



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Chu Chang

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2021

Approved

Date

6/2/2021

**SUBJECT: AMENDMENT TO CHAPTER 6.87- TOBACCO RETAIL LICENSE OF TITLE 6, BUSINESS LICENSES AND REGULATIONS, OF THE SAN JOSE MUNICIPAL CODE IN ALIGNMENT WITH CITY COUNCIL POLICY PRIORITY #12: FLAVORED TOBACCO AND E-CIGARETTES, ITEMS 1, 2 AND 3/ PROTECTING OUR YOUTH FROM THE E-CIGARETTE EPIDEMIC**

## RECOMMENDATION

Approve 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 City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes, Items 1, 2, and 3/Protecting our Youth from the E-Cigarette Epidemic.

## OUTCOME

Adoption of the proposed ordinance will amend Title 6, Chapter 6.87 of the SJMC to establish provisions prohibiting the sale of flavored tobacco and e-cigarettes (or other flavored tobacco products), prevent further overconcentration of tobacco retail businesses, and establish distance requirements for tobacco retail businesses from schools and youth sensitive uses in alignment with City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes, Items 1, 2, and 3/ Protecting our Youth from the E-Cigarette Epidemic (City Council Policy Priority #12).

## EXECUTIVE SUMMARY

On February 25, 2020, San José City Council voted to place City Council Policy Priority #12 on the City Council Policy Priority List for FY 2020-2021 and directed staff to develop an ordinance to prohibit the sale of flavored tobacco products and flavored e-cigarettes; explore policies to limit further overconcentration of tobacco businesses; remove existing tobacco retail

license exemptions, and explore proximity restrictions of tobacco retail businesses to youth sensitive uses.

In February 2020, the City of San José was awarded \$120,270 in grant funding from the Santa Clara County Public Health Department (PHD) Tobacco-Free Healthy Cities Project – Tobacco-Free Communities Program. These funds were identified to be used to offset staff costs to carry out selected PHD priority #2 and the recently approved City Council Policy Priority #12.

Following development of the Council Policy Priority #12 work plan, staff worked in coordination with the PHD, City Attorney’s Office, and other departments to complete key work plan milestones from October 2020 through May 2021. Completed work plan items included research and benchmarking of other jurisdiction’s tobacco ordinances; data collection and analysis of existing and potential tobacco retailers; stakeholder outreach including a webinar and survey; ordinance development; and development of an implementation and enforcement strategy. Staff also provided a status report on City Council Policy Priority #12 to the Neighborhood Services and Education Committee on December 10, 2020 in which the committee directed staff to return to Council in Spring 2021 with a proposed ordinance.

In coordination with the City Attorney’s Office and in alignment with Council Policy Priority #12 and recent State and Federal legislation, staff developed the proposed ordinance amendments to prohibit the sale of flavored tobacco products and flavored e-cigarettes, limit further overconcentration of tobacco businesses, remove existing tobacco retail license exemptions, and establish proximity regulations of tobacco retailers to youth sensitive uses.

Anticipated outcomes of the proposed ordinance amendment include: termination of the sale of vape products at 18 Smoke/Vape type businesses currently enrolled in the Tobacco Retail License Program, requirement to register for 44 tobacco retailers that are currently exempt, prevention of new retailers opening a business within 1,000 feet of a school or youth sensitive use or within 500 feet of another retailer, and elimination of the sale of flavored tobacco products at all retailers once the amortization period has ended.

## **BACKGROUND**

### **Rules and Open Government Committee**

On September 18, 2019, Councilmember Carrasco brought forward a memorandum<sup>1</sup> to the Rules and Open Government Committee, dated September 11, 2019, recommending that staff:

1. Develop an ordinance prohibiting the sale by tobacco retail establishments of electronic cigarettes that require, but have not received, an order from the Food and Drug Administration (FDA) approving their marketing; and prohibiting the sale and

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<sup>1</sup> [Rules and Open Government Committee, CM Carrasco Memo, 9-18-19](#)

distribution to any person in San José of flavored tobacco products and electronic cigarettes that require, but have not received, an FDA order approving their marketing.

2. Explore policies that could limit any further overconcentration of tobacco businesses by either:
  - a. Limiting the sale of tobacco products near schools and other youth-sensitive areas or;
  - b. Limiting the sale of tobacco products near existing businesses that sell tobacco products
3. Remove the tobacco retail license exemption from the San José Municipal Code 6.87.210 for eighteen and over tobacco retailers.
4. Support state and federal legislation to prohibit the sale of e-cigarettes and flavored tobacco products.

On September 25, 2019, the Rules and Open Government Committee approved the recommendation that the above items 1, 2, and 3 be referred to the Council Priority Setting session for FY 2020-2021.

On February 25, 2020, the City Council held its 2020-2021 Council Policy Priority Setting Session. In addition to Councilmember Carrasco's yellow-lit preliminary FY 2020-2021 City Council Priority Proposal, Councilmember Foley put forward a policy proposal entitled "Protecting Our Youth from the E-Cigarette Epidemic" which included the following action items:

1. Partner with state and federal agencies to implement effective ways of confirming a consumer's age during online purchases of e-cigarettes.
2. Explore amending the City's zoning code and tobacco licensing process to stop manufacturers of e-cigarette products from selling to retail stores within a half-mile of middle and high schools.
3. Explore amending the City's zoning code and tobacco licensing process to stop retailers from selling flavored products within a mile of elementary, middle, and high schools.

