



**Model California Ordinance
Requiring a Tobacco Retailer License
Summary – May 2005**

This Model Ordinance was developed by the Technical Assistance Legal Center (TALC) to help California cities and counties that wish to reduce youth access to tobacco and to limit the negative public health effects associated with tobacco use.

A licensing ordinance requires merchants to obtain a license to sell tobacco products and provides 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 sales. In this way, a licensing ordinance is a tool that can be used to encourage compliance with *all* existing laws that apply to tobacco sales. For merchants who continue to violate these laws, licensing offers a means to eliminate their unfair and unlawful practices from the marketplace.

Although state law requires tobacco retailers to obtain a license to sell tobacco products, the purpose of the state law is to protect tax revenue by reducing counterfeit and black-market tobacco sales. Recognizing the need for tobacco retailer licensing focusing on the *public health* impact of tobacco, state law explicitly grants local governments the right to enact *local* tobacco retailer licensing laws and to suspend or revoke the local license for a violation of any state tobacco control law. (California Business and Professions Code section 22970.)

This Model Ordinance was revised extensively in May 2005. It replaces the March 2002 version of the Model Ordinance. Following is a summary of the current version of the Model Ordinance.

Findings

This section is part of the ordinance but it does not become part of the local government code. It contains extensive statistical information, presented in the form of “Whereas” clauses, documenting the importance of regulating tobacco retailers.

Section 1: Definitions

This section contains definitions of key words and phrases used in the model ordinance. When these words appear later in the text of the ordinance, they are capitalized to signal they have been specially defined.

Section 2: Tobacco Retailer License Required

This section requires a retailer to obtain a license for each location at which tobacco products or paraphernalia are to be sold. Retailers may not display or advertise tobacco products or paraphernalia if they do not have a license.

Section 3: Limits on Tobacco Retailer Licenses

This section prohibits certain types of businesses from ever obtaining a license:

- mobile vendors;
- new “significant tobacco retailers” (e.g., retailers that primarily sell tobacco products or paraphernalia and that open after the ordinance is adopted—retailers that sell a variety of products, like gas station mini-marts, can still get a license); and
- restaurants and bars (this means, for example, that providing tobacco product samples at industry sponsored “bar nights” would be prohibited).

Section 4: Application Procedure

This section sets forth the basic information required to apply for a tobacco license, such as the retailer’s contact information and whether the retailer has ever been found to be in violation of the licensing law.

Section 5: Issuance of License

This section requires local government staff to issue a license unless there is evidence that: (1) the application is incomplete or inaccurate; (2) the application is for a location or a person with a revoked license; or (3) the application seeks a license for a location or person that can not legally sell tobacco or paraphernalia (e.g., a mobile vendor).

Section 6: License Renewal and Expiration

This section establishes that a license is valid for one year and must be renewed annually. It provides a penalty for tobacco retailers who allow a license to lapse.

Section 7: Licenses Nontransferable

This section provides that licenses cannot be transferred between owners or between retail locations. Whenever ownership changes or a business moves, a new license is required.

Section 8: Fees for License

This section establishes a basic formula for how the licensing fee will be established. The actual dollar amount of the fee does not appear in the ordinance. Instead, the fee is set by a separate resolution because a resolution is more easily adopted than an ordinance and the fee amount can be changed more easily over time. The section requires that the licensing fee be calculated to include all the costs of administration and enforcement.

Sections 9: Other Requirements and Prohibitions

This section establishes requirements for all tobacco retailers such as:

- a retailer and its employees must abide by all local, state, and federal laws applicable to tobacco, tobacco paraphernalia, and tobacco sales (*note: this requirement is the heart of the licensing ordinance and must be included*);
- a retailer must abide by all applicable sign laws because many of the storefront signs at a tobacco retail outlet are likely to be tobacco ads;
- a license must be prominently displayed in a publicly visible place;
- identification must be checked if a tobacco purchaser appears to be under 27 years old;
- clerks selling tobacco must be at least 18 years old;
- all forms of self-service display of tobacco products and paraphernalia are prohibited; and
- smoking is prohibited inside and outside (in certain areas) of a tobacco retailer.

Section 10: Compliance Monitoring

This section designates which government agency will have the primary role in enforcing the ordinance and establishes a minimum number of compliance checks of retailers per year. It also provides limited immunity for youth decoys.

Section 11: Revocation of License

This section contains four main provisions:

- **Revocation**—subsection (a) directs that a license shall be *revoked* for any violation of the licensing ordinance, including the provision requiring the retailer to abide by all laws applicable to tobacco sales (see section 9). Revoking a license rather than suspending it puts the burden and cost on the retailer to reapply for a license and it avoids potential legal technicalities that could be exploited by a tobacco retailer facing suspension. This subsection also provides that if a retailer pleads “no contest” to a violation of any law applicable to tobacco sales, that plea may be used to revoke a tobacco retailer’s license.
- **Ineligibility Period**—subsection (b) establishes the period of time the retailer must wait after his license is revoked before applying for a new license. This “ineligibility period” is essentially the same thing as a “suspension” period in licensing laws that suspend, rather than revoke, a license. The ineligibility period depends on how many violations the retailer has committed in the past five years; it begins with a 10-day ineligibility period for a first violation, followed by a 30-day period, a 90-day period, and finally a five year period for successive violations.
- **Appeals**—subsection (c) provides for appeals of license revocations.
- **Errors**—subsection (d) provides for the revocation of a license issued in error.

Section 12: Tobacco Retailing Without a License

This section provides that a tobacco retailer who is found operating without a license is ineligible to receive a license for a certain period of time. The ineligibility period for selling tobacco products or paraphernalia *without* a license is longer than the ineligibility period for violating an existing license. The longer period is designed to discourage retailers from continuing to sell tobacco after a license revocation or from failing to obtain a license in first place. Tobacco products and paraphernalia offered for sale without a license are subject to seizure and destruction.

Section 13: Settlements in Lieu of Hearing

This section authorizes the city attorney or county counsel to settle claims against tobacco retailers before an administrative hearing takes place so long as the settlement contains certain minimum terms.

Section 14: Enforcement

This section provides a variety of methods for local government to enforce the ordinance, including: civil (i.e., non-criminal) fines, citations by law enforcement, and injunctive relief (a court order to do or not do something). It also allows any private citizen to enforce the ordinance through a lawsuit. For example, a local resident could bring a suit in small claims court against a tobacco retailer operating without a license in order to enforce the ordinance. A city or county agency also can use the “private enforcer” provision to enforce the licensing law in small claims court if desired. Additionally, this section provides that youth decoys cannot be required to testify in non-criminal proceedings such as a license revocation hearing.