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## DOCUMENT THE PROBLEM: Enforcement

### *Need for Better Enforcement*

If you find that even after a local tobacco control policy is passed in your community, youth still have free and easy access to tobacco products from merchants, that tobacco advertising is not being removed from store windows, or that single cigarettes are still being sold in your neighborhood grocery store, you are not alone. Getting a local policy passed is not the end of the story. Passing local policies and resolutions to control youth access to tobacco and/or tobacco advertising in store environments will not be effective unless strong, routine enforcement is included as part of the intervention strategy.

While little is known about the effects of enforcing local advertising restrictions, enforcement of federal, state and local laws that prohibit tobacco sales to minors may help to prevent youth from smoking. It is clear that aggressive enforcement of tobacco sales laws makes it more difficult for youth to buy cigarettes. However, the success of these efforts is contingent upon routine compliance testing and enforcement of tobacco sales laws. Data from routine compliance checks in 16 cities with varying enforcement schedules shows that places performing quarterly checks had lower purchase rates than cities inspecting merchants only once a year.<sup>1</sup>

*Getting local policy passed is not the end of the story.*

Additionally, businesses that received regular compliance checks were more likely to display cigarettes behind a counter and more likely to post signs announcing local or store policies regarding the sale of tobacco to minors. Youth perception of enforcement is also important. When teens feel they are less likely to be successful at purchasing tobacco, they are often less likely to try. Increased enforcement not only encourages better merchant compliance with the laws, but it also gives youth the impression that it is more difficult to purchase tobacco from these businesses.

It is also well documented that even though all 50 states have youth access laws prohibiting minors from purchasing cigarettes, more than 1 billion packs of cigarettes are purchased by youth each year.<sup>2</sup> As of April 2001, there were 490 local tobacco control laws in California alone. Yet out of 182 law enforcement officials representing 200 cities and counties in the state, only 36% of local enforcement agencies reported conducting one or more compliance checks in the previous year.<sup>3</sup> Tobacco control laws, both youth access and advertising, are not being enforced. This lack of enforcement enables and encourages some 73,400 youth to become daily smokers each year in California.<sup>4</sup> There is no question that better enforcement is necessary to reduce and eventually eliminate youth access to and advertising of tobacco products.

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## Identify Existing Laws

Outlined below are a number of laws that might need additional enforcement in your community. Information is provided on whether the laws are “criminal” or “civil.” This distinction can determine which agency enforces the law (e.g., local police for criminal laws) as well as what the burden of proof will be in court (i.e., “beyond a reasonable doubt” for criminal laws but simply “more likely than not” for civil laws). Other factors to consider include the significance of the penalty:

- Is it a deterrence?
- Who can be liable? (e.g., the store clerk, the store owner)
- How hard is it to monitor compliance? (e.g., catching a clerk in the act of selling versus simply not having a sign or license posted)
- Which violations are a problem in your community?

If your community has passed a local tobacco control ordinance, do not overlook it. A strong licensing ordinance is an extremely powerful enforcement tool. With licensing, a community can demand compliance with all tobacco control laws, even laws that have no proscribed penalty and can only be enforced by state agents (e.g., the STAKE Act’s requirement that identification be examined before selling tobacco to anyone who could be a minor). The consequence of violating a tobacco license can be suspension or revocation, which may ultimately cost a guilty retailer far more than the highest of the fines listed below. Also, because local ordinances reflect the will of the immediate community, local enforcers may consider them a higher priority than state or national tobacco control laws.

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### Penal Code § 308

#### Selling Tobacco to Minors

Penal Code § 308(a), see also STAKE Act below

**Type of law?** Criminal and Civil

**What does this law do?** Prohibits any person, firm, or corporation from selling, giving, or in any way furnishing to a minor any tobacco product or paraphernalia when that person knows of the minor’s age or should know given the circumstances.

**Who enforces it?** Local law enforcement agencies with criminal prosecution by the district attorney. Additionally, a city attorney, county counsel, or a district attorney may bring a civil action to enforce this law independent of local law enforcement.

