


# KERN COUNTY'S TOBACCO RETAILER LICENSING PROGRAM

## A Case Study

 The purpose of this case study is to examine Kern County's tobacco retailer licensing program and how its enforcement efforts throughout the county have been successful by using one enforcing agency.

California law<sup>1</sup> requires that tobacco retailers obtain a state license to sell tobacco. However, local jurisdictions in the state have taken further precautions on the sale and distribution of tobacco products by implementing a local tobacco retailer licensing program. A tobacco retailer license (TRL) helps to ensure that tobacco retailers are compliant with local, state, and federal laws while addressing public health concerns in the tobacco retail environment such as the illegal sale of tobacco to minors. TRLs have helped local jurisdictions ensure that retailers are held accountable for violating tobacco control laws. Implementation and enforcement of a TRL can be especially challenging in rural communities where resources are limited. Nevertheless, communities such as Kern County have been able to adopt and



*Tobacco products purchased by youth decoys through Kern County's tobacco retailers licensing program.*

implement their TRL ordinance, leading the way for eight cities within the county to adopt the same TRL ordinance. This is an illustration of successful tobacco policy implementation in California, and how adopting a policy at the county level can result in other incorporated cities in the county adopting the same policies.

## Background of Kern County

Kern County is located in California's southern central valley. The county is the third-largest county in California by area, covering 8,163 square miles. In 2018, Kern County's population was 896,765. The county has small rural communities such as Weedpatch, Ridgecrest, McFarland, and Shafter. Kern has a large oil and agricultural presence, which largely comprises the county's economy.

## Adopting the County Tobacco Retailer License

On October 31, 2006,<sup>2</sup> the Kern County Board of Supervisors unanimously passed a tobacco retailer licensing ordinance, which gave the local health department the authority to enforce the policy in the unincorporated areas of the county. The Tobacco Free Coalition of Kern County helped push this initiative and framed the idea of a TRL to address the ongoing concern about youth tobacco sales. After the policy was passed, county administrators sent the ordinance to the incorporated cities in Kern County so they too could adopt the county ordinance. Since then, eight cities within the county have adopted the county ordinance, giving the local county health department the authority to enforce in those jurisdictions.

**“Kids are our future. As adults, we need to do more to protect them from tobacco and passing these policies is going to get us there.”**

Bernardo Ochoa, MPH, Chair of the Tobacco Free Coalition of Kern County

## One Lead Enforcing Agency

The Kern County Public Health Services Department is the sole enforcement agency for the jurisdictions that have adopted a TRL. Having one enforcing agency has helped with uniformity of enforcement efforts throughout the county, which was an essential part of the implementation process as new cities were passing the county ordinance. Also, having the jurisdictions adopt the same TRL ensured that tobacco retailers adhered to the same policies and standards. The Kern County Public Health Services Department assumed the role of sole enforcing agency for the county. This helped smaller communities address the ongoing concern that tobacco retailers were not complying with local and state laws, without imposing additional burdens on limited community resources. Rural communities, like those in Kern County, often struggle with implementation and

enforcement due to already limited services and resources. When a larger entity such as the county health department takes on the role of enforcement, small rural jurisdictions can rely on it to keep tobacco retailers accountable for license compliance. The local health department’s enforcement role and the number of communities within the county that have adopted the county TRL have led to a decline in youth purchase rates throughout Kern County. Currently, Kern County Public Health Services Department oversees the TRL for 529 stores in the county.

### Cities Following Countywide TRL

<b>Tehachapi</b> February 2007	<b>Wasco</b> March 2007	<b>Delano</b> June 2008	<b>Arvin</b> September 2016
<b>California City</b> February 2007	<b>McFarland</b> May 2007	<b>Taft</b> August 2016	<b>Shafter</b> November 2016

### Risk-Based Approach

To ensure enforcement efforts are successful, jurisdictions need to update their tobacco retailer license ordinances regularly. Since the original Kern County TRL ordinance was passed in 2006, it has been amended several times. Changes have included updated definitions, increased permit fees, and the addition of a risk-based approach in tobacco retailer permitting and inspection. Kern County tobacco retailers are categorized as low risk, moderate risk, or high-risk retailers, depending on the number of violations they have received in the past. Retailers with a history of violating the TRL pay a higher fee for their annual license, compared to those with no violations. Adding a risk-based approach to the TRL incentivizes retailers to comply with laws.

