

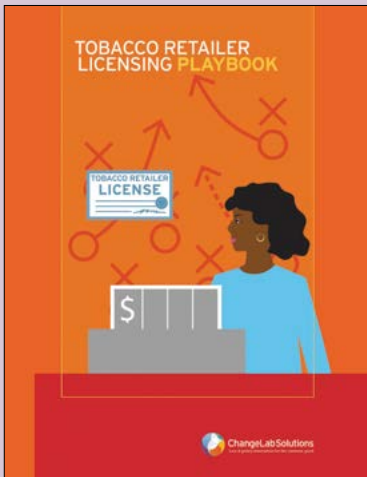


**ChangeLab  
Solutions**

Law & policy innovation  
for the common good.

ChangeLab Solutions has developed model language for a TRL law in California cities and counties. The model language offers a variety of policy options that can be tailored to the specific goals and needs of your community.

In addition to the core provisions, ChangeLab Solutions has drafted supplementary “plug-in” provisions, which offer additional policy options that can be incorporated into the law. For more information, please see our [resources on TRL](#).



While ChangeLab Solutions’ model language for a TRL law was designed for California communities, the model can be adapted for use in other states as well. It is important to carefully check the existing law in your state to learn whether local TRL is allowed. [Contact](#) ChangeLab Solutions to learn more about TRL or to request technical assistance. For legal advice, consult with an attorney licensed in your jurisdiction.

# Tobacco Retailer Licensing

## An Effective Tool for Public Health

*Communities are adopting tobacco retailer licensing laws as one way to combat the public health problems associated with tobacco use, to help reduce tobacco-related health disparities, and to ensure compliance with tobacco laws. In this fact sheet, we explain how tobacco retailer licensing works, why many communities are pursuing this policy, and what goes into creating and implementing a strong tobacco retailer licensing law.*

### What is tobacco retailer licensing (TRL)?

Licensing is a common policy tool that state and local governments use to regulate businesses like alcohol retailers, pharmacists, or restaurants. Similarly, a local government may want to license tobacco retailers in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices.

Under a local TRL law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.<sup>1</sup> Local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities such as store inspections and compliance checks pertaining to youth purchases. Increasingly, TRL is being used to promote other innovative policy solutions, including regulating the location and density of tobacco retailers, imposing additional restrictions on the sale and promotion of tobacco products, and establishing a minimum price for certain tobacco products.<sup>2</sup>

As of June 2017, more than 150 cities and counties in California had adopted a local TRL law.<sup>3</sup> The Center for Tobacco Policy & Organizing (The Center) classifies 133 of these as “strong,”<sup>4</sup> meaning the laws have, at a minimum,

- a requirement that all tobacco retailers obtain a license and renew it annually;
- an annual licensing fee high enough to fund sufficient enforcement;
- meaningful penalties for violators through fines and penalties, including suspension and revocation of the license;<sup>5</sup> and
- a provision stating that any violation of existing local, state, or federal tobacco laws constitutes a violation of the local law.

### For more information

*For support with model language and legal issues:*

[ChangeLab Solutions](#)

*For support on campaign issues:*

[The American Lung Association in California’s Center for Tobacco Policy & Organizing \(The Center\)](#)

*For support on issues related to health equity:*

[The Loop, UC San Francisco](#)

*For support pertaining to new and emerging products, youth engagement, or military issues:*

[California Youth Advocacy Network \(CYAN\)](#)

## Why adopt a TRL law?

Many communities adopt a TRL law because it is an effective tool for limiting the negative public health consequences of tobacco use. While this tool provides many benefits, there are three main advantages to a TRL law: First, these laws have proven effective in limiting youth access to tobacco. Second, a strong TRL law provides a framework for implementing and enforcing other tobacco control policies that may advance health equity by countering the tobacco industry's aggressive and predatory tactics that disproportionately target underserved communities. Third, strong laws with annual fees create self-financing programs that allow for regular enforcement and facilitate comprehensive local enforcement of all tobacco-related laws.