At the Priority Setting session, City Council voted to add the two proposals, which were combined into a single item, to the Council Policy Priority List for FY 2020-2021. The priority item was ranked as City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes, Items 1, 2, and 3 / Protecting Our Youth from the E-Cigarette Epidemic (COMBINED).

## **Santa Clara County Public Health Department Funding**

On January 31, 2020, the City of San José Code Enforcement Division applied for funding from the PHD to amend the existing tobacco retail license ordinance to restrict the sale of flavored tobacco products and restrict the issuance of tobacco licenses to new retailers located within 1,000 feet of schools and within 500 feet from existing tobacco retailers.

On February 13, 2020, the City of San José Code Enforcement Division received notification of an award of \$120,270 in funding from the PHD to support the implementation of proposed strategies that promote tobacco-free communities in alignment with the PHD's Healthy Cities Program. The funding was awarded for a term beginning from contract execution on October 1, 2020 through June 30, 2021 to reimburse the City for staffing and resource costs expended to carry out City Council Policy Priority #12 work plan through the end of the 2020-2021 fiscal year. The contract was amended in May 2021 to extend the grant funding and contract term through September 30, 2021.

## **Neighborhood Services and Education Committee**

In October 2020, staff began implementing the City Council Policy Priority #12 work plan including research and benchmarking of various city and county jurisdictions' flavored tobacco and e-cigarette ordinances; data collection and analysis of existing and potential tobacco retail and e-cigarette businesses; development of a stakeholder outreach strategy; and an ordinance implementation plan (see Attachment A).

Staff provided a status report of City Council Policy Priority #12 and related work plan to the Neighborhood Services and Education Committee on December 10, 2020, including a summary of staff's findings and work plan progress to date. The Neighborhood Services and Education Committee accepted the status report and directed staff to return to City Council with the proposed ordinance amendment to Chapter 6.87-Tobacco Retail License of Title 6 of the San José Municipal Code in Spring 2021.<sup>2</sup>

Between January and May 2021, staff continued to conduct outreach and engagement with stakeholders, conduct research and analysis, and develop the final proposed ordinance.

## **ANALYSIS**

### **Public and Stakeholder Outreach and Engagement**

Between January and May 2021, staff conducted extensive outreach and engagement with a variety of key stakeholders both in support and critical of the proposed amendment, including the Tobacco Free Coalition of Santa Clara County, the American Heart Association, the American Cancer Society, Adobe Services, African American Tobacco Control Leadership, Tobacco Free

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<sup>2</sup> [Neighborhood Services and Education Committee, Council Policy Priority #12 Status Report, 12-10-20](#)

Kids, Parents Against Vaping E-cigarettes, Tobacco Lobbyists, Tobacco product retailers, and local jurisdictions. Feedback from these entities ranged from support of the proposed ordinance, to a desire for stricter legislation, to arguments refuting implementation of the policy. The following summarizes the outcomes of staff's public and stakeholder outreach and engagement.

#### *Associations, Organizations, and Local Jurisdictions*

Staff met with several organizations in support of the proposed ordinance amendment to discuss the proposed policy and hear comments, concerns, and feedback. Each entity expressed support for the proposed ordinance amendment as well as a desire for stricter legislation that would expand the ban to include all electronic cigarettes and hookah related products.

Adobe Services, a social services organization, focuses primarily on racial equity. Adobe Services members expressed support for a ban on menthol products due to a disproportionate use of menthol cigarettes among the African American community and the importance of a ban to support harm reduction goals and increase the overall health of the community. They also expressed concerns about banning specific tobacco products but allowing and taxing cannabis products.

Staff also reached out to local municipalities that have enacted flavored tobacco bans. The City of Berkeley, which instituted a ban on flavored tobacco products in 2019, stated that having smoking cessation programs in conjunction with strong tobacco regulations will help decrease public health inequities and that enforcement efforts should focus on tobacco retailers rather than the individuals who may possess banned products.

#### *Tobacco and Cannabis Lobbyist Groups*

Staff also met with various tobacco lobbyist groups who provided feedback and shared concerns about potential economic consequences and impacts a ban would have on retailers, specifically the convenience store industry. The lobbyist groups expressed concerns about the potential for lost income for retailers, lost tax revenue for the local municipality, and the potential for job loss and store closures as a result of the proposed ordinance. The lobbyists stated that many small retailers are immigrant-owned and any ban, in conjunction with the economic impacts driven by the COVID-19 pandemic, would be harmful to these businesses. Lobbyists also advised that Hookah use is a deeply rooted cultural tradition and is not a product associated with underage use.

#### *Tobacco Retail License Program Businesses*

Staff conducted an online survey and held a webinar for current licensed tobacco retailers, exempted tobacco retailers, and smoke shops that engage in e-cigarette and/or vape sales.

The online survey received a response rate of 21% (or 141 responses out of 687) retailers. Of the respondents surveyed:

- 82% stated they own a tobacco retail business in San José;
- 23% stated they would stop selling tobacco if the ordinance is updated to prohibit the sale of flavored tobacco products and flavored e-cigarettes;
- 90% felt it is difficult for youth under the age of 21 to buy flavored tobacco products in San José;
- 73% felt that flavored tobacco products are not more appealing to youth than unflavored tobacco products;
- 82% oppose an ordinance to prohibit the sale of flavored tobacco products like menthol cigarettes and flavored e-cigarettes; and
- 79% felt it would be difficult to sell their business if a new owner would not be able to sell tobacco due to the proposed proximity restrictions.

