

SANTA MARIA'S TOBACCO RETAILER LICENSING PROGRAM

A Case Study

The City of Santa Maria in Santa Barbara County has taken significant steps to address the youth vaping epidemic by adopting a comprehensive tobacco retail license ordinance, which restricts the sale of flavored commercial tobacco products, including e-cigarettes.¹

Youth Hooked on Flavor

Electronic cigarettes, also known as e-cigarettes, vapes, or e-vaporizers, are battery-operated devices that deliver nicotine with flavorings and other chemicals to the lungs in the form of aerosol, rather than smoke. Although e-cigarettes are often advertised as a safer alternative to combustible cigarettes, a study by the California Department of Public Health (CDPH) suggests



that e-cigarettes pose several health risks.² For instance, e-cigarette liquids and aerosols contain many cancer-causing heavy metals, such as chromium, nickel, manganese, and lead.³ Exposure to these metals can have severe health effects and result in respiratory diseases (such as lung cancer) and neurological and development defects.⁴ Also, the nicotine intake from e-cigarettes is comparable to intake from combustible tobacco cigarettes and can cause addiction.⁵

In addition, the solvents and additives often used in e-cigarettes have been linked to severe lung damage, which in some cases has resulted in death. In 2019 and 2020, the mysterious lung illness outbreak known as EVALI resulted in over 2,801 hospitalizations and 68 deaths in all 50 states and two U.S territories.⁶ As of April 2021, CDPH reported over 240 EVALI cases including five deaths in California. Teenagers and young adult made up almost half of the hospitalized patients with breathing problems, and 30 percent of the patients were treated with a mechanical ventilator or “life support” in the ICU.⁷

The popularity of e-cigarettes among youth is due largely to their availability in more than 15,000 kid-friendly fruit, candy, and dessert flavors, such as bubble gum, mint, and mango.⁸ These flavors are mixed with nicotine, and often include THC or other drugs, attracting and addicting young people at an early age.

Policies to Address Access to Tobacco

State Regulation

To sell tobacco products, tobacco retailers must obtain a state tobacco retailer license (TRL) and pay an annual fee of \$265. This fee is generally used to combat tax evasion on the sale of tobacco products and prevent illegal trafficking of untaxed products.

The federal government, the state of California, and many other states prohibit the sale or furnishing of tobacco products to anyone under the age of 21.⁹ California has established laws that hold business owners and clerks responsible when tobacco products are sold illegally. Yet many youth in California under the age of 21 are still able to access and purchase tobacco products at their local convenience stores. To address this situation and further regulate tobacco sales, cities and counties can pass ordinances requiring tobacco retailers to obtain a local license to sell tobacco products.

Local Regulation

A local tobacco retailer license allows cities and counties to regulate the sale of tobacco products in their communities to ensure retailers comply with local, state, and federal laws. A TRL can

include additional provisions, such as minimum packaging and pricing restrictions and prohibitions on the sale of flavored tobacco products. According to the *2021 State of Tobacco Control: California Local Grades*, for a local TRL ordinance to be most effective in reducing the illegal sale of tobacco to minors, it should include these four provisions:¹⁰

Comprehensive Tobacco Retailer Licensing Ordinance

Provisions	Implications
Sufficient fee for tobacco license	Fee covers administration and enforcement efforts
Permission to sell tobacco	Annual license required to sell; must be renewed annually
Provisions against violations of civil codes	Applied to city, county, and state laws
Financial deterrent	Through fines and penalties, suspensions, and revocation of license

To reduce youth access to addictive nicotine products, the Santa Maria City Council voted unanimously in 2019 to establish new tobacco retail regulations. On Dec. 3, 2019, the city adopted a TRL ordinance that included flavor restrictions, minimum pack and price requirements, and prohibitions on tobacco product coupons and the sale of tobacco in pharmacies.

