

Becoming a Policy Wonk on Local Tobacco Retailer Licensing: Answers to Tough Questions from Opponents and Elected Officials

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Communities and coalitions working on tobacco retailer licensing campaigns will likely need to answer questions from opponents and elected officials about the effectiveness and necessity of strong local tobacco retailer licensing ordinances. Below are some common questions which have arisen in several local licensing campaigns. The suggested answers are meant to help effectively address opponents' arguments against a tobacco retailer licensing ordinance. For more materials on licensing ordinances, visit the Center's website at www.Center4TobaccoPolicy.org/localpolicies-licensing.

Why do we need a local licensing law? Aren't there state laws on licensing?

There is a state licensing law, but it does not effectively address reducing illegal tobacco sales to minors. The Cigarette and Tobacco Products Licensing Act (passed in 2003 as AB 71, Section 22970 et seq, B&P Code) created a statewide licensing program administered by the Board of Equalization that requires retailers to purchase a one-time state license. However, this bill was enacted to prevent smuggling and does little to reduce underage sales. Penalties for violating the statewide license are also so weak that retailers are at little risk of losing their licenses if they violate the law. In addition to the statewide licensing law, Penal Code §308 and the STAKE (Stop Tobacco Access to Kids Enforcement) Act make it illegal to sell tobacco to minors. However, the STAKE program can only do compliance checks annually in about 3% of stores that sell tobacco. Local licensing is essential if your community really wants to address the issue of underage tobacco sales, and on the positive side, the statewide licensing law does not preempt these local ordinances.

Are licensing and enforcement operations really successful in reducing youth access to tobacco?

Enforcement programs DO work, but they must be funded! A recent report by the California Tobacco Control Program found that cities and counties that have a strong local ordinance conduct four times as many decoy operations as jurisdictions without a strong ordinance. In addition, jurisdictions with a strong local ordinance have seen their youth access rates fall dramatically (illegal tobacco sales rates are determined by youth purchase surveys administered by local health agencies).

- Berkeley: \$427 annual fee; adopted December 2002; rates dropped from 38% to 4.2%
- Coachella: \$350 annual fee; adopted July 2007; rates dropped from 69% to 11%
- Elk Grove: \$270 annual fee; adopted September 2004; rates dropped from 17% to 0%
- San Luis Obispo: \$255 annual fee; adopted August 2003; rates dropped from 17% to 0%

Do businesses have to get licenses for other things, or is licensing tobacco sales an unusual requirement?

It is customary for businesses in California to obtain some kind of permit or license in order to conduct business, sell products or offer services. These general business licenses and permits generally require an annual fee or payment. It is not unusual for local governments to require additional special permits for businesses that provide specialized services.

Is it legal to require a retailer to pay for a tobacco license from the state and from a city or county?

It is legal and fair. The two license fees pay for two different enforcement programs - the state fee pays to combat smuggling and black market cigarettes while a local fee would pay to prevent sales to youth. These fees cover the costs to regulate tobacco sales; they are not punishment for selling tobacco.

Furthermore, the state tobacco license fee is only a one-time \$100 fee. Many other businesses in California must pay much larger license fees for the privilege of conducting their businesses. Examples of these fees include:

- State Liquor License for stores that sell beer, wine and spirits for consumption off premises: original fee – \$12,000; annual renewal fee – \$507.
- State Gambling License: original fee – \$500; annual renewal fee – \$500 and an additional fee based on the number of tables in the facility.
- State Pharmacy License: original fee – \$400 application; annual renewal fee – \$250

The requirement to obtain both a local and a state license is also not unique to tobacco retailers. For example, gambling facilities in California must have both a state and local license. Many cities also require certain professionals (contractors, attorneys, dentists, engineers, insurance brokers, physicians, real estate brokers, etc.) to obtain a local license in addition to required state licenses.

Shouldn't communities wait until the economy improves to create a new fee on tobacco retailers?