The webinar, held on March 12, 2021, provided an overview of the proposed ordinance amendment and provided retailers a forum to express their concerns. A total of 97 tobacco retailers and various representatives of the tobacco retailers attended. The following is a summary of the primary concerns and feedback expressed by the participants:

- The City should hold off on new regulations until the results of Senate Bill SB-793 expected to be part of November 2022 General Election;
- The State or Federal government, not local jurisdictions, should regulate what can and cannot be sold;
- Banning flavored products will create a “black market” that is unregulated and force customers to go to other jurisdictions where the flavored products are not banned;
- A flavored ban will cause a loss of revenue and mostly impact small businesses who are already suffering due to the pandemic. Menthol restrictions will have a large economic impact, resulting in job losses, wages, revenue, and tax losses.
- Many of these impacted small businesses are minority or immigrant-owned and family businesses and proximity restrictions would limit economic opportunities;
- The focus should be on prevention, education, and enforcement instead of banning flavored products;
- Legal non-conforming businesses should be allowed to continue to operate and only apply proximity restrictions to new tobacco retailers; and

### **Research, Data Collection, and Spatial Analysis**

Staff conducted research and benchmarking of various jurisdictions throughout the Bay Area and State including Oakland, San Diego, Sunnyvale, Cupertino, Los Gatos, Saratoga, Los Altos, Fremont, Gilroy, and Santa Clara and San Mateo Counties.

Staff found that between November 2019 and July 2020, several jurisdictions within Santa Clara County, including the County, had adopted tobacco retail ordinances to prohibit the sale of tobacco within a certain distance of a school and have placed restrictions on the proximity of tobacco retail businesses to one another. For example, Santa Clara County, Los Gatos,

Cupertino, and Gilroy have all implemented a ban on the sale of tobacco products within 1,000 feet of a school and 500 feet from other tobacco product retailers. These jurisdictions have also included exemptions or provisions in the ordinances for businesses operating prior to adoption of the ordinance such as:

- Legal non-conforming status for businesses selling tobacco prior to the ordinance;
- Criteria to revoke legal non-conforming status such as failure to renew their permit in a timely manner or a change in ownership; and
- A six-month grace period for businesses required to close.

Staff also completed data collection and spatial analysis to determine the number of existing businesses potentially affected by the proposed ordinance changes; the proximity of existing businesses to schools and other youth-related sensitive receptors such as parks, community centers, and libraries; proximity of existing businesses to one another; and the number of new businesses that would be subject to the proposed provisions. Using nearby jurisdiction’s ordinances as a guide, staff utilized an online mapping tool (developed by the [Stanford Prevention Research Center](#) and [GreenInfo Network](#) with funding from Tobacco Related Disease Research Program (TRDRP) and the [California Tobacco Control Program](#))<sup>3</sup> to estimate how many existing businesses fell within 500 feet of a school (see Attachment B). Similarly, staff mapped the location of current Tobacco Retail License (TRL) businesses in relation to schools, parks, community centers, and libraries, and in relation to other tobacco retailers. Under the proposed amendment, new retailers would be required to be a minimum of 1,000 feet from a youth-sensitive use and 500-feet from another tobacco retailer. Under the proposed amendment, no new tobacco retailers would be allowed within the blue areas shown on the map (see Attachment C). The following table provides the results of the mapping exercise (see Table A).

*Table A: Outcomes of Proposed Ordinance Data and Spatial Analysis*

	Number of Businesses	% of total
# of tobacco retail businesses in San José as of March 2021	657	
# of tobacco retail businesses in TRL Program	607	92%
<b>Located Within:</b>		
500 feet of a school	68	10.4%
1,000 feet of a school	188	28.6%
1,000 feet of a youth sensitive use	421	64%
500 feet of another tobacco retailer	526	80%

<sup>3</sup> <https://cthat.org/>

## **Recent State and Federal Legislation**

Since 2016, numerous State and Federal legislation has been enacted to further restrict the sale and use of tobacco products, including online sales and mail delivery.

### *State Legislation*

On May 4, 2016, California Senate Bill No. 7 was approved by the Governor which increased the minimum sale age from 18 to 21. Additionally, on September 16, 2019, California Senate Bill No. 39 was approved by the Governor, which required sellers and distributors to deliver tobacco products only in conspicuously marked containers and to obtain the signature of a person 21 years of age or older before delivering tobacco products, with an effective date of January 1, 2020. California Senate Bill No. 793 (SB-793), approved by the Governor on August 28, 2020, banned flavored tobacco products including menthol flavors but exempted pipe tobacco, hookah, and premium cigars, with an effective date of January 1, 2021. On August 31, 2020 a proposed referendum was submitted to the Attorney General of California. On January 22, 2021, the referendum qualified for the ballot and the implementation of SB-793 was suspended pending the outcome of the referendum vote expected to be held during the Fall 2021 Special Election.

