Tobacco Retailer Density

Place-Based Strategies to Advance Health and Equity

ChangeLab Solutions

Contents

The *social determinants of health* — the conditions where we live, learn, work, and play — shape our well-being. They, in turn, are determined by the distribution of wealth, power, and resources. *Health inequities* — avoidable differences in health status between groups of people — persist when that distribution is unfair. Reducing and ultimately eliminating the unfair distribution of wealth, power, and resources can help to reduce health disparities and advance *health equity*.

This resource focuses on neighborhood characteristics and the physical, built environment. The location, density, and type of tobacco retailers in a community affect tobacco use rates and contribute to health inequities. Understanding this impact has led to a variety of strategies and approaches to improve the built environment with respect to where and how tobacco products are marketed and sold.

Tobacco Use & Health Inequities

Tobacco Use

When tobacco retailers are located near homes and schools, people's health suffers. Youth are more likely to experiment with smoking.[1,2] People who smoke consume more cigarettes per day,[3] and they have a harder time quitting.[4]

Tobacco use rates are affected by where tobacco retailers are located and how concentrated, or dense, they are in a given area. Increased availability of tobacco products is associated with increases in both youth and adult smoking rates,[5,6] even when other neighborhood factors like racial composition and socioeconomic status are taken into consideration.[7] In particular, studies have consistently shown that children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers.[8,9,10,11] Evidence has also begun to emerge that adult smokers who are trying to quit and live within a short walking distance of a tobacco retailer are less successful at sustaining cessation than those whose closest store is farther away.[12]

Children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers.

Tobacco retailers also expose individuals to tobacco advertising and marketing. With billboard, transit, and some other outdoor advertising of cigarettes prohibited by the 1998 Master Settlement Agreement,[13] tobacco advertising has largely shifted to the retail environment — both the exterior and interior of stores.[14] Tobacco advertising at the point of sale provides an environmental cue that prompts individuals to buy the product, even when they weren't originally planning to.[15] One study found that 22% of daily smokers made unplanned cigarette purchases and that point-of-sale displays influenced nearly 4 times as many unplanned purchases as planned purchases.[16] The combination of easy availability of tobacco products and exposure to tobacco advertising and marketing normalize and promote tobacco use.[17] Restrictions that decrease tobacco retailer density make tobacco products less available and decrease exposure to tobacco advertising, both of which are likely to improve public health.

Health Inequities

Tobacco retailers cluster in neighborhoods with a high percentage of low-income residents or residents of color.[18] Tobacco retailers are notably more prevalent in neighborhoods with a high proportion of African American residents and in urban neighborhoods with a high proportion of Hispanic residents.[19] These communities are targeted by tobacco companies, and they suffer disproportionately from the health harms caused by tobacco use.[20] Recent evidence also suggests that disparities in tobacco retailer density differ in rural and urban settings, with higher tobacco retailer density in urban locations[21] and strikingly lower retailer density for Hispanics in some rural communities.[22] Discriminatory distribution of tobacco retailers perpetuates existing tobacco use disparities, which in California include a smoking rate among African Americans of 17.8% and among American Indian or Alaska Natives of 29.5%, compared with 13.4% of whites.[23]

Studies have also measured the potential impact of tobacco retailer location and density on actual health outcomes. Early research suggests higher hospitalization rates for chronic obstructive pulmonary disease (for which smoking is a primary risk factor) in areas with more tobacco outlets.[24] More recent evidence shows that higher tobacco store density is associated with shorter life expectancy and more deaths, even when other factors such as age, income, and race are taken into consideration.[25]

Place-Based Strategies for Restricting Tobacco Retailer Density, Location, & Type

Place-based planning for health has been in place for centuries, from reducing the spread of communicable diseases by mapping sewage facilities for sanitation purposes to more recent land-use controls that reduce the availability of alcohol.[26] The latter includes strategies to limit the spread of alcohol outlets, which have been proven effective in reducing alcohol consumption[27] and have been upheld when challenged in court.[28] The success of this approach has led to increased interest in applying the same retailer reduction strategies to tobacco control.

