

Tobacco Retailer Licensing

A local licensing ordinance can be used to encourage tobacco retailers to comply with all existing laws that apply to tobacco sales.

A licensing ordinance not only requires retailers to obtain a license to sell tobacco products but also provides meaningful penalties if the merchant sells tobacco to

minors or violates any other law related to tobacco sales. For retailers who continue to violate these laws, licensing offers a means to eliminate them from the tobacco product marketplace.

TALC's *Model California Ordinance Requiring a Tobacco Retailer License* provides a range of policy options

to consider when designing a local licensing ordinance. The ordinance language you select should be part of a larger strategy to have the ordinance adopted in your community.

To guide your planning, the Center for Tobacco Policy and Organizing has developed the five-phase model below.

Campaign Trail START

Contact "The Center" for help planning your campaign steps and working through the phases.

The
CENTER
FOR TOBACCO POLICY
& ORGANIZING

AMERICAN
LUNG
ASSOCIATION
of California

The Center for Tobacco Policy and Organizing (The Center) helps local coalitions wage effective tobacco control policy campaigns. The Center can assist you with resources, tools, and effective strategies to help you narrow down your issue, do a political assessment, complete a strategy chart, recruit new members, and re-energize your coalition.

The Center for Tobacco Policy & Organizing
(916) 442-4299
www.californialung.org/thecenter

Pre-Campaign

Identify local issues and resources to build an understanding of what might influence decision makers. Determine your issue, a location (city or county), and a goal.

PHASE
1

Assessment, Strategy, & Planning

Assess the political environment and decision makers. Develop a preliminary strategy and establish a rough timeline.

This phase includes the development of the ordinance – this is the time to call on TALC.

PHASE
2

Recruitment

Now that you've prepared the groundwork, it's time to involve more people. Train campaign members in outreach and recruitment strategies. Meet with key opinion leaders. Plan a campaign "kick-off" event.

PHASE
3

TALC

The Technical Assistance Legal Center (TALC) helps advocates, city and county attorneys, and elected officials by providing and reviewing ordinance language, researching and analyzing state and federal legal issues, and providing training and consulting on legal strategies for tobacco control.

Technical Assistance Legal Center
(510) 444-8252
www.talc.phii.org

PHASE
4

The Campaign

Finalize and then implement the timeline, strategy, and tactics with your newly recruited members. Form action teams: e.g., ordinance-drafting, media, action, speakers' bureau. A key tactic will be meeting with decision makers.

PHASE
5

Evaluation

Determine effectiveness of the campaign and tactics.

WIN!

Licensing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. Many of the options below are based on TALC's *Model California Ordinance Requiring a Tobacco Retailer License*, available at www.talc.phil.org. Contact TALC for help drafting an ordinance based on your community's choices.

ESSENTIAL POLICY PROVISIONS

- All tobacco retailers must obtain a nontransferable license
- An *annual* licensing fee *fully covers all program costs*, including administration and enforcement
- Violating *any* tobacco law is also a violation of the license
- Each license violation results in a *temporary revocation* (or suspension) of the privilege to sell tobacco

STRONGLY RECOMMENDED POLICY PROVISIONS

- Define *tobacco product* to include all nicotine and nontraditional tobacco products (e.g., nicotine water, snus)
- Licensing program will be administered by (e.g., who issues the license?): _____
- Licensing program will be enforced by _____ but also enforceable by *any* agency
- Youth decoy operations will be conducted by (if different from enforcement agency): _____
- Number of mandatory inspections is (e.g., times each store is checked per year): _____
- The hearing process will be an *administrative process* (attorneys and court system need not be involved)
- Licensing violations prosecuted by (who participates in a revocation hearing?): _____
- Number of years past violations will be tracked (the "look-back period"): _____ (minimum of 5 years)
- License is temporarily revoked (or suspended) for _____ days for a 1st licensing violation; _____ days for a 2nd violation; _____ days for a 3rd violation; and _____ days for a 4th violation

OPTIONAL POLICY PROVISIONS

DEFINITIONS

- Specify that "tobacco paraphernalia" (e.g., rolling papers, pipes) is included and requires a license to sell

WHO CAN'T BE LICENSED

- No license for a mobile vendor
- 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)
- No license for addresses zoned residential

CONSEQUENCES OF VIOLATION

- Prohibit display of tobacco products during revocation (or suspension) period
- Prohibit display of tobacco product advertising during revocation (or suspension) period
- Seize and destroy tobacco products offered for sale without a license
- Increase revocation (or suspension) periods and penalties for retailers who sell tobacco without a license (vs. those who *are* licensed but violate their license)

ADDITIONAL RETAILER REQUIREMENTS

- Require license be displayed in a prominent location
- Require clerks to check ID if purchaser appears under age 27
- Prohibit all self-service displays (e.g., bar vending machines)
- Violating storefront sign laws is a license violation
- Violating nontobacco age-of-purchase laws is a license violation (e.g., selling alcohol to a minor)
- Clerks must be old enough to purchase tobacco under state law (e.g., 18 years old) to sell tobacco
- Ban smoking inside the retail outlet and within a 20-foot buffer zone around a retailer's doorway

ENFORCEMENT

- Grant youth decoys partial immunity
- Allow the city attorney or county counsel to settle a license violation before a hearing is conducted
- Allow private citizens to get an injunction in addition to enforcement by the city or county
- Allow private citizens and local governments to sue a retailer in small claims court and win a modest fine (e.g., \$500)