

Contra Costa County Tobacco Prevention Coalition

A Tool for Reducing Youth Access To Tobacco: The Tobacco Retailer License

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I. The Problem of Youth Tobacco Use

Despite long-standing state laws prohibiting tobacco sales to minors, youth continue to obtain cigarettes and other tobacco products at alarming rates. Each year, minors 12 to 17 years of age consume about 924 million packs of cigarettes, yielding the tobacco industry \$480 million in illegal profits from underage smokers¹.

Selling tobacco to kids has been illegal for more than 100 years, yet nearly half of youth smokers report buying their own cigarettes². According to the California Health Department's Food and Drug Branch, the sales rate to minors in Contra Costa County overall is 22%; it is 26% in cities without a strong licensing ordinance³. In other words, stores sell tobacco to youth one in every four times they try to buy cigarettes.

The Contra Costa County Tobacco Prevention Coalition (TPC) recommends that cities adopt and enforce strong tobacco retailer licensing ordinances in order to reduce the illegal sales rate of tobacco to minors and to encourage compliance with all local, state and federal tobacco laws.

II. Policy efforts in Contra Costa County

Contra Costa policymakers, advocates, youth and government officials have been working to address the problem of youth tobacco use since the mid-1990's. In 1997, the Mayor's Conference and Board of Supervisors asked the Contra Costa County Tobacco Prevention Project to recommend an ordinance to reduce youth tobacco use. Between 1998 and 2006, the Tobacco Prevention Coalition, and three youth groups, TIGHT (Tobacco Industry Gets Hammered by Teens), ETA (Empowerment Through Action), and the County Youth Commission, spearheaded successful efforts to encourage the Board of Supervisors and 17 of Contra Costa's 19 City Councils to adopt Tobacco-Free Youth Ordinances (TFYO) and Tobacco Retailer Licensing Ordinances (TRLO) in order to reduce the demand for tobacco by minors and to decrease youth access to tobacco products.

The TFYO restricted tobacco advertising and promotions and banned self-service displays of tobacco products⁴. Self-service displays are typically located on or near the counter and allow the customer to get his or her own cigarettes. The TFYO contained a

¹ Joseph R. DiFranza, M.D. & John J. Librett, M.P.H., *State and Federal Revenues from Tobacco Consumed by Minors*, 89 Am. J. Pub. Health 1106 (1999).

² American Lung Association Fact Sheet, <http://www.lungusa.org>.

³ California Department of Health Services Food and Drug Branch Compliance Checks, 2003.

⁴ The Supreme Court decided that local government cannot restrict tobacco advertising because such restrictions were pre-empted by the Federal Cigarette Labelling and Advertising Act. As a result, the County and the cities stopped enforcing this provision of the TFYO.

provision to license tobacco retailers in all but one city.⁵ There are presently two versions of the licensing provision in Contra Costa County, one that makes the license mandatory for all tobacco retailers (through “universal licensing” or a Tobacco Retailer Licensing Ordinance) and one that requires a license if a merchant violates the TFYO or any other tobacco sales laws (“penalty licensing”). Universal licensing has proven to be the only effective version and has been adopted by the County and seven cities.⁶

III. Benefits of Tobacco Retailer Licensing

A universal licensing ordinance that requires all businesses within a city or county to obtain a license if they plan sell tobacco products is a tool that is proven to reduce illegal tobacco sales to minors and increase compliance with local, state and federal tobacco laws. The illegal sales rate in the unincorporated areas of the County decreased from 37% to 7% once a tobacco retailer’s license ordinance was adopted and enforced.

Inherent benefits of licensing include:

A. Identification of retailers: A local licensing ordinance can generate an accurate list of tobacco retailers in a community on an annual basis that can be used to educate, monitor and encourage retailers to comply with tobacco laws. The list can be updated when new businesses apply for local licenses, and when businesses renew their licenses.

B. Education of retailers: The licensing process can be used to conduct merchant education regarding the rules and regulations surrounding tobacco sales in a community. The licensing authority can send out a letter or other educational materials each year to an accurate list of tobacco retailers.

C. Monitoring of retailers: Licensing can establish a fair, methodical, and ongoing process to monitor compliance with tobacco laws.

D. Encouragement of compliance: A local tobacco retailer’s license is a powerful tool for encouraging retailers to comply with all existing tobacco-related laws, including state no-sales to minors laws and local and state laws prohibiting self-service displays of tobacco products. Such an ordinance can provide for the suspension or revocation of the license if the merchant sells tobacco to minors or violates other local, state, or federal laws related to tobacco. In this way, a licensing ordinance creates a greater deterrent than does a small fine to discourage retailers from violating the law. For many merchants, tobacco sales make up a substantial portion of their revenue. Temporarily losing the authority to sell tobacco products costs far more than the state law fine of several hundred dollars—which, in fact, is usually levied against the clerk, and not the store. Put another way, the threat of license suspension or revocation

⁵ The Town of Moraga did not adopt a licensing ordinance.

⁶ These cities are Clayton, Concord, Danville, Pinole, Richmond, San Pablo and San Ramon.

encourages compliance with state and local tobacco laws because licensing makes compliance matter.

