



TOBACCO RETAIL LICENSING ENFORCEMENT GUIDE

for New York State



Commercial tobacco products¹ are inherently dangerous and addictive, and their sale deserves significant oversight by local communities. Local tobacco retail licensing is a powerful tool that communities can use to shape their retail environment to reflect community values and impede tobacco industry control.

Retail licensing furthers government objectives of preventing disease and promoting health and health equity. Through tobacco retail licensing, local government is better equipped to



control where and by whom tobacco products are being sold and better understand how the sales environment impacts community health behavior and outcomes. Tobacco retail licensing also permits local enforcement with meaningful consequences for violations of federal, state, and local laws. This guide highlights approaches to local tobacco retail licensing enforcement in New York State. Local communities have different public health resources and community preferences, so a range of enforcement options are included, with context for the benefits of each approach and implications for equity.

New York State law uses the word “registration” rather than “license” regarding the retail sale of tobacco and vapor products, and it requires separate registrations for retailers that sell tobacco products, as opposed to vapor products. For purposes relevant to this guide, the words license and registration are synonymous. This guide generally uses the word license, except when it is specifically referencing state registrations to sell tobacco and vapor products.

Equitable Enforcement

Equitable law and policy enforcement is an ongoing process that “considers and minimizes harms to underserved communities.”² Equitable enforcement is important to ensure effective compliance and implementation of tobacco retail license ordinances, which will in turn reduce sales to youth and initiation of commercial tobacco use and decrease health disparities in communities targeted by the tobacco industry. The Center for Black Health & Equity and leading U.S. public health organizations have endorsed the following core values for equitable enforcement in tobacco control:

- Commercial tobacco control laws and policies are first and foremost public health measures.
- State and local governments should reform or eliminate enforcement practices that target individuals, especially youth, rather than businesses and industry actors.
- Enforcement practices and penalties for violations of commercial tobacco control laws should be proportional to the alleged violation and address health, equity, and social justice considerations.
- State and local governments should adopt legal and policy frameworks that facilitate the effective, equitable enforcement of commercial tobacco control laws by holding businesses and other industry actors accountable for violations.³

These core values are intended to reduce both under- and overenforcement of tobacco control policies. Underenforcement occurs when laws designed to “provide safe, healthy communities



Left, tobacco chew products near candy and snacks, Brooklyn, New York.
Right, a smoke shop in New York City.

Credits: Counter Tobacco, iStock.

are not enforced or are underenforced, [and] residents in those communities do not reap the benefits of those policies.”⁴ Overenforcement occurs when tobacco control laws “are enforced more frequently, or more strictly, in certain places — or against certain people as compared to others.”⁵ It’s important to note that well-drafted tobacco control policies in the retail environment are enforced against retailers, not individuals in possession of tobacco and nicotine products. Overenforcement by police, especially against individuals, can raise concerns about racial profiling, an unfair commercial marketplace, and the potential for compounding negative consequences from unpaid fines and criminal penalties. The tobacco industry exploits genuine fears of racial injustice as a way of decreasing support for tobacco policies.⁶ Effective enforcement is consistent and sufficient to deter regulated conduct and reduces over- and underenforcement by balancing public health goals and equity considerations.

Advantages of Tobacco Retail Licensing

Tobacco retailers are subject to state law licensing requirements, which include the regulation of sales to underage buyers or sales of flavored products, minimum package sizes for cigars, and coupon redemption. For an overview of state retail tobacco licensing laws, see *Tracking Tobacco Laws: A New York State Digest*. Local governments in New York, however, also have the

authority to adopt retail tobacco licensing laws — often called city or county ordinances. These local licensing laws can be stricter and more comprehensive than state (or even federal) law. For example, local licensing ordinances can specify enforcement mechanisms, evaluation, and a process for ensuring that fees are sufficient to cover all costs associated with license administration. Ordinances can include provisions specifying where tobacco retailers can locate in a community; how close tobacco retailers can locate to one another; and how far away they must be from establishments like healthcare providers, parks, and schools. A licensing ordinance also can reduce the density of tobacco retailers by decreasing the number of licenses issued over time. For example, in 2023, the City of Syracuse, New York enacted a tobacco retail licensing ordinance that limits the number of local licenses to the number of valid state tobacco retail licenses issued when the ordinance took effect, and over time only one new license can be issued for every two existing licenses that are revoked or expired and not renewed.⁷