### *Federal Legislation*

On December 27, 2020, the President approved an emergency Covid-19 economic relief and government spending package called the Consolidated Appropriations Act, 2021. This legislation, effective March 27, 2021, also included the Preventing Online Sales of E-Cigarettes to Children Act, commonly known as the “vape mail ban”. This legislation amended the Jenkins Act and PACT Act to include all electronic nicotine delivery system (ENDS) products (such as e-cigarettes, e-hookah, e-cigars, vape pens, refillable personal vaporizers, and electronic pipes) as well as related accessories that do not contain nicotine and applied the same safeguards to electronic cigarettes already in place for combustible cigarette and smokeless tobacco products. The USPS was also required to impose new restrictions, no later than April 27, 2021, that prohibit the postal service from delivering ENDS products through the mail to residential addresses. Similarly, FedEx ceased delivery of electronic vaping products in March 2021 and UPS indicated it would no longer deliver ENDS products as of April 15, 2021. However, the USPS has delayed its rulemaking in order to determine whether and to what extent the PACT Act exemptions could apply to the ENDS products.

In addition to the ban on USPS delivery of these products to residences, the legislation also added new requirements for online vape retailers. Under the new legislation, online vape retailers must now comply with the following requirements:

1. Engage in third party identity verification for all sales.
2. Use a shipping service that verifies age at delivery.
3. Follow all PACT Act shipping requirements.
4. Register with the US Attorney General.
5. Register with the tobacco tax administrator of any state products are sold.



6. Collect all applicable local taxes.
7. Share all transactions for a state with that state's tax administrator, following that state's reporting rules.

Lastly, on April 29, 2021, The U.S. Food and Drug Administration (FDA) announced that it would work towards a ban on menthol flavors in cigarettes and ban characterizing flavors in cigars. The ban on menthol cigarettes and all flavored cigars would include manufacturers, distributors, wholesalers, importers, and retailers. The ban does not require congressional approval but could take several years before it takes effect as the FDA must first put out proposed rules and consider public comments.

### **Proposed Ordinance Amendment**

In alignment with City Council Policy Priority #12 and NSE Committee feedback, and in consideration of the data and analysis gathered regarding existing and potentially new Tobacco Retail License holders, the research and benchmarking of other local jurisdictions flavored tobacco bans, State and Federal legislation, and the public and key stakeholder outreach and engagement, staff has proposed the following ordinance amendments.

The proposed amendments to Chapter 6.87, Title 6 of the SJMC include:

- Prohibiting the sale of flavored tobacco and e-cigarettes and other products including menthol flavored products;
- Establishing proximity limits for new tobacco retailers to schools, youth-related sensitive receptors (such as parks, community centers, and libraries) and other existing tobacco retailers;
- Increasing the minimum sale age from 18 to 21
- Removing license exemptions
- Aligning City of San José Municipal Code with State and Federal Regulations
- Defining legal non-conforming requirements for existing retailers as appropriate
- Providing a defined grace period for affected retailers to deplete current stock of newly prohibited products

Anticipated outcomes of the proposed ordinance amendment include:

- 18 Smoke/Vape type businesses currently in the Tobacco Retail License Program would be required to cease selling vape products after the grace period concludes;
- 44 Tobacco Retail License exempt businesses would be required to register into the TRL program and be subject to annual inspections;
- No new tobacco retailers would be allowed to open a business within 1,000 feet of a youth-sensitive receptor or within 500 feet of an existing tobacco retailer; and
- Flavored tobacco products, including flavored e-cigarettes, would no longer be sold at any retailer after the grace period concludes.

### **Implementation and Enforcement Strategy**

Pending City Council adoption of the ordinance amendment, staff will work to complete the following ordinance implementation strategy to educate tobacco retail business owners and the public of the amended ordinance and program changes (see Table B).

From June to September 2021, Staff will update existing multilingual collateral materials and the Code Enforcement Division website to reflect the ordinance changes and new regulations. As part of the annual Tobacco Retail License Renewal process conducted in July, staff will identify and conduct outreach to new retailers now subject to the ordinance and provide support to these businesses through the enrollment process.

In addition to the current inspection and enforcement model, pending State grant funding for enforcement, staff will work in partnership with the Santa Clara Public Health Department to establish a youth decoy program to enforce laws prohibiting the sale of tobacco products to minors. Lastly, inspections and enforcement of the Tobacco Retail License Program in accordance with program performance measures and the SJMC will remain ongoing.

*Table B: Proposed Ordinance Implementation and Enforcement Strategy*

<b>Timeline</b>	<b>Activity</b>
June-July 2021	<ul style="list-style-type: none"> <li>• Update the multilingual Tobacco Retail License brochure and create a frequently asked questions (FAQ) document to educate tobacco retailers.</li> <li>• Update Code Enforcement Division website to include updated collateral and new program information</li> </ul>
June-August 2021	<ul style="list-style-type: none"> <li>• Begin Tobacco Retail License Program annual license renewal process.</li> <li>• Conduct outreach to all retailers to educate of new requirements and regulations.</li> <li>• Enroll any identified new businesses into the TRL program for annual renewal and licensing including a site visit and inspection.</li> </ul>
September 2021	<ul style="list-style-type: none"> <li>• Work in partnership with Santa Clara County Public Health Department and other organizations to develop resources for smoking cessation programs and assistance.</li> <li>• Pending State grant funding for enforcement, establish a decoy program, in partnership with the Santa Clara County Public Health Department, to conduct decoy operations to enforce tobacco sales to minors laws</li> </ul>
Ongoing	<ul style="list-style-type: none"> <li>• Continue to carry out inspections and enforcement of the Tobacco Retail License Program in accordance with program performance measures and the SJMC.</li> </ul>

## **CONCLUSION**

Staff completed key milestones of the Council Policy Priority #12 work plan including stakeholder outreach, research and benchmarking, data and spatial analysis, development of a proposed ordinance amendment, and an implementation strategy. Staff received robust feedback from stakeholders for and against the proposed ordinance amendment. Supporters of the proposed ordinance desired more strict ordinance requirements with no product exemptions. Opponents of the proposed changes argued the ordinance as proposed will have a substantial economic impact to tobacco retailers and create a “black market” for banned products or push customers to surrounding jurisdictions with no restrictions on flavored products.