Health Equity Impact of TRLs

TRLs and related tobacco control measures play a key role in reducing health disparities in vulnerable and disadvantaged communities. The tobacco industry has aggressively and systematically marketed flavored tobacco products, such as menthol and mint, to African Americans and other groups, to keep smokers smoking and introduce new smokers to an addictive product. As a result, menthol and other flavored tobacco products are used at disproportionately high rates by African Americans (84.6 percent), Hispanics or Latinos (46.9 percent), Asian Americans (38 percent), and other groups compared to White smokers (28.9 percent).¹¹ The tobacco industry also targets the LGBTQ community through sponsored events, Pride celebrations, advertising in various media, and other means. Significantly, over 50 percent of LGBTQ adults smoke menthol cigarettes in comparison to only 28 percent of straight adult smokers.¹²



Cheap and accessible tobacco products attract youth and new tobacco users. Minimum pack/price and coupon restrictions are an effective way to counteract the tobacco industry's price manipulation strategies. Increases in tobacco product prices tend to make people smoke less and buy fewer tobacco products. Tobacco price increases also motivate people to quit. What's more, data shows cigarette manufactures use trade discounts, coupons, price promotions, and similar tactics to counter tax increases.

Proximity to tobacco retailers also can increase youth use. Tobacco retailers located near schools or other areas frequented by youth expose young people to tobacco advertising and provide access to products. Restricting tobacco retailers from school neighborhoods and similar youth-oriented venues limits young people's access to tobacco and e-cigarettes. In addition, pharmacies that sell tobacco products send a mixed message about their safety because that's where people purchase medications and healthcare products. Along with proximity restrictions for tobacco retailers, pharmacy restrictions also reduce tobacco retail density and youth access.



Santa Maria's economy consists of agriculture and a mix of commerce and manufacturing industries.

State Prohibition on Flavored Tobacco Sales

On August 28, 2020, California prohibited the sale of most flavored tobacco products, becoming the second state in the nation with a law restricting the sale of flavored tobacco.¹³ The law prohibits the sale of menthol cigarettes and other flavored tobacco products. However, it exempts hookah, premium cigars, and pipe tobacco from the flavored tobacco prohibition. The tobacco industry sought to undermine this law through the referendum process, and the law has been suspended. In the November 2022 general election, California voters will decide whether this measure will become state law. In the meantime, coalition efforts are focused on passing local flavored tobacco restrictions to protect children from a lifelong addiction to tobacco products.

Santa Maria Background

Santa Maria is the largest city in Santa Barbara County, located in California's Central Coast region. In January 2020, the city's population was estimated at 100,000 — approximately 16 percent White and 76 percent Hispanic or Latino. Santa Maria's economy consists of

agriculture and a mix of commerce and manufacturing industries, including employment in education, healthcare, oil production, and government.¹⁴

There are nine cities in Santa Barbara County and only six have a TRL — Santa Maria is one of six with a TRL. Thirty-three percent of the county’s population resides in areas without comprehensive TRL ordinances. Only four of these nine cities restrict the sale of flavored tobacco products, leaving more than half the population in Santa Barbara exposed to these products.¹⁵

Regulating Tobacco Sales

One of the most effective ways to restrict tobacco use is through a comprehensive tobacco retailer licensing ordinance. Such a law can help communities regulate the tobacco retail environment, reduce youth access to tobacco products, and address local public health concerns. On December 3, 2019, the Santa Maria City Council adopted an ordinance that requires tobacco retailers in the city to obtain a license for each retail location where they plan to sell tobacco products.¹⁶

Santa Maria’s TRL is enforced by the City Police Department, City Rangers, and Code Enforcement Division. The ordinance includes several provisions, such as minimum pack and price requirements, prohibitions on the sale of all flavored tobacco products (including menthol), and also prohibits selling tobacco products in pharmacies. The ordinance took effect July 1, 2020, which allowed time to reach out to retailers and educate them on the new requirements.

Santa Maria’s Tobacco Retail Licensing Ordinance Provisions

Provisions	Implications
Tobacco retail license	Fees: \$600 application, \$480 annual renewal
Sale of flavored tobacco products prohibited	Includes: mint, menthol, wintergreen, and other “characterizing flavors” ¹⁷
Minimum pack & price	\$7/pack of cigarettes \$5/pack of 5 cigarillos \$5/pack of 5 cigars
No coupons, discounts, or deals	Full retail price for all tobacco products
No tobacco in pharmacies	All tobacco products

Implementation Process

The Santa Barbara Public Health Department worked in collaboration with the city of Santa Maria to create an ordinance implementation plan. The plan contained five phases for the city to complete in the six months before the city ordinance took effect.

