

Just the Facts: Tobacco Retail Licensing

Tobacco Retail Licensing Helps Reduce Tobacco Use

- Tobacco retail licensing empowers local governments to define the future of their neighborhoods and promote a safe, healthy environment for all.
- Retail licensing requires outlets to obtain a license before selling tobacco products, including vapor products. Tobacco products are highly addictive and most are deadly—they should not be treated as just another consumer product readily available in every corner store.
- Tobacco retail licensing is a powerful tool that can be used to enhance compliance with existing laws and implement new controls on where and how tobacco is sold.
- Through a license requirement, a community may limit the number, location, and type of outlets that sell tobacco products, and stop the sale of flavored or other types of tobacco products.
- These policies limit youth access to tobacco products, reduce exposure to tobacco marketing, and reduce tobacco use.¹
- Licensing fees may be assessed to fund the implementation and enforcement of a tobacco retail licensing system.²

Tobacco Retail Licensing Prevents Illegal Tobacco Sales

- Despite existing penalties, every year, there are retailers in New York that violate federal and state tobacco controls, such as by selling a tobacco product to a minor.³ Communities can avoid playing whac-a-mole with compliance and instead *prevent* violations through a strong incentive system, such as the potential of losing a local license.
- In fact, stores have been shown to be more vigilant about verifying customer ages for tobacco product sales when illegal sales could result in immediate license suspension or revocation.⁴ Through a local license, a local government may set consequences for violations of federal, state, or local law by stores in their community.
- Tobacco retail licensing increases retailers' accountability to the communities in which they are located. More immediate and frequent enforcement of tobacco controls and other local laws enhances health and safety for everyone.

Tobacco Retail Licensing May Restrict Where and How Tobacco Is Sold

Number: Limiting the Number of Tobacco Retail Outlets

- Communities may cap the number of licenses issued and reduce that number over time. Evidence shows that reducing the number of tobacco outlets is an effective way to prevent and reduce tobacco use.⁵
- By limiting the number of local licenses that are issued, local governments can prevent uncontrolled proliferation of tobacco outlets while continuing to support economic development and healthy (tobacco-free) businesses in their communities.

Location: Addressing Where Tobacco Product Sales Occur

- Through licensing, communities may create a buffer around sensitive areas such as schools by restricting where they issue tobacco licenses.
- Through licensing, communities may prevent tobacco retailers from clustering by requiring a minimum distance between licensed stores.

Type: Limiting the Sale of Tobacco Products to Designated Retail Categories

- Through local licensing, communities may identify types of stores that may not sell tobacco products.
- Just as it is incongruous for retail pharmacies to sell tobacco products,⁶ so too is it especially problematic for other categories of stores to offer these toxic products.
- Local licensing aids enforcement of the sales restriction by designating resources, including funding, to identify, educate, and survey the impacted retailers.

Flavor: Restricting the Sale of Alluring Tobacco Products

- Communities may prohibit locally licensed tobacco outlets from selling flavored tobacco products, which are known to hook youth and prolong addiction.⁷
- While federal law prohibits cigarettes with non-menthol flavors, and state law restricts the sale of flavored vapor products to products without an FDA marketing order, a local government may stop the sale *all* flavored cigarettes and vapor products, as well as flavored cigars and smokeless tobacco.
- Local licensing funds enforcement activities such as checking stores for flavored products, educating retailers, and administering penalties for non-compliance.

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Local tobacco retailer licensing works for New York communities. Villages, town, cities and counties across the Empire State require a local license to sell tobacco products, including the Villages of Endicott and Dolgeville; New York City and the City of Newburgh; the Town of Bethlehem; and Cayuga, Dutchess, and Ulster Counties.



¹ PUBLIC HEALTH AND TOBACCO POLICY CTR, “Tobacco Retail Licensing: Promoting Health Through Local Sales Regulations,” Appendix C (January 2020), *available at* www.tobaccopolicycenter.org/documents/TobaccoRetailLicensing.pdf.

² *Suffolk Cnty Builders Ass’n v. Cnty of Suffolk*, 389 N.E.2d 133, 136 (N.Y. 1979) (holding licensing fees are permissible when there is “reasonable correspondence” between the cost of enforcement and amount of the fee); *Torsoe Bros. Construction Corp. v. Bd. of Trustees of Monroe*, 375 N.Y.S.2d 612, 616-617 (N.Y. App. Div. 1975); *Dugan Bros. of N. J. v. Dunnery*, 269 N.Y.S. 844, 845 (N.Y. Sup. Ct. 1933).

³ U.S. FOOD AND DRUG ADMINISTRATION, “Compliance Check Inspections of Tobacco Product Retailers (through 03/31/2020),” *available at* https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm (last visited Apr 23, 2020); N.Y. DEP’T OF HEALTH, “Youth Access Tobacco Enforcement Program Report April 1, 2016 – March 31, 2017,” 13, *available at* https://www.health.ny.gov/prevention/tobacco_control/docs/tobacco_enforcement_annual_report_2016-2017.pdf (last visited April 15, 2020); (reporting that youth were able to purchase tobacco products in 1,296 transactions between April 1, 2016 and March 31, 2017, and that 985 non-compliant retailers were fined \$922,250 during this period).

⁴ Sharon Lipperman-Kreda, Joel W. Grube & Karen B. Friend, *Contextual and community factors associated with youth access to cigarettes through commercial sources*, 23 *TOB. CONTROL* 39–44 (2014); 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-RetailerLicensing-is-Effective-September-2013.pdf>; see Roe L. Astor et al., *Tobacco Retail Licensing and Youth Product Use*, 143 *PEDIATRICS* e20173536 (2019) (tobacco retail licensing laws in California were associated with lower odds of youth tobacco initiation); see also Sunday Azagba, Lingpeng Shan & Keely Latham, *E-cigarette Retail Licensing Policy and E-cigarette Use Among Adolescents*, *J ADOLESC HEALTH* (2019) (Pennsylvania e-cigarette licensing associated with reduced e-cigarette use among youth).

⁵ Louise Marsh et al., *Association between density and proximity of tobacco retail outlets with smoking: A systematic review of youth studies*, *HEALTH & PLACE* 102275 (2020).

⁶ K S. Hudmon, *Tobacco sales in pharmacies: time to quit*, 15 *TOB. CONTROL* 35–38 (2006); Mitchell H. Katz, *Banning tobacco sales in pharmacies: the right prescription*, 300 *JAMA* 1451–1453 (2008).

⁷ PUBLIC HEALTH AND TOBACCO POLICY CTR, “Regulating Sales of Flavored Tobacco Products,” (September 2019), *available at* www.tobaccopolicycenter.org/documents/FlavoredTobacco.pdf.

