CITY OF
HAYWARD
HEART OF THE BAY

October 2, 2013

Tobacco Retail Sales Establishment Regulations Overview

Purpose:

- To establish regulations on the sales of tobacco and tobacco related products within the City of Hayward in effort to reduce the sales of said products to youths.

Proposed Draft Regulations to include:

- Define Tobacco Sales Establishments, Tobacco Paraphernalia, Tobacco Products, etc.
- Location - Restrict the zoning districts in which Tobacco Sales establishments can be located.
- Require Conditional Use Permit for Tobacco Sales Establishments in allowed Zoning Districts.
- Require separation requirements from sensitive receptors and other Tobacco Sales Establishments.
- Prohibit sales of specific products (i.e. drug paraphernalia, single cigarettes and cigars, flavored tobacco products, etc.).
- Product Packaging- Prohibit sale of single cigarettes and cigars.
- Reinforce compliance with local, federal and state laws pertaining to tobacco and tobacco product sales, licensing and advertising and display to allow enforcement at local level.
- Local enforcement provisions.
- Create provisions for existing tobacco retail sales establishments considered legal non-conforming (regardless of zoning district).

ChangeLab Solutions
Law & policy innovation for the common good

Tobacco Retailer Licensing
An Effective Tool for Public Health

Communities are adopting tobacco retailer licensing laws as one way to ensure compliance with tobacco laws and to combat the public health problems associated with tobacco use. In this fact sheet, we explain how tobacco retailer licensing works, why many communities are pursuing this policy, and what goes into creating and implementing a strong tobacco retailer licensing law.

What is tobacco retailer licensing?

Licensing is a common policy tool that state and local governments use to regulate businesses like alcohol retailers, pharmacists, or restaurants. A local government may want to similarly license tobacco retailers in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices.

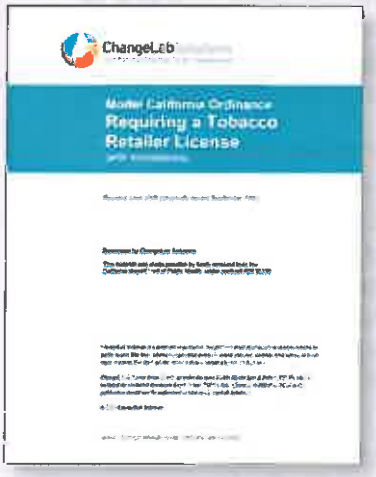
Under a local tobacco retailer licensing law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.[1] Local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities such as store inspections and youth purchase compliance checks. Increasingly, tobacco retailer licensing is being used to promote other innovative policy solutions as well, including controlling the location and density of tobacco retailers and imposing additional restrictions on the sale and promotion of tobacco products.[2]

As of June 2012, more than 100 cities and counties in California had adopted a local tobacco retailer licensing law.[3] The Center for Tobacco Policy & Organizing (The Center) classifies 94 of these as "strong,"[4] meaning the laws have at a minimum:

- a requirement that all tobacco retailers obtain a license and renew it annually;
- an annual licensing fee high enough to fund sufficient enforcement;
- meaningful penalties for violators through fines and penalties, including the suspension and revocation of the license;[5] and
- a provision stating that any violation of existing local, state or federal tobacco laws constitutes a violation of the local law.

ChangeLab Solutions has developed model language for a tobacco retailer licensing law in California cities and counties. The model language offers a variety of policy options that can be tailored to the specific goals and needs of your community.

In addition to the core provisions, ChangeLab Solutions has drafted supplementary "plug-in" provisions, which offer additional policy options that can be incorporated into the law. For more information, please see our resources on Tobacco Retailer Licensing at www.changelabsolutions.org/publications/model-TRL-ordinance.



While ChangeLab Solutions' model language for a tobacco retailer licensing law was designed for California communities, the model can be adapted for use in other states as well. It is important to carefully check the existing law in your state to learn if local tobacco retailer licensing is allowed. Consult with an attorney licensed in your jurisdiction.

Why adopt a tobacco retailer licensing law?

Many communities adopt tobacco retailer licensing laws because they are effective tools for limiting the negative public health consequences of tobacco use. While this tool provides many benefits, there are three main advantages to a tobacco retailer licensing law. First, these laws have been shown to be effective at limiting youth access to tobacco. Second, strong laws with annual fees create self financing programs that allow for regular enforcement. Third, a tobacco retailer licensing law facilitates comprehensive local enforcement of all tobacco related laws. Each of these points is discussed below.