A variety of strategies to limit tobacco retailers are available. Some of the most common ones are highlighted in this section. There is no one-size-fits-all solution.[29] The right solution(s) for a community will depend on the existing landscape of tobacco retailer locations, population demographics, the community's layout and land uses, and a variety of other policy adoption, implementation, and enforcement factors.

Cap the Number of Retailers: Different Approaches

Perhaps the most straightforward approach to capping the number of retailers is to set a static maximum number of stores allowed by implementing a **hard cap on the number of retailers** allowed to operate. That is, unless legislatively changed, the number would not fluctuate as it might with other strategies that predicate the cap on a variable that can change (eg, population size). **Contra Costa County** in California used this approach in 2017, capping the number of tobacco retailers at 90 for unincorporated areas,[30] which is the number of licenses that existed at the time the policy was adopted.[31]

The hard cap strategy could also apply to only a subset of tobacco retailers that may be of particular concern to a community. For example, in the Minneapolis–St. Paul, Minnesota, suburb of **Little Canada**, no limit is placed on general tobacco retailer stores, but the number of significant tobacco retailers (ie, retailers whose tobacco sales account for more than 90% of their gross revenue) is capped at 2.[32]

A variety of strategies to limit tobacco retailers are available. There is no one-size-fits-all solution.

Cities and counties can also limit retailers by setting a **cap on the number of retailers by population size**; for example, California state law limits the number of off-site alcohol outlets to 1 per 2,500 county inhabitants.[33] A number of other states also use this strategy for alcohol retailers,[34] and this strategy alone can limit or reduce retailer density if the cap is set at or below a community's existing per capita threshold. For example, if current density is 1 tobacco retailer per 1,500 residents, setting that as the threshold would cap density at the status quo. To reduce density, a city or county could set the cap at 1 per 3,000 residents.

As part of a tobacco retailer licensing (TRL) ordinance adopted in 2016, **unincorporated Sonoma County**, California, defines its allowed retailer density by population size, restricting the number of tobacco retailers in its unincorporated areas to 1 per 2,000 residents countywide,[35] or about 75 retailers total.[36] About 175 miles northeast of Sonoma County and 65 miles directly north of Sacramento is the Butte County seat of **Oroville**. Since 2013, Oroville has had a zoning restriction for a subset of tobacco retailers whose primary business is tobacco sales, limiting these significant tobacco retailers to 1 per 4,000 residents.[37] Oroville's zoning restriction recognizes that no new significant tobacco retailers are permitted until either the population grows or the number of significant tobacco retailers drops below the population-size threshold set by the city.[38]

Finally, cities and counties can implement a **cap on the number of retailers by geographic area**. In 2014, **San Francisco** adopted a density restriction, effective in 2015, that set a cap of 45 tobacco retailers per electoral district.[39] Among San Francisco's 11 supervisorial districts at the time the ordinance was adopted, the number of tobacco retail licenses ranged from a low of 37 in a district with a median household income of over $94,000 to 180 in a district whose median household income was just shy of $37,500.[40] Thus, a 6-year advocacy effort sought "to reduce the overconcentration of tobacco retail outlets in low income neighborhoods and neighborhoods of color" by halving the total number of outlets from just over 1,000 at the time of policy adoption to 495 in 10–15 years.[41] Given the pre-existing disparity in the number of licensed retailers by district, the law has reduced retailer density (and is expected to continue to reduce it) in the districts most disproportionately affected by easy and overabundant tobacco access.[42]

A San Francisco law has reduced retailer density in the districts most disproportionately affected by easy and overabundant tobacco access.