### Tobacco Retailers Permit

	Application Fee	Permit Fee	Total Fees
<b>Low Risk</b>	\$128.50	\$246.72	\$375.22
<b>Moderate Risk</b>	\$128.50	\$488.30	\$616.80
<b>High Risk</b>	\$128.50	\$729.88	\$858.38

## Fees and Penalties

To obtain a license and comply with their TRL, retailers must not only pay the annual fee, but also receive education and training on local, state, and federal laws. Risk-based administrative fees help with daily enforcement operations, including the hiring of a temporary employee between the age of 18 and 20 years old, who helps with underage decoy operations. A youth decoy working specifically for the program helps with continuous compliance checks of the large number of retailers overseen by the department. If a tobacco retailer sells to the department's youth decoy, the retailer will receive a letter and an invoice describing the violation and the penalty, which is based on the retailer's violation history. Below are the sanctions and penalties imposed on retailers:

### Retail Sanctions and Penalties

	Sanction	Fine
<b>First Violation</b>	Notice	\$257 fine
<b>Second Violation</b>	Permit suspended for up to 30 days	\$514 fine
<b>Third Violation</b>	Permit suspended for up to 90 days	\$1028 fine
<b>Fourth Violation</b>	Permit suspended for up to 180 days and/or revoked	\$1028 fine and every subsequent violation

## Administrative Review

Tobacco retailers who wish to challenge the violation can request a hearing with the director of the county health department. If the department decides to uphold the violation, the tobacco retailer may appeal the department's decision to the county board of supervisors.

## Success in Kern County

Since the implementation of the tobacco retailer licensing program, Kern County has seen a decrease in youth purchase rates. In 2016, 12 percent of tobacco retailers in Kern County violated the county's TRL. In 2018, that number declined to 4 percent. A sole enforcing agency creates uniform enforcement and retailer accountability. These rates are likely to continue to drop as cities consider additional TRL provisions.



## Looking Toward the Future

This is only the beginning for Kern County, as the Tobacco Free Coalition of Kern and the youth coalition Students Working Against Tobacco are continuously working on adding TRL provisions. In November 2019, the city of Delano passed a flavored tobacco prohibition — the first flavors ban in California’s central valley region. Both coalitions championed for this policy and hope to have the same success in other jurisdictions to address the ongoing concern about youth using flavored tobacco. Kern County is continuously striving for additional tobacco control policies and the local health department is willing to work with those cities that decide to add TRL provisions. Just as the county is striving for more policies, the tobacco industry is simultaneously striving for new tactics to get around local tobacco control efforts.

## Serving Community Needs

There is no one-size-fits-all model when it comes to enforcing a TRL. TRLs and their policy provisions are most effective when tailored to each community’s respective needs. These needs vary, depending on the resources available and the community’s readiness to adopt those policies. In rural communities, readiness to pass tobacco control policies can often be challenging when limited resources and capacity are available for enforcement. The strategy that best worked for this rural Kern County community was for local cities to adopt the county ordinance and one sole agency to enforce it. By taking the first step and adopting the ordinance, Kern County led the way for other jurisdictions within the county to follow. One agency’s enforcement throughout the county, including incorporated cities, resulted in a successful TRL program implementation. Using realistic strategies to implement and enforce tobacco retail policies can work in turn to create a tobacco-free generation.

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## Endnotes

- 1 CAL. BUS. & PROF. CODE § 22970-22983.
- 2 KERN COUNTY, CAL. CODE § 8.60, [https://library.municode.com/ca/kern\\_county/codes/code\\_of\\_ordinances?no-deld=TIT8HESA\\_CH8.60TOREPE](https://library.municode.com/ca/kern_county/codes/code_of_ordinances?no-deld=TIT8HESA_CH8.60TOREPE).
- 3 Bridget Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1871-73 (2015), <https://jamanetwork.com/journals/jama/fullarticle/2464690>.