

# Q&A

## Q: Can Newly Adopted Tobacco Retailer Licensing (TRL) Restrictions Apply to Existing Tobacco Retailers?

changelabsolutions.org

**A:** ChangeLab Solutions' [Plug-Ins for the Tobacco Retailer Licensing Model Ordinance](#) includes a variety of strategies local jurisdictions can use to restrict where tobacco products are sold and what types of establishments sell them. For example, plug-in options include: a prohibition on the sale of tobacco products within a certain distance of schools or other youth-oriented areas; a prohibition on the sale of tobacco products within a certain distance of another tobacco retailer; and a prohibition on the sale of tobacco products at pharmacies. Location restrictions may be especially effective tobacco control policies because a high density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates.<sup>1</sup>

*A jurisdiction that adopts any of these plug-ins can choose to apply them to the jurisdictions' existing retailers, even if the result is that some retailers would lose their license to sell tobacco products. Exempting existing retailers from new tobacco control policies greatly limits the public health benefits of those policies.*

The California State Constitution grants cities and counties the "police power" to enact ordinances and regulations that protect the health, safety, welfare, and morals of their citizens.<sup>2</sup> This police power is broad in scope and elastic in nature, expanding to meet the developments of modern life.<sup>3</sup> Because prohibiting the sale of tobacco products in certain locations and in certain types of establishments is aimed at protecting public health, these types of laws are within a local jurisdiction's police power.

If a jurisdiction prohibits existing tobacco retailers from selling tobacco products, those businesses may argue that they have a "vested right" to continue to sell tobacco products because they are currently allowed to do so. However, "the protection of a vested property right . . . generally must yield to the [government's] concern for the public health and safety and its authority to legislate for the protection of the public."<sup>4</sup>

In a lawsuit against the City of San Francisco, a major supermarket chain with in-store pharmacies asserted that it had a vested right to continue to sell tobacco products after the City prohibited the sale of all tobacco products at pharmacies. The supermarket chain argued that depriving it of its vested right to sell tobacco products was a constitutional violation. The court ruled in favor of the City because it found that the law had a substantial relation to public health and safety.<sup>5</sup>

The provisions in ChangeLab Solutions' [Plug-Ins for the Tobacco Retailer Licensing Model Ordinance](#) accommodate existing tobacco retailers who might be impacted by new restrictions on tobacco sales. For example, if a local jurisdiction prohibits the sale of tobacco products within 1,000 feet of schools, existing tobacco retailers in these areas would be allowed to apply for a one-time, non-renewable license. ChangeLab Solutions' default license term is a period of one year. This allows the business time to sell off its existing tobacco inventory and make plans to transition its sales strategy away from tobacco product sales.



### Model California Ordinance Requiring a Tobacco Retailer License "Plug-in" Policy Options

Revised November 2014 (Originally issued June 2008)

These supplemental policy options are intended to be incorporated into ChangeLab Solutions' Model California Ordinance Requiring a Tobacco Retailer License.

www.changelabsolutions.org/tobacco-control

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

This material was made possible by funds received from Grant #14-10214, California Department of Public Health, California Tobacco Control Program.  
© 2015 ChangeLab Solutions

January 2015

1. Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.
2. Cal. Const. art. XI, § 7.
3. See *Miller v. Board of Public Works*, 195 Cal. 477, 484 (1925); *Birkenfield v. City of Berkeley*, 17 Cal. 3d 129 (1976). See also, *Consolidated Rock Products v. City of Los Angeles*, 57 Cal. 2d 515, 522 (1962).
4. *Safeway Inc. v. City & Cnty. of San Francisco*, 797 F. Supp. 2d 964, 970 (N.D. Cal. 2011).
5. *Safeway Inc. v. City & Cnty. of San Francisco*, 797 F. Supp. 2d 964, 970 (N.D. Cal. 2011).



**ChangeLab Solutions**  
Law & policy innovation for the common good.