



## Tobacco Retailer Licensing

### Matrix of Local Ordinances Restricting Tobacco Retailers Within a Certain Distance of Schools April 2011

In order to prevent youth from getting addicted to tobacco products and to reduce illegal sales of tobacco products to minors, many cities and counties in California have restricted the location of tobacco retailers within a certain distance of schools. Studies have shown that the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased smoking rates (Henriksen L., Feighery E.C., et al) and that one-third of illegal tobacco sales take place within 1,000 feet of schools (Lipton, Robert, et.al.). An additional benefit of this policy is that it restricts some advertising of tobacco products within a certain distance of schools, because if retailers are not able to sell tobacco products, they also cannot display ads for those products that would mislead consumers.

This matrix lists 23 municipalities in California that have adopted an ordinance to restrict the location of tobacco retailers within a certain distance of schools (there are 24 total ordinances as West Hollywood is listed twice and has two separate ordinances). The cities and counties are listed in reverse chronological order from the most recently passed. To be included on this matrix, the ordinance must require all tobacco retailers or significant tobacco retailers to be located 500 feet or more away from schools. The definition of significant tobacco retailers varies by ordinance, such as any store that devotes more than 15 percent of its floor space to tobacco products or any store that generates more than 75 percent of its sales from tobacco products and tobacco paraphernalia. The strength of each of these 24 ordinances varies and the policy details that are included in this matrix help to highlight these differences.

#### Type of Ordinance

There are four different ways for local governments to restrict the location of tobacco retailers and the first section of the matrix includes an "X" to designate which type of policy each municipality has adopted. While each of these policy options can accomplish the goal of restricting tobacco retailers near schools, using the tobacco retailer licensing ordinance to do this is the best approach for dealing with current tobacco retailers located within the restricted area around a school and more efficient to enforce, and therefore it is recommended. For this reason, the tobacco retailer licensing column is shaded in blue to highlight these ordinances. Full explanations for each of the four policy types, along with the matrix abbreviation and information about how many municipalities have adopted that type of policy, are listed below.

1. **Tobacco Retailer Licensing Ordinance (TRL)** – this type of law requires all tobacco retailers to obtain a license in order to sell tobacco products in the municipality and a requirement can be added to the licensing ordinance that a retailer cannot obtain a license if they are located within a certain distance of schools. Because tobacco retailer licenses are only granted for a set period of time (one year) and must be renewed annually, it is more efficient to implement

location restrictions through a licensing ordinance by simply not renewing licenses for businesses in prohibited locations. Five municipalities use this type of policy to restrict sales near schools and all of these policies have been adopted since April 2010.

2. **Conditional Use Permit (CUP)** – the requirement that a business obtain a Conditional Use Permit (CUP) is a requirement typically imposed through a community’s zoning code that allows a city or county to make an individualized determination about the use of a property in a specific location. If a proposed use such as tobacco retailing near schools is not “permitted” by the zoning code (i.e., always allowed) nor “prohibited” (never allowed), it can be “conditionally permitted” depending on site-specific factors. A retailer would have to apply for a CUP in order to open a business in a specific location and cannot operate a store that sells tobacco in that location if the CUP is not granted. A restriction on the issuance of a CUP can be that the tobacco retailer is not located within a certain distance of schools. Fifteen municipalities have adopted this type of policy.
3. **Zoning Ordinances (Zoning)** – closely related to a CUP requirement, zoning regulations are used to establish what type of uses are allowed for each type of property or district. A zoning ordinance can be used to specifically prohibit a tobacco retailer from operating within a certain distance of schools. Three municipalities use this policy to restrict sales near schools.
4. **Direct Regulation (Reg)** – this type of law is enacted under the general police powers of the municipality to protect the health, safety, welfare and morals of their citizens. Unlike TRL, zoning, and CUP ordinances, for this type of law an enforcement mechanism must be specifically created or incorporated by reference from another part of the municipal code (TRL and zoning ordinances already include enforcement procedures that apply to any violation.) A regulatory ordinance can be enforced in many ways, for example through civil suit or criminal prosecution, administrative citations, and as a nuisance through administrative, civil or criminal nuisance abatement proceedings. One city has adopted this type of ordinance to restrict tobacco retailers near schools.

### **Type of Tobacco Retailers that are Subject to the Ordinance**

Another significant distinction for these policies is whether the policy restricts the location of all tobacco retailers or just significant tobacco retailers. The blue column on the right side contains the information about which type of retailers are subject to the ordinance. The municipalities that contain an “X” in the column are the strongest type of policy and restrict every retailer that sells tobacco products within a certain distance of schools. Nine municipalities have adopted this type of ordinance, including every ordinance that has been adopted since April 2010 with the exception of West Hollywood. The other policy option is to only restrict the location of significant tobacco retailers. Fourteen municipalities have adopted an ordinance that only applies to significant tobacco retailers. One municipality has adopted an ordinance that only applies to retailers other than significant tobacco retailers.