**What is the penalty for violation?** Criminal liability for a misdemeanor, or civil liability punishable by a fine of \$200 for the first offense, \$500 for the second offense, and \$1,000 for the third offense.

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**Note:** This law is usually enforced against clerks. It is more difficult to enforce against a store's absent owner. The prohibition against sales to youth in the STAKE Act (below) is more easily applied to owners but can only be enforced by the Food and Drug Branch of the California Department of Health Services.

### Sign Posting

Penal Code § 308(c)

**Type of law?** Criminal

**What does this law do?** Requires every store that sells tobacco to post a boldly printed, contrasting-color sign (the same sign required in the Business and Professions Code section 22952(b)) in a conspicuous place where tobacco sales are likely to occur (such as at the cash register) stating that tobacco products may not be sold to minors. The sign must state that retailers are required to check the identification of anyone who reasonably appears to be under 18 years of age.

**Who enforces it?** Local law enforcement agencies with criminal prosecution by the district attorney.

**What is the penalty for violation?** Violators who fail to post the sign are subject to a fine of \$10 for the first offense and \$50 for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

**Note:** Unlike Penal Code section 308(a) prohibiting sales to minors, this law is easily applied to store owners because it does not require an absent owner to “know” or be unreasonably ignorant that the law is being violated.

### Sale of Bidis

Penal Code § 308.1

**Type of law?** Criminal and Civil

**What does this law do?** Prohibits the sale, distribution, or importation of “bidis” (also known as “beedies”), defined as products containing tobacco wrapped in temburni leaf or tendu leaf. Bidis are hand-rolled filterless cigarettes that are imported primarily from India and some Southeast Asian countries. They are available in a variety of candy-like flavors and are often sold in packs of less than 20, making them more affordable. This law does not apply to businesses that prohibit minors, such as tobacco shops or a bar.

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**Who enforces it?** Local law enforcement agencies with criminal prosecution by the district attorney. In addition, the Attorney General, a district attorney, a county counsel, or a city attorney may bring a civil action.

**What is the penalty for violation?** Violators are guilty of a misdemeanor or subject to a civil penalty of \$2,000 per violation.

### Sale of Single Cigarettes

Penal Code § 308.2

**Type of law?** Criminal and Civil

**What does this law do?** Provides that cigarettes may only be sold in a sealed and properly labeled package (i.e., the original manufacturer's or importer's packaging including the federal warning label).

**Who enforces it?** Local law enforcement agencies with criminal prosecution by the district attorney.

**What is the penalty for violation?** Violators are liable for an infraction.

### Sale of Single Cigarettes/Minimum Pack Size

Penal Code § 308.3

**Type of law?** Criminal and Civil

**What does this law do?** Provides that cigarettes may not be manufactured, distributed, sold, or offered for sale in packages of less than 20. Roll-your-own tobacco may not be manufactured, distributed, sold, or offered for sale in a package containing less than 0.60 ounces of tobacco.

**Who enforces this law?** Local law enforcement agencies with criminal prosecution by the district attorney. In addition, the Attorney General, a district attorney, a county counsel, or a city attorney may bring a civil action.

**What is the penalty for violation?** Violators are liable for an infraction or subject to a civil penalty of \$200 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation.

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## STAKE Act

### I.D. Check Requirement

Business & Professions Code § 22956

**Type of law?** Civil

**What does this law do?** Requires that retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age.

**Who enforces it?** Because there is no penalty established for this law, the law may only be enforced through other laws, such as Business and Professions Code section 17200 (which *anyone* may enforce) or through local ordinances such as licensing or land use zoning.

**What is the penalty for violation?** None.

### Selling to Minors

Business & Professions Code § 22958, see also Penal Code § 308 above

**Type of law?** Civil

**What does this law do?** Provides that no person, firm, or corporation may sell, give, or in any way furnish any tobacco product or paraphernalia to a person under the age of 18.

**Who enforces it?** The Food & Drug Branch of the California Department of Health Services. Local law enforcement may *not* enforce this law without permission from the Department of Health Services.

**What is the penalty for violation?** A civil penalty of \$200-\$300 for the first violation; \$600-\$900 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period.