Local licensing has many advantages. For instance, it permits local enforcement, with meaningful consequences, for violations of federal, state, and local laws. One criticism of federal and state tobacco control policies is that they are underenforced at the local level.⁸ As a result, communities most in need of interventions to reduce the burden of tobacco-related disease and death may not receive the full benefit of state and federal policies. A best practice to increase compliance with federal and state tobacco laws is to include in the local ordinance a provision stating that it is a violation of the local license to violate federal and state tobacco- and vapor product-related laws.⁹ For example, the New York State Model Tobacco Retail Licensing Ordinance contains the following provision: “... it shall be a violation of this [article/chapter] for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.”¹⁰ When well enforced, such a provision provides tobacco retailers with a strong incentive to comply with all tobacco control laws because they may face fines or revocation of their tobacco retail licenses if they violate those laws.

Through licensing, local government also can gain information about how the tobacco sales environment impacts health outcomes. For example, tobacco retailer density in New York State has been found to be positively associated with smoking among adults with comorbid diabetes and serious mental illness.¹¹ Local tobacco retail licensing data about local retailer density can be used to focus smoking cessation resources on those most in need of services.¹² Another major advantage of tobacco retailer licensing is that new licensing requirements can be applied to existing license holders allowing for flexibility to address novel tobacco products and sales tactics and changing community demographics, as well as adjustments to the licensing fee to cover the costs of administering the licensing program. Additional best practices to help New York municipalities and counties establish or strengthen local tobacco retail programs are available in New York State’s Comprehensive Tobacco Retailer Licensing Model Ordinance.



New York State Tobacco Retail Licensing Laws

In New York State, a retailer that sells tobacco products must secure a retail dealer and vending machine registration under New York tax law, section 480-a.¹³ To sell vapor products, a retailer must secure a vapor products dealer certificate of registration under New York Tax Law section 1183.¹⁴ To sell tobacco products and vapor products, a retailer must secure both registrations, which are issued by the New York State Department of Taxation and Finance.¹⁵ The Department of Taxation and Finance and local law enforcement agencies have authority to enforce tobacco retailer registration laws.¹⁶ Registrations are valid for one year, and a current certificate of registration must be publicly displayed where tobacco products or vapor products are sold.¹⁷ The application fee is \$300 per retail location selling tobacco products or vapor products, and \$100 per vending machine.¹⁸ The application fees are separate, so a retailer with both registrations would pay \$300 for each registration annually, plus a vending machine fee if applicable. State tax law also requires that cigarettes be sold in packs of at least 20 cigarettes and tobacco product packaging includes all federally mandated health warnings.¹⁹

Retailers that violate relevant state tobacco, criminal, or tax laws (e.g., selling tobacco products to an individual under age 21 years) jeopardize their registrations to sell tobacco products and/or vapor products.²⁰ Violations of state tax laws may also result in significant fines (up to \$35,000 for repeat violations) and possible suspension and revocation of certificates of registration.²¹ Finally, the cancellation or suspension of a tobacco product retail dealer's registration can result in cancellation or suspension of other state licenses, including lottery and alcohol licenses.²²

For example, from April 1, 2018, to March 31, 2020, the New York State Gaming Association suspended 75 lottery agent licenses as a result of multiple tobacco sale-to-minor violations.²³

Local Tobacco Retail Licensing Authority

Local governments in New York have the authority to enact tobacco retail licensing ordinances under federal and state law. The 2009 Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”) granted the U.S. Food and Drug Administration (FDA) authority to regulate tobacco products,²⁴ and permits state and local governments “to enact, adopt, promulgate, and enforce any law, rule, regulation or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established” by the Act, including “requirements relating to the sale, distribution, ... [or] access to ... tobacco products by individuals of any age....”²⁵

Also, New York State law does not preempt local tobacco control laws,²⁶ which means that local governments in New York can create tobacco retail licensing systems more stringent than systems allowed under state law. Tobacco retail licensing ordinances can be enacted at the county level or by a city, village, or town.²⁷ In addition, New York local boards of health have some authority to pass regulations “necessary and proper for the preservation of public health.”²⁸

Local Tobacco Retail Licensing Enforcement

Policy enforcement is shaped by the mechanisms contained in the policy and the way the community chooses to enforce it. Tobacco retailer licensing requirements can be enforced by a range of entities including the local public health department, other government agencies (such as the department of planning and economic development), the police department, and/or local prosecutors. How enforcement actions are prioritized and how penalties for violations are assessed can involve a high level of discretion by local enforcement officers that must be exercised in an equitable way. Also, local governments need to be diligent in identifying all tobacco retail establishments (including vape shops) — licensed and unlicensed — in their communities, and not rely solely upon state lists. This section discusses various aspects of the enforcement process, with a focus on best practices, equity considerations, and New York-specific examples.