The proposed ordinance amendment to Chapter 6.87, Title 6 of the San José Municipal Code will prohibit the sale of flavored tobacco products, including flavored e-cigarettes, limit any further overconcentration of tobacco retailers by prohibiting new tobacco retailers within 1,000 feet of a youth-sensitive receptor and within 500 feet of an existing tobacco retailer, and remove all licensing exemptions. Following ordinance adoption, existing retailers will be provided a grace period of six months to deplete their remaining stock of newly banned products. Ultimately, it is estimated that 18 businesses will need to cease selling vape products, 44 known businesses would be required to register into the Tobacco Retail License Program, and no new businesses will be able to open near schools, youth sensitive uses, or other retailers. The ordinance would also be in alignment with current State and Federal legislation and would implement the goals of City Council Policy Priority #12.

## **EVALUATION AND FOLLOW UP**

Pending adoption of the ordinance amendment, staff will carry out the Implementation and Enforcement Strategy (outlined in Table A above) and continue to engage with existing and new Tobacco Retail License Program businesses and the public to provide support and assistance through the transition and implementation of the new ordinance. Staff will continue to conduct inspections and enforcement in alignment with program performance measures and goals and the San José Municipal Code. Staff will also continue to coordinate with the Santa Clara County Public Health Department to establish a youth decoy program.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

Staff conducted outreach and engagement with a variety of key stakeholders, including non-

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profits, tobacco-free advocates, lobbyists, and tobacco retail businesses, between January and May 2021 as noted above. Several email correspondences were received by the Code Enforcement Division and other City of San José staff from health and tobacco-free advocates in support of the proposed amendments as well as a stricter ordinance with no product exemptions. An informational webinar was also held for tobacco retailers.

This memorandum will be posted on the City's website for the June 15, 2021 City Council Meeting Agenda.

### **COORDINATION**

Staff coordinated with the Santa Clara County Public Health Department and the City Attorney's Office in developing the proposed ordinance amendment. Staff consulted the Office of Racial Equity in developing the stakeholder outreach strategy.

### **COMMISSION RECOMMENDATION/INPUT**

Staff provided a status report of City Council Policy Priority #12 and the related work plan to the Neighborhood Services and Education Committee on December 10, 2020, including a summary of staff's findings and work plan progress to date. The Neighborhood Services Committee accepted the report and directed staff to return to City Council with the proposed ordinance amendment to Chapter 6.87-Tobacco Retail License of Title 6 of the San José Municipal Code in Spring 2021.

### **FISCAL/POLICY ALIGNMENT**

This action is consistent with the City's Proposed 2021-2022 Operating Budget and Adopted 2020-2021 Operating Budget City Service Areas Delivery Framework for Performance-Driven Government for Operational Services.

### **COST SUMMARY/IMPLICATIONS**

Staff will utilize the remaining Santa Clara County Public Health Department grant funding through the contract term ending September 2021. Staff will continue to work to acquire State grant funding for tobacco enforcement strategies for FY2021-2022. Staff will evaluate fees, resources, and budget needed to support the ongoing programmatic efforts as part of the mid-year 2021-2022 and 2022-2023 proposed budget process.

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**CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Information Memos that involve no approvals of any City action.

/s/

CHU CHANG, Acting Director  
Planning, Building, and Code Enforcement

For questions, please contact Rachel Roberts, Deputy Director, at [rachel.roberts@sanjoseca.gov](mailto:rachel.roberts@sanjoseca.gov).

Attachment A: City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes Work Plan

Attachment B: California Tobacco Health Assessment Tool (CTHAT)-City of San José Tobacco Businesses and School Proximity Map

