

Implementation Checklist for Tobacco Retailer Licensing

While there is no right way to carry out and enforce a local tobacco retailer licensing (TRL) program, one common characteristic of successful programs is early planning for implementation and enforcement that engages all the key players. This checklist is designed to assist in these planning efforts, which are usually coordinated by a single "lead agency" with dedicated staff members. Essential elements already include a check mark, though we recommend considering all elements on the checklist. Many of these decisions may need to be made with other city or county staff, or they may be guided by policies or processes that the local government already has in place. If you have any questions about the items in this checklist, please submit your question to ChangeLab Solutions at www.changelabsolutions.org/tobacco-control-request.

ESTABLISHING THE LICENSING PROGRAM

- Create a database of all retailers
 - Cross-reference with local business licenses and state TRLs from the State of California Board of Equalization
- Calculate the fee
- Create information packets or FAQs for retailers
- Provide trainings for retailers
- Create an application packet (with instructions)
 - Include an affirmation that retailer is aware of tobacco laws
 - Include an optional declaration of non-tobacco retailing (when no license is required)
- Create the actual Tobacco Retailer License to be displayed by the retailer
- Identify the license administrator/issuing agency (e.g., treasurer, tax collector, city clerk)
 - Provide and receive applications
 - Collect fees (either with application OR only after approval)
 - Issue License
- Create a notice of license suspension/revocation
- Create a document detailing internal policies and procedures for the TRL program
- Create a system to track actual costs of program

CONDUCTING COMPLIANCE CHECKS

- Decide how often retailers will be inspected
- Decide which retailers will be inspected
- Decide which requirements and prohibitions will be enforced:
 - Enforcing Tobacco Sales to Minors:**
 - youth decoy operations
 - Identify who will conduct operations (e.g., local law enforcement, Food and Drug Branch of the California Department of Public Health, etc.)
 - Recruit and train youth, obtain parental consent letters, obtain immunity letters from the District Attorney
 - Develop protocols for the operation (e.g., STAKE (Stop Tobacco Access to Kids Enforcement) Act protocols)
 - Enforcing other tobacco control laws** (e.g., sale of single cigarettes): visual inspections
 - Identify which agency or department will conduct inspections (e.g., code inspection, health department, etc.)
 - Create an inspection form
- Create database for compliance results
- Send notice of non-compliance (and compliance)
 - Send notice of suspension with right to appeal
OR
 - Send notice of violation with date of hearing
- Decide when to conduct re-inspection



PROSECUTING VIOLATIONS

A key decision for all communities is whether to prosecute violations of tobacco control laws by retailers in court before imposing license-related penalties through an administrative proceeding. In some communities, underlying violations of a license are determined through an administrative hearing. This is referred to as a "one-step" enforcement process, which allows the community to impose license-related penalties without first going to court. In contrast, a "two-step" enforcement process requires the underlying violation—for example, selling tobacco to a minor in violation of state law—to be first prosecuted by the government in a court of law. These decisions may need to be made with county counsel or the city attorney, or they may be guided by other administrative penalty proceedings already in place. For more information, see www.changelabsolutions.org/tobacco-control/question/local-trl-enforcement.

CHOOSE A PROCESS

- Decide on a "one-step" or "two-step" process

(A one-step process skips prosecution in court and moves directly to administrative hearing)

Prosecution in Court

- Decide which violations should be prosecuted (e.g., sales to minors, self-service displays, etc.)
- Identify who will prosecute violations in court (e.g., the sheriff, the city attorney, etc.)
- Develop a system to coordinate between the agency conducting compliance checks and the agency prosecuting violations
- Identify who will notify the lead agency of convictions

Administrative Hearing

- Determine whether violations automatically trigger a hearing or if hearings are a right upon appeal
- Identify which agency will hold the administrative hearings (e.g., the public health department)
- Identify who will serve as the hearing officer (e.g., city manager, existing hearing officer, etc.)
- Decide how hearings will be conducted (e.g., new or existing process, in person or in writing, etc.)
 - Decide who presents evidence on behalf of the government
- Create a document detailing policies and procedures for administrative review
- Decide on an appeals process, if any
- Send notice of administrative decision
 - Send notice of suspension (include information on appeal rights)
- Create a system to track suspensions and account for the "look-back period" (the period in which multiple violations are counted)

Our *Model California Ordinance Requiring a Tobacco Retailer License* contains the essential elements for an effective licensing ordinance that can be used to enforce federal, state, and local tobacco control laws. To download model language for a local tobacco retailer licensing law, see: www.changelabsolutions.org/publications/model-TRL-Ordinance.

Developed by ChangeLab Solutions, a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.