Protecting youth

Despite state laws prohibiting sales of tobacco to minors, a 2007 survey found that nearly three-quarters of youth access enforcement agencies statewide issued warnings to merchants selling tobacco products to minors during the prior year.[6] Fortunately, strong local tobacco retailer licensing laws—that is, laws that meet the criteria above—have proven effective at reducing illegal tobacco sales to minors. The Center has found that local tobacco retailer licensing is extremely effective at reducing illegal sales to underage youth: the organization surveyed 31 municipalities that have implemented and enforced a strong tobacco retailer licensing law and found that the rates of illegal sales to minors decreased, often significantly, in all communities surveyed.[7]

A self-financing program

An important strength of licensing is that the government may impose a licensing fee that is sufficient to cover the costs of enforcement. Because funding enforcement is often the best way to ensure compliance with a policy, ChangeLab Solutions recommends that the fee be calculated to include all enforcement activities. For more information on how to calculate a fee for a local tobacco retailer license, see our tobacco licensing cost worksheet at: www.changelabsolutions.org/publications/tobacco-licensure-costs.

A comprehensive enforcement mechanism for local communities

A number of federal and California state laws already regulate tobacco sales and establish penalties for illegal sales to minors. But these laws each have separate enforcement mechanisms and penalty structures, making it difficult to enforce them at the local level. A local tobacco retailer licensing law, on the other hand, empowers *local law enforcement* to impose *meaningful penalties* for illegal sales to minors and ensure compliance with all existing laws—ensuring that local communities can prioritize enforcement even when state and federal authorities are unable to do so.

Meanwhile, some of these state and federal laws fail to address important public health concerns related to tobacco. For example, the federal regulations authorized by the 2009 Tobacco Control Act currently apply only to cigarettes and smokeless tobacco products—they do not apply to little cigars or other tobacco products that are aggressively marketed to youth. A local tobacco retailer licensing law is a tool communities can use to help bridge these gaps and address public health concerns in their communities.

An electronic cigarette with charger

What is a tobacco product?

When people think of tobacco products, they may think of cigarettes, cigars, and chewing tobacco, but there are other products communities may want to restrict. Our model language defines tobacco products broadly to include all products containing tobacco leaf (including hookah, snuff, snus, and dissolvables) as well as nicotine-only products such as electronic cigarettes. This definition is written to restrict emerging tobacco industry products without interfering with FDA-approved cessation devices—like nicotine patches.

What else can a tobacco retailer licensing law do?

While a tobacco retailer licensing law may be the best tool to prevent sales to minors, it can also promote other innovative policy solutions, controlling the location and density of tobacco retailers, imposing additional restrictions on the sale of other tobacco products like little cigars, and preventing the sale of drug paraphernalia.

Zoning: location and density of retailers

Another common way to limit where tobacco retailers can locate is through land use laws, also known as zoning laws. For a comparison between land use laws and licensing laws, see ChangeLab Solutions' factsheet, Licensing & Zoning: Tools for Public Health, available at: www.changelabsolutions.org/publications/licensing-zoning.

Location and density of retailers

Local governments can use tobacco retailer licensing to control both the location and density of tobacco retailers in their communities. A licensing law could, for example, prohibit licenses for any businesses operating too close to a school or other area frequented by youth. Because tobacco sales near schools and child-oriented areas have been shown to increase youth smoking[8], this policy can be used to keep tobacco retailers out of areas where youth typically congregate. A tobacco retailer licensing law also could cap the total number of licenses issued based on population, controlling the overall density of tobacco retailers in a community. California law limits alcohol licenses based on density, and this policy applies that same rationale to tobacco retailers.

Cigarillos in grape, strawberry and blueberry flavors, sold for under a dollar a piece

Meth pipes for sale at a smoke shop in San Francisco, California

Little cigars and cigarillos

A tobacco retailer licensing law can also prohibit the sale of individual or small packages of low-priced cigars, including little cigars and cigarillos. Due to their low prices and candy flavoring, these products are particularly appealing to youth, and though they are often similar to cigarettes, they are not subject to the same restrictions against selling the product individually or in small quantities. This policy allows communities to close this loophole and regulate a product that is increasingly used by youth. For more on this policy, see our fact sheet at: www.changelabsolutions.org/publications/limiting-teen-friendly-cigars.

Drug paraphernalia

Many communities are using tobacco retailer licensing laws to address the sale of drug paraphernalia in their neighborhoods. Through this provision, a retailer found to have violated state laws regarding drug paraphernalia will also be in violation of the local tobacco retailer license, and the penalties of the licensing ordinance will apply. In this way, the tobacco retailer licensing law becomes an additional tool for local law enforcement to combat sales of drug paraphernalia. For more information on this policy option, see our fact sheet on this topic at: www.changelabsolutions.org/publications/drug-paraphernalia.

