

Local Tobacco Retail Licensing Campaigns: Answering Your Opponents' Questions

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Tobacco retail licensing campaigns are spreading across the state, and communities and coalitions working on licensing will likely need to answer questions from opponents and elected officials about the effectiveness and necessity of strong local tobacco retail licensing ordinances. Below are some common questions which have arisen in several local licensing campaigns. The suggested answers are meant to help advocates effectively address their opponents' arguments.

Why do we need a local licensing law? Aren't there state laws on licensing?

There is a state licensing law, but it is not effective at reducing illegal tobacco sales to minors. AB 71 (enacted in 2003, Section 22970 *et seq*, B&P Code) requires retailers to purchase a one-time state license. However, this bill was enacted to prevent smuggling and does little to reduce underage sales. Penalties for violating AB 71 are also so weak that retailers are at little risk of losing their licenses if they violate the law. In addition to AB 71, Penal Code §308 and the STAKE Act make it illegal to sell tobacco to minors. The STAKE program, however, is under-funded and can only do compliance checks in about 3% of stores that sell tobacco. Local licensing is essential if your community really wants to address the issue of underage tobacco sales, and on the positive side, AB 71 does not preempt these local ordinances.

Do businesses have to get licenses for other things, or is this an unusual requirement?

It is customary for businesses in California to obtain some kind of permit or license in order to conduct business, sell products or offer services. These general business licenses and permits generally require an annual fee or payment. It is not unusual for local governments to require additional special permits for businesses that provide specialized services.

Is it legal to require a retailer to pay for a tobacco license from the state and from a city or county? Isn't that excessive?

It is neither illegal nor excessive. The two license fees pay for two different enforcement programs - the state fee pays to combat smuggling and black market cigarettes while a local fee would pay to prevent sales to youth. These fees cover the costs to regulate tobacco sales; they are not punishment for selling tobacco. Furthermore, the state tobacco license fee is only a one-time \$100 fee. Many retailers in California must pay much larger license fees for the privilege of conducting their businesses. Examples of these fees include:

- State License for stores that sell beer, wine and spirits for consumption off premises: original fee \$12,000; Annual renewal fee \$446.
- State Gambling License: \$500 application fee. Annual fee based on the number of tables in the facility.
- State Pharmacy License: \$400 application; \$250 annual fee

The requirement to obtain both a local and a state license is also not unique to tobacco retailers. For example, gambling facilities in California must have both a state and local license. Many cities also require certain professionals (contractors, attorneys, dentists, engineers, insurance brokers, physicians, real estate brokers, etc) to obtain a local license in addition to required state licenses.

Are licensing and enforcement operations really successful in reducing youth access to tobacco?

Enforcement programs DO work, but they must be funded! California cities and counties with strong licensing ordinances have seen their youth access rates fall dramatically.*

- Berkeley: \$300 annual fee adopted December 2002; rates dropped from 38% to 5.8%
- Elk Grove: \$270 annual fee adopted September 2004; rates dropped from 17% to 10%

- Sacramento: \$300 annual fee adopted March 2004; rates dropped from 27% to 7%
- Sacramento County: \$287 annual fee adopted May 2004; rates dropped from 20.6% to 10.6%
- San Luis Obispo: \$255 annual fee adopted August 2003; rates dropped from 17% to 2%

* Illegal tobacco sales rates determined by youth purchase surveys administered by local health agencies.

Won't these large licensing fees and fines prove to be a burden on retailers?

Licensing fees are not a burden for tobacco retailers. According to the National Association of Convenience Stores, cigarettes are consistently the top product sold inside stores (excluding gasoline sales outside). In 2004, cigarettes accounted for 34.7% of all in-store sales in convenience stores. In 2003 when cigarettes were 34.4% of all in-store sales, they generated average sales per store of \$304,250. Retailers are worried about lost sales if their license is revoked for selling to minors, not about affording the annual license fee. If a tobacco license is suspended (even for one month), a retailer will lose a lot of money. This is why licensing ordinances with fees and strong enforcement do work to reduce sales to minors. And the bottom line is, if a retailer does not sell to youth, they have nothing to worry about.

Our retailers already train their clerks and use the "We Card" program. Isn't this sufficient?

Research has shown that merely educating storeowners and clerks about illegal tobacco sales does not reduce tobacco sales to children over time. Studies also show that the tobacco industry's own "We Card" merchant education and signage program does not decrease tobacco sales to minors.** In order to effectively combat the problem of illegal sales to minors, communities need to pass local licensing laws with (1) an annual fee, and (2) funds for enforcement programs.

** Redhead, Stephen C. and Joy Austin-Lane. 98-678 Tobacco Control: Enforcement and Effectiveness of Federal and State Youth Access Laws. 1998. <http://www.ncseonline.org/NLE/CRSreports/Agriculture/ag-72.cfm>

Isn't it really clerks who should be punished if they sell to minors?

Clerks are already punished under Penal Code §308, but this provision has not been effective at reducing illegal sales. Retailers claim that mistakes are made because clerks are very busy and can't check everyone's ID. Is this an argument they would make about illegal alcohol, gun or ammunition sales? The fact is that retailers, not clerks, are responsible for what happens in their stores. They must train clerks to ask for ID and must enforce tobacco regulations, even during busy times.

Won't the state eventually pass a stricter licensing law? Why should we pass an ordinance that could eventually get preempted by state legislation?

A strict statewide licensing law might be a good idea, but as we saw with smokefree restaurants and bars, it was only when a mass of local ordinances existed that the state took action. We need many more strong local licensing ordinances before state officials will seriously consider a tough statewide licensing law. So there are two reasons to act now: first to reduce illegal sales to minors in your community as soon as possible, and second, to lay the foundation for a strong statewide law in the future.

Why not just require those who violate the law to get licenses?

The California Grocers Association frequently uses this argument. They claim that all of their members are law-abiding and shouldn't be "punished" by having to get a license. Licensing fees, as discussed above, are not a punishment. They cover the costs of enforcing public health regulations in a retail industry. Retailers reap significant financial benefits from selling tobacco and there is nothing wrong with asking them to contribute a small amount to enforce tobacco regulations. It is also true that CGA members sell tobacco to kids just as often as most other retailers do.

Won't kids just get cigarettes from their parents or friends? How does licensing prevent that?

Of course retail licensing can't address all of the sources from which minors can obtain tobacco. But illegal sales to minors are a big part of the problem. This is a public health problem, and tobacco retailers need to be part of the solution. That can only happen through strong local licensing laws.