With the highest adult smoking rate among the country's 10 largest cities (23%) and almost twice the number of tobacco retailers per capita compared with other major cities, including San Francisco,[43] **Philadelphia** set a cap on the number of tobacco retailers in 2016: 1 per 1,000 people per planning district.[44] The law uses a commuter-adjusted daytime population, which means the reduction in retailers should occur primarily in residential areas rather than in the city center, where more people work during the day.[45] Before the law went into effect in 2017, the city had about 3,500 active tobacco retailer licenses and almost half of those retailers were located in low-income communities.[46] Evaluation of Philadelphia's law is planned,[47] but nothing has been published as of the release date of this fact sheet.

All of the strategies discussed so far can be implemented as a reduction in the number of retailers by attrition (eg, no new stores until a specific number is reached through natural turnover). For example, in California, **unincorporated Sonoma County**'s cap of 1 tobacco retailer per 2,000 countywide inhabitants[48] — about 75 retailers total — did not apply to the roughly 130 existing tobacco retailers who met certain requirements.[49] Instead, no new retailers are permitted until the density drops below the set per capita threshold. Similarly, **San Francisco**'s tobacco retailer cap of 45 per supervisorial district exempted existing licensed retailers,[50] relying on attrition — non-renewals of licenses — to eventually reach their reduced density goal.

Pre-existing inequities in the location and distribution of tobacco retailers might not be alleviated through one strategy alone. To ensure special consideration of such inequities, each strategy should be combined with others — for example, adding a geographical element to a population cap, as San Francisco and Philadelphia did. Still, each strategy alone can limit or reduce overall tobacco retailer density.[51]

Limit Proximity to Other Retailers

Another strategy to limit tobacco retailers is to require a minimum distance between stores. Depending on the distance and a community's layout and land uses, this option could reduce overall tobacco retailer density and address pre-existing inequities in the location and distribution of tobacco retailers. Jurisdictions can also consider proximity to retailers of other commonly co-used products such as alcohol or cannabis when creating policies on the siting of tobacco retailers.[52]

The following examples from 3 different communities demonstrate some of the possible variations of this strategy:

- In 2017, **Palo Alto**, California, prohibited new tobacco retailers from locating within 500 feet of another tobacco retailer as part of a TRL ordinance.[53] Known as the birthplace of Silicon Valley, Palo Alto encompasses roughly 26 square miles (one-third of which is open space) and has about 67,000 total residents.[54]
- Since 2011, the TRL ordinance of **Huntington Park**, California, has required that no new tobacco retailers be licensed to operate within 200 feet of another tobacco retailer.[55] Huntington Park, a city in southeast Los Angeles County, is only 3 square miles in area but has over 61,000 residents, who are predominantly Hispanic.[56]
- In 2016, **Benton County**, Oregon, enacted a TRL ordinance with a restriction that prevents new tobacco retailers from opening within 1,000 feet of another tobacco retailer.[57] Benton County's population of over 91,000 residents spans 679 square miles.[58]

In modeling studies, the strategy of requiring a minimum distance between tobacco retailers has been shown to reduce overall tobacco retailer density,[59] especially in dense, low-income, urban communities.[60] In fact, in one study testing the impact of tobacco retailer density in North Carolina, a 500-foot minimum distance between retailers reduced density by 22.1% for the state and 20.8% at the county level.[61]

