

# CAMPAIGN CHRONICLES

A CAMPAIGN NEWSLETTER FOR COMMUNITIES

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## STRONG LOCAL TOBACCO RETAILER LICENSES

### A COMPARISON OF ENFORCEMENT STRATEGIES

By

*Julie Bradley-Hart, Policy Coordinator & Vanessa Marvin, Organizing Coordinator*

**P**assing local licensing policies is extremely important in our efforts to prevent youth access to tobacco. By now, most of us know that in order to be effective the ordinances must contain enforcement and the fees to pay for this enforcement.

Several strong retail-licensing ordinances have recently passed across the state in which the fee and enforcement provisions are particularly noteworthy. Because of specific circumstances in these communities, not all are exactly like the TALC model ordinance. (For a copy of the TALC model ordinance, contact Randy Klein at 510-444-8252 or visit TALC's web site at <http://talcp.hlaw.org/cgi-bin/pub/cgi/publications.cgi>.) For example, some communities pay for visual store inspections with the fee but pay for compliance checks through other sources. Although finding alternative-funding sources may not be possible in most communities, we have included these ordinances because there may be locations where these strategies make sense.

The ordinance passed by the city of San Luis Obispo most closely resembles the TALC model ordinance. Therefore if this is the type of ordinance you are trying to pass it is the best example to show your decision makers. What follows are some of the details of these strong retail licenses.

#### **San Luis Obispo (passed 8/19/03)**

Fee: A \$255 annual retail tobacco fee passed in a resolution separate from the

licensing ordinance.

What the Law Says: "The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators."

Enforcement covered by the Fee: The fee resolution specifies three police officers and one police sergeant will conduct 4 stings per-retailer per-year.

Additional Notes: Of ordinances passed to date, San Luis Obispo's ordinance most closely resembles the TALC model ordinance.

Contact: Susan Hughes 805-781-5564

#### **Berkeley (passed 12/10/02)**

Fee: Berkeley passed a fee resolution charging \$283/year per tobacco retailer, which includes \$35 administration fee and \$248 for inspections, enforcement and monitoring.

What the Law Says: The text of Berkeley's tobacco retail licensing ordinance doesn't include an enforcement plan or address what the basis of the fee should be, as these may change over time. The Council Report outlines the enforcement plan and protocol and the fee structure. The establishment of the fee and what costs constitute the fee are established in a separate fee resolution.

Enforcement Covered by the Fee: The City's cost analysis includes the cost of

## MOVING FORWARD WITH LOCAL LICENSING

By

*Randy Kline, TALC Attorney*

TALC's current model tobacco retailer licensing ordinance was last revised in March of 2002. However, TALC has continued to work with advocates on creative ways to increase the public health benefits of local licensing. As a result, TALC advises communities interested in licensing—or those interested in strengthening an existing ordinance—to consider a number of novel requirements not contained in TALC's published model.

- **Establish a minimum age for clerks who sell tobacco.** The age should be linked to the minimum age in state law for possessing tobacco (currently 18 years of age) but is best not established by an actual number such as "18" because state law may change.
- **Mandate that clerks must check the ID of anyone appearing to be under the age of 27.** Communities could then use 18, 19, or even 20 year old undercover buyers to test compliance with this provision without worrying about the immunity issues associated with under-age "sting" operations.
- **Prohibit bars and restaurants from obtaining a license, effectively banning sales of tobacco at these businesses.**
- **Prohibit new "significant tobacco retailers"** (such as Cigarettes Cheaper!) from obtaining a license, effectively banning all new significant tobacco retailers from opening in the community. Existing businesses can continue to

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hiring a .5FTE Environmental Health Inspector who conducts three inspections per-retailer, per-year to visually check for posting of the license and compliance with all local, state, and federal tobacco related laws, except PC308. They have the authority to enforce local ordinances prohibiting self-service displays, vending machines, coupon distribution, worksite smoking, smoking in outdoor seating areas, etc.

