

**Implementation and  
Enforcement Protocols  
for  
Tobacco Retailer Licensing Laws  
in  
Santa Barbara County**

**June 2005**

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A multi-disciplinary approach is being used to effectively enforce the local law(s) that license tobacco retailers in Santa Barbara County, The statutes that govern the licensure of tobacco retailers in this county are: Santa Barbara County Ordinance # 4438, Chapter 37A, Goleta City Municipal Code, Chapter 37A and the Santa Barbara City Municipal Code 9.21. This document outlines and summarizes the parties involved and the procedures utilized in implementing local tobacco retailer licensing laws. The County of Santa Barbara will be referred to as COUNTY and the City of Goleta as CITY.

NOTE: This document details the procedural requirements for the County and City of Goleta. Similar procedures will be established for the City of Santa Barbara.

There are numerous departments/agencies that will be involved in the enforcement and prosecution of Chapter 37A and they are listed below:

1. The Public Health Department (PHD)
  - a. Tobacco Prevention Settlement Program (TPSP) staff
  - b. The Health Officer
  - c. Information Technology (IT) (develop and maintain tobacco retail license (TRL) data base
2. The Sheriff Department
  - a. South and North County Division or Station Commanders
  - b. Supervising and Field Officers
  - c. Records
  - d. Property and Evidence
3. Treasurer-Tax Collector
4. City of Goleta
  - a. City Administrator
5. County Counsel
  - a. Primary counsel for TPSP staff
  - b. Independent counsel assigned to represent the Health Officer, in the event of an appeal hearing.
6. District Attorney
  - a. Deputy District attorneys in both North and South County
7. Courts
  - a. Civil Court
  - b. Superior Courts
    - i. To prosecute initial misdemeanor violation
    - ii. In the event of an appeal of the result of the administrative ruling rendered by the Public Health Officer based on the findings of an appeal hearing.

This is a draft document that represents the enforcement guidelines learned after the first series of TRL suspensions in Santa Barbara County. There are areas where discussion, negotiation and ultimately approval must be gained from the various entities involved in the enforcement process. Not only will this document serve as a blueprint for local operations, but it will also identify and catalog the forms and agreements involved.

## **I. Tobacco Retailer Licensing Laws in Santa Barbara County and the City of Goleta:**

An explanation of the tobacco retailer licensing law in both of these jurisdictions can be found in the licensing brochure (Attachment 1). A summary of the law and its salient provisions appears below:

- Any individual or establishment that sells tobacco products must apply for a tobacco retailer license (TRL).
- Any business that does not have a permanent, fixed location may not sell tobacco products.
- Each individual or establishment must apply for a TRL annually and pay a \$30 fee to the appropriate agency (see the brochure).
- Each retail location will need its own TRL.
- Selling tobacco products without a TRL is a violation of the law and is subject to criminal, civil and/or administrative penalties.
- Tobacco licenses can be suspended if a retailer violates any state, federal, or county/city law related to tobacco within a two-year period.
  - First Violation: Warning Letter
  - Second Violation: 30 day suspension
  - Third Violation: 90 day suspension
  - Fourth Violation: 1 year suspension

## **II. Interagency Cooperation and Procedures for Issuing Tobacco Retailer Licenses:**

In the COUNTY the Treasurer-Tax Collector is the agency that is responsible for licensing tobacco retailers. The Treasurer-tax Collector mails out the initial application form (Attachment 2) along with a self-addressed stamped envelope (SASE), a form letter and a fact sheet explaining the laws governing the sale and distribution of tobacco products (Attachments 3). The same information is sent 30 days prior to the tobacco retailer license (TRL) expiration date, reminding retailers that it is time to renew their license. The CITY Business License office follows the identical process. A copy of a valid license from both the COUNTY and CITY are shown in Attachment 4.