These are just a few examples of cutting-edge policy solutions for tobacco control. These innovative policy solutions—referred to as "plug-in" provisions—can be incorporated into our model language for a tobacco retailer licensing law. For more information about plug-in provisions, including the ones mentioned here, see: www.changelabsolutions.org/publications/policy-provisions-trl.

Implementation and enforcement

It's up to individual communities to decide who will implement and enforce a tobacco retailer licensing law. Multiple agencies might be involved: one agency may issue the license (the city manager, for example, or the agency that issues general business licenses), while another agency, such as the environmental health or police department, may monitor compliance.

There is no one right way to implement and enforce a local tobacco retailer licensing program. That said, successful programs share some characteristics.

For one thing, they are overseen by a single government agency with dedicated staff members. They also plan early for enforcement that engages all the key players. And they require a license fee that is large enough to cover the full costs of administering and enforcing the program. To assist agencies in coordinating and planning, ChangeLab Solutions created a checklist that includes all the recommended elements of a successful program. The checklist is available at: www.changelabsolutions.org/publications/implementation-checklist-TRL.

To help understand the variety of local approaches to tobacco retailer licensing, in 2006 we studied four communities that are effectively enforcing their local tobacco retailer licensing laws: Contra Costa County, Santa Barbara County, the City of Willits, and the City of Los Angeles. We chose these communities because they were among the first in California to suspend the tobacco licenses of retail outlets that violated sales-to-youth or other tobacco control laws. Read our review of these programs (visit: www.changelabsolutions.org/publications/case-studies-local-trl-ords) to see how, despite their differences, they all achieve the goal of holding retailers accountable for violations of tobacco sales laws.

Licensing for healthy food retailers

Communities can use licensing to improve public health in other ways by ensuring that retailers are not only complying with existing laws but also benefiting the communities they serve. For example, in neighborhoods with limited access to fresh produce and staple foods, a licensing system could require food retailers to carry these items. For more information on healthy food retailer licensing, see our Model Licensing Ordinance for Healthy Food Retailers at: www.changelabsolutions.org/publications/HFR-licensing-ord.

For more information

For support with model language and legal issues:

ChangeLab Solutions

www.changelabsolutions.org

For support with campaign issues:

The Center for Tobacco Policy & Organizing, a project of the American Lung Association in California (The Center)

www.Center4TobaccoPolicy.org

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This material was developed by ChangeLab Solutions with funds received from the California Department of Public Health, under contract #09-11182.

ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance Legal Center (TALC).

The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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[1] In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that "[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law." Cal. Bus. & Prof. Code § 22971.3

[2] *See generally* McLaughlin I. *License to Kill? Tobacco Retailer Licensing as an Effective Enforcement Tool.* Tobacco Control Legal Consortium, 2010. Available at http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf

[3] American Nonsmokers' Rights Foundation *California Municipalities with Laws Restricting Youth Access to Tobacco.* 2011. Available at www.changelabsolutions.org/publications/anrf-list (List includes only those laws which provide for suspension or revocation of a license)

[4] The Center. *Table of Strong Local Tobacco Retailer Licensing Ordinances.* 2012. Available at www.center4tobaccopolicy.org/localpolicies-licensing

[5] The threat of license suspension creates a greater financial deterrent to retailers than a simple fine. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products for a month can cost retailers far more than the largest fines that can be imposed under existing California laws, like Penal Code section 308 or the STAKE Act. See Cal. Penal Code § 308 (violators can be fined $200, $500, or $1000 for first, second, or third violations, respectively); Cal. Bus. & Prof. Code 22958 (violators can be fined $400-600 for a first violation and are subject to harsher penalties for each additional violation in a 5-year period).

[6] Rogers T, Feighery EC, Haladjian HH. *Current Practices in Enforcement of California Laws Regarding Youth Access to Tobacco Products and Exposure to Secondhand Smoke.* Sacramento, CA: California Department of Public Health, 2008. Available at www.cdph.ca.gov/programs/tobacco/Documents/CTCPEnforcementReport08-05.pdf

The Center. *Tobacco Retailer Licensing is Effective.* 2011. Available at www.center4tobaccopolicy.org/CTPO/_files/_file/Tobacco%20Retailer%20Licensing%20is%20Effective%20March%202011.pdf

[7] Henriksen et al. "Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventative Medicine,* 47(210): 210-214, 2008. Abstract only is available at www.sciencedirect.com/science/article/pii/S0091743508002089

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