### Protect youth

Despite state laws prohibiting tobacco sales to youth, a significant number of merchants continue to sell tobacco products to young people.<sup>6</sup> Fortunately, strong local TRL laws have proven effective in reducing illegal tobacco sales to youth. The Center has found that local TRL is extremely effective at reducing illegal sales to underage youth: the organization surveyed 31 municipalities that have implemented and enforced a strong TRL law and found that the rates of illegal sales to youth decreased, often significantly, in all communities surveyed.<sup>7</sup>

### Advance health equity

One of the most effective potential uses of TRL is to reduce inequities in how tobacco products are marketed and sold in underserved communities. Research has found that the prices of tobacco products tend to be lower in neighborhoods of low socioeconomic status and in African American neighborhoods.<sup>8</sup> Evidence shows that these same communities have higher rates of tobacco use and addiction, worse health outcomes, and increased health inequities.<sup>9</sup> Because the health problems associated with tobacco use fall disproportionately on underserved communities, policy interventions that affect consumption, price, or marketing also have a greater impact on these populations and have the potential to address these inequities.

### Establish a self-financing mechanism for comprehensive enforcement

A number of federal and California state laws already regulate tobacco sales and establish penalties for illegal sales to youth. But these laws each have separate enforcement mechanisms and penalty structures, making it difficult to enforce them at the local level. A local TRL law, on the other hand, empowers *local officials* to impose *meaningful penalties* for illegal sales to youth and enforce all existing laws—ensuring that local communities can prioritize enforcement even when state and federal authorities do not.

Another important strength of licensing is that the government can impose a licensing fee sufficient to cover enforcement costs. Because funding enforcement is often the best way to ensure compliance with a policy, ChangeLab Solutions recommends that the licensing fee be calculated to cover all enforcement activities. For more information on how to calculate a fee for a local tobacco retailer license, see our [tobacco licensing cost worksheet](#) and our [interactive licensing fee calculator](#).

## What is a tobacco product?

When people think of tobacco products, they may think of cigarettes, cigars, and chewing tobacco, but there are other products that communities may want to restrict. Our model language defines tobacco products broadly to include any product containing, made, or derived from tobacco or nicotine that is intended for human consumption (including hookah tobacco, snuff, snus, and dissolvables), as well as electronic smoking devices such as e-cigarettes and e-hookahs. This definition is written to restrict emerging tobacco industry products (eg, heat-not-burn products) without interfering with FDA-approved cessation devices—like nicotine patches.



An electronic cigarette with charger.

## What else can a TRL law do?

While a TRL law may be the best tool to prevent sales to youth, it can also promote other innovative policy solutions, including controlling the location and density of tobacco retailers, restricting the sale of menthol cigarettes and other flavored tobacco products, and establishing a minimum price for certain tobacco products.

### **Zoning:** *location and density of retailers*

Another common way to limit where tobacco retailers can locate is through land use laws, also known as zoning laws. For a comparison between land use laws and licensing laws, see ChangeLab Solutions' fact sheet "[Licensing & Zoning: Tools for Public Health.](#)"

### *Regulate the location and density of retailers*

Local governments can use TRL to control both the location and density of tobacco retailers in their community. A licensing law could, for example, prohibit a license for any business operating too close to a school or other area frequented by youth. Given that tobacco sales near schools and child-oriented areas have been shown to increase youth smoking,<sup>10</sup> this policy can be used to keep tobacco retailers out of areas where youth typically congregate.

Communities can also use TRL to address inequities by limiting the number of tobacco retailers located within communities most affected by tobacco-related harm. Low-income communities, communities of color, and other underserved communities experience denser concentrations of tobacco retail outlets, which are associated with increased tobacco use, increased rates of tobacco-related disease, and decreased quit rates.<sup>11</sup> Local governments can reduce tobacco retailer density by capping the total number of licenses issued, limiting the number of tobacco retailers allowed to operate within a specified area (eg, a city council district), or specifying a minimum distance between tobacco retailers. California law limits alcohol licenses based on density; this policy applies that same rationale to tobacco retailers.

