



Pipe Down! **How to Address Drug Paraphernalia in Your Community**

Throughout California, communities are facing public health and safety concerns that stem from the sale and use of illegal drugs. Giving local agencies a way to enforce state laws regulating the sale of drug paraphernalia can help address the problem.

This fact sheet explains how communities can help enforce state drug paraphernalia laws through a law requiring local tobacco retailers to obtain a license to sell tobacco products.

What does state law say about the sale of drug paraphernalia?

Although it's legal to sell *tobacco* paraphernalia (e.g., a lighter or matches), California does prohibit the sale of *drug* paraphernalia, defined as items that are “designed” or “marketed” for use with drugs.¹ Selling drug paraphernalia is illegal under state law if there is reason to know that the item will be used for taking drugs.² State law also prohibits local governments from enacting a law that directly regulates the sale of drug paraphernalia.³

What is a tobacco retailer license?

To deter retailers from selling tobacco products to minors, nearly 100 California cities and counties have adopted strong tobacco retailer licensing laws.⁴ This type of law requires all tobacco retailers to obtain a license to sell tobacco products, and it can be used to help local officials enforce all federal, state, and local laws relating to tobacco.

When retailers illegally sell tobacco products to a minor they are not only violating state law and federal law, they are also violating their local license.⁵ The consequence of violating the law against selling tobacco to minors is the suspension of the retailer's local tobacco license.

What does a tobacco retailer license have to do with drug paraphernalia?

Stores that sell drug paraphernalia commonly sell cigarettes or other tobacco products, and these retailers often claim that their drug paraphernalia is in fact tobacco paraphernalia. A tobacco retailer licensing law requires all retailers who sell any kind of tobacco paraphernalia to have a license, and local governments can attach another condition to the license in order to protect local health, safety, and welfare: the retailer must comply with all state laws regarding drug paraphernalia. This condition must be included in the licensing law itself.

If compliance checks reveal that a retailer is selling items that constitute drug paraphernalia—say, if a city agent purchases a “meth pipe” (used for smoking methamphetamine)—then the retailer is violating not only state law but also its local tobacco license, which can then be suspended or revoked. Enforcement proceedings happen the same way as if the retailer violated any other condition of the license—for example, by selling tobacco to a minor.

To download model language for a local tobacco retailer licensing law (also known as an ordinance), see www.changelabsolutions.org/tobacco-control/products/Licensing_Ordinance.

This photo of meth pipes was taken at a neighborhood smoke shop in San Francisco, California.





Methamphetamine addiction is one of California's top drug problems, ruining lives, generating crime and violence, and worsening other public health crises.



Generally, a city will hold an administrative hearing and introduce evidence of the sale of the illegal meth pipe. This evidence can take many forms, but often the best evidence will be the item which was purchased. The retailer will have the opportunity to present evidence of its own (probably claiming that the item is “tobacco paraphernalia” rather than illegal “drug paraphernalia”), and afterward the hearing officer will make a decision and impose a penalty, such as suspending the retailer’s license for a certain number of days.

If the retailer’s license is suspended, that means the store cannot sell any tobacco products or paraphernalia during the suspension period. This will cost the store substantial revenue from both cigarette and paraphernalia sales. The prospect of a future suspension will discourage the retailer from choosing to sell drug paraphernalia again.

Why is the drug paraphernalia connection important for tobacco control?

It gives tobacco control advocates the opportunity to work with those fighting illegal substance abuse in their communities. Methamphetamine (meth) addiction, for example, is one of California’s top drug problems, ruining lives, generating crime and violence, and worsening other public health crises like HIV infection.⁶ In some counties, the huge impact of meth has led to ATOD (Alcohol, Tobacco, and Other Drugs) coalitions and law enforcement agencies increasing their focus on meth at the expense of tobacco. This enforcement mechanism provides a way to engage anti-drug coalitions in tobacco control work while contributing to the fight against meth.

ATOD coalitions and law enforcement agencies will see at least three benefits in supporting tobacco retail licensing: (1) law enforcement can stop paraphernalia sales locally through an administrative procedure to enforce the license requirement (and not have to go to court); (2) the fees associated with the license are a revenue-generating opportunity for law enforcement to fund compliance checks; and (3) since tobacco is a gateway drug that leads to youth addiction to other drugs,⁷ joining efforts to stem tobacco use will be mutually beneficial.

Is there public support for this type of policy?

Two scientific surveys of voters in California commissioned by the American Lung Association in California’s Center for Tobacco Policy & Organizing (the Center) show that concern about the meth problem can increase support for a local tobacco retailer license.

In April 2011, the Center commissioned a survey of California voters on different policies in the tobacco retail environment. The survey found that 66 percent of voters support a law prohibiting stores that sell meth pipes from also selling tobacco products.⁸ For full survey results, see www.center4tobaccopolicy.org/polling-retailer-policies.