Phase I: Notice to Retailers

Tobacco retailers were notified months before implementation of the revised licensing requirements. The city sent retailers a notice letter, including Frequently Asked Questions that described the new ordinance and how it affected current retailers.¹⁸ The notice letter included program contact information and a list of tobacco products that retailers can no longer sell.

Phase II: Planning and Finalization

The city created an administrative process for tobacco retailers to apply for licenses. Licensing information is available online on the city's website. Retailers are redirected to the city ordinance language on municipal code so they can complete and submit the application online.

Phase III: Hazardous Waste Removal Planning

Retailers were expected to dispose of their unused tobacco products before the ordinance took effect. Because these products can contain hazardous waste, the county consulted environmental health and community and household environmental waste removal services to create a handling method for their safe and effective disposal. The county public health department prepared educational materials containing directions on how and where to dispose of these products safely.

Phase IV: Outreach and Education to Retailers

The city and the county public health department collaborated educating retailers about the ordinance. Materials were translated in Spanish and made available before the ordinance took effect. Retailers could access all educational resource and contact information on the city's website.

In addition to product disposal guidelines, the public health department provided retailers with information about resources, such as workshops and other educational options, to help them grow their businesses, given the required change in their retail inventory.

Phase V: Enforcement and Compliance Checks

The local Police Department enforces undercover compliance checks at tobacco retailer locations. Note: Compliance checks have been temporarily paused because of COVID-19 stay-at-home orders and business closings. Also, many resources, such as the Police Department and the County Public Health Department, have been temporarily diverted to meet pandemic-related needs. This has affected the enforcement of the ordinance.

Application Process

A business in Santa Maria that wants to sell tobacco-related products must register with the City to apply for a tobacco retailer’s license for each sales location.¹⁹ The TRL application fee and annual renewal fees cover the costs of administering the license program, retailer education, inspection, compliance checks, and enforcement.

Any business that fails to obtain an approved tobacco retailer license must wait a number of days before being allowed to apply for a license, during which time the retailer cannot sell tobacco products. In addition, the City may enforce its standard penalties for violating a City Code and may treat violations as a misdemeanor or public nuisance.

Each tobacco retailer license is valid for 12 months. To be eligible to renew a license, tobacco retailers must have complied with all licensing requirements during the previous period, and paid in full all appropriate fines and fees. Tobacco retailers must apply to renew their licenses annually and pay the license fee no later than 30 days before the expiration date. If a license expires and is not renewed on time, businesses must submit an application fee, application renewal form, and a signed affidavit affirming that no tobacco products have been sold in the interim. If the license was denied in the past, the retailer must comply with the required waiting period before requesting a license. Retailers whose renewal application is denied may appeal to the City Manager.

Penalties for Not Having a City Tobacco Retailer License

Offense	Penalty
First offense	30-day waiting period
Second offense	90-day waiting period
Third offense	1-year waiting period

Suspension or Revocation of License

A violation of the ordinance may result in a fine, suspension, or license revocation. Within 14 days of the city’s decision on a license status, a retailer may appeal to the City Manager.

License Suspension or Revocation

Violation Within 5-Year Period	Fine or Penalty
First violation	\$1,000
Second violation	License suspended for 15-days
Third violation	License suspended for 30-days
Fourth violation or more	License revoked

Enforcement

Police department staff received extensive training on enforcing the ordinance. The police department was aware that the tobacco retail licensing provisions could be difficult for some retailers to understand. Because of this, staff focused on building relationship with retailers and educating them, rather than serving solely as enforcement agents.

COVID-19 Challenges in Santa Maria

During the 2020 coronavirus pandemic, enforcement agencies across California experienced new and unexpected demands. Many cities and counties across the state that have implemented TRLs lacked enforcement capacity as a result of shifted priorities and the reallocation of enforcement agencies to other duties. The Santa Maria Police Department, Santa Barbara County Public Health Department, and community organizations focused on addressing needs created by the pandemic and had limited interactions with members of the business community, including tobacco retailers.

During this time, the city and the Santa Maria Police Department have continued to monitor and successfully process applications for new tobacco retail licenses and license renewals. The police department reviews each tobacco retailer application to confirm that the retailer qualifies for a license, based on ordinance compliance. As a result, the police department



has been key in enforcing the city ordinance and will continue its enforcement efforts once pandemic-related demands have relaxed. For instance, the new proximity requirements limiting how close tobacco retailers can be to each other and to schools has already prevented five businesses from opening tobacco retail stores in the city.