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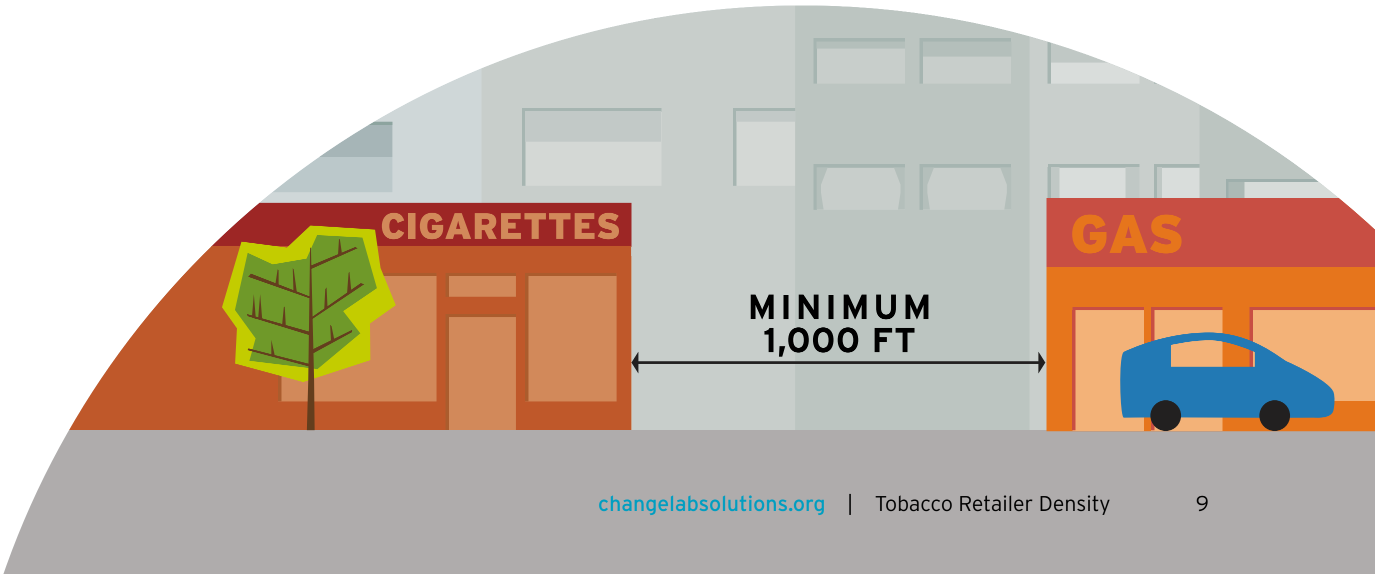

Limit Proximity to Schools & Other Youth Areas

Given consistent research findings that the number of tobacco retailers near schools correlates with increased smoking rates, a common tobacco reduction strategy is limiting how close tobacco retailers can be to schools and other youth-oriented areas such as parks, playgrounds, and child care facilities. Tobacco retailers near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions.[62] Studies that have mapped tobacco retailers have also shown that a substantial portion of access to tobacco products and exposure to point-of-sale tobacco advertising could be eliminated by creating, for example, a 1,000-foot buffer zone between schools and tobacco retailers.[63]

Research finds that the number of tobacco retailers near schools correlates with increased smoking rates.

In California's Eastern Sierra region, the city of **Bishop** adopted a zoning restriction in 2016 that prohibits tobacco retailers from locating within 1,000 feet of primary or secondary schools.[64] In southern Minnesota, **Renville County** adopted a TRL ordinance in 2015 that similarlly prohibits tobacco retailers from operating within 1,000 feet of schools, playgrounds, houses of worship, and other youth-oriented facilities.[65]

Depending on the distance selected and a community's layout and land uses, limiting tobacco retailers' proximity to youth-oriented facilities could reduce tobacco retailer density and address pre-existing inequities in the location and distribution of tobacco retailers. In modeling studies, this strategy has been shown to reduce overall tobacco retailer density,[66] with greater distances providing greater reductions in density.[67] For example, in a low-income, urban community, density decreased from 12.03 retailers per square mile to 11.27 with a distance of 500 feet, 6.75 at 1,000 feet, and 3.23 at 1,500 feet.[68] However, restricting retailers near schools could also have the unintended result of increasing tobacco retailer density in parts of a community that are not located near schools. Thus, combining this strategy with other restrictions would likely be necessary to prevent that outcome.

