Tobacco Retail Business Compliance Update

RECOMMENDATION:

Council direct Staff to continue to monitor the retail sale of tobacco products to ensure adherence to the State Law that prohibits the sale of tobacco to minors, and report back to City Council any non-compliance by retailers for additional consideration of a tobacco retail licensing ordinance.

DISCUSSION:

The City of Atascadero, in partnership with the San Luis Obispo County Public Health Department, conducts compliance checks of tobacco retailers within the City to ensure retailers are not selling tobacco to persons under the legal age of 18. Currently under State law, both the seller and the under-age buyer are cited for misdemeanor violations. However, under current law, and without a City Licensing Ordinance, the business retailer is not cited unless a direct connection to the buyer can be established. Such ordinances have proven effective in reducing the sale of tobacco products to minors in other municipalities including cities in San Luis Obispo County.

Following a significant spike in retailer non-compliance in Atascadero, Council directed staff on September 14, 2010, to come back to the City Council with available options to address the trend. Staff returned to the City Council on November 9, 2010 where the Council directed staff to implement additional measures designed to provide greater opportunity for voluntary compliance prior to further consideration of the adoption of a licensing ordinance. Staff was directed to report back to Council on or before June, 2011 to determine the effectiveness of these measures.

Two compliance checks were conducted with the County Public Health Department’s assistance in December of 2010 and February of 2011 which yielded 8% and 0% non-compliance rates, respectively; suggesting intermediate measures have been successful in garnering voluntary compliance from tobacco retailers at this juncture.
The following measures were taken by Staff:

- **Delivery of a letter from the police chief to retailers outlining concerns regarding sale of tobacco to minors and looming possibility of a licensing ordinance** - A letter from former Chief of Police Jim Mulhall was hand delivered to each retailer on November 30, 2010 (Attachment 1).

- **Additional educational workshop** - County Public Health Department and APD hosted the second (of two) tobacco retailer training forums on January 19, 2011. Invitations were hand delivered to each retailer. Nine persons representing eight businesses were in attendance, two businesses represented had employees who were issued citations during the compliance check.

- **Atascadero Chamber and Main Street assistance** - Information was provided to both organizations on December 7, 2010 for inclusion in their monthly newsletters.

- **Garner media assistance in shedding light on the problem** - Results of the compliance checks and a summary of the November 9, 2010 Council meeting were covered by main stream media outlets.

- **Strengthen relationship between the Police Department and Retailers** - Atascadero Police Community Response Officers hand delivered invitations to the September 4, 2010 and January 9, 2011 forums. Many of these visits were the catalyst for discussion regarding the impact of a tobacco retailer licensing program. Additionally, immediate follow-up with cited clerks occurred and all were invited to the forums which fell prior to their respective court dates. Finally, the two forums provided additional opportunity for strengthened relationships.

- **Two additional compliance checks** - Compliance checks were held on December 9, 2010 and February 15, 2011. Of note, KCOY aired an interview with former Chief Mulhall on December 8, 2010 that did not mention the pending “sting” but did address the problem of tobacco sales to minors. It is unknown what, if any, impact this had on the non-compliance rate the following day. Additionally, a male decoy purchasing chewing tobacco was used in the February compliance check at the suggestion of a compliant business owner during one of the forums as a method of “really testing businesses.” Interestingly, the sting resulted in 100% compliance.
COMPLIANCE CHECK RESULTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Retailers</th>
<th>Citations</th>
<th>Compliance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 19, 2009</td>
<td>18</td>
<td>4</td>
<td>22%</td>
</tr>
<tr>
<td>March 16, 2010</td>
<td>17</td>
<td>4</td>
<td>23%</td>
</tr>
<tr>
<td>August 9, 2010</td>
<td>25</td>
<td>8</td>
<td>32%</td>
</tr>
<tr>
<td><del>November 9, 2010 City Council Meeting</del></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>December 9, 2010</td>
<td>26</td>
<td>2</td>
<td>8%</td>
</tr>
<tr>
<td>February 15, 2011</td>
<td>26</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

Conclusion: It is unknown whether the non-compliance rate will remain at current levels; however, it appears the business community has been responsive to the recent measures employed to address this important issue. Staff is committed to the active monitoring of compliance rates in continued cooperation with the County Public Health Department.

FISCAL IMPACT:

None.

ALTERNATIVES:

1. Direct Staff to draft an ordinance identifying licensing fees, administrative citation process, fines, suspension/revocation, and appeal process.

2. Provide alternative direction to Staff.

ATTACHMENT:

1. Letter to tobacco retailers from former Chief of Police James Mulhall
November 30, 2010

TO WHOM IT MAY CONCERN:

It is with considerable concern that I write this letter. Throughout the past year, the Police Department has conducted compliance checks on tobacco retail businesses in an attempt to mitigate the ever increasing illegal sales of tobacco products to buyers under the age of 18. It is apparent that our current enforcement efforts have done little to deter these illegal sales.

On September 14th of this year, in conjunction with the County Health Department, the Police Department hosted a Tobacco Retail Seminar and partnered with the Atascadero Chamber of Commerce to notice this seminar in the September issue of the Chamber of Commerce Business Reporter. In addition, I had officers assigned to the Community Response Team personally deliver this seminar invitation to each of the 25 tobacco retailers in the City. Only five retail businesses showed up with a total number of 10 employees in attendance. One of the businesses present was from the unincorporated part of the County, and two of the remaining four shared common ownership.

It is with great disappointment that I now feel that the extraordinary use of Police Department resources, in an attempt to partner with the business community in resolving this issue, have fallen on deaf ears. In the process, enforcement efforts must be increased to ensure that state law is not violated and our at-risk youth are protected.

There has been considerable interest and discussion involving the Police Department, Atascadero City Council, The Chamber of Commerce, and the County Health Department regarding the violation of state law in selling tobacco products to underage buyers. The City Council is now poised to enact an ordinance that will create a Tobacco Retail Licensing Program. Not only will each tobacco retailer have to purchase a license each year to sell tobacco products, but this ordinance will allow my officers to charge you, the business owner or manager, with a violation of the City ordinance. This violation may have catastrophic consequences for you, resulting in a fine and possible license suspension.
To that end, it is my intent to enforce the state statutes in the strongest enforcement measures possible. This sternest of warnings carries with it the promise that enforcement efforts are currently in effect. I welcome your input, and if you wish to call upon me, please do so at 470-3200.

Sincerely,

James F. Mulhall
Chief of Police

JFM/mc