

# Tobacco Retail License Ordinance Amendment

## City Council Policy Priority #12

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Item 7.1

September 28, 2021

Presenter: Rachel Roberts, Deputy Director Code Enforcement,  
PBCE

# Background



February 25, 2020 : Combined Proposal Ranked as Council Policy Priority #12 for FY 2020-2021 -*Flavored Tobacco and E-Cigarettes, Items 1, 2, and 3 / Protecting Our Youth from the E-Cigarette Epidemic (Carrasco/Foley)*



February 13, 2020, City notified of Grant Funding from Santa Clara County Public Health Department (SCCPHD) to support implementation of proposed strategies that promote tobacco-free communities in alignment with the SCCPHD's Healthy Cities Program.



December 10, 2020: Neighborhood Services and Education Committee (NSE) Accepted Status Report



June 9, 2021- Rules and Open Government Committee Deferred item to September 2021 to allow for more small business/stakeholder outreach

# Background



## State Legislation

- SB 7 (effective June 9, 2016) – Increased minimum sale age from 18 to 21
- SB 793 (effective January 1, 2021)-Bans flavored tobacco products but exempts pipe tobacco, hookah and premium cigars (*Note: Referendum to suspend implementation of SB 793 November 2022 general election*)



## Federal Legislation

- Consolidated Appropriations Act 2021 “Vape Mail Ban” – included the Preventing Online Sales of E-Cigarettes to Children Act\*
- April 2021 FDA announced it would work towards menthol ban

\*Implementation delayed pending clarification on potential exemptions

# Flavored Tobacco and E-Cigarette Ordinance Goals

Prohibit the sale of flavored tobacco products and electronic cigarettes

Explore policies to limit further overconcentration of tobacco businesses

Remove the tobacco retail license exemption for "18 and over" businesses

Develop proximity limits of tobacco retail license business to schools / youth oriented land uses



# Outreach and Engagement

## Three (3) Webinars

March 12  
June 29  
August 21

Focus on Tobacco  
retailers and industry  
representatives

Total of 167  
attendees

## Two (2) Online Surveys

Survey #1: February 22-  
May 1, 2020  
141 responses

Survey #2: July 23-  
August 27, 2021  
English, Spanish, and  
Vietnamese  
12 responses