Prohibit Tobacco Product Sales at Pharmacies & Other Health Institutions

In 2015, 14.3% of tobacco retailers in the country had a pharmacy counter,[69] despite the fact that in 2014, CVS pharmacies had voluntarily stopped selling tobacco products and state attorneys general from 28 states had sent letters to 5 of the nation's largest retail pharmacies, encouraging them to cease selling tobacco products in their stores.[70]

Sales of harmful tobacco products in pharmacies and other health-promoting organizations like hospitals and behavioral health facilities are an inherent conflict of interest and send mixed messages to individuals about tobacco's health risks. Interestingly, research has also shown that the price of cigarettes is significantly cheaper in pharmacies, whereas bottled water costs substantially more in pharmacies than in other stores.[71] Furthermore, while bottled water prices were not related to neighborhood demographics, cigarettes cost less in low-income areas and Newport menthol cigarettes were cheaper in African American communities.[72] Thus, mandating tobacco-free pharmacies not only decreases the availability of tobacco products but also removes a source of discounted cigarettes.

Litigation against **San Francisco**'s first-in-the-nation ban on tobacco sales in pharmacies in 2008 made clear that communities may prohibit tobacco sales in pharmacies as long as all pharmacy retailers are treated similarly (equal protection under the law).[73] In the context of prohibiting tobacco product sales at pharmacies or other health-promoting institutions, the more comprehensive (ie, without exceptions) the policy is, the more likely the law is to avoid equal protection challenges.

Since San Francisco led the way, at least 10 other California communities have applied the learnings from San Francisco to their own tobacco-free pharmacy laws.[74] For example, in 2015, **Hollister**, the county seat of San Benito County in central California, prohibited pharmacies from operating as tobacco retailers as part of a TRL ordinance.[75] Local jurisdictions in **Massachusetts** have been particularly active with this strategy; over 80 cities and towns have adopted tobacco-free pharmacy laws, prohibiting over 500 pharmacies from selling tobacco products.[76] First in Massachusetts and second in the nation was **Boston**, which prohibited not only pharmacies but also health care organizations and educational institutions from selling tobacco products.[77]

Tobacco-free pharmacy policies decrease the availability of tobacco products by reducing tobacco retailer density by up to 3 times, compared with communities that do not have such policies.[78] Evidence from the nationwide CVS policy change showed that cigarette purchases declined and that smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely.[79]

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Effective Approaches to Adopting Place-Based Strategies

Communities have long used their police power to adopt laws that protect and promote the health, safety, morals, and general welfare of their residents.[80] Two of the primary ways that communities have exercised this authority is through (1) licensing regulations and (2) regulating the use of land.[81,82]

Licensing

Licensing is a tool that governments use to regulate businesses and professionals, usually to maintain a set of standards that a community deems important. A license grants the license holder permission to engage in the business or profession as long as minimum standards of conduct and operation are met. Communities set those standards, subject to state and federal limitations, and often require a fee to cover the costs of administering the license and ensuring compliance with license requirements and related regulations.

The privilege of engaging in the particular licensed business or profession is usually specific to the individual license holder. Thus, rather than creating a property right that attaches to the land where a business is located, the specific license holder is accountable for ensuring that the standards and conditions incorporated into the license are met. If license terms or conditions are violated, the license is suspended or revoked; it does not remain with the land where the business is located. Additionally, with varying eligibility requirements and standards of conduct for different types of licenses, many communities make licenses non-transferable to ensure that potential license holders are fit to engage in a particular business or profession responsibly.

A tobacco retailer license does not remain with the land where the business is located, and many communities make licenses non-transferable.

All of the characteristics of licensing just described apply in the context of **tobacco retailer licensing (TRL)**. Under tobacco retailer licensing, all retailers who want to sell tobacco products to consumers in a particular jurisdiction must obtain and maintain a license from that jurisdiction. In order to do so, a retailer must meet eligibility requirements and comply with the license's standards of conduct and operation or risk having their license suspended or revoked. License fees generally and license revocation for retailers who violate their terms make licensing itself a strategy for reducing tobacco retailer density. In fact, in **Santa Clara County**, California, the implementation of TRL resulted in an immediate reduction of tobacco retailers.[83]

Land-Use Regulations: Zoning & Conditional Use Permits

Zoning is a way to specify both general and specific uses of property and may also govern the buildings themselves (eg, size, height, location on a lot). In use-based zoning, certain areas, or zones, are assigned general yet distinct, separate uses (eg, residential, commercial, industrial, or agricultural) or even mixed uses (eg, residential and commercial). In the various zones, specific types of use (eg, tobacco retail) are then categorized as permissible; prohibited; or permitted, subject to certain conditions specified in a conditional use permit (CUP).

