

CAMPAIGN CHRONICLES

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The CENTER FOR TOBACCO POLICY & ORGANIZING

A NEWSLETTER FOR COMMUNITIES
WORKING ON TOBACCO CONTROL POLICIES



SPECIAL EDITION NEWSLETTER: Tobacco Retailer Licensing

LICENSING ORDINANCES WORK YOUTH TOBACCO SALES DECLINE IN COMMUNITIES WITH STRONG TOBACCO RETAIL LICENSING LAWS

Several years ago tobacco control advocates in California launched a new effort to end illegal sales of tobacco to minors. The strategy was to pass strong local tobacco retailer licensing ordinances. Seventeen communities have passed strong ordinances so far, and more are on the way. What distinguishes these new ordinances from earlier, weaker versions is licensing fees high enough to fund strong enforcement programs (\$200-300 per retailer).

Enough time has now passed for some of these communities to have implemented their licensing program and to evaluate the effectiveness of the program in deterring sales of tobacco to minors. The results overwhelmingly demonstrate that tobacco retailer licensing with strong enforcement provisions is effective. Rates of illegal tobacco sales to minors have decreased in California communities which have passed strong tobacco retailer licensing ordinances. In many communities, the reductions are quite dramatic.

Previous laws were unsuccessful because the fees were not set high enough to fund an effective enforcement program that included compliance checks. In addition, punishments in previous laws were not significant enough to serve as a deterrent. Strong licensing ordinances include a financial deterrent through fines and through penalties including the suspension and revocation of the license. To learn more about drafting an effective tobacco retailer licensing ordinance contact Randy Kline at the Technical Assistance Legal Center (TALC) at 510-444-8252 or rkline@phi.org.

Berkeley

- \$300 annual fee
- Adopted December 2002
- Rates dropped from 38% to 14%

Contra Costa County:

- \$160 annual fee
- Adopted January 2003
- Rates dropped from 37% to 7%

Elk Grove

- \$270 annual fee
- Adopted September 2004
- Rates dropped from 17% to 10%

Pasadena:

- \$135 annual fee
- Adopted January 2004
- Rates dropped from 19% to 5%

City of 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%

City of San Luis Obispo

- \$255 annual fee
- Adopted in August 2003
- Rates dropped from 17% to 2%

** Pre and post rates of illegal tobacco sales to minors were determined by youth purchase surveys administered by local agencies. (For more information, contact the local tobacco control program.)*

CIGARETTES GENERATE CASH FOR RETAILERS

How important are tobacco sales to the profitability of retailers? Advocates working on passing a tobacco retailer licensing ordinance often hear retailers claim: "Your annual licensing fee will put me out of business!" Faced with this charge advocates can fire back with data from the retailers' own trade association, the National Association of Convenience Stores.

In 2004 overall sales inside convenience stores (excluding the sale of products such as gasoline outside) grew to \$132.1 billion, up from \$116.2 billion in 2003. Cigarettes were again the top product, increasing to 34.7% of all sales in stores in 2004. The next closest product was "packaged beverages" at 12.2%. Cigarettes accounted for more than one in every three dollars spent in a convenience store in 2004. How does this calculate in terms of real dollars? In 2003, when cigarettes were 34.5% of total sales, they generated average sales per store of \$304,250.

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This information is also available as a stand-alone factsheet on the Center's website at: www.californialung.org/thecenter.

RURAL COMMUNITIES FACE LICENSING CHALLENGE

Center Tips for Overcoming Barriers to Rural Community Organizing

Why do advocates in metropolitan areas seem to be having an easier time passing tobacco retail licensing ordinances than those in more rural settings? A different set of challenges face rural communities in California. They have some of the highest rates of illegal tobacco sales to minors, as well as the toughest political environment for passing new laws.

The tobacco sales rates to rural youth in recent local youth purchase surveys are alarming: forty, fifty, and sometimes even higher percentages of minors are able to purchase cigarettes illegally in rural communities. This is unacceptable, but, the question is how to change it?

Rural environments tend to be conservative in general, and local elected officials are resistant to adding burdens to local businesses. So, when rural political leaders hear about a licensing program with a fee they do their best to stop it. But while this is a tough political environment, with no easy solution, we know we can't wait for attitudes to change by themselves. Over time, we have to increase awareness in the community and build the strength of the local health coalition so that our call for change is understood and cannot be ignored.

People do not want their kids to start smoking. That foundation is as true in rural California as anywhere else. It will take a lot of work and careful messaging to convince local decision makers that a retail license fee is the best way to achieve that. And educating the community is critical: people's attitudes may change when they see the youth purchase survey results and learn about the profit tobacco retailers make addicting their kids.

In the end, in rural communities as in other places, what matters most is who is on our side urging the local decision makers to take action. When our advocates are limited to the health community, we are not challenging the decision makers. They are challenged when the health community is backed up by farmers, the university, hospital executives, business leaders, in other words, when our side reflects a broad community consensus.