## Stakeholder Outreach Letters

July 2021  
Part of TRL annual  
renewal

August 2021

## Code Enforcement Webpage

Webinar links

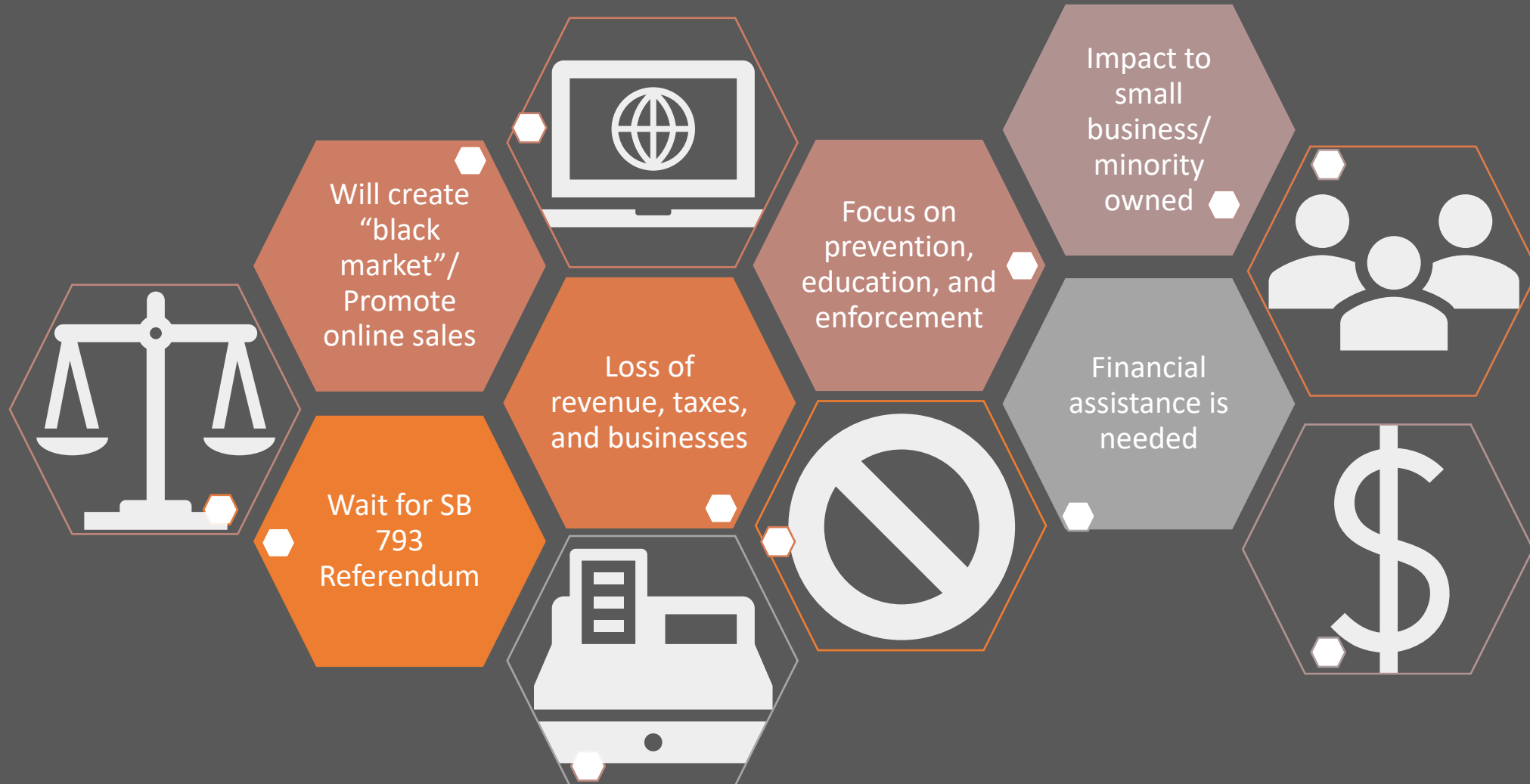
Online survey

Draft Ordinance

City Council Memo

FAQs

# Outreach and Engagement: Tobacco Retail License Businesses and Industry Representatives



# Outreach and Engagement: Interest Groups

## Health

- Protect Youth and increase community health
- Prioritizes health over profits
- Supports harm reduction goals
- Smoking/E-cigarettes risk factors for COVID19

## Disproportionate Impacts

- Disproportionate use of menthol among African Americans
- Menthol targeted to communities of color and youth
- Provide cessation services to decrease public health inequities

## More Regulation

- More strict laws banning all e-cigarettes and hookah
- Remove language that allows TRL transfer
- Not a violation for individuals to possess banned products