The Tobacco Prevention Settlement Program (TPSP) of the Santa Barbara County Public Health Department (PHD) has a lead coordinating role in the TRL enforcement procedures for both the COUNTY and CITY. TPSP sends out the notices for the COUNTY and CITY if an application for the TRL renewal is not received by the expiration date (Attachments 5 and 6). The allowable thresholds for selling tobacco without a valid TRL have been established and the time line for communicating this with tobacco retailers is set forth in Attachment 7. This time line delineates the notification process and timing for letters sent to tobacco retailers in both the COUNTY and CITY, and is defined below:

- 30 Days prior to license expiration: Treasurer-Tax Collector or CITY staff sends renewal notice
- Day 0: TRL expires
- Day 1: TPSP sends reminder notice-“Notice of Expiration” letter
- Day 32: TPSP sends “Notice of Violation” letter (Attachments 8 and 9)
- Day 63: TPSP sends “Notice to stop Selling” letter (Attachments 10 and 11)

The letters that notify tobacco retailers of the consequences of selling tobacco products without a valid TRL are found in Attachments 8 through 10. Letters 8 and 9 alert the retailer that the COUNTY and CITY takes selling tobacco without a TRL seriously, and gives them one last chance to acquire the necessary permit or face serious consequences, the most serious of which is losing the ability to sell tobacco products. TPSP staff and/or coalition members monitor the establishment and if they

are observed selling tobacco products without a TRL, other enforcement/legal sanctions will be imposed, and these have not yet been fully determined. Attachments 10 and 11 are the letters that notify a tobacco retailer that they must remove all tobacco products from their shelves and also stop advertising tobacco products until such time as they obtain a valid TRL. It has not been our practice to seize tobacco products when businesses do not have a valid TRL or during suspensions. All the letters referenced above (Attachments 5-11) are sent via certified mail with a return receipt requested, as are all formal communications sent to tobacco retailers, so this fact will not be repeated in future sections.

The final document referenced in this section is a memo (Attachment 12) that was drafted to delineate the relationship that was established to ensure collaboration and cooperation between the COUNTY and the newly established City of Goleta. The incorporation of the CITY, occurred concurrent with the passage of these laws at the COUNTY and thus the CITY adopted the COUNTY code by default. Given that the CITY was brand new and struggling to find its way in every area, it was difficult to get consistency of operations with regards to implementation of the technical administration of the TRL law. This was also compounded by staff turnover. TPSP funded the enforcement operations for the CITY, had complete control of this data and had established a comprehensive database of all known tobacco retailers for the CITY. It was also in TPSP's best interest to have uniformity of implementation and enforcement of these laws, as the CITY borders the unincorporated area and TPSP is striving to establish the efficacy of TRL laws in reducing youth sales rates. TPSP has assumed most of the implementation and enforcement functions for the CITY. Though the CITY collects the revenues from the 28 tobacco retailers, TPSP has assumed most of the responsibility of implementation and enforcement functions at no charge to the CITY. Settlement (MSA) funds pay for actual enforcement and Prop 99 and MSA funds pay equally for the administrative functions performed by the clerk. The collaborative relationship took time to establish and is mutually beneficial for all parties involved. It should be noted that this is a unique situation and is not anticipated when working with other cities.

Attachment 12 specifies how TPSP works with the TRL-issuing agency, either the Treasurer-Tax Collector or the CITY Business License office, to issue a TRL. Applications and the funds are collected and maintained by the TRL-issuing agency. They in turn fax the application to TPSP for review, approval and signature, and then TPSP faxes the license back to the issuing agency. Once a TRL is issued to a tobacco retailer, a copy of that license is faxed to TPSP for record keeping purposes. TPSP maintains files and a database of these and other pertinent items related to tobacco retailers in the COUNTY and CITY. TPSP sends out a monthly notice to each TRL-issuing agency about upcoming TRL expirations and follow-up communications when necessary procedures and timetables are not followed. The memo also delineates the procedures for law enforcement operations to monitor sales to minors using PC 308a violations as the basis for sanctions against the TRL. These procedures are outlined in the following section of this document, as is the suspension process that is referenced in Attachment 12.

### **III. Undercover Law Enforcement Operations:**

TPSP has been conducting undercover tobacco buys since 1993. Most of these buys have had no law enforcement involvement and closely mirror the state's youth purchase survey (YPS) model. These buys involve sending a minor decoy into the store to purchase tobacco. The buys have been done annually or semi-annually and have been reported in a general way to the media. The purpose was to provide a snapshot of underage youth's ability to purchase tobacco. These buys

were useful in the providing data about local “buy” rates, but had not shown efficacy at permanently reducing sales to minors.

Based on the continued high rate of sales of tobacco to minors, three communities enacted TRL laws in an attempt to hold tobacco retailers accountable for selling tobacco products to underage youth. The violations that result from the enforcement of both state and local laws governing the sale of tobacco products represent the “findings” that are used to suspend a TRL. Local law enforcement agents have the authority to cite any individual who sells tobacco to a minor (under the age of 18) under the authority of Penal Code Section 308a (PC 308a). Deputized law enforcement agents must actually witness the sale of the tobacco product in order to issue the citation. Therefore in order to enforce TRL laws, the methodology of local undercover buy operations that did rely on law enforcement was changed.

