

Tobacco Retail Licensing

An effective tool for a healthy community

Communities are adopting tobacco retail licensing laws as one way to ensure compliance with tobacco laws and to combat the public health problems associated with youth tobacco use and vaping. This brief describes how tobacco retail licensing works, why many communities are pursuing this policy, and what goes into creating and implementing a strong tobacco retail licensing law.



What is tobacco retail licensing?

Licensing is a common policy tool that local and state governments use to regulate businesses like alcohol and marijuana retailers, pharmacists, and restaurants. A local government may want to similarly license retailers who sell tobacco products to protect public health and safety by ensuring that the retailers comply with responsible retailing practices.

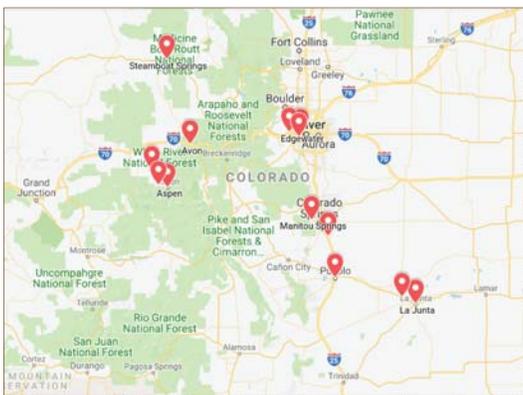
Under a local tobacco retail licensing law, the city or county government requires all businesses that sell tobacco products to obtain a license in exchange for the privilege of selling these products to consumers.¹ Local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities, such as store inspections and youth compliance checks, as well as retailer education. Increasingly, tobacco retail licensing is also being used to promote other innovative policy solutions, including controlling the location and density of tobacco retailers and imposing additional restrictions on the sale and promotion of tobacco products.²

As of October 2018, more than 13 cities and counties in Colorado had adopted a local tobacco retail licensing law. A retail license acts as the backbone to other youth access policy solutions. Without a retail license in place, there is no way to know where tobacco and vaping products are being sold.

A retail license should include the following:

- A requirement that all retailers selling tobacco products obtain a license and renew it annually.
- An annual licensing fee sufficient enough to fund proper enforcement.
- Meaningful penalties for violators through fines and penalties, including the suspension and revocation of the license.³
- A provision stating that any violation of existing local, state, or federal tobacco laws constitutes a violation of the local law.

Colorado Communities with Tobacco Retail Licensing Ordinances



Avon, Aspen, Basalt, Edgewater, Fountain, Golden, La Junta, Lakewood, Manitou Springs, Pueblo, Rocky Ford, Steamboat Springs, Snowmass Village



Why adopt a tobacco retail licensing law?

Many communities adopt tobacco retail licensing laws because they are effective tools for limiting the negative public health consequences of tobacco use. While this tool provides many benefits, the three main advantages to a tobacco retail licensing law are:

1. They have been shown to be effective at limiting youth access to nicotine products.
2. Combined with annual fees, they create self-financing programs that allow for regular enforcement.
3. They facilitate comprehensive local enforcement of all tobacco-related laws.

Protecting youth

Despite state laws prohibiting sales of tobacco to minors, research shows that in Colorado, more than 68% of youth younger than 18 years who attempt to buy tobacco products can complete the transaction. In Boulder County, about 65% of high school students reported it would be easy or very easy to get electronic vapor products if they wanted. Further, of students younger than 18 who reported current cigarette use, 48.7% reported they usually got their cigarettes by buying them in a gas station, convenience store, grocery store, or drugstore.⁴

Fortunately, strong local tobacco retail licensing laws have proven effective at reducing illegal tobacco sales to minors. A study in Fort Morgan, Colorado, showed that the true violation rate of sales to minors was as high as 48%; more than 5 times the state's reported rate. This rate dramatically decreased with more frequent inspections.⁵

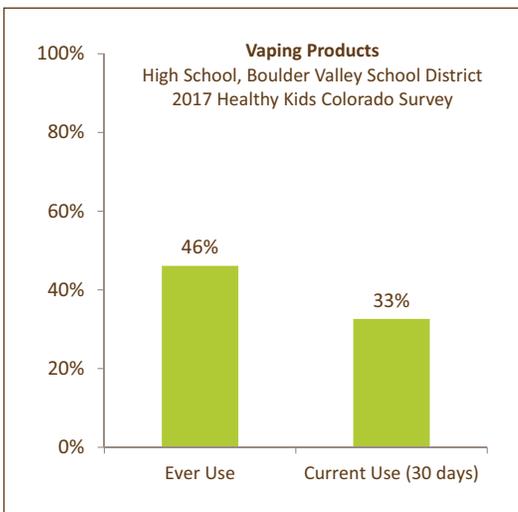
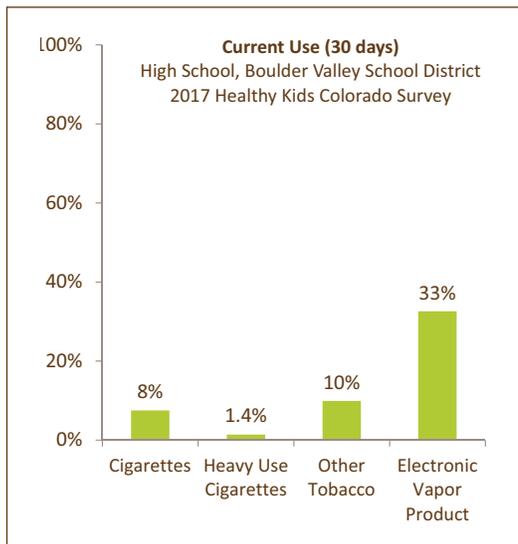
Compliance checks are essential to ensure that retailers are not illegally selling to minors. However, the state currently relies on random sampling of retail outlets. Currently, only 50% of known retailers are checked every year by state-level enforcement.