**Note:** Clerks are not subject to this law and violators may not be penalized under this section and Penal Code §308 for the same incident. Sections 22952 and 22958 of the Business and Professions Code spell out detailed protocols for using youth decoys to see if the retailer sells tobacco products to a minor. Inspections may be conducted (1) by random selection (2) at sites with previous violations, or (3) in response to reports of violations of state law, including reports made on the “1-800-5 ASK-4-ID” phone line. The Department of Health Services is also authorized to investigate illegal sales of tobacco products to minors by phone, mail, or internet.

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## Self-Service Displays

Business & Professions Code § 22962

**Type of law?** Civil

**What does this law do?** Prohibits the sale or display of cigarettes through a self-service display, which is an open display of cigarettes that is accessible to the public without the assistance of the clerk.

**Who enforces it?** The Attorney General, a city attorney, a county counsel, or a district attorney may enforce this law.

**What is the penalty for violation?** Violators are subject to fines of \$200-\$300 for the first violation; \$600-\$900 for the second violation within a five year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five year period; or \$5,000-\$6,000 for a fifth and for each subsequent violation within a five-year period.

**Note:** This law only applies to cigarettes and not to other tobacco products. However, the law explicitly permits stronger local ordinances including self-service display bans applying to all tobacco products.

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## Business & Professions Code § 17200

### Unlawful or Unfair Business Practice

Business & Professions Code § 17200

**Type of law?** Civil

**What does the law do?** Prohibits unlawful or unfair business acts and practices. The violation of any federal, state, or local law, including tobacco laws, constitutes an unlawful business act.

**Who enforces this law?** Anyone may enforce this law. (Note that certain public attorneys require permission from other public attorneys if a civil fine is sought.)

**What is the penalty for violation?** Violators are subject to an injunction to stop the behavior and if brought by the state Attorney General or any district attorney (or, with the consent of the district attorney, any county counsel, city attorney, or city prosecutor), a civil fine of up to \$2,500 for each violation.

**Note:** This powerful law affords anyone the right to enforce any law against a noncompliant business. The primary barriers to private

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individuals using this law are finding and paying an attorney to handle the case. The law must be enforced through a lawsuit filed in the Superior Court. As a practical matter, such a lawsuit requires many hours of an attorney's services.

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## **Business & Professions Code § 17537.3**

### **Free Samples (Smokeless Tobacco)**

Business & Professions Code § 17537.3

**Type of law?** Civil

**What does the law do?** Free samples of smokeless tobacco products may not be distributed within a two block radius of any premises or facility whose primary purpose is directed toward persons under the age of 18 including schools, clubhouses and youth centers when those premises are being used for their primary purposes.

**Who enforces this law?** Actions for injunction may be brought by the state Attorney General, district attorney, county counsel, city attorney, or city prosecutor, or by a private individual. § 17535.

**What is the penalty for violation?** Violations are classified as misdemeanors. Violators of an injunction are subject to a penalty of up to \$6,000 for each violation. § 17207.

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## **Health & Safety Code § 118950**

### **Tobacco Product Samples and Coupons**

Health & Safety Code § 118950

**Type of law?** Civil

**What does this law do?** Prohibits distribution of free or low-cost cigarettes or smokeless tobacco products (or coupons or rebate offers for such products) on public grounds, such as a state or county-owned fairground, and on private grounds open to the public, such as a racetrack or retail outlet. The law allows local governments to pass or enforce ordinances that are stricter than state law, so check for stronger local ordinances. This law applies only to cigarettes and smokeless tobacco products and does not apply to locations where minors are prohibited by law, or a separate distribution area on property open to the public if minors are denied access to the site by a peace officer or licensed security guard.

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**Who enforces this law?** The law does not specify which agency is responsible, but the Attorney General or local prosecutor may enforce it.

**What are the penalties for violating the law?** Violators are liable for civil penalties of \$200 for the first item distributed, \$500 for the second item, and \$1,000 for each item after that.