The sanctions related to repeated sales of tobacco products to minors are detailed in Section I, and are predominantly based on the number of violations that occur within a two-year period at each retail location. Sales violations must occur at the same business location and the TRL-owner must be the same for each violation. In addition, violations of the STAKE Act (a state law that governs the sale of tobacco to minors and is enforced by state Food and Drug Branch agents) are reported to TPSP and are also counted in assessing violations against a TRL. Additionally, a violation of any tobacco-related law, such as, self-service display of tobacco, selling single cigarettes, etc., could be cited as a “finding” that would count against the TRL, but this is anticipated to happen rarely with infractions that are not related to selling to a minor, and would only occur if the infraction had occurred repeatedly and without correction. (List of these lesser infractions can be found in Attachment 3.)

Prior to law enforcement operations taking place in the communities where TRL laws are in effect, TPSP or the enforcing agency conducts an observational survey to assess compliance with all the laws related to the sales and distribution of tobacco products. This is done once every other year or as needed. The form used to conduct these local surveys and the instructions for its use are found in Attachment 14, though a modified version of the observation form found on the STORE web page may be used for future surveillance. The results of the observational surveys are communicated to the retail owners in a follow-up letter. (Attachment 15)

TPSP uses a standardized protocol for carrying out these undercover operations that has been developed and refined over time. An outline of these protocols follows, along with a narrative of how TPSP interrelates with other cities when conducting these buys.

1. TPSP conducts observational surveys of tobacco retail outlets to assess violations of local and state tobacco control law and monitors tobacco sales to minors.
  - a. Sales to minors are assessed through routine, random and representative law enforcement-based undercover buys (1-3 buys per year).
    - During the last three years, since the inception of TRL laws, one PC 308a enforcement operation has taken place per year and over 90% of all known tobacco retailers have been shopped.
  - b. Notification of the retailers takes place in stages, as follows:
    - After the buy, the employee who was cited often notifies the owner of the store that a sale took place.
    - Once TPSP has received verification from the courts that the defendant (store owner, agent, employee, or licensee) has been found guilty of the

infraction, TPSP sends a letter to each known tobacco retailer in the county. This letter notifies the retailers of the results of the buys countywide and the specifics related to their store. The details of these letters are found in Section V.

- Shortly after the retailers are notified, TPSP disseminates a press release with details about the buy results and the pending suspensions/revocations. This press release contains the names and addresses of all retail outlets facing suspension as a means of informing the public. A sample of this media release is included in Attachment 15a.
  - Store names had never been publicized prior to the enforcement stage of the TRL laws, i.e., when the first TRL suspensions were pending.

2. The forms that are used to conduct undercover buys are listed below and can be found in Attachments 16–26. These forms are self-explanatory and thus are not articulated in this document.
  - a. Participant Record Forms (Attachment 16)
  - b. Parent Permission Forms (Attachment 17)
  - c. Driver's Certification Form (Attachment 18)
  - d. PC 308a Site Inspection Form (Attachment 19)
  - e. Law Enforcement Training Protocol and Proof of Completion (Attachment 20)
  - f. Youth Training Protocol and Proof of Completion (Attachment 21)
  - g. Copy of the District Attorney Letter of Immunity (Attachment 22)
  - h. Copy Youth Photo with Date imprinted (Attachment 23)
  - i. Copy of Youth Identification Card or California Drivers License, with the identity blocked out. (Attachment 24)
  - j. Examples of Sheriff/Police Incident Reports that accompany a sale of a tobacco product to a minor and a description and/or copy of typical evidence gathered in these cases. (Attachment 25 & 26) Copies of citation examples for both prosecution strategies exist within these attachments.

#### **IV. District Attorney (DA) Protocols and Prosecution Strategies**

The development of the DA protocols has evolved and these guidelines are found in Attachment 13. The protocols are reflective of the prosecution preferences of the DA, the structure and operation of the courts and are subject to change. Local protocols have changed annually since the inception of TRL enforcement. There are eleven key elements to the DA's requirements designed to promote successful prosecution of PC 308a violations.

