



# Tobacco Retailer Licensing

## A Plan to Reduce Youth Access to Tobacco

### Background

In January 2014, the U.S. Acting Surgeon General Boris D. Lushniak, MD, MPH released the 50th Anniversary Surgeon General's report. The report shows that smoking is even more dangerous than previously thought in that it causes multiple serious diseases and diminishes overall health status. More than 42 million American adults smoke. Nearly 50% will continue to smoke into later decades and an estimated 480,000 will die prematurely from a tobacco-related disease each year. Despite progress since the first report was issued 50 years ago, smoking remains the single largest cause of preventable disease and death in the United States.<sup>1</sup>

### Smoking, Youth, and Retail Point of Sale (POS)

Of the 25 million 12 to 17-year-olds in the United States, about 10 million (40%) are at risk of taking the first puff or continuing to smoke and becoming regular smokers.<sup>2</sup> Nearly 3 million middle and high school students smoke. If smoking rates remain unchanged, 5.6 million children alive today will die prematurely from smoking. For every "customer" that dies, the tobacco industry targets two more younger, replacement smokers to initiate the deadly habit.<sup>3</sup> As a result of the industry's marketing practices, more than 80% of all adult smokers begin smoking before the age of 18, and 90 percent do so before leaving their teens.<sup>4</sup>

Use of other forms of tobacco and nicotine products by youth is on the increase. Electronic cigarette experimentation and recent use doubled among US middle and high school students during 2011–2012.<sup>5</sup> In addition, more than 50% of White and Hispanic males reported they were concurrent users of more than one tobacco product.<sup>6</sup>



In 2009, Congress passed, and the President signed into law, the Family Smoking Prevention and Tobacco Control Act (Public Law 111-31).<sup>7</sup> It gave the FDA broad authority to regulate the manufacture, sale, and distribution of tobacco products. This includes products on sale in retail locations such as convenience stores and supermarkets. As a result, states and communities can consider retail point of sale (POS) restrictions as an area of promising tobacco control practice.<sup>8</sup>

Tobacco companies spend more than 90% of their marketing budget (\$10 billion a year) to have their products marketed and displayed in retail stores. In addition, these companies compensate retail stores to assure that their cigarettes and other tobacco products are prominently displayed. This is an effort to appeal to youth and other tobacco users.<sup>9</sup>

The 2008 National Cancer Institute Monograph found that “the evidence base indicates a causal relationship between tobacco advertising and increased levels of tobacco initiation and continued consumption.” Even short exposure to tobacco advertising influences adolescents’ way of thinking and view about smoking and their intentions to smoke.<sup>10</sup> With these risks in mind, it is the right time for cities and towns to consider implementing a local tobacco retailer license in order to begin to assert judicious authority over the heavily funded and predatory tobacco marketing landscape.

## The Benefits of Requiring a Local Tobacco Retail License in Rhode Island

Requiring a local tobacco retailer license provides communities with a powerful tool for garnering compliance with all tobacco-related regulations including laws banning sales to minors. Once in place, the community will be able to identify a list of local tobacco retailers, and can update the list annually with yearly license renewals. This would facilitate merchant education regarding the rules and regulations surrounding tobacco sales. Other highly effective retail point-of-sale policy initiatives to consider include: eliminating tobacco product discounting and tobacco flavors (**Providence**)<sup>11</sup>, and requiring that certain products not be displayed on retail counters (**North Kingstown**).



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## Tobacco Industry Influence in Rhode Island

High school students who smoke .....	8.0% (3,293)
Male high school students who use smokeless or spit tobacco .....	10.0%
Kids (under 18) who become new daily smokers each year .....	700
Packs of cigarettes bought or smoked by kids each year .....	1.8 million
Adults in Rhode Island who smoke .....	142,461 (17.4%)

Sources: 2013 Rhode Island Youth Behavioral Risk Survey; Campaign for Tobacco Free Kids Fact Sheets [http://www.tobaccofreekids.org/facts\\_issues/toll\\_us/rhode\\_island](http://www.tobaccofreekids.org/facts_issues/toll_us/rhode_island); 2012 Rhode Island Behavioral Risk Factor Surveillance System.