### **Other Policy Provisions**

In addition, the Matrix also contains information about five other policy provisions relevant to restrictions on the sale of tobacco products near schools. For each of these provisions, the full question is listed below along with information on trends and most common responses from the 24 ordinances:

- *The policy prohibits tobacco retailers from being located within what distance of schools?* The restrictions range from 500 feet to 1,500 feet, with the majority (14 of 24) restricting sales within 1,000 feet of schools.
- *Does the policy apply to existing retailers (no grandfathering)?* A majority of the policies (22 of 24) do not subject existing retailers to the location restrictions but would only apply to new retailers and grandfather existing retailers. However, for several of these cities and counties, there were no existing retailers within that restricted distance from schools.
- *Does the municipality have a tobacco retailer licensing ordinance?* While five municipalities use a licensing ordinance to restrict sales near schools, eight other municipalities have a licensing ordinance but have adopted these restrictions as a separate policy from the licensing ordinance.
- *What other youth-oriented areas do the distance requirements apply to other than schools?* In addition to schools, the majority of these policies (18 of 24) also restrict tobacco retailers within a certain distance of other youth-oriented areas. The most popular other location is parks and/or playgrounds, which 18 cities and counties restrict tobacco retailers near in addition to schools.
- *Does the policy restrict tobacco retailers from being located within a certain distance of other tobacco retailers?* In addition to schools and other youth-oriented areas, some of these ordinances contain a density provision that restricts tobacco retailers from being located near other tobacco retailers. Six ordinances contain this provision and the distance restrictions range from 500 to 1,500 feet.

### **Resources**

The Center has additional resources on restricting tobacco retailers near schools and tobacco retailer licensing ordinances available at [www.center4tobaccopolicy.org/localpolicies-licensing](http://www.center4tobaccopolicy.org/localpolicies-licensing). The Technical Assistance Legal Center has model ordinance language available for tobacco retailer licensing ordinances, conditional use permits and zoning ordinances at [www.phlpnet.org](http://www.phlpnet.org).

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	Does the municipality have TRL?	What other youth-oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	CUP	Zoning	Reg						
West Hollywood March 2011				X	600	No	No	None	No	
Santa Clara County November 2010	X				1,000	No	Yes	None	Yes (500 feet)	X
Santa Barbara County November 2010	X				1,000	No	Yes	None	No	X
South Pasadena November 2010	X				500	No (but there were no retailers within restricted area)	Yes	None	No	X
Riverbank July 2010	X				500	Yes	Yes	Playgrounds	No	X
Adelanto May 2010			X		1,000	No	No	Playground, church, public library or childcare facility	No	X
Calabasas April 2010	X				500	No (but there were no retailers within restricted area)	Yes	None	No	X
Union City January 2010		X			1,000	No	Yes	Park, playground, library, recreation center, religious institution, youth-oriented establishment	Yes (1,000 feet)	
Palmdale January 2010		X			500	No	Yes	Commercial daycare center, hospitals, parks, libraries, recreation centers	No	X
Vallejo December 2009		X			1,000	No	No	Church, public recreation area	Yes (1,000 feet)	
Windsor November 2009		X			600	No (but there were no retailers within restricted area)	No	Religious institutions, libraries and parks	No	

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	TRL	CUP	Zoning	Reg						
Saratoga October 2009		X			1,000	No	No	Parks	Yes (500 feet)	X
Albany February 2009		X			500	Yes	Yes	Childcare centers, public libraries, public community centers, parks or playgrounds	No	
Oakland April 2008		X			1,000	No	Yes	Residential zone, library, park, playground, recreation center, licensed daycare facility	No	X
La Mirada 2008		X			600	No	No	Church, temple, park	Yes (500 feet)	
Mountain View February 2005		X			1,000	No (if existing retailers are caught selling to minors twice in a 36 month period, they must apply for a CUP)	No	Childcare facility or preschool other than family daycare, playground, youth center, recreational facility	No	
Pasadena February 2004		X			1,000	No	Yes	Game arcade, internet access studio, library, licensed childcare facility other than family daycare, park and recreation facility, theater	No	
San Rafael February 2003		X			1,000	No	Yes	Parks, libraries, arcades, youth/teen centers, community/recreation centers, licensed daycare centers, shopping malls, houses of worship with youth programs	No	

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	TRL	CUP	Zoning	Reg						
Marin County 2002		X			1,000	No	No	Childcare facility or preschool other than family daycare, playground, youth or teen center, community or recreation center, arcade, park, library, houses of worship with youth activities	No	
Berkeley November 2001		X			1,400	No	Yes	Public Park	No	
San Leandro July 2001		X			1,500	No	No	Park, library, recreational facility	Yes (1,500 feet)	
Novato April 2001			X		1,000	No	No	Parks or other land use oriented to minors as determined by zoning administrator	No	
West Hollywood 2001		X			1,000	No	No	Park, playground, motion picture theater, game arcade	No	
Vista June 1997			X		1,000	No	Yes	None	No	

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