Attachment C: Retailer Spatial Analysis 1,000 ft (C-1) and 500 ft (C-2) Buffers

## City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes Work Plan\*

October 2020-September 2021

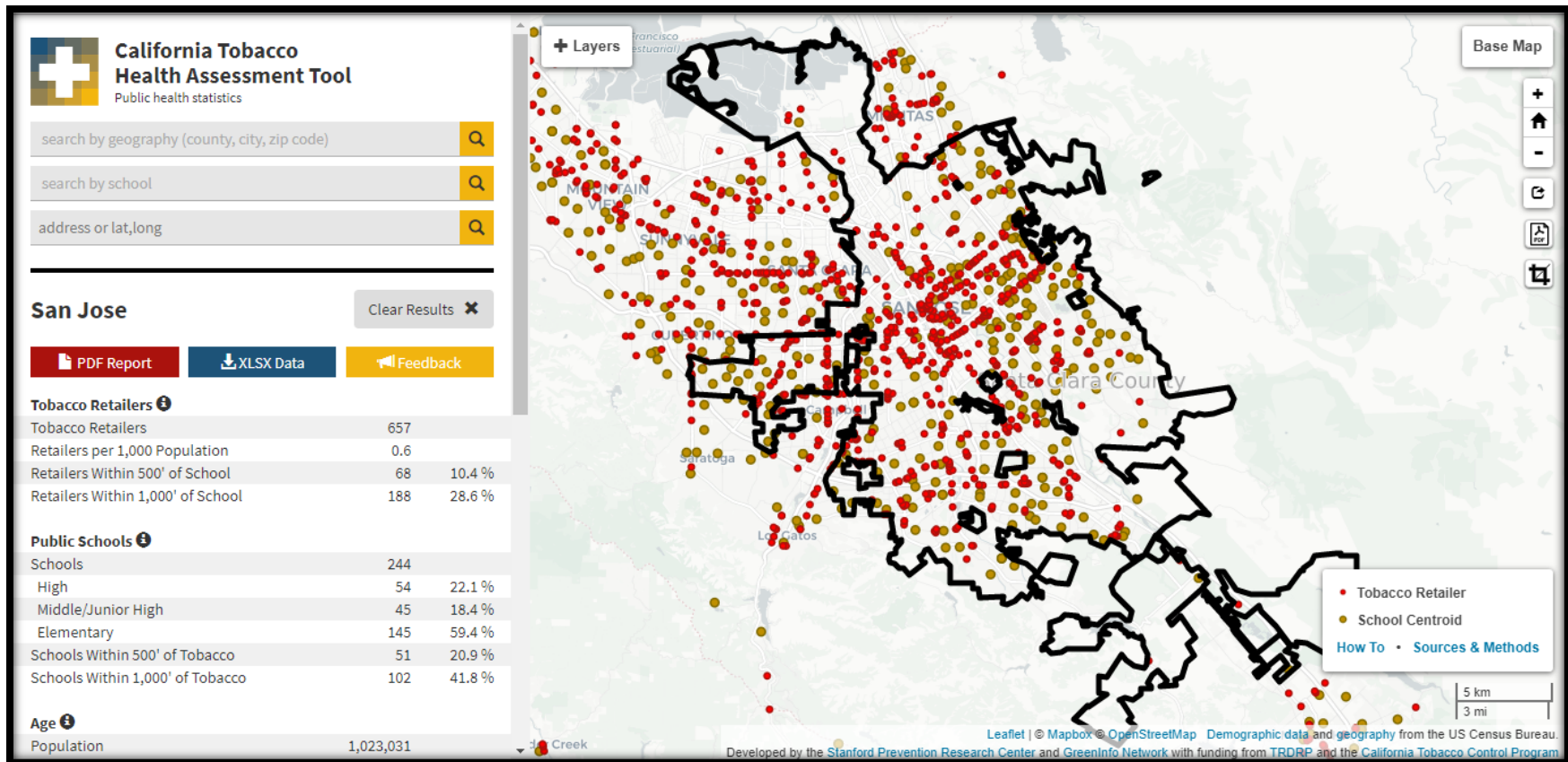
Objectives	Actions	Timeframe	Status
1. Research and Benchmarking	Research and Benchmark of Existing Local, State, and Federal regulations including but not limited to: <ul style="list-style-type: none"> <li>• California Senate Bill No. 7 increased the minimum sale age from 18 to 21 and was approved by the Governor on May 4, 2016 and went into effect June 9, 2016.</li> <li>• California Senate Bill No. 793, banning flavored tobacco products, including menthol flavors, was approved by the Governor on August 28, 2020 and goes into effect on January 1, 2021.</li> <li>• Local City and County Ordinances regarding increasing minimum sale age from 18 to 21, prohibiting the sale of flavored tobacco and e-cigarettes including menthol flavors, and non-FDA approved products, proximity/density requirements, and other provisions</li> </ul>	October-November 2020	Completed
2 Data Collection, Mapping, and Analysis	Data Collection, Mapping, and Analysis <ul style="list-style-type: none"> <li>• Evaluate proximity of existing TRL businesses to Youth sensitive receptors and other TRL businesses</li> <li>• Evaluate proximity of potentially new TRL businesses to Youth sensitive receptors and other TRL businesses</li> <li>• Assess impacts of proposed Draft Ordinance proximity requirements on existing and potential new TRL eligible businesses</li> <li>• Explore potential legal non-conforming status of existing retailers</li> </ul>	October 2020-January 2021	Completed