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## Master Settlement Agreement

### Free Samples, Cartoon Ads, Storefront Ads

Master Settlement Agreement § III(g)

**Type of law?** Contract (not a law, but an agreement enforceable in court)

**What does the law do?** Prohibits distribution of free samples of tobacco products except in an “adult-only” facility (where the operator ensures that no minors are present). This does not apply to tobacco products provided in exchange for proof of purchase or through special promotions such as “two-for-one” offers or for consumer testing. It also prohibits storefront ads that are more than fourteen square feet in area and the use of cartoon or cartoon-like images in tobacco advertising and packages.

**Who enforces this law?** Only the state Attorney General may enforce these provisions. Violations, however, may be reported to the Attorney General’s Tobacco Litigation and Enforcement Section’s complaint line at (916) 565-6486.

**What are the penalties for violation?** The Attorney General may seek a court order to enforce the provision or stop a violation of the provision. If such an order is violated, the Attorney General may seek monetary, civil contempt or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## **Common Local Ordinances**

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Local tobacco control ordinances that your community may have passed are contained in the municipal code (this is the city’s or county’s book of laws). Municipal codes are sometimes available via the internet and are frequently available in local libraries. To search on the internet, look for the city’s or county’s website. The types of ordinances that your community may have passed as of September 2000 may be contained in the Stanford Enforcement Survey Database. Following is an overview of some of the most common local ordinances affecting the store environment. (For more information, see *Consider New Policy Options* in the Select an Issue section.)

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## Tobacco Retailer Licensing

**Type of law?** Criminal and/or Civil (dictated by local ordinance)

**What does the law do?** Requires a license to sell tobacco products.

**Who enforces this law?** The enforcing agency will be specified in the ordinance or will be a matter of local policy. If the ordinance was adopted before September 2000, the enforcing agency may be found in the [Stanford Enforcement Survey Database](#).

**What are the penalties for violation?** The penalties will be set forth in the ordinance itself. In many cases, a violation of any federal, state, or local tobacco control law will constitute a violation of the license and can lead to the suspension or revocation of permission to sell tobacco. Monetary fines may be imposed for anyone who sells tobacco without a license.

**Note:** A licensing ordinance may contain additional tobacco control measures such as self-service display bans, bans on mobile vending, or a requirement that clerks selling tobacco be at least 21 years old.

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## Land Use Zoning (“Conditional Use Permits”)

**Type of law?** Criminal and/or Civil (dictated by local ordinance)

**What does the law do?** Prohibits tobacco retailers (or sometimes just “significant” tobacco retailers) from locating in certain areas, such as near youth sensitive locations like schools and playgrounds. Requires a tobacco retailer to acquire a use permit to locate in other areas. The use permit is conditioned on the retailer’s compliance with all federal, state and local tobacco control laws.

**Who enforces this law?** The enforcing agency will be specified in the ordinance or will be a matter of local policy. If the ordinance was adopted before September 2000, the enforcing agency may be found in the [Stanford Enforcement Survey Database](#).

**What are the penalties for violation?** The penalties will be set forth in the ordinance itself. If a retailer violates a permit condition, such as violating a state tobacco control law, the permit may be suspended or revoked and the retailer forced to close or cease selling tobacco products.

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## Advertising Restrictions

**Type of law?** Criminal and/or Civil (dictated by local ordinance)

**What does the law do?** Restricts how or where tobacco may be advertised.

**Who enforces this law?** Advertising ordinances may be unenforceable (see the note below). The enforcing agency will be specified in the ordinance or will be a matter of local policy. If the ordinance was adopted before September 2000, the enforcing agency might be found in the [Stanford Enforcement Survey Database](#).

**What are the penalties for violation?** Advertising ordinances may be unenforceable (see the note below). The penalties will be set forth in the ordinance itself.

**Note:** The U.S. Supreme Court ruled that many types of tobacco advertising restrictions are unconstitutional. Some types of restrictions remain valid but you should not pursue enforcement of local advertising restrictions unless you are confident that your local ordinance falls within the narrowed field of acceptable regulation. (See *Legal Limits on Store Marketing Regulation* in the [Select an Issue](#) section.)