In addition, in March 2008, the Center commissioned a survey of rural and small town voters and found that 69 percent of voters would be more inclined to support a local tobacco retailer licensing law if it included a provision to prevent stores that sell meth pipes from obtaining a license. This included about half of voters who, earlier in the survey, were opposed to a local tobacco retailer license.⁹ The Center’s survey also found that 88 percent of rural voters think that it should be a high priority of government to reduce teen use of meth, compared with 75 percent who think it should be a high priority for the government to reduce teen smoking.¹⁰ See www.center4tobaccopolicy.org/polling-rural for complete poll results.

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How many communities have enacted this type of policy?

As of June 2012, eleven cities and counties (Firebaugh, Grass Valley, Huntington Park, Montebello, Oakland, Parlier, Richmond, Riverbank, Santa Cruz County, Union City and Watsonville) have a drug paraphernalia provision in their tobacco retailer licensing law. To find out more about any of these provisions, see the Center's Matrix of Strong Local Tobacco Retailer Licensing Ordinances, available at www.center4tobaccopolicy.org/localpolicies-licensing.

To view sample language to incorporate drug paraphernalia restrictions into your tobacco retailer licensing law, see our Plug-in to its Model Licensing Ordinance, available at www.changelabsolutions.org/publications/model-TRL-Ordinance.

For more information on model language and legal issues:

ChangeLab Solutions

www.changelabsolutions.org

For more information on campaign and policy issues:

The Center for Tobacco Policy & Organizing, a project of the American Lung Association in California

www.center4tobaccopolicy.org



This material was made possible with funds received from the California Department of Public Health under contract #09-11182.

ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance legal Center (TALC). Any references to PHLP or TALC in this publication should now be understood to refer to ChangeLab Solutions.

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The Center for Tobacco Policy & Organizing, a project of the American Lung Association in California, helps local coalitions throughout California meet policy objectives using proven community organizing strategies, and serves as a statewide and local tobacco policy resource.

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- ¹ Cal. Health & Safety Code §§ 11364.7, 11014.5 (2012). "Drug paraphernalia" includes the following items, among many others: Carburetion tubes and devices, smoking and carburetion masks, roach clips (meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand), miniature cocaine spoons, cocaine vials, chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bong, and ice pipes or chillers.
- ² Cal. Health & Safety Code § 11364.7 (2012).
- ³ See *A & B Cattle Company, Inc. v. City of Escondido*, 192 Cal. App. 3d 1032 (1987).
- ⁴ The Center for Tobacco Policy & Organizing, American Lung Association in California. Table of Strong Local Tobacco Retailer Licensing Ordinances. June 2012. Available at: www.center4tobaccopolicy.org/CTPO/_files/_file/Table%20of%20Tobacco%20Retailer%20Licensing%20Ordinances%20June%202012.pdf.
- ⁵ Selling tobacco products to a minor is a violation of California Penal Code section 308, and the STAKE Act, as well as the federal Family Smoking Prevention and Tobacco Control Act.
- ⁶ See California Society of Addiction Medicine. *Recommendations to Improve California's Response to Methamphetamine*. Available at: www.csam-asam.org/pdf/misc/Meth_Recommendedations.pdf.
- ⁷ Levine et al. "Molecular Mechanism for a Gateway Drug: Epigenetic Changes Initiated by Nicotine Prime Gene Expression by Cocaine." *Science Translational Medicine*, 3: 107ra109, 2011.
- ⁸ The Center for Tobacco Policy & Organizing, American Lung Association in California (conducted by Goodwin Simon Strategic Research). Survey of California Voters About Policies in the Tobacco Retail Environment: Summary of Key Findings. April 2011. Available at: www.center4tobaccopolicy.org/CTPO/_files/_file/Summary%20of%20Key%20Findings%20-%20Policies%20in%20the%20Tobacco%20Retail%20Environment.pdf.
- ⁹ The Center for Tobacco Policy & Organizing, American Lung Association in California (conducted by Goodwin Simon Strategic Research). Survey of California Rural and Small Town Voters About Local Tobacco Retailer Licensing Ordinances: Summary of Key Findings. March 2008. Available at: www.center4tobaccopolicy.org/_files/_files/Rural_Poll_Summary_of_Findings_Final_5-21-08.pdf.
- ¹⁰ The Center for Tobacco Policy & Organizing, American Lung Association in California (conducted by Goodwin Simon Strategic Research). Survey of California Rural and Small Town Voters About Local Tobacco Retailer Licensing Ordinances: Survey Results. March 2008. Available at: www.center4tobaccopolicy.org/_files/_files/Rural%20Licensing%20Survey%20Statewide%20Weighted%20Results.pdf.