### *Restrict the sale of menthol cigarettes and flavored tobacco products*

A TRL law can also restrict the sale of menthol cigarettes and other flavored tobacco products. Menthol and other flavored tobacco products are considered starter products that help establish long-term tobacco use, particularly among youth. Restricting the sale of all flavored tobacco products may reduce tobacco use and counter the tobacco industry's predatory targeting of these products to youth, people of color, low-income populations, and members of LGBTQ+ communities—all of whom are significantly more likely to use menthol cigarettes and other flavored tobacco products and disproportionately bear the burden of tobacco-related harm.

While the federal Tobacco Control Act banned the manufacture of flavored cigarettes, the law contains an exception for menthol cigarettes and neither federal nor California state law restrict flavored non-cigarette tobacco products. Communities can close this loophole and regulate products that are increasingly used by youth and other underserved populations. For more on this type of policy, see ChangeLab Solutions' [fact sheet and model ordinance on regulating flavored tobacco products.](#)

### *Establish a minimum price for tobacco products*

Several communities are using TRL laws to establish minimum prices for tobacco products such as cigarettes, little cigars, and cigars. Minimum price policies set a floor price below which a product cannot be sold. By raising the price paid for tobacco products, such policies can reduce the consumption of those products, particularly among youth. Research shows that establishing minimum pricing is one of the most promising strategies for reducing tobacco-related disparities.<sup>12</sup> Jurisdictions can also use TRL to implement other pricing policies such as establishing minimum package sizes for little cigars and cigars, as well as prohibiting the redemption of tobacco product discounts, coupons, and promotions. For more information on these policy options related to tobacco pricing, see our [model language.](#)



*Cigarillos in grape, strawberry and blueberry flavors, sold for under a dollar a piece.*



*Menthol cigarette promotions are more pervasive in underserved communities.*



<sup>1</sup> In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that “[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.” Cal. Bus. & Prof. Code § 22971.3.

<sup>2</sup> See generally McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. Tobacco Control Legal Consortium, 2010. Available at: <http://publichealthlawcenter.org/sites/default/files/resources/tcl-syn-retailer-2010.pdf>.

<sup>3</sup> Policy Evaluation Tracking System for Tobacco Control in California, Full List of Policy Jurisdictions with Tobacco Retailer Licenses (TRL). Available at: [www.tcpspartners.org/PETS/FullList.cfm?PolicyType=TRL](http://www.tcpspartners.org/PETS/FullList.cfm?PolicyType=TRL).

<sup>4</sup> The American Lung Association in California Center for Tobacco Policy and Organizing. *Matrix of Strong Local Tobacco Retailer Licensing Ordinances*, 2017. Available at: <http://center4tobaccopoly.org/wp-content/uploads/2017/06/Matrix-of-Strong-Local-TRL-Ordinances-June-2017.pdf>.

<sup>5</sup> The threat of license suspension creates a greater financial deterrent to retailers than a simple fine. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products for a month can cost retailers far more than the largest fines that can be imposed under existing California laws, like Penal Code section 308 or the STAKE Act. See Cal. Penal Code § 308 (violators can be fined \$200, \$500, or \$1000 for first, second, or third violations, respectively); Cal. Bus. & Prof. Code § 22958 (violators can be fined \$400-600 for a first violation and are subject to harsher penalties for each additional violation in a 5-year period).

<sup>6</sup> California Department of Public Health, *California Tobacco Control Program. California Tobacco Facts and Figures*, 2016. Available at: [www.cdph.ca.gov/Programs/CCDPHP/DCID/CTCB/Pages/FactsandFigures.aspx](http://www.cdph.ca.gov/Programs/CCDPHP/DCID/CTCB/Pages/FactsandFigures.aspx).

