

TOBACCO RETAIL LICENSE ENFORCEMENT GUIDE

Overview

This guide highlights the most equitable enforcement options for consideration with a model tobacco retail license (TRL) policy. It is meant to be used as a companion to the Partnership's [model ordinance](#), which contains more detailed language and explanation of various enforcement choices.

Not all jurisdictions have the same resources or community preferences, so a range of enforcement options are included, with context for the benefits and cautions for each from an equity perspective. We have provided recommendations as to which enforcement options are considered best practices and more equitable (**coded green** ) , and the options that the Partnership recommends against (**coded red** ). Including multiple enforcement elements in a TRL policy can provide options for enforcement tailored to each violation. The Partnership is funded



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by the California Tobacco Control Program to provide legal technical assistance and works with communities and partners to adopt equitable enforcement strategies that meet local needs.



Considerations for equitable enforcement also involve determining which entity (e.g., code enforcement, retailers, city or county attorneys, or another government agency) is best positioned to effectively enforce the policy and minimize negative outcomes. Enforcement by police, for example, may raise concerns over potential negative collateral consequences or racial profiling.

Equitable enforcement is important to ensure effective compliance and implementation of tobacco retail license ordinances, which will in turn reduce sales to youth and the resulting initiation of commercial tobacco use¹ and will decrease health disparities in communities targeted by the tobacco industry. Enforcement should focus on retailers who have an economic incentive to sell tobacco products, not on individual commercial tobacco users. Punitive measures do not help those struggling with tobacco addiction to end their commercial tobacco use. The best approaches to help those confronting addiction are counseling and education. Enforcement against retail workers (clerks) is also not a best practice as it is less likely to change overall retailer behavior and can inappropriately shift accountability away from a retailer's poor training or management practices. Additionally, fines can be a substantial burden and have rippling effects for retail workers who are likely to be making minimum wage or close to it.

✓ Most preferred/most equitable

✗ Not recommended by the Partnership

✓ License applications and renewal

Benefits

- Requiring disclosure of any violations of tobacco product sales laws in license applications can incentivize retailer compliance
- Allowing a history of noncompliance to be considered in whether to grant a license application or renewal also can be a strong compliance incentive
- Can determine adequate fees to cover the cost of implementation and enforcement

✓ Compliance monitoring

Benefits

- Direct inspection of retailers by public enforcement agencies is an effective means to ensure compliance
- Requiring a minimum number of inspections (at least three) per year can improve compliance
- Can cover the cost of monitoring with adequate fees

✓ License suspensions or revocations

Benefits

- Suspensions and revocations can both be strong economic incentives for retailers to comply
- Graduated penalties with increasing length of suspension for subsequent offenses can effectively incentivize compliance

✓ Underage sales checks

Benefits

- Using underage individuals to attempt purchases from retailers can be an effective deterrent for retailers to sell to youth
- Can also create enforcement or education opportunities for retailers that do make sales in an underage check

Cautions

- Youth should be willing participants, compensated, and trained, which requires some resources and recruitment

✓ Civil penalties against retailers

Benefits

- Civil penalties can be tailored to the circumstances to either be a less severe punishment than license suspensions or an even stronger punishment for more flagrant violations

Cautions

- Requires legal resources to pursue

✓ Criminal penalties against retailers

Benefits

- Allowing prosecution as infractions or misdemeanors gives city or county attorneys other tools to hold violators accountable

Cautions

- Requires legal resources to pursue

✓ Nuisance²

Benefits

- Permits a range of nuisance abatement tools commonly used by city or county attorneys, such as restraining orders, or preliminary or permanent injunctions

Cautions

- May require too many local government resources to be widely used

✗ Enforcement against retail workers

No benefits recognized.

Cautions

- Punishing employees is much less likely to change the overall behavior of retailers
- Because employees are agents of their employers, employers should be responsible for the actions of their workers, and any tobacco product sales by employees should be considered acts of the tobacco retailer (employer) for enforcement purposes

✘ Purchase, use, or possession penalties (“PUP laws”)³

No benefits recognized.

Cautions

- Does not help those with nicotine dependence or addiction get on a path to recovery
- Criminal enforcement also often disproportionately targets individuals of color and can lead to collateral consequences, including impact on immigration status, and can trigger a probation, a parole violation, or a summons leading to a criminal record or a warrant
- If an enforcement action triggers more severe criminal sanctions, it could potentially jeopardize housing, benefits, education, and employment

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Endnotes

- 1 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.
- 2 A public nuisance is a legal doctrine that applies when a person unreasonably interferes with a right that the general public shares in common. Local ordinances can declare violations of the ordinance to be a public nuisance, opening up this enforcement option, generally by city or county attorneys.
- 3 For more, see the helpful guide from Campaign for Tobacco Free Kids, *Youth Purchase, Use, and Possession Laws are not Effective Tobacco Prevention* (2018).