



## Using Licensing and Zoning to Regulate Tobacco Retailers

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.<sup>1</sup> For more details about these policy considerations, please contact the Consortium.

### Licensing and Zoning

State and local governments are interested in monitoring and increasing compliance with tobacco control laws, such as laws prohibiting sales of tobacco products to minors. They are also interested in reducing the rates of youth initiation and adult consumption of tobacco products.<sup>2</sup> Licensing and zoning laws are two long-accepted methods governments may use to accomplish these goals.

The general concept of tobacco licensing is that, consistent with its police power to protect and promote the health of its citizens, a governmental unit can require all businesses that sell tobacco to purchase a license from the government. Zoning ordinances, on the other hand, are generally used to keep incompatible uses of land apart from one another. And when used in conjunction with conditional use permits, zoning can accomplish results similar to licensing.



Many governments already have a history of applying licensing or zoning laws to businesses such as liquor establishments or gun shops. These existing systems might provide a tried-and-true framework that could be adapted to fit the needs of a tobacco control law and might also provide governmental employees who are well-versed in the implementation and enforcement of licensing and zoning laws. This brief guide offers pointers on how governments can use licensing and zoning to control the locations of tobacco retailers and increase compliance with tobacco control laws.

## Policy Benefits

Ordinances that control access to tobacco products can benefit the public in several ways. To begin with, both licensing and zoning ordinances can enable governments to place conditions on tobacco retailers, such as requiring compliance with tobacco control laws, restricting the use of coupons, regulating the placement of products or advertising, and other options that advance public health concepts. These laws can also facilitate the creation of comprehensive lists of tobacco retailers, which government inspectors can then use to ensure retailers are complying with tobacco tax laws. In turn, the existence of a license provides governments with a direct and effective enforcement mechanism by which a non-compliant retailer can be prohibited from selling tobacco products or from doing business.

Licensing and zoning laws can also control the location, density or number of retailers—which in turn can benefit public health by lowering the rate of youth initiation. For example, a licensing ordinance can be structured to prohibit a license from being issued for retailers seeking to be located within 1,000 feet of youth-oriented facilities. Similarly, a zoning ordinance could require that tobacco retailers be located in zones that do not contain facilities frequented by youth. The same licensing and zoning laws could also lower the density and quantity of tobacco retailers. For instance, a law could require tobacco retailers to be located a certain distance from one another, could limit the total number of retailers allowed in an area, and could prohibit the transfer or expansion of existing tobacco retailer buildings.

## Policy Elements

Effective licensing and zoning ordinances generally contain several common components.

- **Clear definitions and concise language:** As with any law, tobacco control laws must be worded clearly and concisely. Carefully avoid vague or ambiguous language.
- **Well-crafted implementation process:** Licensing and zoning laws should also specify the means by which a retailer applies for, receives, and maintains permission to sell tobacco products. These provisions can include the type of forms to be filed, deadlines and fees for filing, an annual renewal process, and the ramifications of any failure to meet such requirements.
- **Appropriate fees:** The fees assessed to a tobacco retailer should be set at an amount that takes into account the cost of administering the law. For example, annual licensing fees can be used to offset the salary of employees, the cost of inspections, and other overhead and logistical aspects of administering, implementing, and enforcing the law.
- **Robust enforcement options:** The law should clearly describe the type of conduct it prohibits. Laws can require compliance with any and all federal, state and local laws

that apply to the retailer, or could more narrowly require compliance with certain aspects of tobacco control laws, such as prohibitions against sales to minors, taxation statutes, promotional restrictions, and the like.

- **Fines, penalties and appeals process:** The licensing or zoning laws should explain the penalties for each violation of the law. For instance, penalties could include a graduated system of warnings and fines. Further penalties for certain violations could result in the suspension or revocation of the ability to sell tobacco products. Additional provisions could explain how penalties can be appealed.

## Challenges

Tobacco licensing and zoning laws can face several legal challenges, including issues involving:

- **Authority:** First, the governmental unit needs to have the power to carry out a licensing or zoning scheme. While states generally have the power to regulate in this manner, a local government's authority to do so depends largely upon the authority a state has preserved for itself and granted to communities through special legislation, home rule charters, or similar laws. Also, there needs to be a focus on whether any laws preempt the government from carrying out licensing or zoning schemes related to tobacco retailers. Note that simply because a governmental unit is not currently using licensing or zoning to regulate businesses does not mean the power does not exist. It may be that the power exists, but simply hasn't been put to use.
- **Political and Administrative Realities:** If a government has the authority to license or zone, the determination needs to be made about which option is the best fit. For example, existing tensions unrelated to tobacco control efforts may make one option more politically viable than the other. Also, if the government has an existing licensing or zoning framework, give some thought to whether the governmental units administering such schemes might assist or hinder tobacco control efforts.
- **Existing Businesses:** Regardless of the option chosen, part of the process should include a comprehensive analysis of how the proposed requirements would treat those existing businesses whose location or activity would be out of compliance. Drafters should fully understand the legal ramifications of placing conditions on such businesses.

