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Law and Policy Partnership to End the Commercial Tobacco Epidemic

KERN COUNTY'S TOBACCO RETAILER LICENSING PROGRAM

A Case Study

This updated case study describes Kern County's tobacco retailer licensing program and how its enforcement efforts throughout the county have been successful in using one enforcing agency to regulate the unincorporated county as well as incorporated cities.

California law[1] requires that tobacco retailers obtain a state license to sell commercial tobacco products.[2] However, local jurisdictions in the state have taken additional precautions regarding 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 also addressing public health concerns in the tobacco retail environment, such as the illegal sale of tobacco to minors. TRLs help 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

Flavored tobacco products purchased by youth decoys from their tobacco retailer licensing program.

Photo: Kern County Public Health Services Department

are limited. Nevertheless, communities such as Kern County have been able to adopt and implement their TRL ordinances, leading the way for nine cities within the county to adopt the same TRL ordinance. (Kern County uses the term "tobacco permit" instead of "tobacco license.") 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. It is an especially helpful success story for rural communities and others who may have limited resources available for enforcement.

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 2022, Kern County's population was 916,108. A third of this population lives in the unincorporated county and a third in Bakersfield, the largest city in the county. The county has small rural communities such as Weedpatch, Ridgecrest, McFarland, and Shafter. Kern's economy is based largely on agriculture and petroleum extraction, and it also has a strong aviation, space, and military presence.

Adopting the County Tobacco Retailer License

On October 31, 2006, 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.[3]

The Tobacco Free Coalition of Kern County helped push this initiative and presented 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, nine cities within the county have adopted the county ordinance, giving the local county health department the authority to enforce in those jurisdictions as well.

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

"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, Chair of the Tobacco Free Coalition of Kern County

jurisdictions adopt the same TRL ensured that tobacco retailers adhered to similar policies and standards. Having a sole enforcing agency for the county 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, the Kern County Public Health Services Department oversees the TRL for hundreds of stores.

Cities Following Countywide TRL

Tehachapi February 2007	**McFarland** May 2007	**Arvin** September 2016
California City February 2007	**Delano** June 2008	**Shafter** November 2016
Wasco March 2007	**Taft** August 2016	**Bakersfield** July 2023

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

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
Low Risk	$128.50	$246.72	$375.22
Moderate Risk	$128.50	$488.30	$616.80
High Risk	$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
First Violation	Notice	$257 fine
Second Violation	Permit suspended for up to 30 days	$514 fine
Third Violation	Permit suspended for up to 90 days	$1028 fine
Fourth Violation	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. Adopting additional TRL provisions can further aid cities in minimizing youth purchase rates.

> "My goals are to ultimately eradicate tobacco from shelves so that our communities are allowed a healthier and safer environment, especially for youth."
>
> **Youth Coalition Member, Students Working Against Tobacco**

Bumps Along the Way

With the rise in youth using tobacco products over the past decade due to the popularity of flavored e-cigarettes, communities are now facing new challenges in tobacco control efforts. Four out of five youth who use tobacco started with a flavored product, and with the widespread availability of flavors, local jurisdictions are now considering additional TRL provisions.

Like many other communities, Kern County is looking to include more comprehensive provisions in its TRL to help address the availability of tobacco products in the community and the use of tobacco among youth. Although a TRL has helped reduce youth purchase rates in Kern County, additional TRL provisions are needed to address the tobacco industry's tactics of targeting youth and other priority populations.

Looking Toward the Future

Tobacco Free Coalition of Kern County, the youth coalition Students Working Against Tobacco, and other organizations have worked continuously on adding TRL provisions and encouraging more jurisdictions to adopt TRLs. In July 2023, Bakersfield — a city with 453 tobacco retailers — joined other incorporated cities within the county in passing its own TRL, an effort aided by Blue Zones Project Bakersfield. (Prior to adopting this measure, 47 percent of retailers near a school in Bakerfield failed a youth decoy inspection.[4])

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 employing 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 worked best for Kern County was for local cities to adopt the county ordinance and for 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. The use of realistic implementation and enforcement strategies in tobacco retail policies can help localities like Kern County make significant strides toward the creation of a tobacco-free generation.

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Endnotes

1 CAL. BUS. & PROF. CODE § 22970-22983.

2 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit resulting in disease and death. For more information visit: http://www.keepitsacred.itcmi.org. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.

3 KERN COUNTY, CAL. CODE § 8.60, https://library.municode.com/ca/kern_county/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.60TOREPE.

4 Ruby Rivera, *Bakersfield City Council Unanimously Passes New Tobacco Retail Permit Ordinance*, 23ABC BAKERSFIELD (July 13, 2023), https://www.turnto23.com/news/local-news/bakersfield-city-council-unanimously-passes-new-tobacco-retail-permit-ordinance.