# Research and Benchmarking

## State

100 jurisdictions throughout the State enacted bans on flavored tobacco

## Santa Clara County

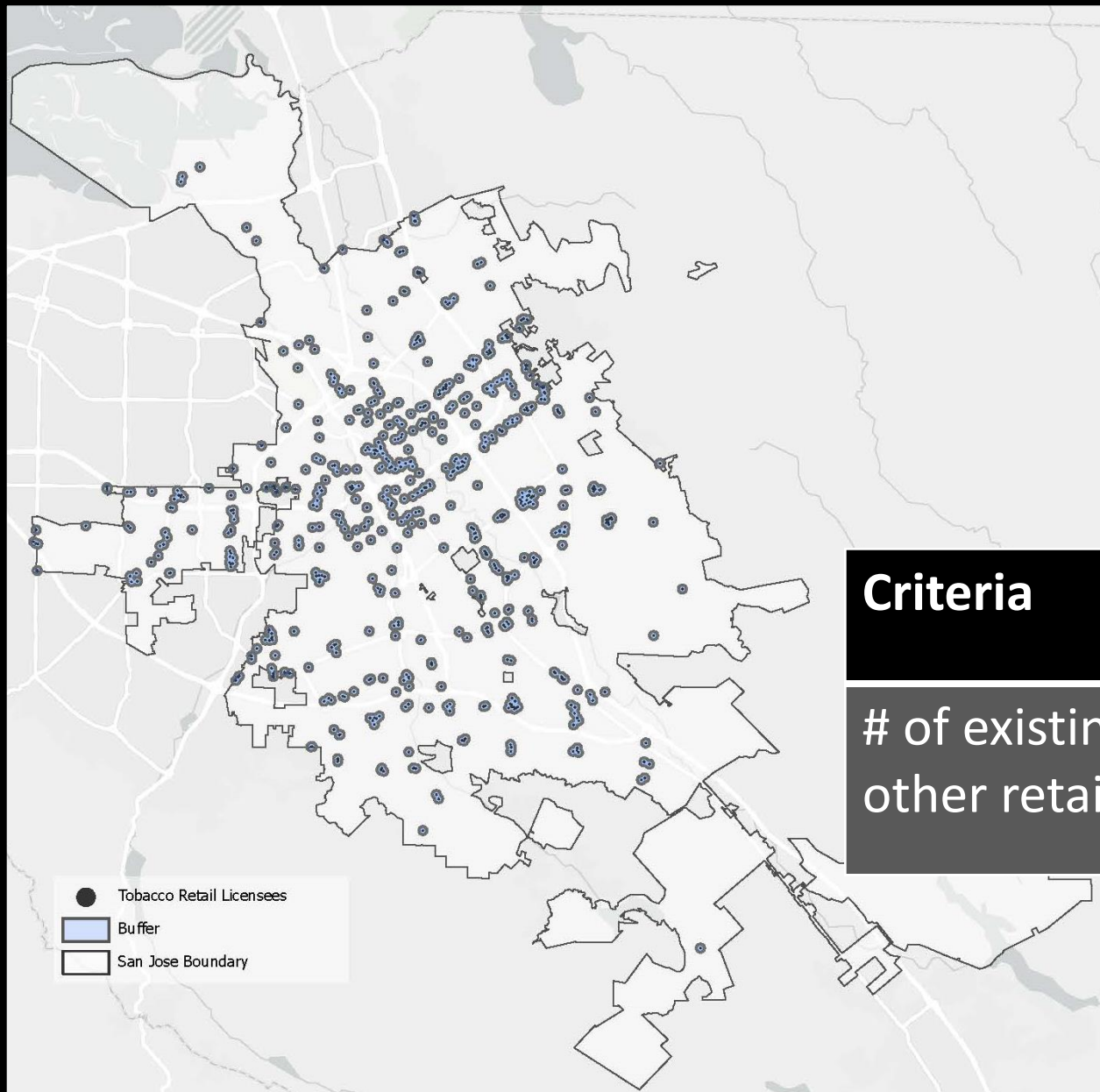
- 7 Municipalities prohibited the sale of tobacco within a certain distance of a school
- 6 Municipalities enacted regulations to reduce density of tobacco businesses
- 8 Municipalities enacted flavor bans

## Legal Non-conforming Provisions

- Legal non-conforming status for businesses selling tobacco prior to the ordinance
- Criteria to revoke legal non-conforming status
- Grace period for businesses to deplete stock of newly prohibited products