<sup>7</sup> The American Lung Association in California Center for Tobacco Policy and Organizing. *Tobacco Retailer Licensing Is Effective*, 2013. Available at: <http://center4tobaccopoly.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>.

<sup>8</sup> Cantrell J, Kreslake JM, Ganz O, et al. Marketing Little Cigars and Cigarillos: Advertising, Price, and Associations with Neighborhood Demographics. *American Journal of Public Health*. 2013;103(1):1902-9.

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Feighery EC, Schleicher NC, Boley Cruz T, Unger JB. An Examination of Trends in Amount and Type of Cigarette Advertising and Sales Promotions in California Stores, 2002-2005. *Tobacco Control*. 2008;17(2):93-8.

Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods. *Nicotine and Tobacco Research*. 2012;14(1):116-21.

<sup>9</sup> Tobacco-Related Disparities. Centers for Disease Control and Prevention website. [www.cdc.gov/tobacco/disparities/index.htm](http://www.cdc.gov/tobacco/disparities/index.htm). Accessed February 20, 2018.

<sup>10</sup> Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools? *Preventive Medicine*. 2008;47(2): 210-214. Abstract only is available at: [www.sciencedirect.com/science/article/pii/S0091743508002089](http://www.sciencedirect.com/science/article/pii/S0091743508002089).

<sup>11</sup> Ackerman A, Etow A, Bartel S & Ribisl KM. Reducing the density and number of tobacco retailers: Policy solutions and legal issues. *Nicotine & Tobacco Research*. 2017;19(2): 133-140. Abstract only is available at: <https://academic.oup.com/ntr/article-abstract/19/2/133/2631681/Reducing-the-Density-and-Number-of-Tobacco>.

<sup>12</sup> Hill S, Amos A, Clifford D, Platt S. Impact of tobacco control interventions on socioeconomic inequalities in smoking: review of the evidence. *Tobacco Control*. 2014;23(e2):e89-e97. Available at: <http://tobaccocontrol.bmj.com/content/23/e2/e89#T1>.

Golden SD, Farrelly MC, Luke DA, Ribisl KM. Comparing projected impacts of cigarette floor price and excise tax policies on socioeconomic disparities in smoking. *Tobacco Control*. 2016;25(Suppl. 1):i60-i66. Available at: [http://tobaccocontrol.bmj.com/content/25/Suppl\\_1/i60/](http://tobaccocontrol.bmj.com/content/25/Suppl_1/i60/).

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The options discussed so far are just a few examples of cutting-edge policy solutions for tobacco control. Other innovative policy solutions—referred to as “plug-in” provisions—can be incorporated into a TRL law. For more information about plug-in provisions, including the ones mentioned here, see our [fact sheet](#).

## Who should handle implementation and enforcement?

It’s up to individual communities to decide who will implement and enforce a TRL law. Multiple agencies might be involved: one agency may issue the license (the city manager, for example, or the agency that issues general business licenses), while another agency, such as the environmental health or police department, may monitor compliance.

There is no one right way to implement and enforce a local TRL program. That said, successful programs share some characteristics. For one thing, they are overseen by a single government agency with dedicated staff members. They also plan early for enforcement that engages all the key players. And they require a license fee that is large enough to cover the full cost of administering and enforcing the program. To assist agencies in coordinating and planning, ChangeLab Solutions has created a [checklist](#) that includes all the recommended elements of a successful program.

## Can licensing be used in other ways to create a healthier retail environment?

Communities can use licensing and other strategies to improve public health in other ways by ensuring that retailers are not only complying with existing laws but also benefiting the communities they serve. For example, in neighborhoods with limited access to fresh produce and staple foods, a licensing system could require food retailers to carry these items. For more information on how public health practitioners in tobacco control, nutrition, and prevention of excessive alcohol use can work together to create a healthier retail environment, see our [resources on healthy retail policy and partnerships](#).



ChangeLab Solutions

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

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