Identifying Retailers

A first step to establishing a licensing system is to create a database of all tobacco retailers required to obtain a local license.²⁹ Inaccurate and incomplete retailer lists can be a barrier to effective enforcement. A list of conventional tobacco product retailers can be compiled

from state tobacco retail registration records (available at health.data.ny.gov/stories/s/Active-Tobacco-Retailers-Interactive-Search/4k3j-hkhk and health.data.ny.gov/Health/Active-Retail-Tobacco-and-Vapor-Product-Vendors/9ma3-vsuk/data.) For example, the City of Syracuse's tobacco retail licensing ordinance limits the number of licenses to the number of retailers registered with the state to sell tobacco or vapor products when the ordinance became effective.³⁰ The ordinance required the licensing agency to mail a copy of the ordinance to all tobacco retailers registered with the state within sixty days of the effective date of the ordinance.³¹ This provision facilitated an initial count of tobacco retailer licenses in the community, generated a mailing list of retailers required to obtain a local license, and provided initial notice of the law's requirements.

Enforcing provisions of a local licensing ordinance that prohibit sales of tobacco products without a local license is an ongoing process that can be difficult, especially in larger cities and counties. Unconventional, unregistered businesses, like delicatessens and hardware stores could begin to sell tobacco or vapor products illegally at any time. Likewise, businesses that have recently opened or changed ownership may sell tobacco or vapor products, violating state and local laws intentionally or unwittingly. An initial step to identify unlicensed tobacco sales is to review the state Department of Taxation and Finance records of tobacco retailers that have had their registrations revoked or permanently suspended. From April 1, 2018, to March 31, 2020, the New York State Department of Taxation and Finance suspended 299 retailer registrations (261 were suspended for 6 months, 9 were suspended for 1 year, and 29 were permanently revoked).³² The licensing agency also can use online business listings, review sites, social media platforms, citizen complaints, and community surveys to identify unlicensed retailers.

Retailer Education

Once retailers are identified, the licensing agency can determine which languages are spoken by tobacco retailers and their staff and develop and circulate written materials about what is required of licensed tobacco retailers and staff.³³ Information can be published online, sent to all retailers via post and email, or provided as handouts during compliance checks. Educational materials can communicate the rationale behind the licensing system and otherwise place the law in the proper health context. The enforcing agency also can use these materials to invite retailers' questions and provide contact information for assistance with policy compliance. To support effective enforcement and to promote health equity, educational materials should be easy to understand and available in the languages spoken by license holders and tobacco retail sales staff.³⁴ For example, New York City makes its educational resources for tobacco retailers available in English and seven other languages.³⁵

Según las leyes del Estado y de la Ciudad de Nueva York, esta tienda:



Solo venderá productos de cigarrillos electrónicos **si son con o sin sabor a tabaco.**



Solo venderá productos de tabaco o cigarrillos electrónicos al **precio exigido**, sin cupones ni descuentos.



Solo venderá productos de tabaco o cigarrillos electrónicos **en persona** a personas en NYC (sin envíos).



Solo venderá productos de tabaco en los **tamaños de empaque exigidos**. No habrá cigarrillos sueltos.



Solo venderá productos de tabaco o cigarrillos electrónicos a personas que tengan **al menos 21 años** y muestren un documento de identidad válido.

Spanish



Para obtener más información, llame al 311 o visite [nyc.gov](https://www.nyc.gov) y busque "tobacco laws" (leyes de tabaco).



Actualizado en marzo de 2022

Figure 1: New York City Department of Health and Mental Hygiene, public facing tobacco laws poster (Spanish version).