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## Self-Service Display Bans and General Sign Regulations

**Type of law?** Criminal and/or Civil (dictated by local ordinance)

**What does the law do?** Dictated by the local ordinance.

**Who enforces this law?** The enforcing agency will be specified in the ordinance or will be a matter of local policy. If the ordinance was adopted before September 2000, the enforcing agency may be found in the [Stanford Enforcement Survey Database](#).

**What are the penalties for violation?** The penalties will be set forth in the ordinance itself.

## Patterns of Enforcement

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Each type of enforcement agency (or individual) follows a different pattern of enforcing tobacco control laws. Following is an overview of the agencies (or individuals) that enforce the tobacco laws listed above and a general description of the way each agency enforces them.

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## Local Law Enforcement

Police and sheriff departments are the primary enforcers of criminal tobacco laws. These agencies have a strict hierarchical command structure and operate pursuant to well-established internal policies and protocols. With the exception of emergency responses, the allocation of existing resources (i.e., personnel and funding) within these agencies depends upon the agency's internal priorities. Priorities are influenced by legislative or executive directives, political pressure, and the agency's own perception of community needs. Such needs are assessed in part historically (i.e., what the department has done in the past) and in part through contact with the community (e.g., complaints and public hearings).

According to local law enforcement and code enforcers, the most common barriers to enforcing laws are limited resources and the perception that tobacco laws are not a community priority. Resources can be increased through securing external funding, such as Master Settlement Agreement-based grants, or by encouraging elected officials to increase the agency's budget. Community support can be demonstrated through direct contact with the law enforcement agency or by encouraging your elected officials to direct the agency to enforce tobacco laws.

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## Local Code Enforcement

Many important regulations such as local building codes and health codes are enforced not by police, but by code enforcers. Compared to law enforcement, local code enforcers are fewer in number, operate within a more relaxed command structure, and may be only a small part of an administrative department. Code enforcers can and do issue citations, but, in most cases, the person responsible for a code violation is given an opportunity to voluntarily comply with the law and correct the situation (e.g., ten days to remove a junked car from a front yard). Code enforcers rely on the assistance of local law enforcement in dangerous situations. The internal priorities of a code enforcer's agency are influenced by legislative or executive directives and the agency's own perception of community needs. Because code enforcement is less visible than traditional law enforcement, the agency is more likely to be insulated from popular political pressure and less in touch with community concerns in general.

The most common barriers to code enforcement are limited resources and a perception that tobacco laws are not a community priority. As with law enforcement, resources can be increased through securing external funding, such as Master Settlement Agreement-based grants, or by encouraging elected officials to increase the agency's budget. Community support can be demonstrated through direct contact with the code enforcement agency or by encouraging

*Sleuth out which local agency has the responsibility to enforce the law.*

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elected officials to direct the agency to enforce tobacco laws. Because code enforcers are fewer in number and less structured than law enforcement, it is possible that direct contact with your code enforcer may establish a fruitful working relationship.

#### ▼ Food & Drug Branch of the California Department of Health Services

The STAKE Act regulates: selling tobacco to minors, checking for identification, sign posting, and self-service display of cigarettes. Currently, only state STAKE Act investigators from the Food & Drug Branch of the California Department of Health Services can enforce these regulations. STAKE Act investigators work fulltime on tobacco control, operating in regional teams throughout California. The investigators conduct random compliance checks and employ underage youth to attempt tobacco purchases. STAKE Act investigators may also inspect retailers in response to public complaints (1-800-5 ASK-4-ID) and at sites with previous violations. Issues such as funding and enforcement priorities are addressed at the state level. The only practical option to stimulate *direct* enforcement of the STAKE Act is to make a public complaint. Local communities and private citizens, however, can *indirectly* enforce the STAKE Act in at least two ways: local tobacco retailer licensing and through a lawsuit based on Business & Professions Code section 17200 (i.e., it is a violation of a license not to comply with the STAKE Act just as it is a violation of section 17200 to break a STAKE Act law).