No, protecting minors from the harmful effects of tobacco should not have to wait. The consequences of not protecting kids from tobacco are too great when 36,600 youth in California become smokers each year. In addition, these fees are not a burden for tobacco retailers. According to the National Association of Convenience Stores (NACS), cigarettes are the top product sold inside stores. The NACS 2008 State of the Industry Report shows that in 2007, cigarettes accounted for 32.93% of all in-store sales and generated average sales of \$498,780 per convenience store. Retailers are worried about lost sales if their license is revoked for selling to minors, not about affording the annual license fee. This is why licensing ordinances with fees and strong enforcement are effective at reducing sales to minors. And the bottom line is, if a retailer does not sell to youth, they have nothing to worry about.

What's the difference between a tax on retailers and a fee?

A fee can only be used to pay for the costs of the program for which it is being assessed. The fee revenue cannot be used for any other purpose. A tax on retailers might be used for any purpose, but a tobacco retailer license fee can only be used to pay for administration and enforcement of the license provisions. A tobacco retailer license fee is limited by the costs of administering and enforcing the license provisions. Such licenses and fees are common for businesses which sell potentially dangerous products.

Won't the state eventually pass a stricter licensing law? Why should we pass an ordinance that could eventually get preempted by state legislation?

There is a lot of uncertainty about whether a new statewide licensing law will pass and what the benefits would be if it did. It is likely that such a law would still be weaker than local ordinances and it is unclear whether such a law would be effective at reducing illegal sales to youth. In addition, a state law would likely contain non-preemption language so that these stronger local laws could still be in effect. Finally, enforcement of a state law would not be as thorough as enforcement that is done by local agencies funded by a local licensing fee because of the sheer magnitude of the state. Only a local licensing law can provide the funding and administration to effectively check most or even all retailers in the jurisdiction for compliance.

Aren't trainings done by retailers and the "We Card" program effective at reducing sales to youth?

Research has shown that merely educating storeowners and clerks about illegal tobacco sales does not reduce tobacco sales to children over time. Studies also show that the tobacco industry's own "We Card" merchant education and signage program does not decrease tobacco sales to minors. In order to effectively combat the problem of illegal sales to minors, communities need to pass local licensing laws with (1) an annual fee and (2) funds for enforcement programs.

Why not just require those who violate the law to get licenses?

The California Grocers Association (CGA) frequently uses this argument. They claim that all of their members are law-abiding and shouldn't be "punished" by having to get a license. However, youth purchase surveys show that grocers do sell tobacco products to kids. Also, licensing fees, as discussed above, are not a punishment, but rather cover the costs of enforcing public health regulations. The fines and suspensions for selling tobacco to minors is the punishment and those are only applied to violators of the license. Retailers reap significant financial benefits from selling tobacco and it is fair to require them to pay a small amount to enforce tobacco regulations.

In addition, a licensing fee that is only paid by violators would be unsustainable. The funds would steadily decrease because fewer stores would be checked each year and thus fewer violators would be found each year. The whole point of the licensing fee is to have enough money to fund consistent enforcement to do compliance checks on most, if not all, retailers in the jurisdiction annually. Just because a store doesn't sell to minors one time, doesn't mean they never make illegal sales.

Why not use Master Settlement Agreement (MSA) monies or other funds to pay for the enforcement?

First, MSA funds and monies from the general fund are not sustainable and could be taken away from the enforcement program at a later date. An annual fee on retailers is the only way to ensure that there will be a stable supply of money for enforcement that cannot be used to pay for other priorities. Secondly, it makes sense to require retailers to pay a licensing fee to verify that the laws are being followed by the retailers when they engage in the lucrative business of selling cigarettes. Having the fee set high enough to cover enforcement will provide a consistent amount of money available to enforce tobacco regulations.

Isn't it really clerks who should be punished if they sell to minors?

Clerks are already punished under Penal Code §308, but this provision has not been effective at reducing illegal sales. Storeowners claim that mistakes are made because clerks are very busy and can't check everyone's ID. This is an argument that would be unacceptable for illegal alcohol, gun or ammunition sales and should be just as unacceptable for illegal tobacco sales. The fact is that storeowners, not clerks, are responsible for what happens in their stores. They must train clerks to ask for ID and must enforce minimum age requirements, even during busy times.

Won't kids just get cigarettes from their parents or friends? How does licensing prevent that?

Retailer licensing can't eliminate all of the sources minors use to obtain tobacco. But illegal sales to minors are a big part of the problem. This is a public health problem, and tobacco retailers need to be part of the solution. That can only happen through strong local licensing laws.