A self-financing program

An important strength of licensing is that local government may impose a licensing fee that is sufficient to cover the costs of license enforcement and administration. Funding enforcement can support compliance as well as retailer education. For more information on how to calculate a fee, visit ChangeLabSolutions.org/publications/tobacco-licensure-costs.

A comprehensive enforcement mechanism for local communities

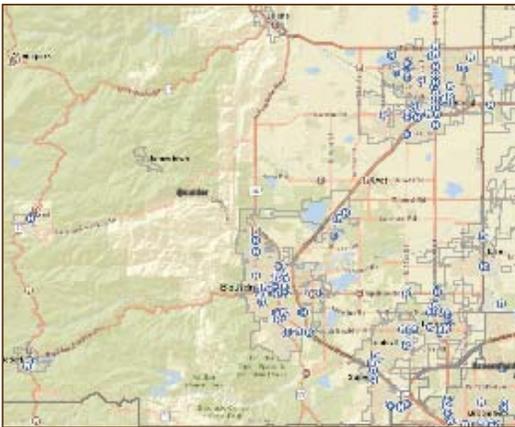
A number of federal laws already regulate tobacco sales and establish penalties for illegal sales to minors. But these laws each have separate enforcement mechanisms and penalty structures, making it difficult to enforce them at the local level.



Zoning

» Another common way to limit where tobacco retailers can locate is through land use laws, also known as zoning laws.

Boulder County Tobacco Retailers, 2018



Successful Programs

- » Are overseen by a single government agency with dedicated staff members
- » Plan early for enforcement that engages all key partners
- » Require a license fee sufficient enough to cover the full costs of administering and enforcing the program

A local tobacco retail licensing law, however, empowers local communities to impose meaningful penalties for illegal sales to minors and ensure compliance with all existing laws—ensuring that local communities can prioritize enforcement and education even when state and federal authorities are unable to do so.

Some state and federal laws fail to address important public health concerns related to tobacco. For example, the federal regulations authorized by the 2009 Tobacco Control Act currently apply only to cigarettes and smokeless tobacco products—they do not apply to little cigars, cigarillos, or other tobacco products (e.g. e-cigarettes) that are aggressively marketed to youth. A local tobacco retailer licensing law can be used to help bridge these gaps and address public health concerns.

What else can a tobacco retail licensing law do?

While a tobacco retail licensing law may be the best tool to prevent sales to minors, it can also promote other innovative policy solutions.

Control location and density of retailers

Local governments can use tobacco retail licensing to control both the location and density of tobacco retailers in their communities. A licensing law could, for example, prohibit licenses for any businesses operating too close to a school or other area frequented by youth. Because tobacco sales near schools and youth-oriented areas have been shown to increase youth smoking,⁶ this policy can be used to restrict tobacco retailers from areas where youth typically congregate. A tobacco retail licensing law also could cap the total number of licenses issued based on population, controlling the overall density of tobacco retailers in a community.

Encourage other healthy options

Communities can use licensing to improve public health in other ways by ensuring that retailers are not only complying with existing laws but also benefiting the communities they serve. For example, in neighborhoods with limited access to fresh produce and food staples, a licensing system could require food retailers to carry such items.

How is tobacco retail licensing implemented and enforced?

It's up to individual communities to decide who will implement and enforce a tobacco retail licensing law. Multiple organizations might be involved: one agency may issue the license, such as the city manager or the agency that issues general business licenses, while another organization, such as public health or the police department, may monitor compliance.

References

¹ In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that “local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.” Cal. Bus. & Prof. Code § 22971.3.

² See generally McLaughlin I. License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool. Tobacco Control Legal Consortium, 2010. Available at: <http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.

³ The threat of license suspension creates a greater financial deterrent to retailers than a simple fine would. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products for a month can cost retailers far more than the largest fines that can be imposed under existing California laws, like Penal Code Section 308 or the STAKE Act. See Cal. Penal Code § 308 (violators can be fined \$200, \$500, or \$1000 for first, second, or third violations, respectively); Cal. Bus. & Prof. Code § 22958 (violators can be fined \$400-600 for a first violation and are subject to harsher penalties for each additional violation in a 5-year period).

⁴ 2017 Boulder County Healthy Kids Colorado Survey.

⁵ The American Lung Association in California Center for Tobacco Policy and Organizing. Tobacco Retailer Licensing Is Effective, 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>.

⁶ Cantrell J, Kreslake JM, Ganz O, et al. Marketing Little Cigars and Cigarillos: Advertising, Price, and Associations with Neighborhood Demographics. *American Journal of Public Health*. 2013;103(1):1902-9; Toomey TL, Chen V, Forster J, Coevering PV, Lenk KM. Do Cigarette Prices Vary by Brand, Neighborhood, and Store Characteristics? *Public Health Reports*. 2009;124(4): 535-40; Feighery EC, Schleicher NC, Boley Cruz T, Unger JB. An Examination of Trends in Amount and Type of Cigarette Advertising and Sales Promotions in California Stores, 2002-2005. *Tobacco Control*. 2008;17(2):93-8; Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods. *Nicotine and Tobacco Research*. 2012;14(1):116-21.

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