License Applications and Renewals

License application and renewal forms collect information necessary to administer the licensing program and to evaluate the program’s effectiveness. Application and renewal forms can collect information about the type of businesses seeking a license. For example, Cayuga County, New York asks tobacco retail applicants to describe their businesses as follows:

Facility Type (check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Convenience | <input type="checkbox"/> Gas | <input type="checkbox"/> Discount Store |
| <input type="checkbox"/> Grocery/Supermarket | <input type="checkbox"/> Pharmacy | <input type="checkbox"/> Mobile/Stand |
| <input type="checkbox"/> Restaurant | <input type="checkbox"/> Bar/Lounge | <input type="checkbox"/> Tobacco Business |
| <input type="checkbox"/> Liquor/Beverage Store | <input type="checkbox"/> Other (specify): _____ ³⁶ | |

This information can be used to inform future policy decisions about the number of licenses permitted in a community. It also can be useful when evaluating requests from new applicants for a waiver of a cap on the number of retail licenses issued, or a waiver of a licensing provision restricting licenses from being issued to tobacco retail establishments within a certain distance of a school or other restricted location. Changes in facility type from those listed in the state database of tobacco registrations, or those that are discovered during local retail inspections or the renewal application process, also can alert the licensing agency to potential changes of ownership that may impact license eligibility in communities where the number of new licenses is limited and/or licenses are non-transferrable.

Application and renewal forms can also require the tobacco retailer to specify which types of products they sell. For example, the City of Syracuse³⁷ and the Town of Bethlehem ask applicants to indicate whether they are registered with the state to sell tobacco and/or vapor products:

- | | | |
|-----------------------------|------------------------------|---|
| NYS Tobacco Retailer | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| NYS Vapor Retailer | <input type="checkbox"/> Yes | <input type="checkbox"/> No ³⁸ |

Having an inventory of the number of retailers that sell tobacco and/or vapor products in a community can be useful when calculating program costs and application and renewal fees as compliance checks can be more time-consuming for vendors selling both tobacco and vapor products.

Application and renewal forms also can contain questions and retailer affirmations that support a more effective licensing program. Requiring disclosure of any prior violations of tobacco product sales laws in license applications and renewals can incentivize retailer compliance.³⁹ For example, Cayuga County, NY, requires applicants to answer the following question: “Has the business/owner ever had a Tobacco Retail License issued under this Cayuga County local law

revoked? Yes No⁴⁰ The City of Syracuse asks applicants the following questions about prior violations:

Are you aware if a Tobacco Retail License was revoked in the past three years at the address where business is to be conducted under the Tobacco Retail License being applied for herein? If yes, explain what, if any, relationship you had with the prior licensee:

Do you have any outstanding fines and/or violations with the Onondaga County Health Department in connection with violation(s) of New York State Public Health Law Article 13-F, known as the Adolescent Tobacco Use Prevention Act ("ATUPA")? If yes, please describe:

Have you ever been found by a court of law or administrative body to have violated any federal, state or local law pertaining to: (a) trafficking in contraband tobacco products, electronic smoking devices, or any other product regulated under Article 13-F of the New York State Public Health Law; (b) the payment or collection of taxes on tobacco products, electronic smoking devices, or any other product regulated under Article 13-F of the New York State Public Health Law; (c) the display of tobacco products, electronic smoking devices, or any other product regulated under Article 13-F of the New York State Public Health Law; (d) the display of health warnings pertaining to tobacco products, electronic smoking devices, or any other product regulated under Article 13-F of the New York State Public Health Law; or (e) the sale of tobacco products, electronic smoking devices, or any other product regulated under Article 13-F of the New York State Public Health Law? If yes, please describe:⁴¹

Forms also can include an affirmation that the applicant is aware of the local law.⁴² For instance, the Ulster County Department of Health's tobacco license application form requires the owner, operator, or corporation officer of the retail establishment seeking the license to sign the following certification:

I certify that I have read and understand the contents of the Ulster County Local Law Number 5 of 2015. I have reviewed this information with employees of the establishment and understand that as the legal vendor of tobacco products, I am responsible for any violations of Ulster County Local Law Number 5 of 2015, that are committed by the establishment.⁴³

Enforcing Distance Requirements

Tobacco retailers may try to avoid enforcement of a tobacco retail licensing provision limiting licenses within a certain distance of schools, parks, or other restricted locations by claiming that their establishments fall outside the distance restrictions.⁴⁴ One solution is to work with geographic information system (GIS) specialists to create maps of parcels within restricted



zones.⁴⁵ For example, Ulster County prohibits new tobacco retail licenses for establishments within 1,000 feet of K–12 schools.⁴⁶ The County’s tobacco retail license ordinance includes a provision stating that: “The Commissioner [of the Ulster County Health Department] shall, as part of the application process, identify and notify any existing tobacco retailer in Ulster County that is located within 1,000 feet from the nearest point of the property line of a school.”⁴⁷ To facilitate this process, the Ulster County Health Department generated a series of property maps showing parcels within a 1,000 foot radius of each of the 55 K–12 schools covered by the ordinance.⁴⁸ These maps also mark active tobacco retailers grandfathered in by the local licensing ordinance and support ongoing compliance monitoring.