Ideally, one standardized prosecution method, either criminal or civil, would be preferred. However, in Santa Barbara County, this is not the case. At present, cases are prosecuted differently depending on what region of the county the PC 308a violation occurs. If the citation is issued in South County, then the case is treated as a misdemeanor and the individual who sold the tobacco product is cited for a violation of PC 308a and the case is referred to the DA for criminal prosecution. These citations have a date in the "Notice To Appear" section of the ticket. In North County, the cases are prosecuted in a limited civil action, which will be brought forth against the owner as a violation of PC 308a. Subsequently, in the "Notice To Appear" section of these citations, it states, "refer to the DA for prosecution". The procedures for referring cases to the DA are also spelled out in Attachment 13.

There are pros and cons to each method of prosecution. I will cover these methods in as far as they relate to the TRL process. A more comprehensive description of these strategies can be found in TALC's "Roadmap to Enforcement" series. The criminal approach presents numerous limitations, but is often the DA's preferred method for addressing this type of misdemeanor. If the person who sold the tobacco (the defendant) does not challenge the citation, it will proceed through courts and the defendant will be required to appear before the judge, enter a plea, (guilty or no contest), and pay their fine. Either of these pleas results in a conviction or a judgment that can be used as evidence of a violation. These violations are referred to as "findings" in the language of most TRL laws.

The first major drawback of criminal prosecution is the fact that a defendant has the right to request a jury trial. This entitles them to the use of the public defender and burdens the county with all the costs associated with a jury trial. This is likely to appear ludicrous to the jurors and to the judge, all for the purposes of addressing a \$200 ticket. Another limitation to the criminal method of prosecution is the higher burden of proof in the criminal court, where the prosecution must prove "beyond a reasonable doubt" that the violation occurred. Further, the laws of discovery apply in criminal cases and this means that all evidence in the case must be furnished to the defendant and/or their legal representative, including the identity of the minor involved in the decoy operation.

One final drawback is that if a defendant enters a plea of no contest in a criminal case, it is not admissible as "proof of guilt" in a future administrative proceeding. Appeal hearings related to TRL-suspensions/revocations are administrative in nature, which means that the TPSP would have to prove that the sales took place, i.e., have the Sheriff's present all the evidence at the hearing.

Despite its drawbacks, the criminal process is the one that many DA's are most comfortable with and is the process that will be followed in the southern region of our county. If a tobacco retailer violates the law three times, then the DA has agreed to prosecute the owners civilly, using the Business and Professions Code (B&PC) 17200, which governs unfair business practices.

The procedures in Northern Santa Barbara County differ considerably and as a result of the DA's in north trying to avoid the time and expense of a jury trial. For one year, cases were tried in Small Claims Court (a civil venue) but based on the legal nuances of that court system; it was deemed an unsuitable, long-term solution to prosecution. However, another civil strategy has emerged, namely the use of a limited civil action. This strategy is new and will be utilized to prosecute the cases that resulted from recent buys. At present, what is known about this process is that all the cases are filed in a batch and the DA will file one limited civil action against all the parties. This will allow for only one court appearance, if one is even necessary at all. In this type of civil procedure, the defendants will have an opportunity to discuss their cases individually with the DA in an attempt to reach a settlement prior to a court appearance. In the event that a settlement is reached, the DA will draft a settlement agreement and one of the stipulations will be that the admission that a sale took place, i.e., an admission of guilt. If a settlement is not reached, then a court proceeding will take place. In civil prosecution, the burden of proof is less rigorous for the prosecution; in that they must only show the "preponderance of evidence" that the violation took place. In these PC 308a cases this evidence exists. It is likely that a judge will rule that in favor of the prosecution. Another benefit of the civil process is that the minor need not be present, in that the laws of discovery are not in effect, the owner can be prosecuted for the PC 308a violation rather than then clerk, the DA and law enforcement need only appear in court once to try all the cases. One negative to this prosecution strategy is that the penalties associated with the cases may be substantially lessened, especially if the cases go to court.

Unlike the criminal scenario, either a court ruling or the stipulation of judgment from the settlement agreement suffices as evidence of guilt in the event an appeal hearing occurs, and thus no sheriff/police appearance is needed.

**V. Process of Requesting Records from the Sheriff/Police Department, Courts and DA:**

Prior to notifying licensees that a violation of a local or state law occurred at their tobacco retail outlet, TPSP must obtain proof that the violation was adjudicated. In our county there are three ways to obtain this information, initially and then two ways to verify it.