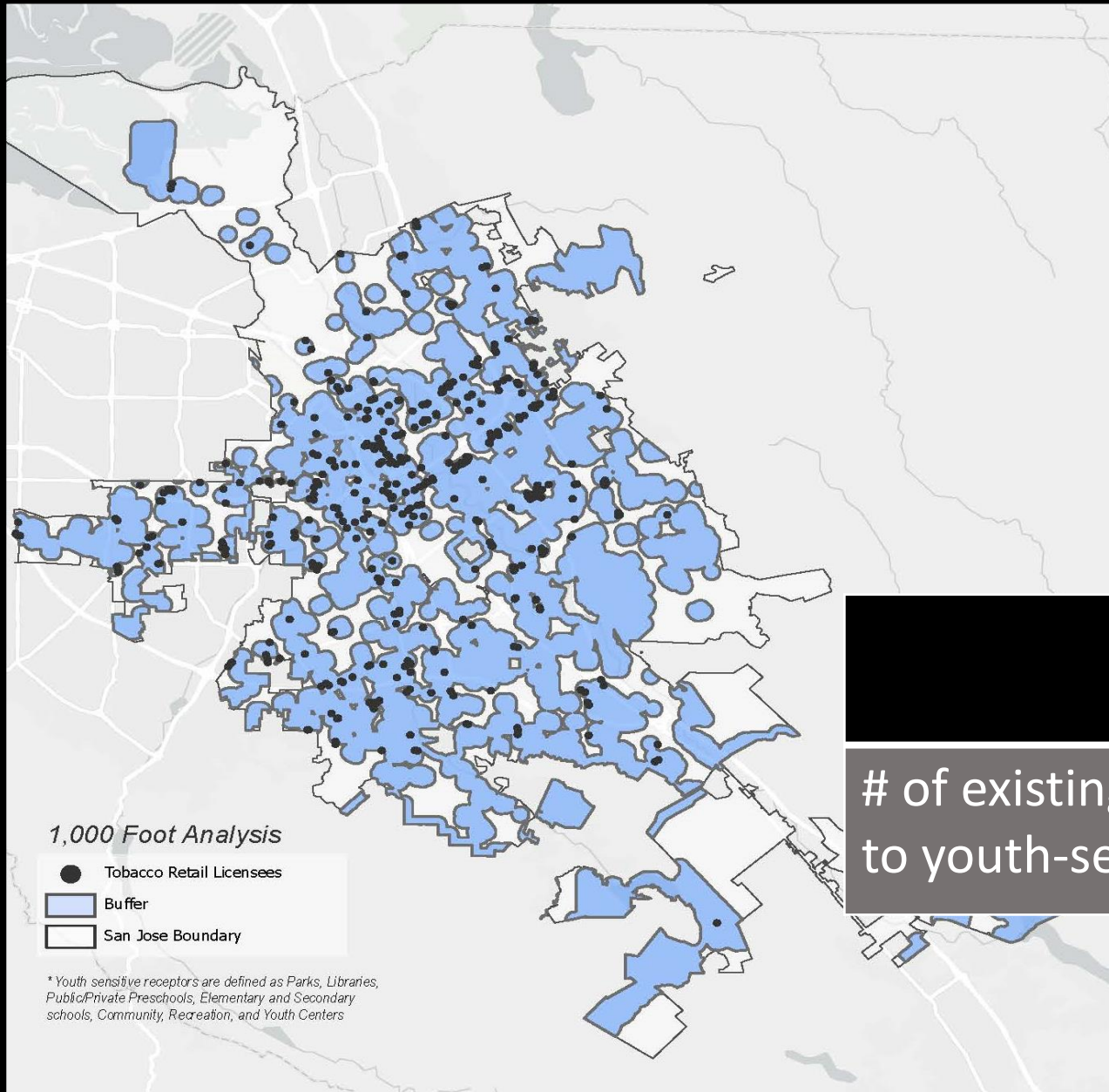


# Tobacco Retail License: Retailer to Retailer Proximity (500 ft Analysis)



Criteria	w/in 500 feet
# of existing TRL businesses near other retailers	526

# Tobacco Retail License: Retailer to Youth- Sensitive Receptor Proximity (1,000 ft Analysis)



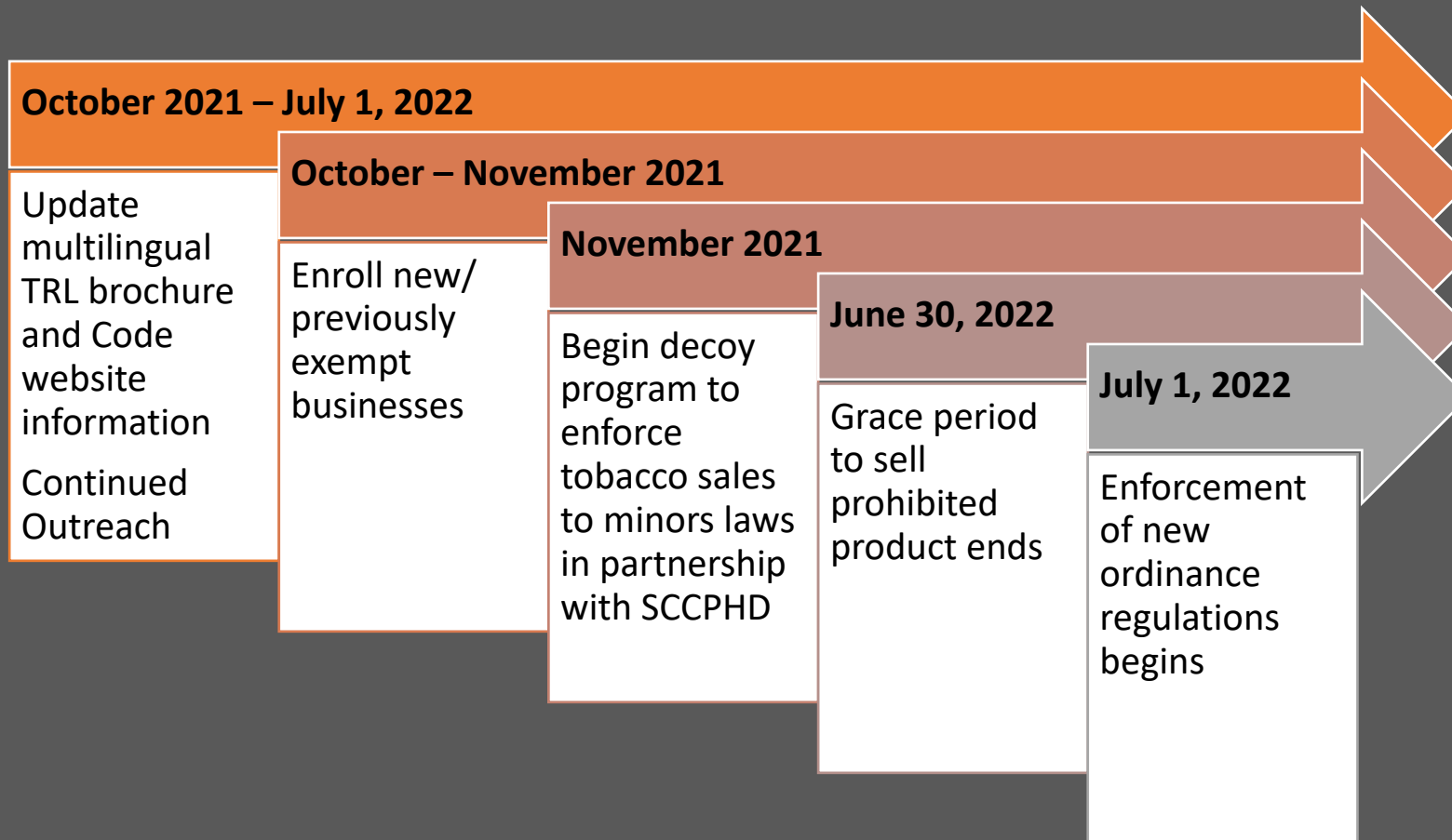
Criteria	w/in 1,000 feet
# of existing TRL businesses in proximity to youth-sensitive receptors	421

# Proposed Ordinance Amendments

- Prohibits the sale of flavored tobacco and e-cigarettes and other products including menthol flavored products\*
- Established proximity limits for new tobacco retailers near schools/youth-sensitive receptors and to one another
- Increases the minimum sale age from 18 to 21
- Removes license exemptions
- Provide a grace period to deplete prohibited products (until June 30, 2022)
- Align Municipal Code with State and Federal Regulations

\*Note: Ordinance will not create a violation for individuals who possess banned products

# Implementation and Enforcement



# Staff Recommendation

Adopt an ordinance amending Chapter 6.87- Tobacco Retail License of Title 6, Business Licenses and Regulations, of the San José Municipal Code (SJMC) to prohibit the sale of flavored tobacco and e-cigarettes (or other flavored tobacco products), prevent further overconcentration of tobacco retail businesses, and reduce youth access to tobacco products in alignment with and completion of City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes, Items 1, 2, and 3 / Protecting our Youth from the E-Cigarette Epidemic.