A CUP allows a community to make an exception for specific land uses otherwise prohibited by general zoning controls (eg, allowing a business in a residential zone) or to attach certain conditions to the use of land, even if that use is consistent with zoning uses (eg, setting requirements to mitigate excessive traffic for a specific business in a commercial zone). CUPs give local governments flexibility to make an individualized decision about the suitability of a potential use in a particular area.

For example, a zoning restriction may require that a tobacco retailer apply for a CUP in order to open their business in an area zoned for residential use. The community could stipulate that a CUP can be issued to a tobacco retailer only if the business is not located within 500 feet of a school. If the proposed location is within 500 feet of a school, the community would deny the CUP and the business would not be permitted to open.

Zoning laws grant rights attached to the land, meaning that once a parcel of land is designated for a particular use, the designation remains with the land even if there is a change in ownership. This feature makes it difficult to impose new restrictions on existing businesses. Similarly, regardless of ownership changes, a CUP can apply indefinitely to its specific location, as long as the conditions set in the CUP are met. Thus, once zoning uses are in effect for a given property, they have long-lasting impacts.

The long-term nature of zoning means that land-use regulations can be beneficial for tobacco control purposes in the long run, but they can also pose immediate and long-term challenges, depending on a community's growth and redevelopment. In communities with little growth and redevelopment, new zoning restrictions may have little or no impact on tobacco retailer density, especially in the short term. Even in communities with strong growth and redevelopment, improvements in tobacco retailer density through land-use restrictions can take many years.

Zoning laws grant rights attached to the land, and the use designation remains with the land even if there is a change in ownership. Thus, once zoning uses are in effect for a given property, they have long-lasting impacts.

Tobacco Retailer Licensing Versus Land-Use Regulations

When TRL is not a feasible option, here are some considerations in deciding whether land-use restrictions are appropriate for your community:

- **How concerned is your planning commission about health and tobacco use in particular?**
  The input of a city or county planning commission is typically required for land-use changes.
- **What is your community's interest in regulating sales practices for tobacco products (eg, price or flavor restrictions)?**
  Because zoning and CUP restrictions are about regulating land uses, TRL is better suited for more complex regulations of tobacco product sales. While it is possible to impose these types of regulations via CUPs, this approach is less than ideal because the enforcement, administration, and funding mechanisms offered by CUPs are less effective than those available through TRL.
- **Who is best suited to administer and enforce restrictions?**
  Land-use regulations are typically administered and enforced by zoning or building code departments, and CUPs often require the approval of a city council or county board of supervisors. TRL can be administered and enforced by the city or county department best suited to do so, particularly because the licensing fee creates a funding stream to cover ongoing program costs.
- **Will restrictions apply to existing tobacco retailers?**
  Imposing new land-use restrictions on existing businesses can be difficult, but it is possible. New licensing requirements can be applied to existing businesses relatively quickly, given that license terms are usually a year. Grandfathering and amortization are discussed in the next section.

TRL is better suited for more complex regulations of tobacco product sales and can be applied to existing businesses relatively quickly.

