

## **Oklahoma Tobacco Settlement Endowment Trust Board of Directors: Strengthening E-Cigarette and Nicotine Product Retailer Licensing and Enforcement**

August, 2022

**WHEREAS**, the Oklahoma Tobacco Settlement Endowment Trust (TSET) was created by voters in 2000 and has a constitutional mandate to support strategies and programs designed to maintain or improve the health of Oklahomans; and

**WHEREAS**, in 2006, a U.S. federal court found Altria, Philip Morris USA, R.J. Reynolds, and other tobacco companies in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), citing 145 distinct acts of racketeering in a 1,682 page ruling and finding the companies' conduct permeated all aspects of their operations, that they would likely continue committing fraud, and that their conspiracy sought not only to misinform the public, but also lawmakers; and

**WHEREAS**, internal documents made public by court order show that tobacco industry lobbyists, concerned that they could not control city councils, worked behind the scenes to promote new statutory language of their own. It was designed to prohibit Oklahoma municipalities from enacting any ordinance stronger than state law on tobacco-related issues, including smoking inside workplaces, tobacco licensure, tobacco advertising, and youth access to tobacco; and

**WHEREAS**, the tobacco industry has developed new and emerging products, including e-cigarettes, that addict new customers, and use flavors, colorful packaging and social media marketing to make them more appealing to youth; and

**WHEREAS**, some of these new and emerging nicotine products use plant-derived or synthetic nicotine<sup>1</sup> and all of these products can lead to a lifetime of addiction and none have been approved by the FDA as cessation tools; and

**WHEREAS**, high exposure to nicotine can harm the developing brain of an adolescent and disrupt attention, mood, learning and impulse control<sup>2</sup>; and

**WHEREAS**, addiction to nicotine makes individuals more likely to use combustible cigarettes<sup>3</sup>. More than one in four Oklahoma youth have reported using a tobacco product<sup>4</sup>. High school youth e-cigarette and vapor device usage is high in Oklahoma as 27.8% of them reported using them in 2019<sup>5</sup>; and

**WHEREAS**, retail outlets are the main marketing venue for tobacco products, with the tobacco industry spending \$138 million annually to market their addictive products to Oklahomans<sup>6</sup> with areas with higher density of tobacco retailers often having poorer health outcomes; and

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<sup>1</sup> <https://truthinitiative.org/research-resources/harmful-effects-tobacco/what-you-need-know-about-new-synthetic-nicotine-products>

<sup>2</sup> [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html)

<sup>3</sup> <https://truthinitiative.org/research-resources/emerging-tobacco-products/young-people-who-vape-are-much-more-likely-become>

<sup>4</sup> <https://www.cdc.gov/tobacco/stateandcommunity/state-fact-sheets/oklahoma/index.html>

<sup>5</sup> [https://www.cdc.gov/tobacco/data\\_statistics/surveys/nyts/index.htm](https://www.cdc.gov/tobacco/data_statistics/surveys/nyts/index.htm)

<sup>6</sup> <https://www.tobaccofreekids.org/problem/toll-us/oklahoma>

**WHEREAS**, TSET’s Healthy Living Program and the TSET Healthy Incentive Program have encouraged local partners to educate their communities and promote adoption of thousands of new tobacco-free and wellness policies among a wide range of organizations throughout the state, promoted policies to reduce the density and proximity of tobacco outlets near schools and educated retailers about current tobacco laws; and

**WHEREAS**, retailers of nicotine-only products, e-cigarettes or any other electronic nicotine delivery systems in the state of Oklahoma are not currently required to obtain a license from the Oklahoma Tax Commission; and

**WHEREAS**, as of March 2022, 33 states require retail licensure for e-cigarettes<sup>7</sup>; and

**WHEREAS**, because only a sales tax permit is required to sell e-cigarettes and other new and emerging nicotine products in Oklahoma it makes it harder for the Alcoholic Beverage Laws Enforcement Commission to identify where those locations are in order to enforce applicable laws; and

**WHEREAS**, strengthening laws directed at retailers in combination with effective enforcement and retailer education is a proven best practice<sup>8</sup>, with retail licensure and potential license suspensions or revocations being essential for deterring illegal sales of age-restricted products; and

**WHEREAS**, additional revenue from license fees and taxes could be used to monitor and improve retailer compliance, helping to prevent sales of these products to Oklahoma youth; and

**WHEREAS**, the federal definition of tobacco products includes e-cigarettes and other new and emerging nicotine products but sellers of these products in Oklahoma do not need a license from the Oklahoma Tax Commission, as is required of retailers that sell cigarettes, cigars, or smokeless tobacco.

**BE IT THEREFORE RESOLVED**, the TSET Board of Directors supports local efforts to:

- Educate on the need for comprehensive tobacco retail licensing to include e-cigarettes and alternative nicotine or vapor products.
- Update existing tobacco-free ordinances on city-owned or operated property to include e-cigarettes and other nicotine products.
- Continue efforts aimed at increasing tobacco retailer compliance that include activities such as retailer education trainings, tobacco compliance checks, and prevention of youth access to tobacco ordinances that encourage local enforcement of youth access laws.
- Reduce e-cigarette retailer proximity near schools and playgrounds.

**FURTHERMORE, BE IT THEREFORE RESOLVED**, the TSET Board of Directors calls on the Oklahoma State Legislature to enact legislation in support of these aims by:

- Repealing tobacco control preemption measures that prevent local governments from enacting policies to protect the health and well-being of their citizens.

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<sup>7</sup> <https://www.cdc.gov/statesystem/factsheets/ecigarette/ECigarette.html>

<sup>8</sup> [https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/pdfs/2014/comprehensive.pdf](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf)

- Enacting comprehensive clean indoor air laws for all workplaces.
- Expanding tobacco retail licensing to include e-cigarettes by requiring e-cigarette retailers to obtain an annual, non-transferable license from the Oklahoma Tax Commission.
- Clearly defining enforcement provisions for retailers that violate the tobacco or e-cigarette license requirement.
- Enacting penalty structures that follow best practices and have been shown to increase compliance in other states.
- Ensuring the penalty structure provides an incentive for business owners to comply with penalties that occur immediately, including suspension or revocation of the license for repeat violators.
- Amending state law to include all new and emerging nicotine products in Oklahoma’s statutory definition of tobacco products.
- Expanding tobacco retailer zoning to be the same as medical marijuana dispensaries of 1,000 feet from schools and playgrounds, including childcare centers.
- Restrict advertising and sponsorship of all tobacco and nicotine products, particularly on social media and at retail locations.
- Taxing e-cigarettes and other new and emerging nicotine products at a rate and manner to ensure price parity with other tobacco products.

**FURTHERMORE, BE IT THEREFORE RESOLVED**, the TSET Board of Directors respectively recommends the adoption of the aforementioned policies and strategies to strengthen e-cigarette and nicotine product retailer licensing and enforcement.

**THE TSET BOARD OF DIRECTORS** hereby calls upon other interested groups and governing bodies to adopt similar resolutions.