3. Title 6.87- Draft Ordinance Amendments	Develop Preliminary Draft Ordinance Amendments to include: <ul style="list-style-type: none"> <li>• Prohibit the sale of flavored tobacco and e-cigarettes and other products including menthol flavored products</li> <li>• Set proximity limit for new tobacco retailers to schools and other youth sensitive receptors and other existing tobacco retailers</li> <li>• Increase the minimum sale age from 18 to 21</li> <li>• Remove license exemptions</li> <li>• Align City of San Jose Municipal Code with State and Federal Regulations</li> <li>• Define legal non-conforming requirements (if applicable)</li> <li>• Provide a defined grace period for affected retailers to deplete current stock of prohibited products</li> </ul>	November-December 2020	Completed
4. Neighborhood Services and Education Committee (NSE) Status Report	<ul style="list-style-type: none"> <li>• Present status report to NSE Committee and obtain input/feedback on work plan objectives</li> </ul>	December 10, 2020	Completed
5. Stakeholder Outreach	Stakeholder Outreach to include: <ul style="list-style-type: none"> <li>• Virtual outreach meetings</li> <li>• Mailings</li> <li>• In-person outreach as appropriate in accordance with County Orders/COVID19</li> </ul>	January-May 2021	Completed
6. Title 6.87- Final Draft Ordinance Amendments	Develop Final Draft Ordinance Amendments to include: <ul style="list-style-type: none"> <li>• NSE Committee direction</li> <li>• Stakeholder feedback as appropriate</li> <li>• Outcome of completed data and analysis</li> </ul>	February -May 2021	Completed
7. Proposed Ordinance Amendments Presented to City Council	Bring proposed Ordinance Amendment to City Council including: <ul style="list-style-type: none"> <li>• Research, benchmarking, and outreach outcomes</li> <li>• Data and Analysis Outcomes</li> <li>• Proposed Implementation Plan</li> <li>• NSE Committee feedback/direction</li> <li>• Staff Recommendation</li> </ul>	June 15, 2021	On Calendar

<p>8. Carry Out Implementation Plan <i>(Pending Council Approval of Ordinance Amendment)</i></p>	<p>Finalize and Carry Out Implementation Plan including but not limited to:</p> <ul style="list-style-type: none"> <li>• Communication Plan to inform public and stakeholders</li> <li>• Creation and preparation of educational materials including FAQ and Fact Sheets in multiple languages</li> <li>• Update Code Enforcement website content</li> <li>• Update Tobacco Retail Licensing brochure and customer materials</li> <li>• Virtual outreach meetings with stakeholders as appropriate</li> <li>• All eligible Business owners and the public informed of new regulations and program changes</li> </ul>	<p>July- September 2021</p>	<p>Pending</p>
<p>9. Enrollment of new businesses into the Tobacco Retail License Program</p>	<ul style="list-style-type: none"> <li>• Provide newly eligible businesses with the Tobacco Retail Licensing application and Program Collateral</li> <li>• Assist business/property owners with the application/onboarding process</li> <li>• Complete an initial inspection of newly enrolled businesses upon Code Enforcement's receipt of a complete Tobacco Retail License application.</li> </ul>	<p>July- September 2021</p>	<p>Pending</p>