Additional Policy Implementation & Enforcement Considerations

When deciding on the best way to reduce the availability of tobacco products and advance health equity, communities may want to consider a variety of additional factors:

- Geographic information systems (GIS) are a tool that can be used to present spatial data. **GIS mapping** can be helpful for showing a community's current tobacco retailer landscape (eg, identifying store locations and their proximity to each other, schools, and other points of interest); measuring retailer density in different neighborhoods; showing how different minimum distance requirements would affect various factors; or overlaying population demographics to provide information on existing and potential disparities as well as to help with selection of the most appropriate strategies.
- Determining the **impact** of new tobacco retailer location, density, and type restrictions on existing businesses is important. This consideration may be particularly important in underserved communities. Exempting existing businesses is often the default choice for political or other reasons, but it is not required. As already discussed, it can be difficult to apply new land-use regulations to existing businesses, but it is possible. And in the context of TRL, communities have a number of choices, including applying restrictions to existing businesses. When implementing restrictions on existing retailers, communities may want to consider the following options:
    - **Grandfathering** existing retailers memorializes the status quo and can limit the proliferation of additional tobacco retailers, but it can also minimize the practical effect and dramatically slow the impact of TRL in improving public health and advancing health equity. Awaiting natural turnover of businesses through either failure or changes in ownership may seem like a gradual phase-out, but in reality, grandfathering reduces competition among existing retailers and may have the unintended result of keeping the status quo indefinitely. Adding a **sunset provision** to any grandfathering policy can limit these drawbacks to a specific period of time.

Grandfathering reduces competition among existing retailers and may have the unintended result of keeping the status quo indefinitely, but a sunset provision can limit these drawbacks.

- **Amortization**, conceptually similar to a sunset provision for grandfathering, is employed in land-use planning to eliminate nonconforming land uses. Amortization allows existing retailers to operate during a set time period (eg, a few months) to recover their investment before the nonconforming use must be terminated. The appropriate time period will vary by jurisdiction, but amortization periods have been upheld by courts in other contexts as a constitutional way for local governments to balance the public interest and the financial impact on a private business.

Conclusion

Tobacco retailer licensing is a proven effective means of restricting tobacco retailer density and reducing access to and use of tobacco products. Depending on state law and a locality's licensing authority, TRL may be the best strategy for reducing tobacco retailer density. All California cities and counties have the legal authority to enact TRL.[84] By implementing a comprehensive TRL policy, a community can help prevent illegal access to tobacco products, decrease tobacco product use and initiation among its most vulnerable populations, and enjoy the health benefits of reduced tobacco use.

Resources from ChangeLab Solutions

- For a more detailed guide to licensing and zoning, see *Licensing & Zoning: Tools for Public Health*.
  changelabsolutions.org/publications/licensing-zoning
- For a look at how licensing can be used to achieve public health goals, see *Tobacco Retailer Licensing: An Effective Tool for Public Health*.
  changelabsolutions.org/publications/tobacco-retailer-licensing
- For a more in-depth look at how TRL works in practice, read *Show Me Your License: The Basics of Tobacco Retailer Licensing*.
  changelabsolutions.org/publications/show-me-your-license
- For a comprehensive strategy to implement a TRL policy, see *Tobacco Retailer Licensing Playbook*.
  changelabsolutions.org/publications/tobacco-retailer-licensing-playbook
- For answers to frequently asked questions about TRL, visit Tobacco Control FAQs.
  changelabsolutions.org/tobacco-control/ask-question#licensing
- For model TRL ordinance language, check to see whether an organization in your state has produced model language or visit California Comprehensive Tobacco Retailer Licensing: Model Ordinance, Checklist, and Supplemental Plug-Ins.
  changelabsolutions.org/publications/model-TRL-Ordinance
- For a broader look at regulating the sale and marketing of tobacco products, read the *Point of Sale Playbook*.
  changelabsolutions.org/publications/point-of-sale

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Acknowledgments

This fact sheet was written by Darlene Huang (consultant), with assistance from Jessica Breslin (staff attorney), Erin O'Malley (legal fellow), Pratima Musburger (program director), and Derek Carr (staff attorney). Editorial and design support was provided by Carolyn Uno (copywriter & editor) and Kim Arroyo Williamson (director of communications). All are affiliated with 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.

This material was made possible by funds received from Grant Number 14-10214 with the California Department of Public Health, California Tobacco Program.

Design and illustration by Karen Parry | Black Graphics