



Using Tobacco Retailer Licensing to Provide Penalties for Violation of State Drug Paraphernalia Laws

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Methamphetamine (meth) addiction is one of California's top drug problems, ruining lives, generating crime and violence, and worsening other public health crises like HIV infection.¹ A new legal tool can help reduce sales of drug paraphernalia related to meth use by allowing communities to insert a provision into a local tobacco retailer licensing ordinance to make violations of state laws regarding drug paraphernalia a violation of a tobacco retailer license.

The rationale for connecting drug paraphernalia enforcement with enforcing tobacco laws is that retailers of drug paraphernalia commonly sell cigarettes and they often claim that their drug paraphernalia is tobacco paraphernalia.

What is a tobacco retailer license?

To combat the problem of illegal sale of tobacco products to minors, many California cities and counties have passed a tobacco retailer licensing ordinance. This ordinance requires all tobacco retailers to obtain a license to sell tobacco products and can be used to encourage tobacco retailers to comply with all federal, state, and local laws relating to tobacco. When a retailer illegally sells tobacco products to a minor, they are not only violating state law (Penal Code section 308 or the STAKE Act), they are also violating their local license. The consequence of violating the law against selling tobacco to minors is the suspension of the retailer's local tobacco license. Model language for a tobacco retailer licensing ordinance is available at: talc.phlpnet.org/pdf_files/0018.pdf.

What is the state law regarding sales of drug paraphernalia?

Although selling tobacco paraphernalia is legal (e.g., a lighter, matches), California does prohibit the sale of "drug paraphernalia," defined as items that are "designed for use" or "marketed for use" with drugs.² Selling "drug paraphernalia" is illegal under state law if there is reason to know that the item will be used for taking drugs.³ State law also prohibits local governments from enacting an ordinance that directly regulates sales of drug paraphernalia.⁴

What is the connection between tobacco retailer licenses and reducing sales of drug paraphernalia?

Since all retailers who sell any kind of tobacco paraphernalia should be required to obtain a license, another condition can be placed on tobacco retailers in order to protect local health, safety, and welfare: the retailer must comply with all state laws regarding drug paraphernalia. This condition must be included in the licensing ordinance itself.

If compliance checks reveal that the retailer is selling items that constitute "drug paraphernalia" (e.g., a city agent purchases a "meth pipe"), the retailer is not only violating state law, but is also violating its tobacco license, which can then be suspended or revoked. Enforcement proceedings happen the same way as if the retailer were caught selling tobacco to a minor. For example, the city can hold an administrative hearing and introduce evidence of the sale of the illegal meth pipe. This evidence can take many forms, but often the best evidence will be the item which was purchased. The retailer will have the opportunity to present evidence of its own (probably claiming that the item is "tobacco paraphernalia" rather than illegal "drug paraphernalia"), and afterward the hearing officer will make a decision, such as suspending the retailer's license for a certain number of days.

If the retailer's license is suspended, that means the store cannot sell any tobacco products or paraphernalia during the suspension period. At the end of the suspension period, the retailer will have lost significant cigarette sales revenue as well as revenue from paraphernalia sales. The prospect of a future suspension will discourage the retailer from choosing to sell drug paraphernalia again.

To view sample language to incorporate drug paraphernalia restrictions into your tobacco retailer licensing ordinance, see TALC's Plug-in to its Model Licensing Ordinance at: talc.phlpnet.org/doc_files/1009.doc.

Why is the drug paraphernalia connection important for tobacco control?

This new legal tool offers the opportunity for tobacco control advocates to further engage or to begin working with those fighting meth. In some counties, the huge impact of meth has led to ATOD (Alcohol Tobacco and Other Drugs) coalitions and law enforcement agencies increasing their focus on meth at the expense of tobacco. This new legal tool provides a way to engage these anti-drug coalitions in tobacco control work while contributing to the fight against meth. ATOD coalitions and law enforcement agencies will see at least three benefits in supporting tobacco retail licensing: (1) law enforcement can stop paraphernalia sales locally through an administrative procedure to enforce the license requirement and not have to go to court; (2) the fines associated with enforcing the license are a revenue generating opportunity for law enforcement; and (3) tobacco is a gateway drug that leads to youth addiction to other drugs.

Is there public support for this type of policy?

A scientific survey of rural and small town voters commissioned by the Center for Tobacco Policy & Organizing in March 2008 shows that concern about the meth problem can increase support for a local tobacco retailer license. This survey found that 69 percent of voters would be more inclined to support a local tobacco retailer licensing ordinance if it included a provision to not allow stores that sell meth pipes to obtain a license. This included about half of those voters who earlier in the survey were opposed to a local tobacco retailer license.⁵

The Center's survey also found that 88 percent of rural voters think that it should be a high priority of government to reduce teen use of meth, compared to 75 percent who think it should be a high priority for the government to reduce teen smoking. Complete poll results can be found at: www.center4tobaccopolicy.org/polling-rural

For more information:

Technical Assistance Legal Center, a project of Public Health Law & Policy
www.phlpnet.org

The Center for Tobacco Policy & Organizing, a project of the American Lung Association of California
www.Center4TobaccoPolicy.org

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¹ California Society of Addiction Medicine. *Recommendations to Improve California's Response to Methamphetamine*. Available at: www.csam-asam.org/pdf/misc/Meth_Recommendedations.pdf.

² California Health and Safety Code § 11014.5, which includes the following items specifically, among many others: Carburetion tubes and devices, smoking and carburetion masks, roach clips (meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand), miniature cocaine spoons, cocaine vials, chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bongs, and ice pipes or chillers.

³ California Health and Safety Code § 11364.7.

⁴ See *A & B Cattle Company, Inc. v. City of Escondido*, 192 Cal. App. 3d 1032 (1987).

⁵ The Center for Tobacco Policy & Organizing, American Lung Association of California (conducted by Goodwin Simon Victoria Research). *Survey of California Rural and Small Town Voters About Secondhand Smoke Policies*. March 2008. Available at: www.center4tobaccopolicy.org/_files/_files/RuralPollSummaryofFindings_2.pdf.