*\*updated 5/21/21*

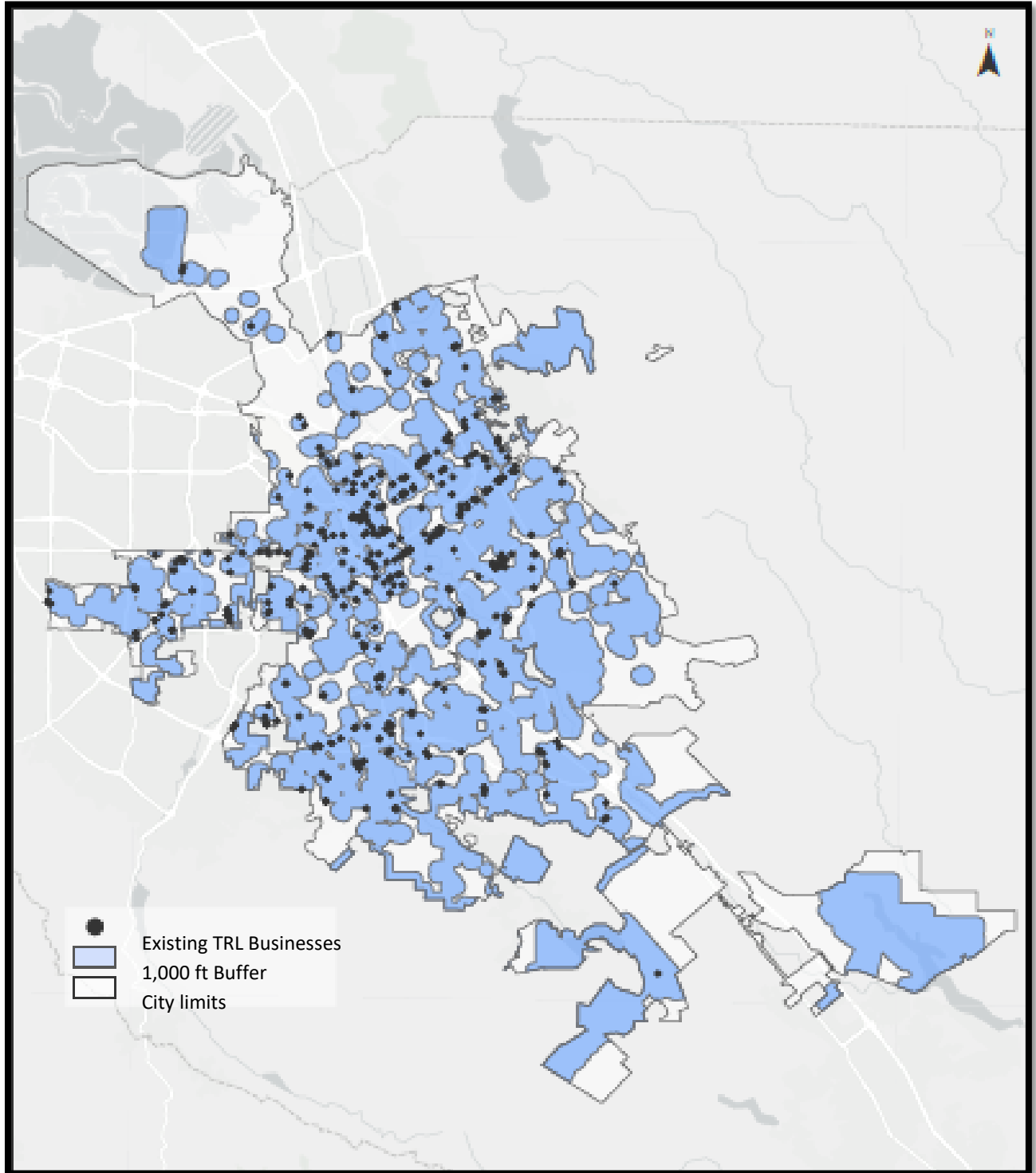




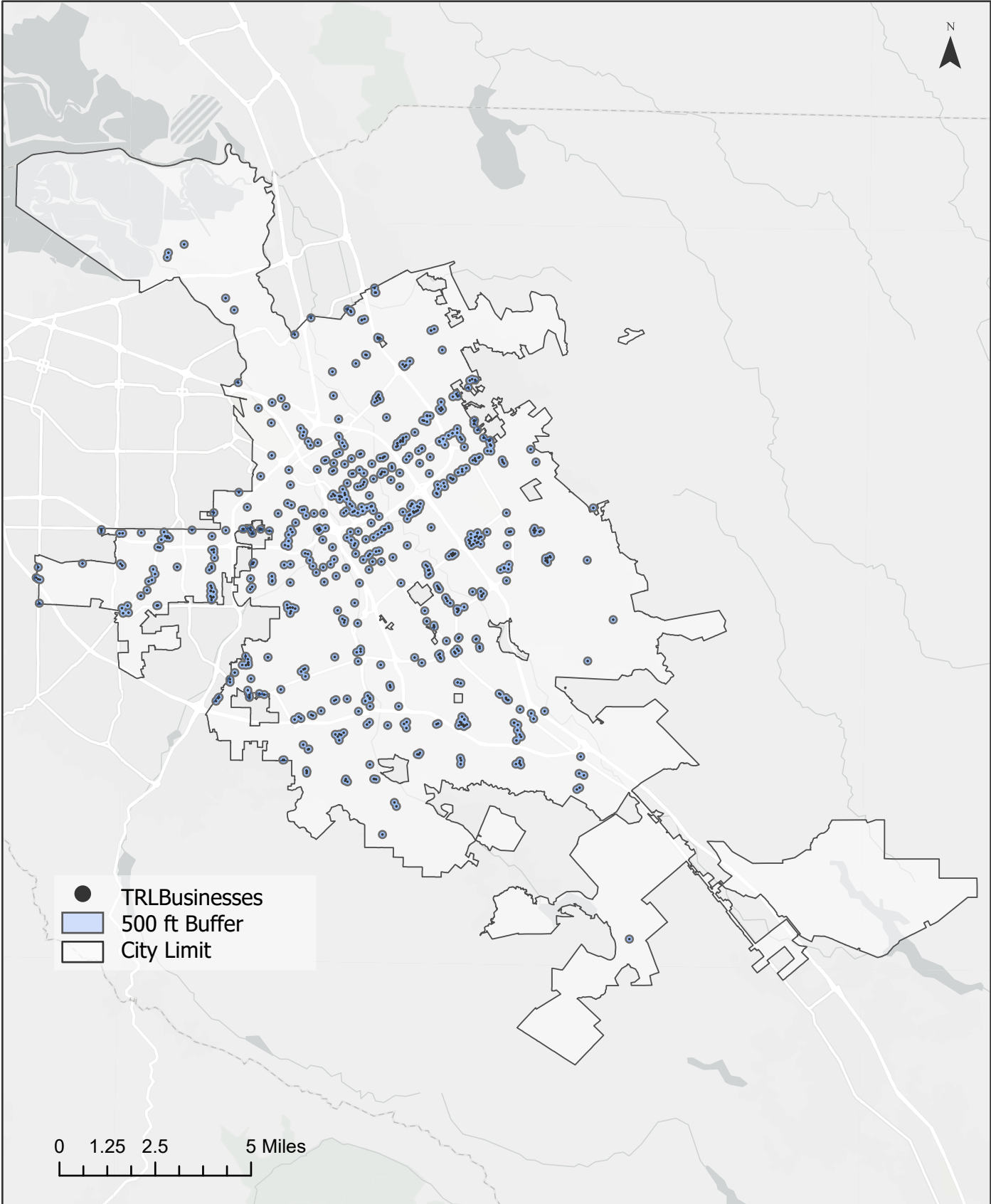
Developed by the [Stanford Prevention Research Center](#) and [GreenInfo Network](#) with funding from Tobacco Related Disease Research Program (TRDRP) and the [California Tobacco Control Program](#)

<sup>1</sup> <https://cthat.org/>

# Youth Receptor Analysis: 1,000 Foot Buffer from Existing Tobacco Retail License Program Businesses



# 500 Foot Buffer to Other Tobacco Retail Licence Program Businesses



County of Santa Clara, Esri, HERE, Garmin, SafeGraph, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA