BUSINESS LICENSE COMMISSION

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April 25, 2007

TO: Each Supervisor

FROM: Steven Afriat
President, Business License Commission

SUBJECT: **TOBACCO RETAIL LICENSING PROGRAM**

On January 30, 2007, your Board approved a motion by Supervisor Yaroslavsky, and amended by Supervisor Antonovich, which 1) instructed the Business License Commission ("Commission"), in conjunction with the Director of Public Health and County Counsel, to conduct a public hearing to consider the establishment of a tobacco retail licensing ordinance for the unincorporated areas of Los Angeles County, 2) directing the Commission, in conjunction with the Director of Public Health and the Chief Administrative Officer, to determine the financial impact of a tobacco retail licensing ordinance on private businesses by size of business, and determine whether a scaling license fee is feasible, and 3) report back to the Board within 90 days with the Commission's findings and recommendations. Furthermore, the motion instructed the Director of Public Health to urge cities in Los Angeles County which do not have a tobacco retail licensing ordinance to consider the development and adoption of such an ordinance.

This is a report on the findings and recommendations put forth as a result of this motion.

Tobacco Retail Licensing Public Hearing Process

In order to solicit input from various stakeholders, the Commission mailed a public hearing advisory to approximately 850 markets and liquor stores who currently hold business licenses in the unincorporated areas of the County. The advisory announced the February 28, 2007 public hearing and its intention to provide members of the public with an opportunity to be heard regarding the potential impact of a tobacco retail licensing ordinance. In addition, the Commission mailed the advisory to the California Grocer's Association, the Mexican-American Grocer's Association, and the Korean-American Grocer's Association.

On February 28, 2007, the Commission convened a public hearing to consider the establishment of a tobacco retail licensing ordinance for the unincorporated areas of Los Angeles County and to determine the feasibility of including a sliding scale fee for a tobacco retail license.

Supervisor Yaroslavsky and several members of the of the public, including, among others, the Chief of Cardiac Surgery from Los Angeles County-USC Medical Center, who also represented the American Heart Association and American Stroke Association; representatives from Kern County Department of Public Health; Glendale Adventist Medical Center; Search to Involve Filipino Americans; American Cancer Society; American Lung Association; and the Tobacco Enforcement Division of the Los Angeles City Attorney's Office; provided testimony in support of a County tobacco retail licensing ordinance. In addition, staff from County Counsel, the Treasurer and Tax Collector, and the Department of Public Health Tobacco Control and Prevention Program ("TCPP") responded to questions from the Commission. No tobacco retailers or representatives of retail associations, if present, chose to speak during the hearing.

The Commission heard testimony indicating that of the 26 California cities and counties that have enacted a tobacco retail licensing ordinance, none have adopted a sliding scale fee due to concerns that such a scaled fee would encumber smaller businesses. Determining a license fee based on the size of a business or revenue generated would cause higher administrative costs for the County, thus leading to a higher license fee overall. Lastly, the license fee for a tobacco retail license is intended to recover costs associated with the administration and enforcement of the program. Since the cost of enforcement operations is the same whether enforcing against a large or small retailer, there has not appeared to be any rational basis for implementing a sliding scale fee.

Following the public comments, the Commission made findings of fact and recommendations based upon the testimony and evidence presented. Additionally, the Commission requested that TCPP staff prepare a report on how other jurisdictions administer and enforce tobacco retail license ordinances and conduct retailer education. The Commission received the report on March 14, 2007.

On March 21, 2007, the Commission voted unanimously to accept with amendments the findings and recommendations from the February 28, 2007 public hearing suggesting that the Los Angeles County Board of Supervisors adopt a tobacco retail licensing ordinance for the unincorporated areas of Los Angeles County. Below are the findings and recommendations of the Commission:

Business License Commission's Findings and Recommendations:

Findings

- State law prohibits the sale or furnishing of tobacco products and paraphernalia to minors, as well as the purchase or possession of tobacco products by minors. State law further requires retailers to check the identification of any tobacco purchaser who reasonably appears to be under eighteen (18) years of age.
- Despite existing federal, state and local laws intended to regulate tobacco sales and use, local laws must be enhanced to ensure and promote compliance and maximize their effectiveness in protecting the public's health, particularly those of minors, to discourage the illegal

purchase of tobacco by minors, and to protect children from being lured into illegal activity through the misconduct of adults.

- The cost to the County taxpayers is:
  - $950 per patient per day for inpatient care at County hospitals;
  - $269 million per year in direct and indirect costs associated with smoking related to minors; and
  - $4.3 billion per year in health care costs and loss of productivity of those who smoke.
- Convenience stores nationally, according to the National Association of Convenience Stores, average over $372,000 per store per year in gross sales for tobacco-related sales; with each store averaging $1,020.70 per day.
- Similar Tobacco Retail Ordinance fees range from L.A. City at $208 per year to the City of Carson at $500 per year. Therefore, the highest fee for a one-year license is less than the average one day revenue for retailers from tobacco sales.
- There is no business that sells a product with more direct and secondary impacts than the sale of tobacco. When a minor is buying cigarettes, the minor not only is harming himself or herself, but the non-smoker nearby who becomes threatened with illness related to second-hand smoke and may also become part of the County system.
- Minors that smoke have an increased incidence of absenteeism in school.

Recommendations

- That the Board of Supervisors adopt a motion to establish a tobacco retail licensing ordinance for the unincorporated areas of Los Angeles County for all retailers who sell tobacco.
- There should be no sliding scale imposed and the same fee should be assessed for all retailers who sell tobacco regardless of the size of the retailer or of their revenues.
- The license fee and program will include full cost-recovery for enforcement and administration, public information, and education, including ongoing education.
- All tobacco retailers are required to attend an educational course on the federal, state and local laws regarding tobacco sales as part of their license application process.
- The Board of Supervisors, in conjunction with County staff, determine proper administration and enforcement procedures.
- A requirement for annual compliance checks and a schedule of penalties, including fines, suspension and revocation, consistent with federal, state and local law.
- That the Business License Commission be notified in a manner consistent with Title 7 of any enforcement action taken against a tobacco retailer that includes penalties, fines, suspensions or revocations, so that it may take the appropriate action on the license consistent with its authority.
- Provide for an "opt-in" provision in the ordinance to allow other cities a mechanism for adopting the County's ordinance, in particular to make the ordinance available to the County's ten contract cities.