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technical assistance legal center



for Tobacco Policy
& Organizing

† AMERICAN LUNG ASSOCIATION.
IN CALIFORNIA

Going Beyond TRL

Emerging Tobacco Retailer Policies



Leslie Zellers, JD
Director of Programs, PHLP



PHLP's team of lawyers, urban planners, and policy analysts works to improve community health by supporting public health leaders around the country.

PHLP does this by providing sophisticated legal and policy tools for use in everyday practice.





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California's Center for Tobacco Policy & Organizing

The Center for Tobacco Policy & Organizing (the Center), a project of the American Lung Association in California, assists local communities meet their policy objectives using community organizing strategies.

The Center also provides policy information and analysis regarding significant tobacco related bills, tobacco industry campaign contributions and local tobacco policy issues (including tobacco retailer licensing, outdoor secondhand smoke restrictions and smoke-free multi-unit housing).

The Fine Print

The information provided in this seminar is for informational purposes only, and does not constitute legal advice. Public Health Law & Policy does not enter into attorney-client relationships.

The primary purpose of this training is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation. PHLP incorporates objective non-partisan analysis, study, and research in all our work.



Technical Support
Q&A
Recording

*For technical assistance. email
swatkins@phlpnet.org*

Agenda:

- A Brief Overview of TRL and Plug-ins
- Explanation of Plug-ins and Model Language
- Public Support, Campaign Tips & Policies Passed
- Real World Examples

- Q & A

Going Beyond TRL
Emerging Tobacco Retailer Policies

Presenters:

Ian McLaughlin

*Senior Staff Attorney
Public Health Law & Policy*



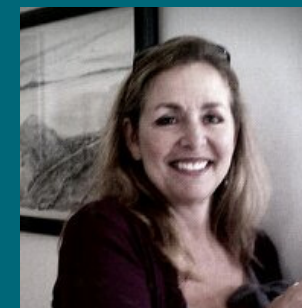
Jeannie Jung

*Organizing Coordinator
Center for Tobacco Policy & Organizing*



Dawn M. Dunn

*Administrator, Tobacco Prevention Settlement Program
Santa Barbara County Public Health Department*



Going Beyond TRL
Emerging Tobacco Retailer Policies

Presenters:

Catherine Mongeon

Staff Attorney

Public Health Law & Policy



Justin Garrett

Policy Manager

Center for Tobacco Policy & Organizing



Natasha Kowalski

Project Director, Tobacco Education Program

Santa Cruz County Health Services Agency





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Going Beyond TRL

Emerging Tobacco Retailer Policies

TRL 101: Accelerated Lesson

TRL 101: Accelerated Lesson

What is a TRL?

TRL 101: Accelerated Lesson

What is a TRL?

Why adopt a TRL?

TRL 101: Accelerated Lesson

What is a TRL?

Why adopt a TRL?

How to draft an *effective* TRL?

What is a TRL?



Why adopt a TRL?





Tobacco Retailer Licensing Is Effective

March 2011

More than 80 communities in California have adopted strong local tobacco retailer licensing ordinances in an effort to reduce illegal sales of tobacco products to minors. These ordinances require tobacco retailers to obtain a license to sell tobacco, include an annual licensing fee high enough to fund strong enforcement programs and include financial deterrents for violators through fines and penalties that include the suspension and revocation of the license.

The table below lists illegal sales rates to minors before and after a strong licensing law was enacted in 31 communities where data is available and enough time (usually at least a year) has passed after the ordinance was enacted to determine results. These sales rates were determined by youth tobacco purchase surveys administered by local agencies. It is important to note that results from the youth tobacco purchase surveys are somewhat dependent on certain factors that differ in each community, such as the age of the youth and the number of stores surveyed.

The results overwhelmingly demonstrate that local tobacco retailer licensing ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, often significantly, in all 31 municipalities with a strong tobacco retailer licensing ordinance where there is before and after youth sales rate data available. However, a licensing ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws are always needed.

For more resources on these ordinances, including the Matrix of Strong Local Tobacco Retailer Licensing Ordinances with policy and enforcement details for every strong ordinance in the state, visit www.Center4TobaccoPolicy.org/localpolicies-licensing. For model tobacco retailer licensing ordinance language, visit the Technical Assistance Legal Center at www.phpnet.org.

TABLE OF YOUTH SALES RATES BEFORE AND AFTER THE ADOPTION OF A STRONG TOBACCO RETAILER LICENSING ORDINANCE

City/County	Date Passed	Annual Fee	Youth Sales Rate Before Ordinance	Most Recent Youth Sales Rate
Banning	August 2006	\$350	77%	21%
Beaumont	December 2006	\$350	63%	20%
Berkeley	December 2002	\$427*	38%	4.2%
Burbank	February 2007	\$235	26.7%	4%
Calabasas	June 2009	\$0*	30.8%	7%
Coachella	July 2007	\$350	69%	11%
Contra Costa County	January 2003	\$160*	37%	7%
Corona	October 2005	\$350	50%	17%
Davis	August 2007	\$344	30.5%	3.8%
Delano	June 2008	\$165	23%	16%
Desert Hot Springs	August 2007	\$350	48%	4%
El Cajon	June 2004	\$698	40%	4.2%
Elk Grove	September 2004	\$270	17%	0%
Grover Beach	September 2005	\$224	46%	2.9%

continued on the next page



City/County	Date Passed	Annual Fee	Youth Sales Rate Before Ordinance	Most Recent Youth Sales Rate
Hollister	May 2006	\$269	33%	4.5%
Kern County	November 2006	\$165	34%	7.5%
La Canada Flintridge	June 2009	\$50*	47.1%	0%
Los Angeles County	December 2007	\$235	30.6%	10.9%
Murrieta	May 2006	\$350	31%	7%
Norco	March 2006	\$350	40%	6%
Pasadena	January 2004	\$225	20%	0%
Riverside	May 2006	\$350	65%	31%
Sacramento	March 2004	\$324	27%	19.7%
Sacramento County	May 2004	\$287	21%	8%
San Fernando	October 2008	\$250	38.5%	3%
San Francisco	November 2003	\$175*	22.3%	13.1%
San Luis Obispo	August 2003	\$255	17%	6.8%
San Luis Obispo County	October 2008	\$342	33.3%	14.3%
Tehachapi	February 2007	\$165	8%	5%
Vista	May 2005	\$250	39%	1.1%
Yolo County	May 2006	\$344	28%	7.9%

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2. Licensing fee covers administration and enforcement costs



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1. All retailers must obtain a nontransferable license, renewed annually
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3. Violating any tobacco law is a violation of the license





Image: www.sxc.hu



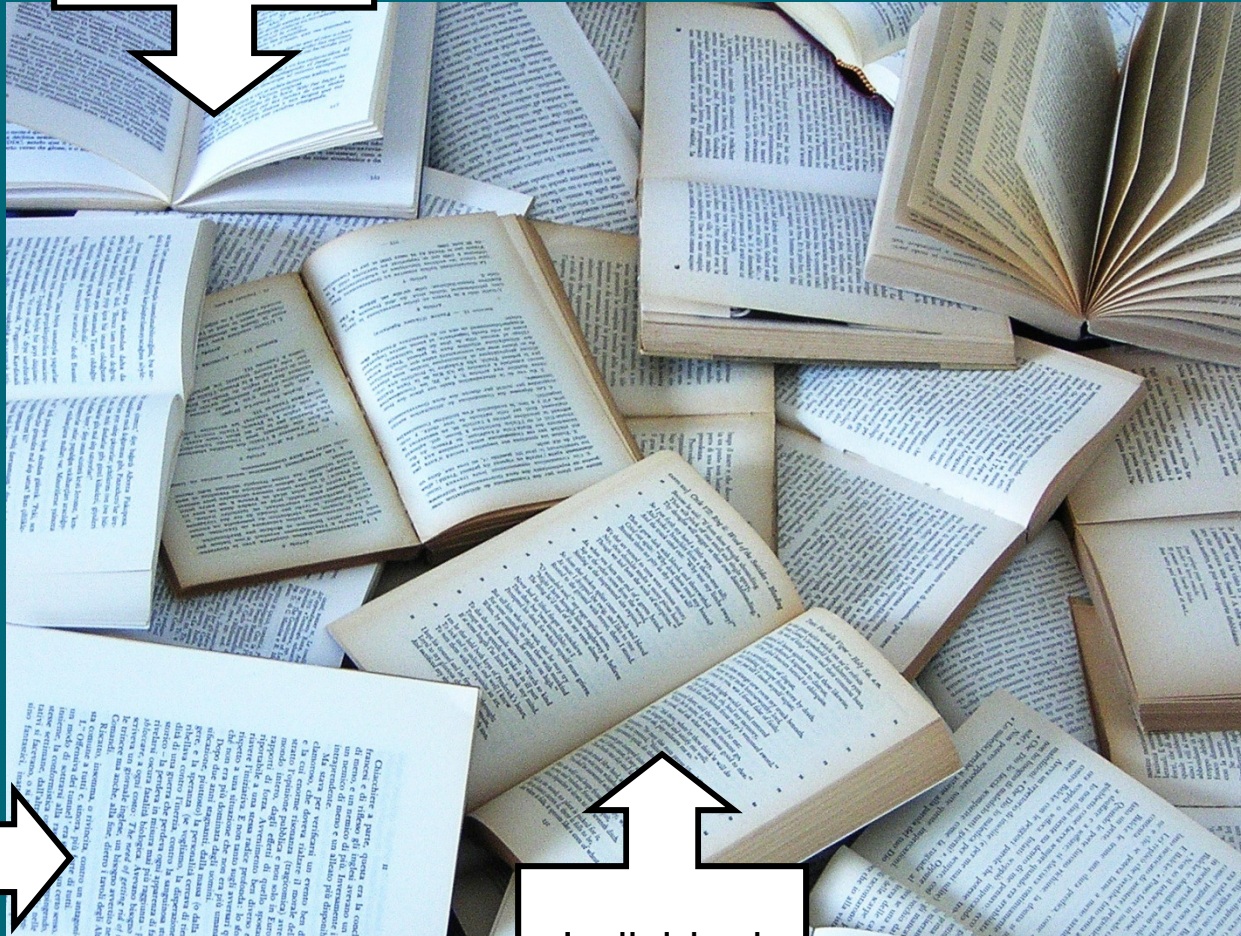
Sales
to
Minors

Self-Service Displays



Sales to Minors

Self-Service Displays



Sales to Minors

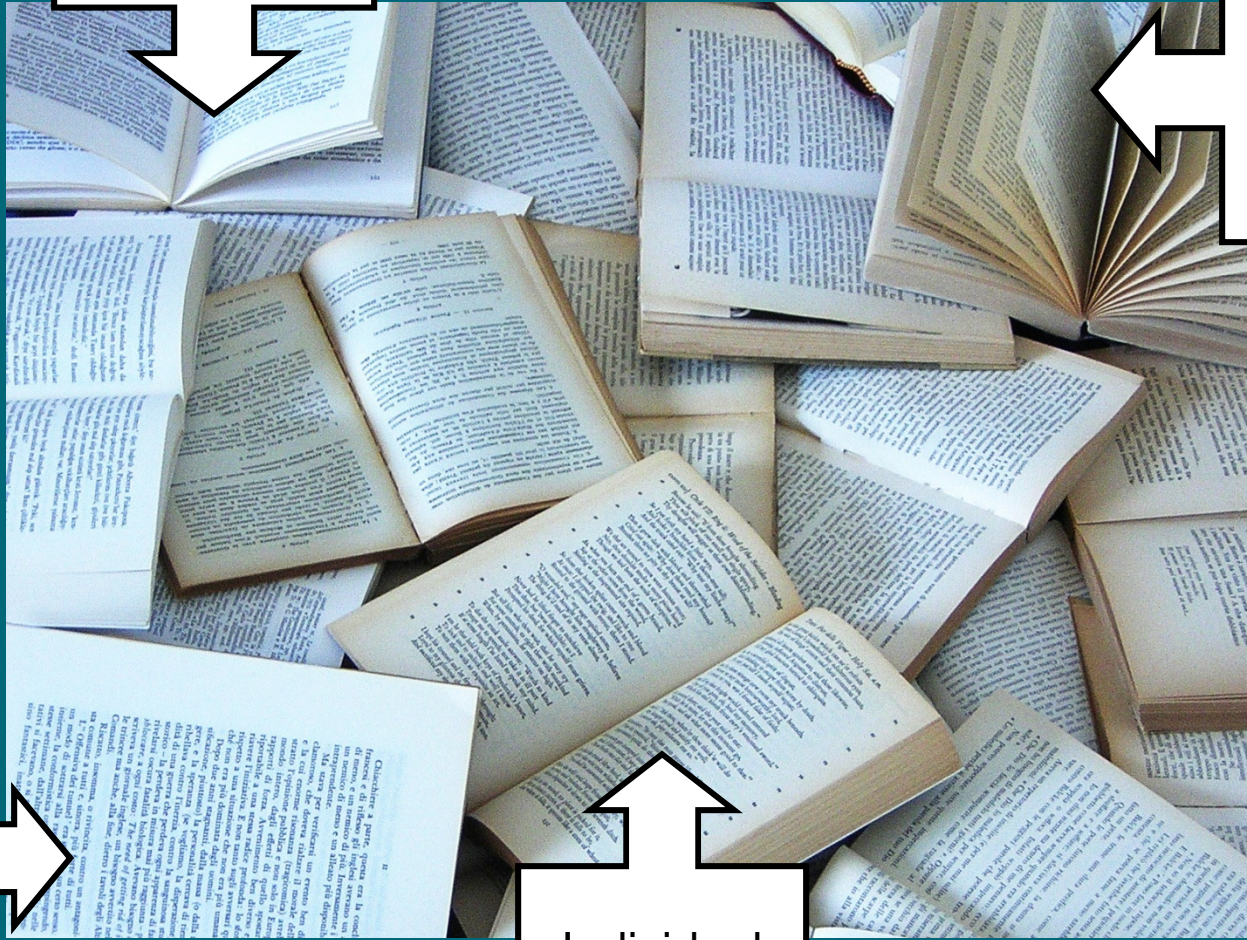
Individual Cigarettes

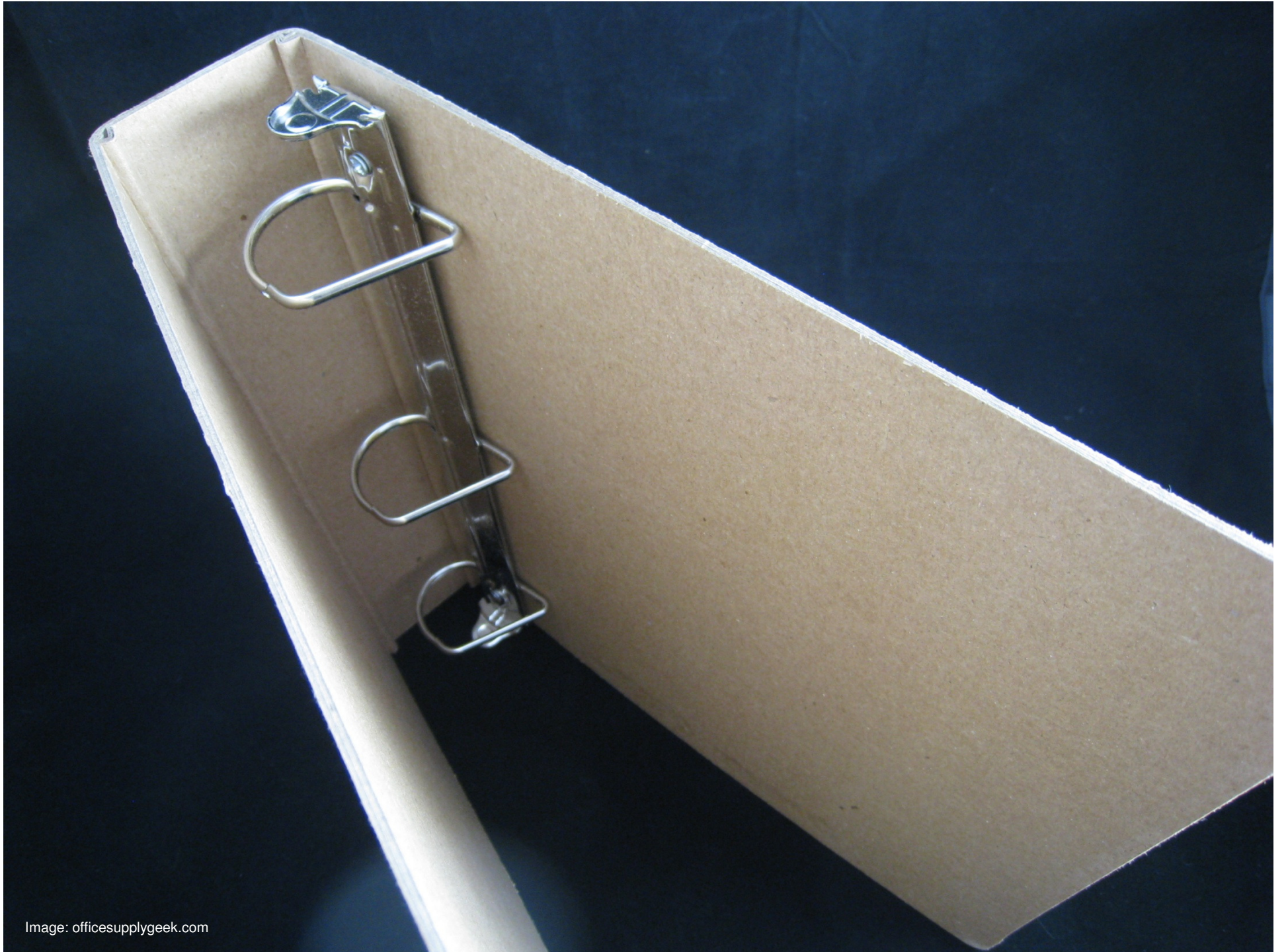
Self-Service Displays

FDA Law

Sales to Minors

Individual Cigarettes



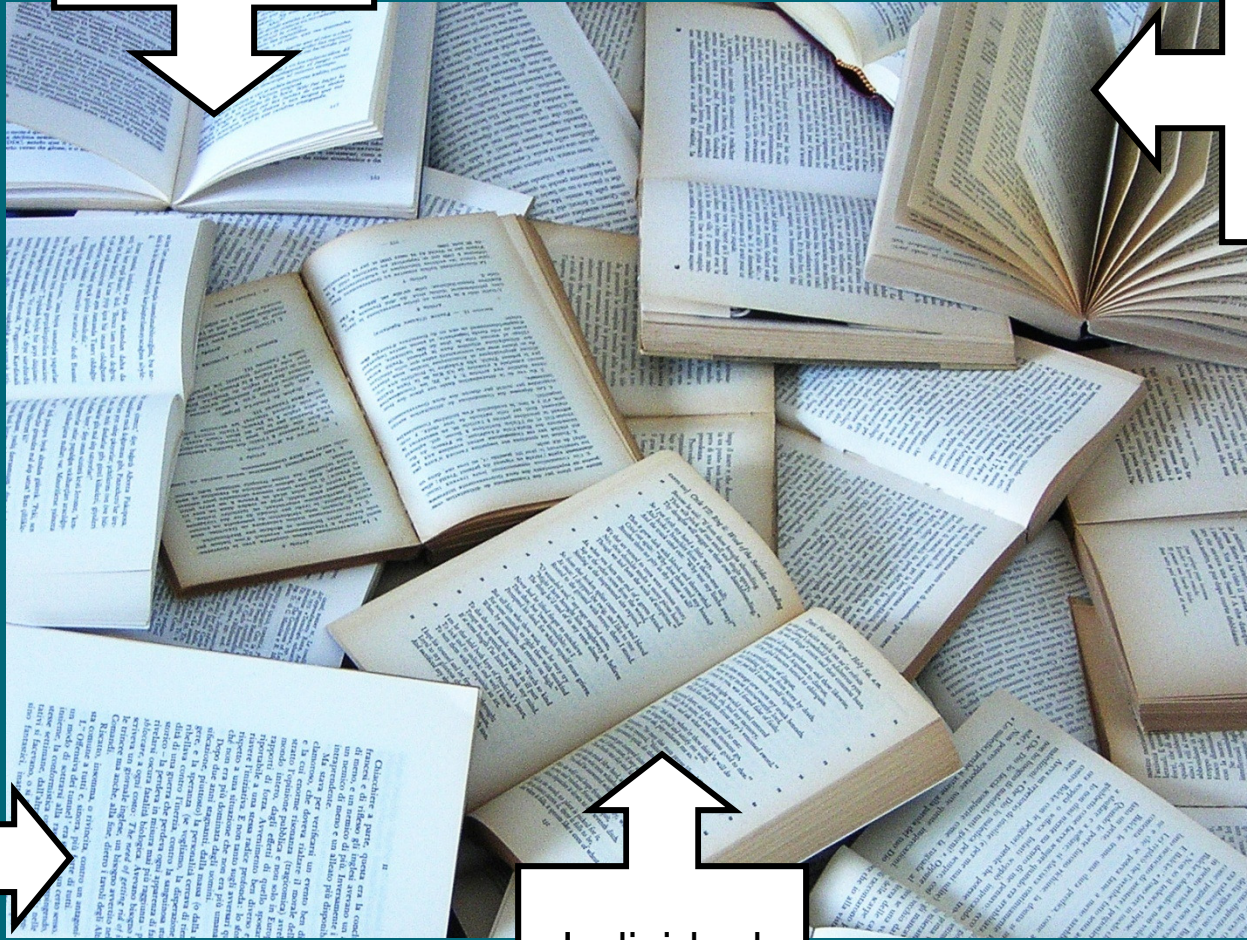


Self-Service Displays

FDA Law

Sales to Minors

Individual Cigarettes



Sales to Minors

Self-Service Displays

FDA Law

Individual Cigarettes

Not Your Grandma's
Coupon Binder!
Name of binder belongs to:
Home

- & Cleaning Items
- & Air Fresheners
- & Cosmetics
- & Oral Care
- & Skin Care
- & Hair Care
- & Feminine Care
- & Pharmacy
- & Baby
- & Pets
- & Office Supplies
- & Miscellaneous
- & Core Coupons
- & on Policies

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1. All retailers must obtain a nontransferable license, renewed annually
2. Licensing fee covers administration and enforcement costs
3. Violating any tobacco law is a violation of the license
4. Meaningful penalties: temporary suspension of the license



Home » Tobacco Control

Model Ordinance (and Associated Plug-ins): Tobacco Retailer Licensing

Model Ordinance

TALC developed this [model ordinance](#) to help California cities and counties that wish to require local tobacco retailer licensing. Licenses are one way to ensure compliance with local business standards, to reduce youth access to tobacco, and to limit the negative public health effects associated with tobacco use.

The current version of the Model Ordinance (revised in June 2008) includes minor changes, such as updated "findings," and some of the content has been reorganized. For example, all requirements and prohibitions for tobacco retailers are now located in a single section of the ordinance.

The most significant change is that TALC has drafted supplementary "Plug-in" provisions to accompany the revised ordinance, any of which can be incorporated into the Model Ordinance. Each Plug-in provides a different policy option. For example, one Plug-in enables communities to prohibit tobacco retailing in a residential zone, while another prohibits tobacco retailing in a bar or restaurant. Currently, TALC has 12 Plug-in provisions but may create others in the future.

The Plug-in provisions cannot be adopted independently; they are intended only to be incorporated into the Model Ordinance. Please consult with TALC or your local government attorney if you want to include one of these provisions in your local ordinance.

You can also download the [Checklist for Designing a Tobacco Licensing Ordinance](#), which highlights key policy options available in the ordinance, and the related [Licensing Ordinance FAQs](#).



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PHLP: Your Partner at Every Step

Can healthy policy transform a community? It can, but only if you and your community have the support and resources to hit the ground running with [effective policy tools and best-practice approaches](#) that are evidence-based.

Bookmark and Share



Downloads

	Size
Licensing Ordinance (DOC, Updated 6/08)	329 KB



public health law & policy
technical assistance legal center

Model California Ordinance Requiring a Tobacco Retailer License (with Annotations)

Revised June 2008
(Originally issued September 1998)

Developed by the Technical Assistance Legal Center (TALC),
a project of Public Health Law & Policy.

This material was made possible by funds received from the
California Department of Public Health, under contract #04-35336.

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www.phpnet.org • talc@phpnet.org • (510) 302-3380

TRL Plug-Ins



TRL Plug-Ins

TRL Plug-Ins

Eligibility Plug-ins

TRL Plug-Ins

Eligibility Plug-ins

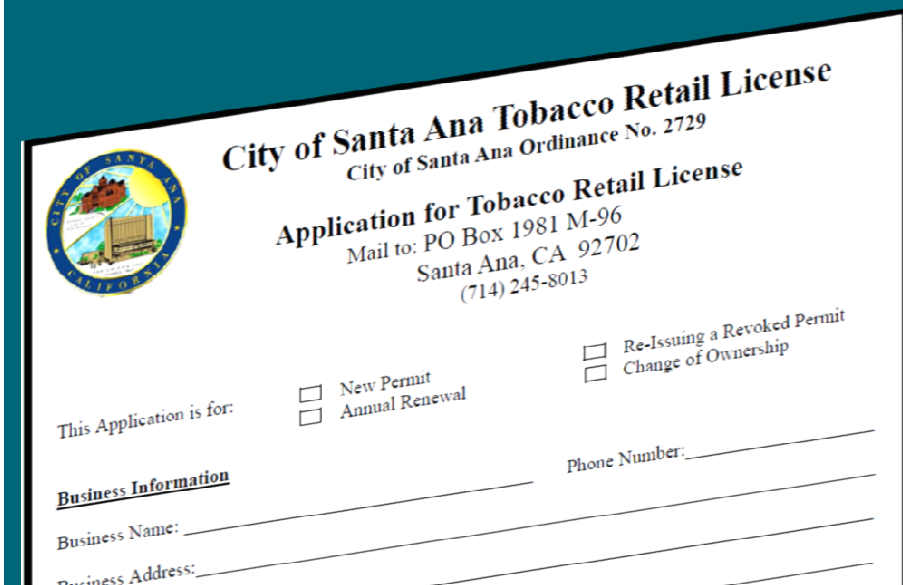
**Requirements and
Prohibitions**

TRL Plug-Ins

Eligibility Plug-ins

- WHO can sell
- WHERE can they sell

Requirements and Prohibitions



City of Santa Ana Tobacco Retail License
City of Santa Ana Ordinance No. 2729

Application for Tobacco Retail License
Mail to: PO Box 1981 M-96
Santa Ana, CA 92702
(714) 245-8013

This Application is for:

<input type="checkbox"/> New Permit	<input type="checkbox"/> Re-Issuing a Revoked Permit
<input type="checkbox"/> Annual Renewal	<input type="checkbox"/> Change of Ownership

Business Information

Business Name: _____ Phone Number: _____

Business Address: _____

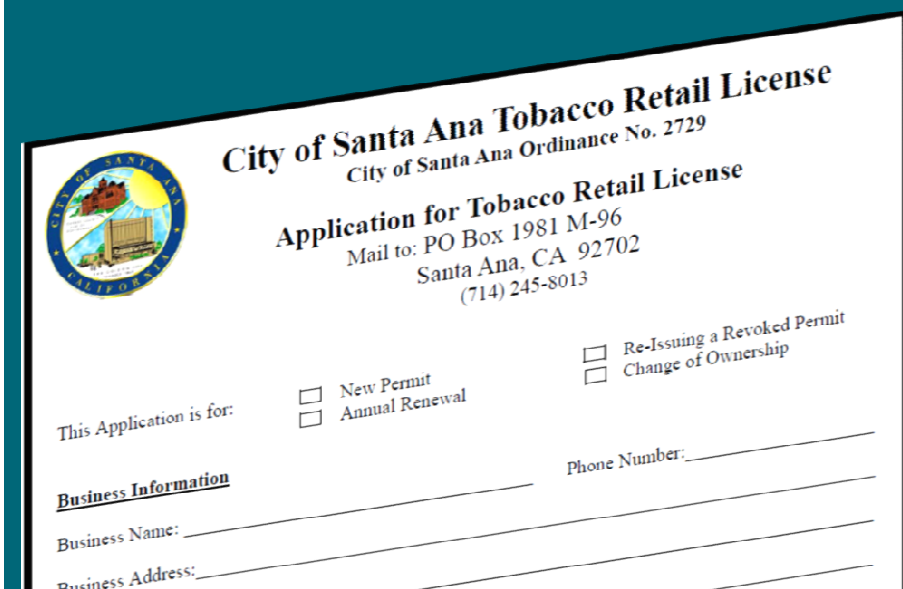
TRL Plug-Ins

Eligibility Plug-ins

- WHO can sell
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Requirements and Prohibitions

- WHAT other conditions must be met



City of Santa Ana Tobacco Retail License
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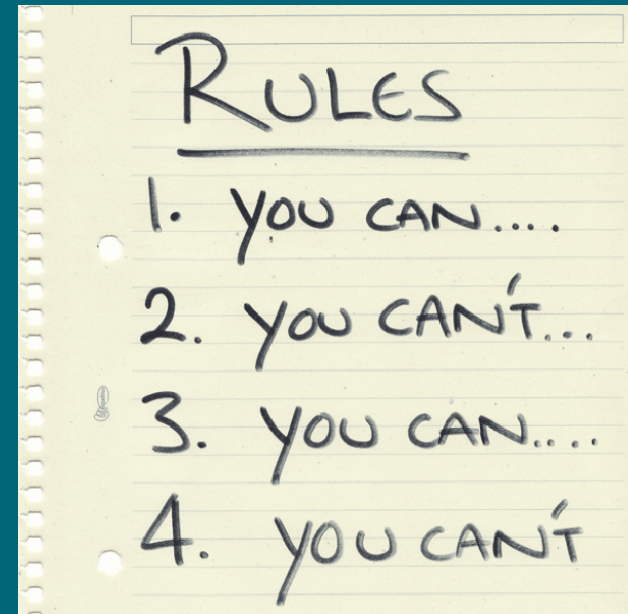
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RULES

1. YOU CAN....
2. YOU CAN'T...
3. YOU CAN....
4. YOU CAN'T

Licensing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. The options below are included in TALC's *Model California Ordinance Requiring a Tobacco Retailer License* and accompanying "plug-ins," all of which are available at www.phlpnet.org/tobacco-control. The provisions that TALC and The Center consider essential already include a check mark. Contact TALC for help drafting an ordinance based on your community's choices.

POLICY OPTIONS IN MODEL ORDINANCE

WHO MUST OBTAIN LICENSE

- All tobacco product retailers must obtain a nontransferable license
- Define "tobacco product" to include all nicotine and nontraditional tobacco products (e.g., nicotine gel, snus)
- Retailers of "tobacco paraphernalia" (e.g., rolling papers, pipes) must also obtain license
- No license may be issued to mobile vendors

ENFORCEMENT OF LICENSE REQUIREMENTS

- Licensing program will be administered by (e.g., who issues the license?): _____
- Licensing program will be enforced by _____ but also enforceable by *any* agency
 - Youth decoy operations will be conducted by (if different from enforcement agency): _____
- Number of mandatory inspections is (e.g., times each store is checked per year): _____
- The hearing process will be an *administrative process* (attorneys and court system need not be involved)
- Grant youth decoys partial immunity

CONSEQUENCES OF LICENSE VIOLATION

- Each violation results in a *temporary revocation* (or suspension) of the privilege to sell tobacco products (and paraphernalia, if applicable) for _____ days for a 1st licensing violation; _____ days for a 2nd violation; _____ days for a 3rd violation; and _____ days for a 4th violation
- Number of years past violations will be tracked (the "look-back period"): _____ (minimum of 5 years)
- Prohibit display of tobacco products during revocation (or suspension) period
- Prohibit display of tobacco product advertising during revocation (or suspension) period
- Increase revocation (or suspension) periods and penalties for retailers who sell tobacco without a license
- Seize and destroy tobacco products offered for sale without a license

"PLUG-IN" POLICY PROVISIONS

LIMITATIONS ON LICENSE ISSUANCE

- No license for a new significant tobacco retailer (e.g., a "mostly tobacco" store)
- No license for a restaurant or a bar
- Only businesses that sell alcohol for off-site consumption may obtain license
- No license for a business that allows smoking anywhere on the premises (e.g., no hookah bars)
- No license for addresses zoned residential
- No licenses near schools and youth-populated areas
- Available licenses limited by population and density

ENFORCEMENT

- Allow the retailer to pay a fine in lieu of license revocation
- Allow private citizens to get an injunction in addition to enforcement by the city or county
- Allow private citizens and local governments to sue a retailer in small claims court and win a modest fine (e.g., \$500)

REQUIREMENTS AND PROHIBITIONS FOR LICENSES

- Pay an *annual* licensing fee that *fully covers all program costs*, including administration and enforcement
- Violating *any* tobacco law is also a violation of the license
- Require license be displayed in a prominent location
- Require clerks to check ID if purchaser appears under age 27
- Prohibit all self-service displays (e.g., bar vending machines)
- Clerks selling tobacco must be old enough to purchase tobacco under state law (e.g., 18 years old)

ADDITIONAL RETAILER REQUIREMENTS AND PROHIBITIONS

- Violating storefront sign laws is a license violation
- Violating nontobacco age-of-purchase laws is a license violation (e.g., selling alcohol to a minor)
- Violating state laws prohibiting sales of drug paraphernalia is a license violation
- Tobacco look-alike products may not be sold by any person
- Retailers may not distribute free tobacco products ("sampling")

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Fact Sheet: “Plug-in” Policy Provisions for a Tobacco Retailer License

November 2011

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance (TRL). Our *Model California Ordinance Requiring a Tobacco Retailer License* (“Model TRL”) contains the essential elements for an effective licensing ordinance that can be used to enforce federal, state, and local tobacco control laws. From there, communities can include additional policy options, or “Plug-ins,” to expand the ordinance. (These Plug-ins are not intended to be adopted independently.)

This fact sheet describes each of the 15 Plug-ins. The Model TRL and Plug-ins are all available at www.phlpnet.org/tobacco-control. If you would like help adapting any of these models for your community, please contact us at www.phlpnet.org/tobaccoquestions.

Limitations on License Issuance

A local tobacco retailer licensing ordinance allows a community to exercise better control over where tobacco products are sold. These Plug-ins limit the types of businesses and the locations that are eligible for a tobacco retailer license. Limiting where tobacco is sold can reduce access to tobacco products and can also facilitate enforcement of the licensing provisions.

Licenses limited by population and density

This Plug-in can be used to limit the density of tobacco retailers in two ways: (1) by capping the total number of tobacco retailer licenses that can be issued based on population (overall density), and (2) by restricting how close tobacco retailers may be to one another (density relative to other retailers). California law limits alcohol licenses based on density, and this Plug-in applies that same rationale to tobacco retailers. One or both options can be included in a licensing ordinance. Communities also can combine this Plug-in with the “proximity” Plug-in (below) to provide even greater control over where tobacco retailers can locate.



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Model California Ordinance Requiring a Tobacco Retailer License

Plug-in:

Penalties for Violation of State Drug Paraphernalia Laws

June 2008

This supplemental policy provision is intended to be incorporated into TALC's *Model California Ordinance Requiring a Tobacco Retailer License*. It cannot be adopted independently.

Developed by the Technical Assistance Legal Center (TALC),
a project of Public Health Law & Policy.

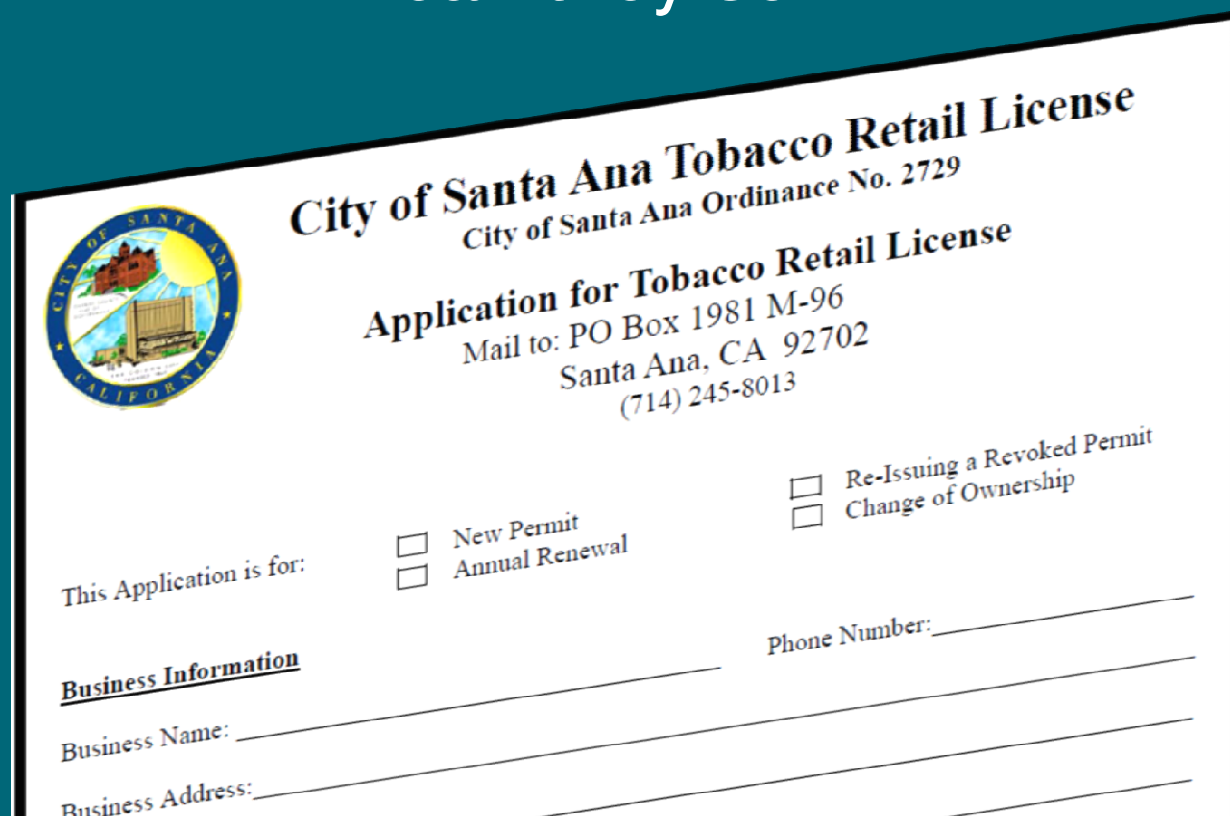
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TRL Plug-Ins: Eligibility Plug-ins

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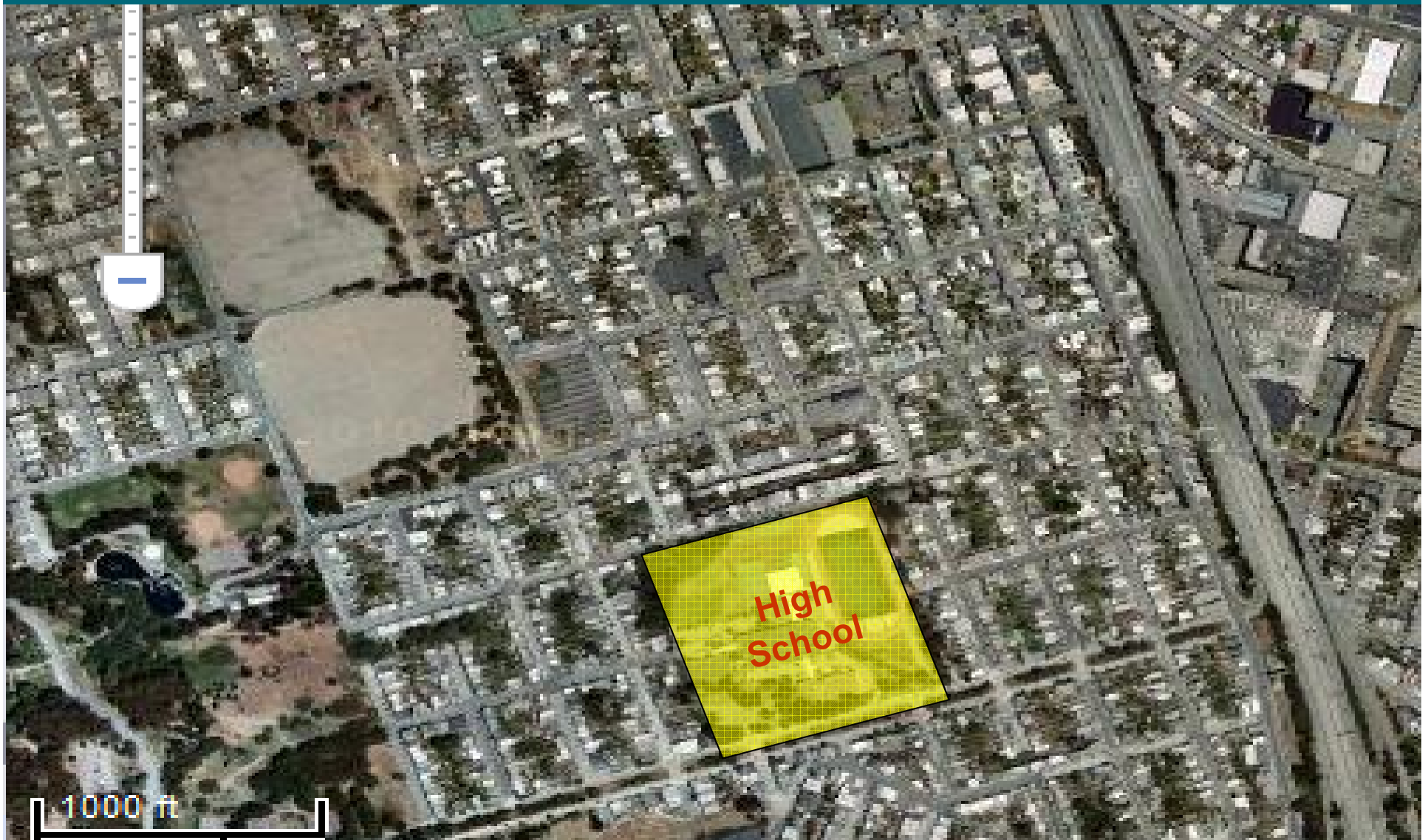
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No licenses near schools and youth-populated areas



No licenses near schools and youth-populated areas



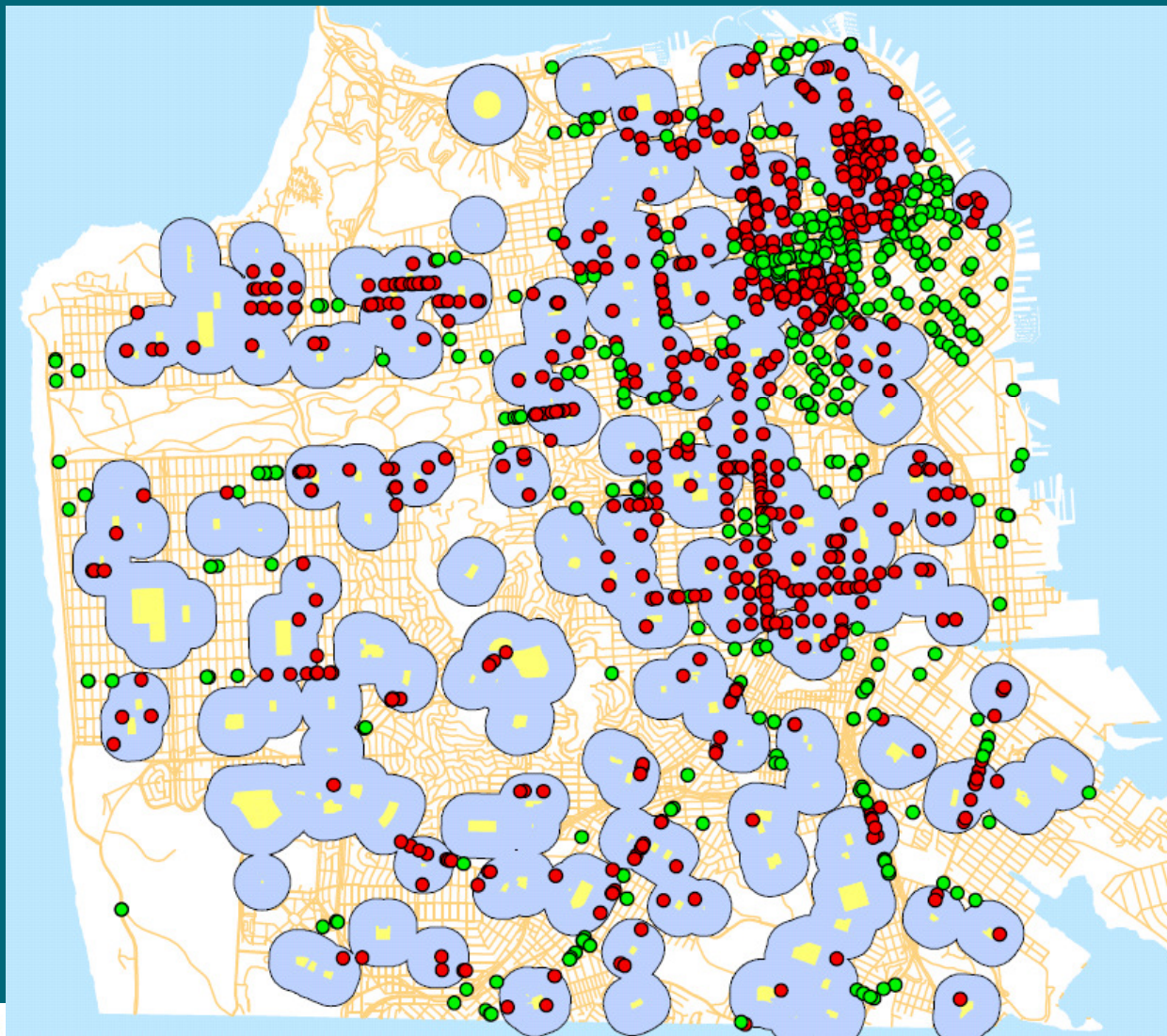
No licenses near schools and youth-populated areas



No licenses in certain zones



Licenses limited by population and density



No license for new significant tobacco retailer



Grand Prix PRICE WINNER \$28.35	PALL MALL LASTS LONGER \$32.80	USA Gold \$39.70	USA Gold \$3.35	THINK VALUE THINK LIGGETT \$29.65	OLD GOLD REAL VALUE \$36.30	OLD GOLD REAL VALUE \$3.65	DORAL SPECIAL OFFER \$37.30	CAMEL SPECIAL OFFER \$39.70	Winston SPECIAL OFFER \$37.20
Montclair You got taste! \$33.05	EVERYDAY LOW PRICE SONOMA \$3.10	EVERYDAY LOW PRICE SONOMA \$29.90	BRONCO \$29.45	No PARKING Eck's TOWING 536-8437	Newport pleasure! Newport	Montclair \$3.45	USA Gold \$32.05		

Prohibiting sale of tobacco products in specific venues



Prohibiting sale of tobacco products in specific venues

