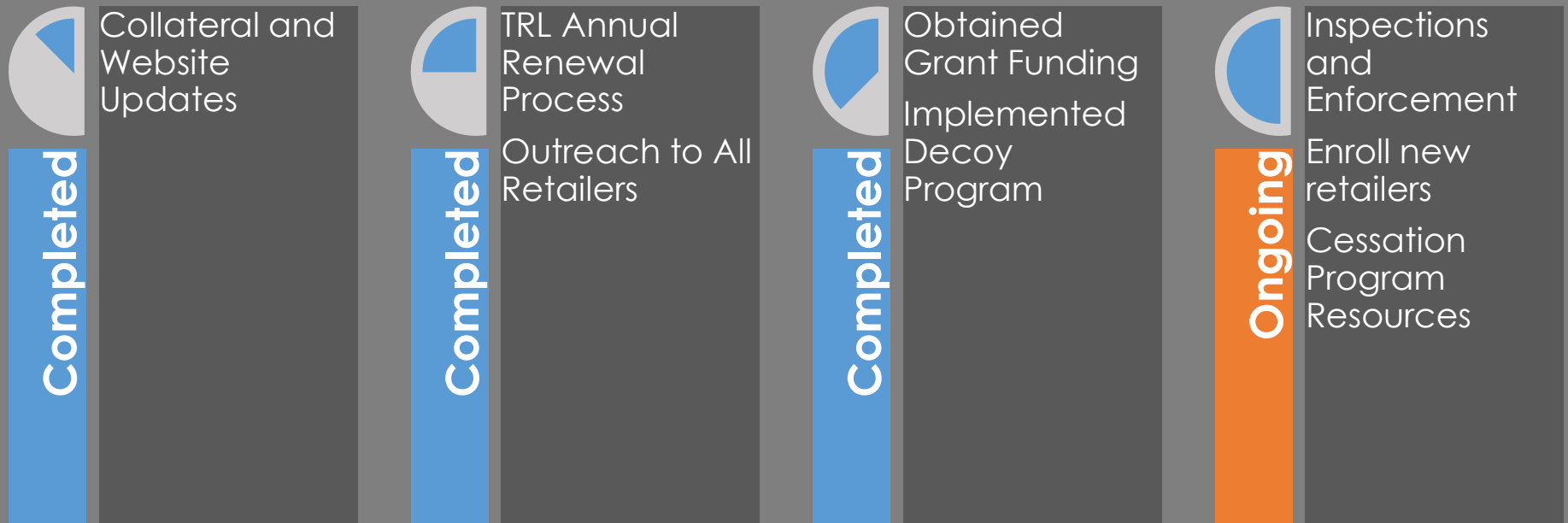
Council Direction- Flavored Tobacco Ordinance

September 28, 2021- Council approved an ordinance amendment to Chapter 6.87 Tobacco Retail License (TRL) of the San Jose Municipal Code.

Council further directed staff to:

- *Clarify enforcement will be aimed at tobacco retailers*
- *Continue to perform a minimum of one annual compliance check per year*
- *Pursue enforcement grants, including funding for decoy enforcement programs*
- *Consider fine schedule amendments to increase TRL violations penalties*
- *Report back to Council on efforts to cross-train inspectors/improve efficiency of code operations*
- *Return to the Neighborhood Services and Education Committee within 12 months after full implementation analyzing the ordinance's effects on tobacco retail licenses throughout San José with a special focus on tobacco retail licenses that are within 1,000 feet of youth-sensitive receptors*

Post Ordinance: Implementation and Enforcement Strategy



Outcomes- Inspections and Enforcement

- Ordinance enforcement began July 2022
- 457 annual inspection completed FY22-23 (78% of licensed businesses)
- Majority had minor violations resulting in Warnings that were quickly remedied

Inspections



- 20 complaints
- Selling tobacco to minors, proximity concerns, no TRL, smoking inside
- 7 Citations, 4 Warnings
- 6 cases still under investigation

Complaint Response



- 60k Grant for November 2021 through June 2024
- July 2022- February 2023
- 93 operations
- 18 failed/20 Citations issued
- TRL revocation being explored with CAO for repeat offenders

Decoy Operations



Outcomes- TRL Proximity

Proximity of TRL Businesses to Youth- Sensitive Receptors			
	2021	2023	#/% change
Total locations	613	583	-30/5%
Within 500-foot Youth-Sensitive Receptor Buffer	199	180	-19/10%
Within 1000-foot Youth-Sensitive Receptor Buffer	421	389	-32/8%
Within 500-foot of Another TRL (grouped event)	140	134	-6/4%

* Youth-sensitive receptors are defined as Parks, Libraries, Schools, and community or recreation centers

Outcomes- TRL Businesses by Council District*

District	# of TRL Businesses		Change
	2020	2023	
1	56	52	-4
2	34	35	+1
3	117	96	-21
4	40	41	+1
5	74	70	-4
6	68	69	+1
7	89	82	-7
8	33	33	0
9	66	68	+2
10	36	37	+1
Total	613	583	-30/ 5%

*without redraw

Outcomes and Challenges

- New products entering the market that appear to circumvent the ordinance
- Flavored tobacco products stored under counters/out of view or in an inaccessible area making enforcement difficult
- Zoning Ordinance - Updates needed to ensure alignment between the Zoning and TRL codes regarding proximity requirement
- TRL Ordinance-Updates needed to clarify or add TRL regulations regarding :
 - Regulating tobacco distributors
 - Clarifying shisha product exemptions
 - Regulating the storage of flavored tobacco products
 - Requiring 21 and over signage at Hookah Lounges

Council Direction- Nitrous Oxide

February 16, 2022- In accordance with staff's Early Consideration Form response, Rules and Open Government Committee approved Council Member Davis's recommendation to direct staff to, in summary:

- *Begin ordinance work within 6 to 9 months once priority work items were completed*
- *Evaluate:*
 - *TRL Ordinance/research ordinances in other jurisdictions*
 - *Impact on staffing and resources on Code Enforcement/SJPD*
- *Conduct business/stakeholder outreach*
- *Design a plan for implementation including a grace period for retailers*
- *Collaborate with SJPD on available support/enforcement assistance for illegal Nitrous Oxide sales*
- *Explore potential requirements, in coordination with County/CAO, for retailers to display substance abuse resources*
- *Coordinate with the Office of Administration, Policy, and Intergovernmental Relations to advocate for State legislation banning sale of products*

Nitrous Oxide Work Plan

Nitrous Oxide Proposed Work Plan (9 months+ Implementation)		
Objective	Coordination	Target Timeline
Research, Benchmarking, and Analysis	PBCE, SJPD, CAO	Jan/Feb 2024
Internal Coordination/ Enforcement Plan Development	SJPD, SCC PHD, City Attorney's Office, Office of Administration, Policy, and Intergovernmental Relations	March/April 2024
Draft Ordinance	PBCE, SJPD, CAO	May 2024
Outreach	PBCE, CAO	June/July 2024
Final Ordinance Adoption	PBCE, CAO	Aug/September 2024
Implementation	PBCE, SJPD, CAO	January 2025

Next Steps

➤ Flavored Tobacco Ordinance

➤ Continue to:

- Enroll new businesses into the TRL Program as required- *Ongoing*
- Carry out inspections and enforcement- *Ongoing*

➤ Work in partnership with SCC PHD to develop resources for smoking cessation programs and assistance as feasible –*Target June 2024*

➤ Consider fine schedule amendments to increase TRL violations penalties (**Council Direction**)- *Target June 2024 pending further analysis*

➤ Report back to Council on efforts to cross-train inspectors/improve efficiency of code operations for Special Programs including TRL (**Council Direction**)- *Target October 2024 pending implementation*

➤ Update Zoning and TRL Ordinance to address challenges, strengthen enforcement, and further clarify regulations as appropriate – *Target Fiscal Year 2024-2025*

➤ Nitrous Oxide Ordinance- Begin Work Plan in January 2024

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