#### ▼ State Attorney General

California's Attorney General employs numerous attorneys. The Attorney General has broad authority to bring both civil and criminal actions on behalf of the State of California, including actions based on California's tobacco control laws. Only the Attorney General may enforce the Master Settlement Agreement and violations of that agreement should be reported to the Attorney General's Tobacco Litigation and Enforcement Section's complaint line at (916) 565-6486. As a practical matter, the Attorney General is not the primary enforcer of tobacco control laws.

#### ▼ City Attorney (or County Counsel)

A city attorney is the lawyer for the city itself, not the individual city council members or other city officials. In large cities, a city attorney may employ dozens of deputy city attorneys who may be assigned to a variety of sections. Small cities may not have a full time city attorney at all but may hire private legal help as needed. Unlike law enforcement or code enforcers, a city attorney has broad discretion as to what legal matters to pursue and how to pursue them. A city attorney may file a civil action based upon any of the civil laws listed previously except for the STAKE Act. However, because a city

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attorney can sue for violations of Business & Professions Code section 17200 that are premised on the STAKE Act, a city attorney can in essence enforce the act. The city attorney may initiate a suit based on evidence known to the attorney regardless of whether the evidence was first acquired by the police, private citizens, or by the attorney directly.

A city attorney's discretion is an important source of power. Because a city attorney can choose when to file an action, the attorney is in a position to negotiate settlements. A city attorney also has the authority to grant "immunity" to underage youth who participate in tobacco sales compliance checks (although this function is more often performed by a district attorney). A city attorney's discretion, however, also can be used to frustrate tobacco control laws. For example, one city attorney agreed to bring Business and Professions Code section 17200 suits against retailers who sell tobacco to minors but insisted that there be five violations of the penal code within a two-month period before a suit would be filed. The city attorney established this despite the fact that a 17200 suit can be filed after only one violation occurring at any time. No suits were ever filed in that community.

Although a city attorney does not represent city officials as individuals, the city attorney does represent the council as a whole and the office of the chief executive (i.e., the mayor's office). As a practical matter, therefore, the city attorney is intimately involved with the core political processes of a city. The priority that a city attorney gives to tobacco control laws will be influenced by the politics of the city officials, and if the city attorney is elected, by the politics of the community. The only true barrier to a city attorney pursuing tobacco control is the political allocation of resources and the exercise of the attorney's discretion.

### ▼ District Attorney

A district attorney is much like a city attorney except that the district attorney prosecutes criminal violations on behalf of the people of California and is an officer of the county. Like a city attorney, the district attorney may employ many deputies or may have none at all. The district attorney has broad discretion as to what crimes to prosecute. As noted above, discretion can either hinder or help the enforcement of tobacco control laws. For example, some district attorneys will grant immunity to underage decoys but will not prosecute a Penal Code section 308(a) violation if the decoy was allowed to lie about his or her age. Such additional requirements must be conveyed to local law enforcement for prosecutions to be successful. Obtaining the district attorney's prior approval of a compliance check protocol is one solution.

The vast majority of a district attorney's prosecutions are based upon evidence gathered by local law enforcement or code enforcers. Just like a city attorney, however, a district attorney may initiate a

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prosecution on evidence gathered by private citizens or by the district attorney directly.

A district attorney is usually not as intimately involved in city politics as is a city attorney. The district attorney's allocation of resources, however, is still influenced by the politics of city officials, and, if the district attorney is elected, by the politics of the community. The barriers to a district attorney pursuing tobacco control laws are a lack of resources, the attorney's discretion and local law enforcement's willingness to monitor tobacco control law compliance.

#### ▼ Private Citizens

Private citizens may seek to stop a business from violating any law by suing the business under Business and Professions Code section 17200, the state law against unfair or unlawful business acts or practices. Private citizens may also sue to enjoin a violation of Business and Professions Code section 17537.3, which prohibits furnishing free samples of smokeless tobacco products close to youth facilities. Both lawsuits must be filed in the Superior Court and both require the assistance of an attorney.

The primary barrier to private individuals using these laws is financial. As a practical matter, such a lawsuit requires many hours of an attorney's services. It may also be difficult to find an attorney to take the case.