## Examples and Select Policies

Below are examples of zoning and licensing policies for tobacco retailers. If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies.

Location	Name	Policy Type	Link
<i>City Ordinance Boston, MA</i>	Limiting Tobacco Access by Youth	Licensing	<a href="http://modelpolicies.thepraxisproject.org/node/94">http://modelpolicies.thepraxisproject.org/node/94</a>
<i>City Ordinance San Francisco, CA</i>	Permits for the Sale of Tobacco	Licensing	<a href="http://library.municode.com/index.aspx?clientId=14136&amp;stateId=5&amp;stateName=California">http://library.municode.com/index.aspx?clientId=14136&amp;stateId=5&amp;stateName=California</a> <sup>3</sup>
<i>Ordinance of Santa Clara County, CA</i>	Regulates Licensure of Tobacco Retailers	Licensing	<a href="http://www.sccgov.org/SCC/docs%2FEnvironmental%20Health%2C%20Department%20of%20%28DEP%29%2Fattachments%2FTMPKeyboard203261357.pdf">http://www.sccgov.org/SCC/docs%2FEnvironmental%20Health%2C%20Department%20of%20%28DEP%29%2Fattachments%2FTMPKeyboard203261357.pdf</a>
<i>City Ordinance Homer Glen, IL</i>	Licensing Retailers of Tobacco and Tobacco Products	Licensing	<a href="http://www.homerglenil.org/Ordinances/OR05-063TobaccoLicense.pdf">http://www.homerglenil.org/Ordinances/OR05-063TobaccoLicense.pdf</a>
<i>City Ordinance Mountain View, CA</i>	Regulating Significant Tobacco Retailers	Zoning	<a href="http://library.municode.com/HTML/16508/level3/PII_C36_AXII-C.html#PII_C36_AXII-C_sA36.42.160">http://library.municode.com/HTML/16508/level3/PII_C36_AXII-C.html#PII_C36_AXII-C_sA36.42.160</a>
<i>City Ordinance Henderson, NV</i>	Requiring Zoning of Tobacco Retailers in Relation to Youth Dancehalls	Zoning	<a href="http://www.cityofhenderson.com/community_development/docs/devcode/Chapter%2019.5%20-%20Use_Regulations.pdf">http://www.cityofhenderson.com/community_development/docs/devcode/Chapter%2019.5%20-%20Use_Regulations.pdf</a> <sup>4</sup>

## Other Helpful Resources

The Consortium's parent organization, the [Public Health Law Center](#), has a webpage dedicated to the Tobacco Control Legal Consortium. The website includes several publications that discuss tobacco licensing and zoning laws in considerable detail.<sup>5</sup> The [Center for Tobacco Policy & Organizing](#) also maintains a webpage that contains resources related to strong local licensing ordinances in California.

## Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at [publichealthlaw@wmitchell.edu](mailto:publichealthlaw@wmitchell.edu) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

## Notes

<sup>1</sup> The information contained in this document is not intended to constitute or replace legal advice. We encourage anyone considering the implementation of any tobacco-related law or policy to seek out local legal counsel to obtain legal advice on these issues.

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<sup>2</sup> J. Paynter et al., *Point of Sale Tobacco Displays and Smoking Across 14-15 Year Olds in New Zealand: A Cross Sectional Study*, 18 TOBACCO CONTROL 268, 272 (2009). The article discusses, in part, how youth exposure to tobacco marketing “at the point-of-sale is significantly associated with being susceptible to smoking, experimenting with smoking and current smoking.”

<sup>3</sup> See Article 19H.

<sup>4</sup> See Section 19.5.5.FF.9, at 5-103.

<sup>5</sup> Publications on the Public Health Law Center’s website that discuss licensing and zoning include: [Regulating Tobacco Retailers: Options for State and Local Governments](#); [Licensed to Kill: Tobacco Retailer Licensing as an Effective Tobacco Control Tool](#); and [Local Land Use Regulation for the Location and Operation of Tobacco Retailers](#).

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