Annual tobacco industry marketing expenditures nationwide .....	\$8.5 billion
Estimated portion spent for Rhode Island marketing each year .....	\$23.1 million

Source: Campaign for Tobacco Free Kids [http://www.tobaccofreekids.org/facts\\_issues/toll\\_us/rhode\\_island](http://www.tobaccofreekids.org/facts_issues/toll_us/rhode_island)

## Enforcement Programs Work

Protecting children from the risk of smoking by reducing youth access to tobacco products can be accomplished. Key elements to a comprehensive approach include: engaging and funding police and law enforcement agencies to help reduce the percentage of retailers that participate in illegal youth tobacco sales; partnering with state agencies such as the Department of Behavioral Health, Developmental Disabilities and Hospitals (BHDDH) which has jurisdiction over federal and state retail education and compliance programs; and instituting local licensing laws in concert with interested community constituencies, such as local community prevention coalitions.



High rates of illegal tobacco sales to minors are linked with low retailer perception of being caught and penalized.<sup>12</sup> This was evident in two California communities. In Coachella, California, youth access to tobacco rates dropped from 69% to 11% after an annual retailer license fee (\$350) was put in place. Similarly, in the City of Elk Grove, California, youth access rates dropped from 17% to 0% when a \$270 license fee was instituted. California now boasts more than 110 local ordinances that require retail licensing with fees and enforcement in both rural and urban areas.<sup>13</sup>





## The municipal benefits to requiring a tobacco retailer license

- It creates a system of fees to support tobacco enforcement efforts.
- The license puts in place a local system for enforcing youth tobacco sales.
- It is an avenue for addressing sales of other tobacco products targeted to youth including electronic cigarettes, SNUS and dissolvables.
- Unregulated products such as electronic cigarettes can be addressed.
- Places limits on tobacco product discounts and promotions.
- Sales of flavored tobacco products can be prohibited to youth, or in total.
- Parameters around tobacco product displays and placements, such as “out of view,” can be adopted.
- Tools, such as placing restrictions on retailer density and zoning, can limit youth exposure to tobacco products.

## Key Provisions and Conditions of a Tobacco Retail License

It is important that all retailers selling tobacco products obtain a license, and renew it annually. Municipalities can determine requirements around the number, locations, and types of tobacco retailers they allow in their communities. In addition, “tobacco products” can be defined to include many new products that are attractive to youth including smokeless and flavored tobacco, cigars, dissolvables and electronic cigarettes. In the City of Cranston, electronic cigarette retailers must obtain a tobacco retail license.

A licensing program should require a fee in order to sufficiently fund an effective program. Many localities adjust the fee annually to support their current program administration and enforcement needs, including periodic compliance checks.

Designating an administrative body and hearing process, such as through a licensing authority, can be used to oversee licenses and violations. Municipalities can impose penalties, and suspension or revocation of the license upon a violation related to sales, distribution or use of tobacco. Fines and penalties should be articulated in the ordinance.

For instance, the City of Providence Charter states that the Board of Licenses “shall have and exercise such power and duties relating to licenses as may be prescribed by law or ordinance” and “shall...receive from the police department notification of the violation of the terms of any license.” This allows the Board to revoke or suspend a repeat offender’s license.



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## Summary

Cities and towns have the right to set tobacco retail policy. Eliminating youth access to tobacco products, putting in place and enforcing retail point-of-sale requirements, and controlling the retail location and concentration of tobacco retailers are all policy tools available to Rhode Island municipalities. In addition, the passage of a local tobacco retail license sends a message to the community that there are consequences for tobacco retail violations.

According to Center for Disease Control and Prevention’s (CDC) 2014 Best Practices for Comprehensive Tobacco Control Programs, state and community interventions for preventing tobacco use among youth includes: “stronger local laws directed at retailers, active enforcement of retailer sales laws, and retailer education and reinforcement”<sup>14</sup>

The Rhode Island Department of HEALTH Tobacco Control Program is available to provide technical assistance to city and town municipalities as they consider and move towards a tobacco retailer license requirement.

## References

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- <sup>8</sup> A report by the Campaign for Tobacco-Free Kids, Counter Tobacco and the American Heart Association, Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies [http://www.tobaccofreekids.org/content/what\\_we\\_do/industry\\_watch/store\\_report/deadlyalliance\\_full\\_report.pdf](http://www.tobaccofreekids.org/content/what_we_do/industry_watch/store_report/deadlyalliance_full_report.pdf)
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