V. Key Provisions

At a minimum, the following provisions should be incorporated into a local licensing ordinance:

- A. All tobacco retailers must obtain a nontransferable license.
- B. An annual licensing fee fully covers all program costs, including administration and enforcement. Jurisdictions in California are charging between \$125 to over \$600 depending upon their unique costs.
- C. Violating any tobacco law is also a violation of the license—including all state laws regulating tobacco sales to minors and prohibiting self-service displays of tobacco products.
- D. Each licensing violation results in a temporary revocation of the privilege to sell tobacco. The length of the suspension periods and the period between violations vary among local ordinances. For example, in the unincorporated areas of Contra Costa, the penalties are as follows:
 - 1. First violation: suspension of the license for up to 30 days.
 - 2. Second violation within 24 months of the first violation: suspension of the license for up to 60 days.
 - 3. Third violation within 24 months of the first violation: suspension of the license for up to one year.

Some jurisdictions have extended the period between violations to 60 months.

E. Require a minimum number of annual enforcement operations to be conducted by the designated local enforcement agency or agencies, including site inspections for: the presence of the local and state license, the presence of required point-of-sale warning signs; and the use of self service displays. Require a minimal number of undercover compliance checks (youth decoy operations). Jurisdictions in California are conducting between one and three undercover buying operations per store annually, and between one and two site inspections.

F. Require removal of tobacco products and advertising for suspended or revoked licenses for the duration of the suspension period.

VI. Conditions of the License

A tobacco retailer's license ordinance primarily encourages retailer compliance with all local, state and federal tobacco laws, especially laws that prohibit the sale of tobacco to minors. However, Tobacco Retailer License ordinances also can require retailers to meet certain additional conditions in order to maintain the license. Other conditions of the license include:

- Violation of local or state signage laws is a license violation.
- Violation of non-tobacco age-of-purchase laws is a license violation (e.g., selling alcohol to a minor).
- No license for a new significant tobacco retailer (e.g., a “mostly tobacco” store).
- No license for a restaurant or a bar.
- No license for a business that allows smoking anywhere on the premises (e.g., no hookah bars).
- Require clerks to check ID if purchaser appears under age 27.
- Clerks must be old enough to purchase tobacco under state law (e.g., 18 years old) to sell tobacco.
- Seize and destroy tobacco products offered for sale without a license.

VII. Enforcement

Enforcing the tobacco licensing ordinance is essential to increasing compliance with tobacco sales laws. This point cannot be overstated. In unincorporated Contra Costa County, the illegal sales rate of tobacco to minors decreased from 37% to 7% with the enforcement of the universal licensing ordinance. According to the California Department of Health Services Food and Drug Branch, cities in Contra Costa County with the licensing ordinance that does not require the tobacco retailer's license until a violation has occurred—that is, penalty licensing—had a sales rate of 26% in 2003⁷.

Costs associated with implementing and enforcing a tobacco retailer licensing ordinance include:

A. Administration of the license. An entity of the local jurisdiction must develop and implement the application process and the distribution of the licenses themselves. In unincorporated Contra Costa, the Tax Collector's Office administers the tobacco retailers license in concert with renewal of the annual business license.

B. Site inspections to check for posting of the license and compliance with other tobacco sales laws. An entity of the local jurisdiction, such as a health department, building department or finance department, should conduct site inspections to verify that the license is posted and that other laws are being obeyed, including the ban on self service displays of tobacco products and signage laws. Law enforcement does not need to be involved in this aspect of enforcement, but it can be.

⁷ Department of Health Services, FDB, 2003 STAKE operation data for the cities of Concord, Richmond and Walnut Creek.

C. Undercover buying operations to test compliance with no-sales to minors laws. In the unincorporated areas of Contra Costa County, the Sheriff's Department is testing compliance by enforcing and prosecuting PC308(a), the state law that makes it illegal for businesses to sell tobacco products to minors. Contra Costa Health Services uses the evidence of a PC308(a) citation as a basis for conducting tobacco retailer license suspension hearings. Some jurisdictions outside Contra Costa County are using other legal tools to test compliance no-sales to minors laws and link them with the tobacco retailer license ordinance, such as the Business and Professions Code. Others are forgoing criminal prosecution altogether and moving directly into administrative enforcement of the licensing ordinance using on the same evidence of illegal sales that would otherwise be used to prosecute the clerk criminally.

D. Data collection. The entity charged with overseeing the program must be prepared to keep records of the names and locations of tobacco retailers, details about site inspections and undercover buying operations, and the prosecution of violations. Fortunately, the State of California funds a database through cigarette tax funds that can be used by any local jurisdiction enforcing tobacco laws.

Overall, the licensing fees themselves can cover the costs of implementing and enforcing a licensing ordinance. California law allows local elected officials to establish fees to cover the costs associated with administering and maintaining compliance with local ordinances. In the unincorporated areas of the County, the licensing fee covers the costs of administering and enforcing the licensing ordinance.

VIII. Resources

Over 450 cities in California and across the nation have adopted and are enforcing strong tobacco retailer license ordinances. These are proving to be an effective tool in increasing merchant compliance with tobacco sales laws, notably no-sales to minors laws. A model licensing ordinance with annotations is available on-line at www.phi.org/talc. This model and its supporting documents is a good start for discussion about licensing policies.

Tobacco Prevention Project (TPP) staff are also available for consultation on ordinance development and implementation. A model ordinance, draft protocols and merchant education materials are available from the TPP as well. They can be reached at 925-313-6216.