Figure 2: Map of all K-12 Schools with Prohibited 1000' Radiuses, Plattekill Elementary School.

Licensing Fees

In New York State, a municipality can fund the administration and enforcement of its licensing program with revenue from licensing fees. A license fee differs from a tax, which most New York municipalities may not impose without special permission, because it is not used to raise revenue to fund general operations, but rather corresponds to the cost of administering and enforcing the licensing program. It is important to document licensing and enforcement costs both to determine a reasonable license fee and to avoid legal challenges by those seeking to evade payment by claiming that the fee is an “illegal” tax. A reasonable license fee can be used to fund a wide range of activities that are needed to successfully maintain tobacco and vapor product retail licensing programs. For example, fees may be used, among many other things, to fund the issuance of licenses, the establishment of an online application portal, the education of regulated businesses and the public, new or additional staff, inspector training, staff time for compliance inspections and data entry, the development of a mobile application to facilitate compliance checks, the production of related signage and materials, enforcement actions, and GIS mapping expenses. A detailed fee calculator that can be used to document and calculate program costs is available [here](#).

The level of compliance monitoring and enforcement feasible for a local tobacco retail license program depends upon the level of program funding available from licensing fees and other sources. The licensing fee will be particular to the resources needed to establish the program and for ongoing license administration, compliance monitoring, and enforcement. Fees should be regularly adjusted to reflect current costs. For example, the City of Newburgh’s tobacco retail licensing ordinance states that the Newburgh City Council may modify the tobacco license fee on an annual basis to recover the costs associated with administration and enforcement of the licensing program.⁴⁹

A 2020 study found that tobacco retail license fees of less than \$300 are generally inadequate to fund a licensing program.⁵⁰ Local tobacco retail licensing systems in New York State typically combine tobacco and vapor products into one license and assess one fee for sellers of both types of products. In 2023, annual local tobacco retail license fees in New York ranged from \$0–\$270 (**Table 1**). These local fees are significantly less than the combined total fee of \$600 for New York State registrations for tobacco (\$300) and vapor products (\$300).

Table 1: Local Tobacco Retail Licensing Fees to Sell Tobacco Products in New York State (2023)⁵¹

Jurisdiction	Fees*	Minimum Number of Annual Inspections for License Holders**
Bethlehem, NY	\$130 application fee & \$140 license issuance fee due upon approval. ⁵²	Discretionary ⁵³
Cayuga County	\$0 ⁵⁴	Discretionary ⁵⁵
Village of Dolgeville	\$200 ⁵⁶	Discretionary ⁵⁷
Dutchess County	\$215 application or renewal fee ⁵⁸	Not Specified ⁵⁹
Village of Endicott	"...as set by resolution of the Board of Trustees for the Village of Endicott." ⁶⁰	Discretionary ⁶¹
New York City	"biennial fee of \$200" ⁶²	"Regularly" ⁶³
City of Newburgh	\$10 application fee \$50 annual fee ⁶⁴	Discretionary ⁶⁵
Town of Salina	\$250 ⁶⁶	Discretionary ⁶⁷
Syracuse	\$250 application fee ⁶⁸	Discretionary ⁶⁹
Ulster County	\$0 ⁷⁰	Discretionary

* Late fees are not included.

** This does not include initial inspections required during the application process for new licenses.

Compliance Monitoring

Compliance monitoring is key to effective and equitable enforcement of local tobacco retail licensing ordinances. Monitoring can include store visits by enforcement officers and underage sales checks, in addition to those required by state law. Considerations for equitable compliance monitoring involve determining which monitoring entity (e.g., code enforcement, police department, public health department, local or district environmental health program) is best positioned to effectively enforce the local policy and minimize negative outcomes. Some tobacco retailer licensing ordinances vest enforcement authority in one entity, and others

permit enforcement by various entities. For example, the City of Syracuse’s tobacco retailer licensing ordinance is administered by its Division of Code Enforcement, but the policy can be enforced by “the Division of Code Enforcement in conjunction with other City Departments including the Police Department.”⁷¹ Also, local jurisdictions can maximize their compliance and enforcement resources by coordinating with other enforcement bodies if and when they become aware of other violations (e.g., by sharing information and documentation of state law violations with local jurisdictions).