Additional Notes: Berkeley's fee does not pay for PC308 compliance checks. Rather, the city's police department conducts bi-annual compliance checks of randomly selected stores. The random sample includes both a variety of tobacco retail outlets (chains, mom & pop stores, donut shops, etc) in all four quadrants of the city. The police department absorbs the related costs of these operations.

Contact: Marcia Brown-Machen 510-981-5330

## San Francisco (passed 11/7/03)

Fee: The board of supervisors established the annual fee at \$175. They also passed a one-time \$50 application fee for the processing of the application and for an initial inspection. So, in the first year retailers will be charged \$225.

What the Law Says: An enforcement plan is not included within the ordinance. It does specify "an annual fee sufficient to cover the cost of annual inspections as determined by the Director [of the Department of Public Health]."

Enforcement Covered by the Fee: The budget analysis conducted for the board of supervisors calculated the costs of the program based on two visual inspections per-retailer per-year performed by environmental health inspectors.

Additional Notes: San Francisco is another example of a community that had a strong ongoing enforcement program in place before their licensing ordinance was passed. The police department does approximately 45 enforcement operations at retail outlets every month. The cost of this program is paid for through MSA

monies and therefore was not included in the license fee.

Contact: Alyonik Hrushow 415-581-2447

The Center is aware of some proposed ordinances in the cities of Pasadena, Sacramento, and Stanislaus County that are worth taking a look at:

## Pasadena

On November 3, 2003, Pasadena's city council approved for first reading, a tobacco control amendment to license tobacco retailers. The First reading is scheduled for January 5, 2004.

The licensing regulation includes an annual fee of \$135. Most of the revenue from the fee will go to the Police Department's Vice-Narcotics Unit to pay for continued quarterly compliance check operations for the Tobacco Decoy Program. A lesser amount will be allocated to the Public Health Department to fund environmental health inspections and to the Tobacco Control Program to administer the program. Per TALC recommendation, staff and the City Attorney's Office is also considering including a provision that would require the "removal of tobacco ads during the suspension period" to strengthen the licensing regulation.

Contact: Statrice Wilmore 626-744-6051

## Sacramento

The Sacramento Coalition has proposed and is working with the city council to pass a strong tobacco retailer license. The estimated \$350 fee would cover the cost of compliance checks conducted by police officers with the assistance of code enforcement officers. It will also include visual inspections conducted by code enforcement officers. Contact: Karen Olson 916-875-6515

## Stanislaus

The Stop Tobacco Sales To Youth committee (a subcommittee of the Stanislaus County Adult Tobacco Coalition) is working to have an ordinance adopted sometime in the coming spring. The proposed ordinance would require a minimum of 2 and an average of 3

compliance checks per store per year by the Sheriff's Department in the unincorporated areas of the county. Preliminary calculations of the licensing fee, which would fully cover enforcement and administration costs, is estimated to be close to \$200

Contact: Salvador Vazquez 209-558-4802

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operate but can not change in any substantial way, expand, or move.

**- Impose a self-service display ban for all tobacco products.**

**- Provide for a "private right of action"** so that any person—including a tobacco control organization—can sue a retailer in small claims court if the retailer violates the licensing law by breaking any tobacco control law. The provision should establish a default amount to be paid by the retailer, perhaps \$250 or \$500, per violation. The person suing the retailer keeps any amount awarded. A private right of action does not affect what a city or county can do itself to enforce the ordinance through traditional enforcement procedures.

**- Require a retailer whose license has been suspended or revoked to remove all tobacco products** from view and remove all tobacco related advertising that might cause a customer to believe tobacco can be purchased from the retailer. This requirement should not violate the First Amendment's protection of commercial speech because advertisements for illegal transactions are not protected.

Please contact the CENTER or TALC for more information on these additional provisions or for assistance developing a licensing ordinance that contains such innovations.

*Special thanks to TALC's Randy Kline, for his contribution to this issue. He can be contacted at (510) 444-8252.*

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