Conclusion

By restricting local sales of flavored tobacco and e-cigarettes, Santa Maria's comprehensive TRL ordinance helps protect the city's youth and other community members from access to these highly addictive products. Santa Maria's successful implementation of this law is particularly significant since it occurred during a historic pandemic. The city prioritized education before and after the TRL took effect so that community members, retailers, and

enforcement agents all understood the regulations and the implementation process. Other communities in California can learn from Santa Maria's TRL example and its additional tobacco control measures. In fact, Santa Barbara County recently added a provision in its existing TRL, prohibiting the sale of flavored tobacco products, including e-cigarettes, in the county's unincorporated areas.²⁰

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Endnotes

- 1 The Law and Policy Partnership to End the Commercial Tobacco Epidemic 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
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- 3 See, e.g., TobaccoFreeCA, *Vaping May Increase Your Risk of Cancer* (2021), <https://tobaccofreeca.com/e-cigarettes/vaping-may-increase-your-risk-of-cancer>.
- 4 *Id.*; see also Jefferson Fowles et al., *Cancer and Non-Cancer Risk Concerns from Metals in Electronic Cigarette Liquids and Aerosols*, 17 INT'L J. ENV'T RES. AND PUBLIC HEALTH 2146. <https://doi.org/10.3390/ijerph17062146>.
- 5 NAT'L ACADS. SCIS., ENG'G, & MED., *PUBLIC HEALTH CONSEQUENCES OF E-CIGARETTES* (Kathleen Stratton et al. eds., Nat. Acad. Press 2018).
- 6 *Outbreak of Lung Injury Associated with E-cigarette Use, or Vaping*, CTNS. FOR DISEASE CONTROL & PREV. (2020), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last updated Feb. 25, 2020, 1:00 PM EST).
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- 8 See, e.g., Vaping Prevention Resource & Public Health Law Center, *E-Cigarette Policy Playbook* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/Policy-Playbook-ECigarettes.pdf>.
- 9 See, e.g., U.S. Food Drug Admin, *Tobacco 21* (2019), <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21>; Calif. Penal Code § 308, https://california.public.law/codes/ca_penal_code_section_308b; Calif. Health and Safety Code § 119405, <https://law.justia.com/codes/california/2011/hsc/division-104/119405/119405>.
- 10 American Lung Assoc., *State of Tobacco Control California 2021* (2021), <https://www.lung.org/local-content/ca/state-of-tobacco-control/2021/sota-2.1>
- 11 Andrea C. Villanti et al., *Changes in the Prevalence and Correlates of Menthol Cigarette Use in the USA, 2004–2014*, 25 TOBACCO CONTROL ii14-ii20 (2016), <http://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2016/10/11/tobaccocontrol-2016-053329.full.pdf>.

- 12 Amanda Fallin et al., *Menthol Cigarette Smoking Among Lesbian, Gay, Bisexual, and Transgender Adults*, 48 AM J PREV. MED. 937 (2015), <https://pubmed.ncbi.nlm.nih.gov/25245795>.
- 13 Public Health Law Center, *What the Referendum on California's Flavored Tobacco Sales Ban Means* (2021), <https://www.publichealthlawcenter.org/blogs/2020-09-04/what-referendum-californias-flavored-tobacco-sales-ban-means>.
- 14 U.S. Census, *Quick Facts* (2019), <https://www.census.gov/quickfacts/fact/table/santamariacitycalifornia/PST045219>.
- 15 See *State of Tobacco Control California 2021*, *supra* note 10.
- 16 Santa Maria Municipal Code, Chap. 13, Title 6 (Sec. 6-13.01 to 6-13.16), http://www.qcode.us/codes/santamaria/view.php?topic=6-6_13&showAll=1&frames=on.
- 17 *Id.*
- 18 City of Santa Maria, *Tobacco Retailer License-Frequently Asked Questions (FAQ)* (2020), <https://www.cityofsantamaria.org/home/showdocument?id=27086>
- 19 Santa Maria Tobacco Retailer Application Form, <https://www.cityofsantamaria.org/city-government/departments/police-services/programs-services/tobacco-retailer-application-form>.
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