The Center for Black Health & Equity recommends that enforcement authority be vested in public health or non-police officials like civil code enforcement officers.⁷² Enforcement by police can raise concerns over racial profiling and potential negative collateral consequences. Also, some public health officials in large cities have noted that when police, rather than public health departments, are responsible for compliance monitoring of tobacco control laws, inter-agency communication can be difficult and competing police priorities (e.g., violent crime), often take precedence over tobacco control.⁷³ Jurisdictions with ordinances that vest enforcement authority in police officials should consider revising their ordinances to shift enforcement to non-police officials. Jurisdictions with discretion to vest authority with police or non-police officials can support equitable enforcement by directing funding for enforcement activities to non-police entities.

The following are some best practices for tobacco retail compliance checks conducted by the monitoring entity:

- Set a minimum number of compliance checks per retailer in a specific timeframe.
- Conduct follow-up compliance checks for non-compliant retailers within a relatively narrow timeframe (e.g., 30 days).
- Prioritize high-risk retailers for compliance checks (see below).
- Conduct unannounced compliance checks.⁷⁴

For routine compliance checks after a tobacco retail license is issued, local tobacco retail licensing ordinances in New York State typically authorize “periodic” inspections at the discretion of the enforcing agency (as opposed to a set number of inspections during a set timeframe) ([Table 1](#)). New York City is the only jurisdiction in the state that requires inspections “regularly,” but it also does not specify a minimum number of inspections ([Table 1](#)).

The number of compliance checks that can be completed is limited by available funding. Prioritizing high-risk retailers, as opposed to random sampling, is one way to use enforcement resources when funding does not permit inspection of all retailers. This approach, however,

can involve a great deal of discretion by enforcement officials. Equitable enforcement systems exercise discretion using “a clear set of guidelines that are made public so that the public can hold enforcers accountable. These guidelines should be evidence-based, prioritize equitable enforcement to vindicate the rights of underserved communities, and push against the forces of implicit bias.”⁷⁵ Systems to identify high-risk retailers should be proactive and data-driven instead of reactive (e.g., reliant on citizen complaints).⁷⁶

For example, communities in California have reported combining the following community data to identify high-risk tobacco retailers for compliance checks: type of establishment (e.g., nontraditional vendors like doughnut shops); density and location of retail districts (e.g., stores easily accessed by youth or within 1,000 feet of a school building), and retailers with prior violations for sales-to-youth.⁷⁷ One large city also reported that it collaborated with a state agency to identify high tobacco sales areas of the city and focused its compliance checks on retailers located in those areas.⁷⁸

Assessing Penalties

Licensing systems are powerful tools in part because the two most common penalties employed — fines and the suspension or revocation of the tobacco retail license — provide substantial incentives to comply with the law. Regular, consistent, and equitable enforcement of the law is required to ensure that the licensing system works effectively to deter illegal conduct. The Center for Black Health & Equity recommends that licensing systems:

- Hold business owners accountable for violations committed by their employees
- Use tiered civil penalties for violations, and
- Reserve criminal penalties only for businesses that repeatedly violate licensing law⁷⁹

Employees are agents of their employers, and employers should be held responsible for the actions of their staff. For enforcement purposes, discretion should be exercised to ensure tobacco retail licensing ordinances are enforced against tobacco retailers (employer) as opposed to their staff. Enforcement against retail staff is not a best practice, because it is less likely to change overall retailer behavior and can inappropriately shift accountability away from a retailer’s poor training or management practices. Additionally, fines assessed against retail staff can be a substantial burden and have rippling effects for staff who likely are paid minimum wage or close to it. Civil penalties that increase with the number of violations and are levied against the tobacco retailer provide a strong financial incentive for retailers to create a culture of compliance. (Note, however, that New York State law allows tobacco and vapor product retailers a reduced

penalty for a sale-to-minor violation if the clerk who made the sale previously attended a State Certified Tobacco Sales Training course and holds a valid certificate of completion.⁸⁰⁾