The first method is to submit a written request (via email) to the Sheriffs Records Department for a copy of the Disposition of Arrest and Court Action (DAR). (Attachment 27) This document serves as a record of a citation from the initial arrest until the case is completed in the courts. Each agency involved with the enforcement action fills out a section of the report and assigns it a case number. Examination of the DAR is the simplest initial step to verify the outcome of prosecution in each case since it contains the court case number, court filings, the plea and the sentencing information. Once that data is obtained, a written request (via email) is sent to the appropriate court to request certified copies of the court rulings. The time for the DAR to return to the Sheriffs Department and become part of the case record varies from 6 to 10 weeks. In the event that a DAR is not available in a timely manner, the second method for getting the court documentation is used. TPSP staff goes to the court and enters the specific information about the defendant and the violation into a computer system to get access to the court record number. The information required is the name of the defendant, charge (i.e., PC 308a), and the date of the violation. Once the court case numbers are furnished by the computer, the process of requesting the records, detailed above, is followed. The other manner in which TPSP obtains court documents is through the DA. In the cases that are processed civilly in the north, the clerical staff of the DA has been directed to send us a certified copy of the court records once the case is adjudicated. Examples of the court documents from North County demonstrating a Small Claims Action (a civil process) are found in Attachment 28 and from a Superior Court ruling on a misdemeanor charge (Attachment 29).

Once the court documents are in hand the letters that communicate the violations to the licensees can be sent. These will be addressed in great detail in Section VI.

Obviously, it is helpful to develop good working relations with intra-agency staff to facilitate this process. This has been fairly easy in our county, though in some cases did require persistence. If this were not the case, the use of higher-ranking agency officials to make these requests would be recommended.

To be thorough, it should be noted that TPSP interfaces with law enforcement related to the TRL process and record keeping. First, TPSP staff or their agents collect our own data about the outcomes of the undercover operations following each buy. The PC 308a Site Inspection Form found in Attachment 19 is used. The adult chaperone or law enforcement officer who remains in the vehicle during the undercover buy completes this form. This form provides TPSP with immediate feedback about the results of the undercover operation and also provides back-up documentation to enable staff to track sheriff/police reports if they are missing or not provided in a timely manner. A copy of the initial sheriff/police report is also sent to TPSP at the same time it is forwarded to the DA. TPSP maintains photos of the youth's ID and requests that the photo of the minor that is taken each day prior to the "buy" is emailed to TPSP. Each youth is given an ID number that is related to

the month and year of the buy and this ID # is digitally superimposed onto their photos and ID. These images are stored digitally and in hard copy format. (Attachments 23 and 24)

TPSP has also been asked to compile and submit a detailed list of violators and the licensees attached to the retail store where the violation took place for the North County DA, who files the cases civilly against the owner, not the clerk.

## **VI. TRL Suspension Procedures:**

Ultimately, if tobacco sales to minors occur repeatedly in retail outlets, a suspension/ revocation procedure will be triggered as defined with the local law. All the TRL ordinances in Santa Barbara County operate on a two-year look-back period. TRL suspensions are triggered after a second sale within the two-year period, given that the first sale within the look-back period triggers a “warning letter”.

In order to communicate the results of undercover operations, and ultimately any sales of tobacco products at a specific tobacco retail location, a series of written communications has been developed. The list of all the letters that could be sent to owners of tobacco retail outlets are found in Attachment 30 and the letters that notify them about violations related to selling tobacco to a minor are the first 12 ones listed. Note that some of the letters are not indicative of a violation, but are a means of alerting retailers that undercover buy operations are taking place, the overall outcome of those buys and the potential impact to their TRL.

Letters that notify TRL holders that a violation has taken place are sent to all known tobacco retailers in the county. See Attachments 31-35, which represent all conditions that are possible after three years of data from buys. The “Letter of Warning” found in Attachment 31, is sent after the 1st sale occurs. Attachments 32 and 33 detail the incidence of a 2<sup>nd</sup> violation resulting from either a violation of PC 308a or the STAKE Act, which notifies the owner that they face a 30-day suspension of their TRL. Attachment 34 provides an example of the 3<sup>rd</sup> violation with a pending 90-day TRL suspension caused by a PC 308a violation. A similar letter exists if a STAKE Act violation resulted in this finding (though it is not included in this document). Finally, Attachment 35 shows a sample of a letter where one of the many conditions took place that did not result in a violation. These letters are cumbersome, but they provide the necessary documentation required to ultimately suspend a TRL in the event of an appeal.