## *Why Law Enforcement Exists*

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As mentioned earlier, the level of active enforcement of state and local laws to control tobacco sales and advertising at the local level is low. Surveys of local law enforcement agencies in California conducted in the last several years included questions about barriers to enforcement in an effort to learn why laws are not actively being enforced. Local government agencies responsible for the relevant municipal laws agreed on the barriers to enforcement. Most frequently listed reasons were limited staff and financial resources and lack of community support. Several local agencies mentioned that they had no authority to issue citations to violators; a few said that their city attorney or district attorney would not prosecute citations brought before them.

Additionally, many code enforcement agencies are used to respond to complaints about violations and rarely enforce local laws that regulate sales or advertising proactively. The reasons most often mentioned for this are resource constraints, competing priorities, and unclear political mandates. Active and regular enforcement, however, may occur through collaborative efforts of local tobacco control advocates, city staff and local policy makers.

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Code enforcement strategies for these types of ordinances are not typically well defined nor are the penalties for violations of the law. Some of these constraints can be avoided when policies are being crafted for adoption, but the details of enforcement take time and consideration—and advocacy. Since this process may involve discussions with or among elected officials, city staff, code enforcement and attorney staff, this may take time and many meetings to accomplish.

### ***Local Laws in Your Community: Are They Enforced?***

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In order to find existing laws in your community, check the [Stanford Enforcement Survey Database](#). It contains enforcement information on 490 local tobacco control laws in California as of September 2000. It also includes information on how often compliance checks are conducted and by which local enforcement agency. Local laws included in the enforcement database are:

#### **Availability Laws**

Vending Machines  
Single cigarettes  
Self-service displays  
Sampling  
Licensing  
Conditional use permits

#### **Advertising Laws**

Retailer ad restrictions  
Public transit  
Location zoning  
Billboards

If your local laws are not included on this database, check with Americans for Nonsmokers' Rights (ANR) ([anr@no-smoke.org](mailto:anr@no-smoke.org) or 510-841-3032) to determine which local tobacco control laws are “on the books” in your community.

If you know that a local ordinance was recently passed, but you do not know who should enforce it, try to collect information from the actual ordinance/municipal code online. Next, contact designated or likely enforcement agencies for information. If you still cannot find anything, ask the city or county clerk, city manager or the city attorney or county counsel. To locate city and county governmental offices, check your local telephone book for the governmental listings. The first few pages will provide a reference list of city, county, state and federal offices. It is important to note that each city and county is structured differently, so the names of the appropriate office might be different in each community. If you are having difficulty locating the appropriate offices, call the general information number for the governmental branch you want to reach or call the main number for city hall. Remember that persistence pays off. Here are some of the most common names to help you get started:

Department/Organizational Unit	Common Names
Zoning	Community Development Planning Code Enforcement
Environmental Health & Management	Environmental Services Environmental Health Department Festivals
Transportation	Transportation Authority Transportation Agency Transit District
Law Enforcement	City Police County Sheriff
Recreation & Community Services	Parks and Recreation Services Neighborhood Services
Permits	Special Events
Elected Officials	Board of Supervisors City Council Mayor
Other	Community Events Cultural Affairs Municipal Codes Neighborhood Development

*Compile the results of your sleuthing to gain an understanding of the extent of enforcement and to aid problem solving.*

Once you find the enforcement agency, be sure to send the information to both TALC and ANR for inclusion in their databases.

Now that you have discovered which agencies are responsible for enforcement of youth access and tobacco advertising laws and ordinances in your community it is time to find out if they are actually enforcing them and if not, why not. Below are three steps to help you:

- analyze your community’s history on enforcement
- survey your enforcement agencies
- assess your community’s support for increased enforcement of tobacco control laws

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## Step 1: Gather Information on Past Enforcement Efforts

Start by analyzing your community's history of enforcement. By finding results from previous enforcement surveys, you gain a better understanding of how the enforcement agency has reacted in the past and ideas on how best to approach them about increasing enforcement of tobacco control ordinances. Think about where in your community you might find data and records on how enforcement has been previously conducted. Consider the following questions:

- Has enforcement of these laws occurred in your community? What were the results? Was the community informed of the results? Were there any reactions from the community?
- Have any other surveys about youth access issues or tobacco advertising been conducted in the community? If yes, what kind?
- Have any public bodies expressed concern about this issue or passed resolutions in support of local activities to address these issues?
- What kind of local media coverage has there been around these issues during the past two years? Has it been positive or negative?