Achieving this consensus entails solving a number of separate challenges including how to get diverse people involved in the campaign, how to influence the city council or board of supervisors, and how to break through the insider game of backroom politics.

Here are some tips that might be helpful along the back roads:

- ❖ You must break the distance barrier. Coalition meetings are a big commitment when advocates live all over the county. One answer to long distances and difficult travel is to focus on the

local and personal. Spend time visiting and involving people who have a hard time coming to meetings. Meet them individually for coffee or lunch, hold meetings in different parts of the county, or ask them to help with coalition tasks outside of meetings.

- ❖ One challenge is that while everyone knows the mayor (for example), few have real influence with him. Your first option is to get influential community members who are politically active or intimately associated with the mayor

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REPORT FROM THE FIELD

Tackling the problem of youth access to tobacco is complicated all over the state, but rural areas face unique concerns. The following is an interview between Jim Smith with the Center and Evonne Dohahue with the Tobacco Control Program in Lake County about the challenges of addressing youth access to tobacco in rural areas.

Jim: Lake County is a particularly beautiful county north of the Bay Area. It would be hard to imagine that illegal sales of cigarettes would be a serious problem in a community like yours. What are the challenges of working on youth access issues in a rural county?

Evonne: There are a number of factors that make youth access issues complex in rural communities. For example in your own question you seem to find it hard to believe we would have serious youth access problems here, but we do! Our most recent (January 2006) Youth Purchase Survey indicates that underage youth have a 32.4% success rate when buying cigarettes in our County. The previous survey indicated that we had a 43.6% rate of illegal sales.

One of the fundamental problems in rural communities is that people find it hard to

believe that illegal sales to youth happen in their communities. They often assume it's a problem faced in urban areas, but not with their own children. This is a culturally conservative area and generally there is surprise about youth here smoking or using other addictive substances. When we publicize our Youth Purchase Survey data it blows folks away to realize there IS such a pervasive problem! Another difficulty in terms of perception is that folks in Lake County and many other rural areas are really spread out geographically, which makes awareness of social problems less likely.

Jim: Why do you think sales of cigarettes to minors remain so high in Lake County?

Evonne: Our sales rates remain high because there are no consequences for

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AB 71: STATEWIDE LAW LEAVES ROOM FOR STRONGER LOCAL LICENSING ORDINANCES

■ **Retailers**, from page 1

If your community is working on a retail licensing ordinance, you should be prepared to answer questions about the California Cigarette and Tobacco Products Licensing Act (AB 71), the statewide licensing program. AB 71 is often brought up in discussions with decision makers as a reason **not** to pass a local ordinance. With some basic information, however, you can counter such opposition to local licensing.

In 2003, the state enacted AB 71, requiring all tobacco retailers, wholesalers, manufacturers, distributors and importers to be licensed. The primary purpose of this new licensing program was to reduce cigarette smuggling, not to reduce illegal cigarette sales to minors. So while AB 71 does set up a system to suspend or revoke retailer licenses if a person is caught selling tobacco to minors, there is no funding provided for enforcement or sting operations to monitor such sales.

In fact, the penalties that lead to suspension or revocation of a license only go into effect in years when the statewide underage sales rate is higher than 13 percent. (We are currently below this "trigger," at 10.2 percent.) Even if the penalty provisions are triggered because of increased statewide sales to minors, suspending or revoking a license would be difficult with no enforcement programs in place. Some counties and cities have underage sales rates as high as 40 to 50 percent, and AB 71 does nothing to address this problem.

On the other hand, AB 71 also includes anti-preemption language which specifically supports stronger local licensing laws. "Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law." AB 71 does not prevent tobacco sales to minors and does not preempt locals from taking more decisive action.

So what does this mean for you? Local governments can currently pass their own licensing ordinances with annual fees allocated to enforcement programs aimed at reducing underage sales. And so far seventeen communities have passed strong ordinances, and more are on their way.

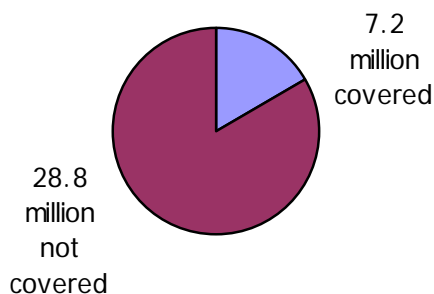
So why do retailers resist being licensed to sell tobacco? It isn't because selling tobacco is a money loser. These businesses are making a great deal of money from cigarette sales; they can easily afford the fee. In truth, they are worried about future suspensions or revocations of their license. After a licensing ordinance goes into effect, if a store clerk is caught selling tobacco to a minor and the store's tobacco retail license is suspended for even one month, the retailer stands to lose a lot of money. That is why retailers oppose tobacco retailer licensing ordinances, and why the licensing ordinances are so effective.