One aspect of the TRL suspension process is the potential for an appeal hearing. Locally, this process was not thoroughly understood when the TRL policies were drafted and enacted. In fact, it was not until we were facing TRL suspensions at more than a dozen retail locations that the process was fully comprehended and defined. The language of the ordinance and also the interpretations of legal counsel involved with the proceedings will determine the nature of the TRL suspension procedures. In our county if a full appeal hearing is required, it is a very formal proceeding and can be preceded by a settlement hearing and these will be described in the following section, but must be preliminarily understood here.

When a tobacco retail outlet owner is notified that they are facing a suspension of their TRL, they are provided with an option to submit a written request for an appeal hearing to the Health Officer. This must be submitted within 10 days of the time that the retailer is notified of the violation, i.e., the date that they signed the return mail receipt. The Health Officer must grant the TRL holder an appeal hearing within the “earliest practical time and provide written notice of the hearing date at least 10 days in advance of the hearing”.

If no such written request is received, then the TRL is subject to the 30-day suspension and the owner is notified with the letter shown in Attachment 36 and 37, as they relate to both the COUNTY and the CITY. The letters are also sent via certified mail, return receipt requested. A copy of the sign that must be posted during the TRL suspension is provided in Attachment 38.

#### **VII. Settlement and Appeal Hearing Process related to the TRL Suspension:**

The appeal hearing is designed to provide the TRL holder an opportunity to see the evidence that relates to the violations, and to state their case, with or without legal representation, in front of the PHD Health Officer, who serves as a neutral hearing officer, reviews the evidence and makes the final ruling regarding TRL suspensions/revocations. The hearing officer has not seen the evidence, nor discussed the case with the program staff prior to the appeal hearing. At the appeal hearing there are many players present. A description of those people likely to be present at the appeal hearing and the rationale for their presence is presented below.

TPSP staff is represented by County Counsel, and an additional representative of County Counsel is present to act as independent legal counsel for the Hearing Officer. The need for independent counsel for the Hearing Officer is based on case law, which requires that the hearing is fair, and the legal advice is unbiased and free from conflict of interest. In addition, the owner of the tobacco retail outlet and their legal counsel, if they have elected to be represented, are present. Lastly, the appropriate law enforcement officers are present, if the case must be presented. Whether the officers are needed is based on the manner of prosecution and the plea that was entered. (See Section IV above for details on when and if law enforcement is needed.)

Once an Appeal Hearing is requested, TPSP notifies the retailer, via a letter, which is found in Attachment 39.

The language of the local ordinances dictates that if the Hearing Officer finds that two sales to minors' violations have occurred at the specified retail location, there is little discretion about the required ruling. The Hearing Officer must order a 30-day TRL suspension. Given this fact, the number of parties involved and the formal nature of the appeal hearings in Santa Barbara County, TRL holders are provided with an opportunity to reach a settlement with TPSP staff in advance of the hearing.

The settlement hearing process, along with its procedure and potential outcomes follows. If the TRL holder has retained legal counsel, then County Counsel contacts their attorney to set up a settlement conference. If not, then TPSP staff contacts the TRL holder. At the settlement conference, both parties discuss the circumstances that led to the pending TRL suspension and try to come up with a plan that will prevent sales of tobacco products to minors at that location in the future. In the six (6) settlement conferences held to date in the COUNTY/CITY, no formal evidence has been presented, though references to the circumstances that led to the sales have been discussed (i.e., conditions within the store environment, details about the clerk, whether ID was checked, etc.). At a certain point, when all parties have clarified their questions and have arrived at a plan to try to ameliorate future sales of tobacco to minors, County Counsel and TPSP staff step out of the room to confer. Once TPSP staff and County Counsel have arrived at a decision on the terms and a reduction of the number of days for the TRL suspension, they return and present this offer to the TRL holder and legal representative, if one is present. There is often further negotiation, but ultimately, if an agreement is reached, County Counsel writes a written draft of the agreement, TPSP reviews and approves this and it is sent to the TRL holder and counsel, for signature. (See Attachment 40 for a sample of a Settlement Agreement and Attachment 41 shows the letter sent to

notify them of their suspension dates.) If no settlement can be reached an appeal hearing is then scheduled. (Attachment 42 shows a letter that notifies the business owner of the need to appear at an Appeal Hearing). In Section VI, the manner in which the TRL suspension is served and the storeowner is notified will be covered.