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## Step 2: Gather Information from Law Enforcement Officials

Survey your enforcement agency(s). Next, develop a survey or modify an existing survey instrument, which can be sent to the enforcement agency to discover their overall attitude toward tobacco control policies (see [Policy Enforcement Survey](#)). If a survey is too formal, telephone them with a few key questions. A cover letter should describe the purpose of the survey and request that the police chief, sheriff, or the most appropriate enforcement official within the agency complete it. Following are some questions asked on the initial tobacco advertising and sales enforcement survey database created by Stanford University.

- Did the enforcement agency conduct compliance checks during the last year?
- How serious of a problem is it that kids can get tobacco products: (using a scale—very serious, serious, somewhat serious or not at all serious).
- How serious of a problem is it that there are too many tobacco advertisements in local store windows? (using a scale—very serious, serious, somewhat serious or not at all serious).
- Estimate how well tobacco retailers in your jurisdiction comply with policies to keep kids from buying cigarettes.

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- Estimate how well tobacco retailers in your jurisdiction comply with local advertising restrictions.
  - Ask which factors posed barriers to enforcement:
    - Limited staff
    - No money in the budget
    - Issues around working with youth
    - Not a priority in our community
    - Lack of support from community leaders
    - District Attorney will not prosecute
    - Problems getting youth volunteers
  - Ask how effective they feel each enforcement policy is: tobacco stings; local store surveys; tobacco merchant licensing; civil penalties for store owners; criminal penalties for store owners caught illegally selling tobacco to minors; civil or criminal penalties for store clerks caught selling tobacco to minors.
  - Ask any other questions that you think are appropriate for your enforcement agency.

The survey is used to identify which barriers prevent your enforcement agencies from actively enforcing tobacco control laws in your community.

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### Step 3: Talk to Key Opinion Leaders

Interview key opinion leaders. Once you have obtained information about previous enforcement or issues related to enforcement, gather information about the best ways to approach the enforcement agency. This step will help you determine the most appropriate person to approach and how to present your request. This process will also help you ascertain who might be good coalition members to assist with this effort. City council members, the mayor's office, the city manager, the city attorney and supportive police or code enforcement officers can be effective resources when developing a plan on how best to approach your enforcement agency. These contacts may simply provide the names of people who will help you find more in-depth information, or they may know someone who sits on the city council, or works in the enforcement department or agency. The goal is to find people who know the inner workings of the enforcement agency so an effective strategy can be developed.

Now develop a list of questions you want to ask your key informants. Here are some to consider:

- What is the law enforcement agency's history on proactive enforcement?
- What are the major barriers to regular active enforcement?

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- Who is the most supportive about this issue and the most influential with the decision maker?
  - Who would the decision maker most likely listen to?
  - What argument might be most effective?
  - Would community pressure be a positive or negative force in stimulating enforcement?

Also consider inviting “non-traditional” partners such as labor unions, faith community groups, county medical associations, educational institutions and parent/teacher groups as well as voluntary health organizations, tobacco control advocates and community leaders to join your coalition (see [Broadening Your Coalition](#)).

Be sure to compile the results/data to use later when developing your strategies to increase enforcement efforts in your community. Documenting the history of enforcement in your community, specific barriers to enforcement, and your community’s support of increased enforcement are major steps towards solving those problems and increasing enforcement of your local tobacco advertising restrictions and youth access laws. If you find that there is strong resistance to local enforcement, you need to focus on increasing community readiness. If your results indicate community support or that the community is neutral, then proceed with community mapping, see *Potential Strategies for Increasing Enforcement* in the [Select an Issue](#) section.

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## **References**

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