The annual fee charged to retailers is what makes strong local licensing ordinances work; it pays for the enforcement program which includes compliance checks. Tobacco retail licensing laws without sufficient fees have had little effect because local police and sheriff departments cannot run enforcement programs without funding. Currently, strong local licensing ordinances around California have fees between \$200-300 per retailer.

As you prepare to promote a strong licensing ordinance remind decision makers that the fee is needed to fully fund a strong enforcement program.

Source: National Association of Convenience Stores, Annual Report.

GOOD NEWS! LICENSING IS SPREADING



The good news is that 20% of Californians are protected by strong, comprehensive local tobacco retailer licensing ordinances! 7.2 million Californians live in the seventeen communities that have passed a local licensing ordinance which include a fee, out of 36 million total Californians.

Licensing is a critical part of preventing youth access to tobacco products and preventing future generations from suffering a lifetime of addiction to one of the world's most deadly products. Don't you want to make sure the youth in your community are protected by licensing?

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selling cigarettes to minors. Those who violate the law do not receive citations because there is no enforcement of laws against selling to minors. In rural communities there is not much of a funding stream for enforcement issues and law enforcement is generally stretched thin with a small number of officers responsible for covering a large geographic area.

Most of our offenders are repeat offenders! In our last Youth Purchase Survey we visited retailers to check license compliance and mentioned that would be doing stings more frequently and yet the same merchants who had sold illegally in earlier stings did so again. If the 15 year old that participated in our sting had not looked so young it is likely our rate would have been much higher! Clerks have a desire to keep the retail line moving and don't seem to want to take the time to check for identification.

Education does not seem to make much of a difference either. All of our repeat offenders had received educational visits from our program to train and remind them to ask for ID when selling cigarettes, yet 11 of 19 merchants visited sold. Until there is the threat of fines or other kinds of consequences, these retailers are likely to continue selling to minors. There's no incentive to do otherwise.

Jim: Are there any tips you might offer to others working on youth access issues in rural communities?

Evonne: Yes, I do think there are things we can do to change the situation in rural counties. Here in Lake County I think we're gaining momentum. Though rural communities tend to not like the idea of passing ordinances, increased visibility with elected officials and the public makes a difference. We have begun to be more of a presence at public meetings and local elected officials take note. After all, in a rural community elected officials and their constituents are more likely to know one another and when they see local youth before them talking about how easy it is to illegally buy ciga-

rettes they pay attention. Likewise, publicizing the sales rates makes a difference, when people hear or read about our Youth Purchase Surveys they're surprised and concerned. People in rural communities care and increased visibility gives rural tobacco control advocates more influence.

■ Rural, from page 2

be a part of the coalition. Another option is to become more engaged in your local community and its politics yourselves. We can't interact with influential community members only when we want something. Take the long-term approach and, after doing research to identify these folks, get to know them. Be a part of their world, by going to community events and meetings, and build relationships one on one by asking contacts to introduce you.

- ❖ The tobacco control coalition must be stronger, with its own identity and visible leadership. One way to help achieve this is to lead the tobacco control coalition into involvement with other public health campaigns led by other organizations. Join the chamber of commerce and the rotary club – and become active participants, building relationships by helping them. Organizing work is not done by just asking 20 strangers to show up at the public hearing in front of the County Supervisors. You can begin by presenting your youth purchase survey data at meetings throughout the community to help other community members understand the work that the coalition is doing.
- ❖ Involving youth is key and there are plenty of opportunities. Youth are often searching for meaningful activities in their communities, and providing them with the chance to be an active part of your coalition gives them valuable experience with local government and a sense that their experiences are taken seriously by the rest of community. Also, in a small town where the council

members may know some of the youth, their presence at public meetings can help advance your coalition's goals.

- ❖ Use the close knit rural community to your advantage to create awareness and education. Rural advocates often point out that violating the get-along code of conduct in rural communities can put an advocate outside of the community and render them ineffective. So, why not use that close community to embarrass local retailers that break the law? Leverage the social pressures built into small communities for our goals.
- ❖ Working in a rural community has a real advantage: it takes fewer people to make a real impact on decision makers. Getting ten people to send a letter to the mayor can have much more impact in a rural area than in a large city.

The work to pass retailer licensing will not be easy in rural communities in California. However the payoff will be large. In the short-term following these tips will make your coalition stronger and more effective and in the long-term allow you to accomplish even more for the health of the residents of your community. But more importantly, you will prevent youth from gaining illegal access to tobacco products and improve overall community health for years to come!

Additional Licensing Resources:

The Center for Tobacco Policy & Organizing
www.californialung.org/thecenter

Technical Assistance Legal Center (TALC)
<http://talc.phi.org>

STORE Campaign
<http://www.tecc.org/store/>

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