In the event that an Appeal Hearing is required, the time allotted is based on the need to prove the fact that the sales of tobacco products to the minors occurred. If the retailer has conceded to this fact then the Appeal Hearing is likely to take no more than two hours. If two or more buys must be proven, then 3-4 hours should be scheduled for the appeal hearing. Copies of the following documents should be prepared for all the parties present at the hearing:

1. The Sheriff's reports
2. Misdemeanor complaint
3. Minute orders – Plaintiff's Claim and Order to Defendant
4. Notice of Entry of Judgment
5. Any other relevant evidence

Copies of communications should be on hand with the TPSP staff and/or their legal counsel.

The Appeal Hearing is convened by the Hearing Officer (Health Officer), provides an overview of the process and asks all the parties present to introduce themselves. Prior to this the Hearing Officer notifies the group that this is a formal, administrative proceeding and that the proceedings will be tape recorded for the record. A tape recorder is turned on and the Hearing Officer's County Counsel representative maintains the tape recording and monitors the tape during the hearing.

The Hearing Officer briefly explains the TRL law and the proceedings. The Hearing Officer then asks the owner and/or their representative if they have had an opportunity to settle this matter prior to the Appeal Hearing. Once the Hearing Officer determines that this opportunity has been provided, and that no settlement was reached, TPSP's County Counsel presents the evidence that led to the finding that a TRL suspension was warranted, eliciting testimony from TPSP staff and the Sheriff/Police. After the case is presented, the TRL holder is allowed to ask questions and make comments about these findings and plead their case. The Hearing Officer can also ask questions of either party. After the presentation, the Hearing Officer concludes the Appeal Hearing and notifies the licensee that a written decision will be rendered within 30 days.

To date, only two full-scale Appeal Hearings have taken place. One resulted in a negotiated settlement (as this took place before we knew that a pre-Appeal Hearing Settlement Conference was an option) and the other generated an official ruling from the Hearing Officer. This decision can be found in Attachment 43 and the accompanying letter that notifies the retail owner of the terms of their suspension is in Attachment 44.

This describes the process to date. Ongoing discussions with tobacco retail owners, their staff and their legal representatives, as well as County Counsel are inherent. This process provides an excellent opportunity to learn more about the retail store environment and the mindset of the business owners.

A discovery was made while attempting to gather evidence during the first round of TRL suspension hearings. The Sheriffs Department Property and Records Division maintains evidence based on the criteria set forth in the statute related to the violation. In this case, PC 308a law has a one-year statute of limitation, so evidence is destroyed at that time and if there is change in the evidence locker, it is returned to a special fund maintained by the Sheriffs Department. Luckily, this evidence

was not pivotal in proving the cases in these TRL suspension hearings, since the eyewitness testimony of the law enforcement officers was sufficient. However, this situation still needs to be solved, since it would be beneficial to have all the evidence present in the case of an Appeal Hearing and/or a court appearance.

Towards this end, TPSP staff will be developing an MOU with this division of the Sheriff Department to extend the time frame for holding onto evidence in PC 308a cases to two years, instead of one. This has yet to be negotiated, but a draft of this agreement appears in Attachment 45.

## **VIII. Data Entry Process and TRL-Record Keeping System**

A database has been developed to track all the elements related to TRL issuance, violations, and suspensions. It was developed by our IT staff with the assistance of an outside vendor and is based on an MSSQL-server database and with an MS Access front end. This database was created when TPSP had only two years of PC 308a violation data and when there was still limited knowledge about its required applications. Until recently staff had felt that the California Online Database Enforcement (CODE) system might be modified, so that it would replace the local database. Therefore attempts to make upgrades to the local database were put on hold until recently when it was learned that CODE may not be updated to accommodate use by communities that are enforcing TRL laws, and any modification, will not take place until after mid- year in 2006.

The local database contains records on all licensees and includes information from their TRL applications, data from observational surveys, PC 308a/STAKE violations, and information regarding license expirations and suspension cycles. TPS staff enters data and uses it to generate lists and letters used to enforce the local TRL laws. In many instances the system is not automatic and requires a great deal of human interface and auditing. In addition to the database, a filing system has been established to maintain the lengthy records that result when retail outlets are involved in multiple violations, suspension and./or appeal hearings.