Local tobacco retail licensing penalty provisions in New York State contain a variety of penalties, and varying levels of discretion to impose penalties. For example, Cayuga County's tobacco retail licensing ordinance contains a tiered fine system by which violators of the local licensing law and violators of state and federal tobacco laws "shall have their Cayuga County License suspended for up to 3 months for a first offense, 6 months for a second offense, or revoked for a third offense after notice and an opportunity to be heard at an administrative hearing."⁸¹ In addition to civil penalties, the Village of Endicott can assess criminal penalties for violations of its tobacco licensing ordinance, and any person "shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both."⁸² The City of Syracuse does not impose criminal penalties, but its tobacco retail licensing ordinance authorizes penalties against license holders for violations of the policy of up to \$3,500 for a first violation, up to \$7,000 for a second violation, and up to \$10,000 for a third and each subsequent violation after notice and a hearing.⁸³ After the required notice and hearing procedures, the Division of Code Enforcement is authorized to conduct a "de novo review" of the information submitted at the hearing and of the hearing officer's penalty recommendations.⁸⁴ After this review, the Division of Code Enforcement can assess fines, and has full discretion to suspend the tobacco retailer's license for up to 12 months, or order revocation of the license.⁸⁵

As discussed above, a best practice when there is broad enforcement discretion is to maintain written guidelines and make them available to the public. To ensure that enforcement practices occur in an equitable manner, the Center for Black Health & Equity also recommends that enforcing entities "[c]ollect and evaluate data regarding ... enforcement actions against tobacco retail sales establishments to ensure that enforcement practices do not unfairly target underserved communities. If businesses in certain communities have a greater number or rate of violations, public health officials should seek to identify compliance barriers and offer technical assistance to help businesses comply with applicable laws."⁸⁶

Using Licensing Data to Improve Health Outcomes

The goal of tobacco retailer licensing laws is to improve public health by creating a retail environment that reduces the number of people who begin using tobacco products and supports cessation efforts by established tobacco users. Tobacco retailer licensing data collected when issuing licenses and conducting enforcement can be paired with public health data to support efforts to improve health outcomes and to reduce health disparities. Health-

based evaluations of tobacco retail licensing ordinances can be required by ordinance or conducted as part of the licensing program.

For example, in 2018, New York City sought to reduce the density of tobacco retailers by capping the total number of tobacco retail licenses at 50 percent of the number of existing licenses in each of the City's 59 community districts.⁸⁷ Under the policy, a new license can only be issued when the number of licenses in a community district is "lower than the community district retail dealer cap."⁸⁸ As a result, the total number of licenses decreases when a tobacco retailer ceases operation or does not renew an existing license.⁸⁹ The policy requires a health-based evaluation of the community district retailer caps every two years or whenever a district's boundaries change.⁹⁰ The evaluation must be conducted by the licensing agency (the Department of Consumer and Worker Protection), in conjunction with the Department of Health and Mental Hygiene.⁹¹ The evaluation must consider "the number of retail dealers and the prevalence of cigarette smoking and use of other tobacco products."⁹² If indicated by the evaluation, "further reductions to the community district retail dealer cap" can be recommended to the City Council.⁹³ A study of the policy found that "four years after policy implementation, retailer density levels decreased by over 30% ... [and] retailer density reductions were greater in communities historically oversaturated with tobacco retailers, particularly those with higher proportions of non-Hispanic Black residents and lower income levels."⁹⁴ The health-based evaluation required by the policy can be used to continue to refine the policy to maximize its public health benefit.

Conclusion

Communities of all sizes in New York State have enacted local tobacco retail licensing ordinances and provide a wealth of examples of enforcement approaches that can be used under existing local licensing ordinances. Translating educational materials into the languages spoken by tobacco retailers and their staff supports compliance and equity. License application and renewal forms can be drafted to collect information vital for effective program administration and evaluation and for determining the adequacy of licensing fees. Application and renewal forms also can contain questions about prior tobacco law violations and retailer affirmations that support retailer compliance. GIS-mapping of licensed tobacco retailers is a powerful tool to enforce distance requirements and to monitor retailer density in the community. Equitable enforcement can be supported through data-driven enforcement, as well as transparency with the public about how retailers are identified for enforcement and how penalties are assessed. Discretion can be exercised to ensure that tobacco retail licensing ordinances are enforced against tobacco retailers (employers) as opposed to staff. When there is broad discretion to assess penalties, licensing programs can develop written enforcement

guidelines and make them available to the public. Tobacco retailer licensing data collected when issuing licenses and conducting enforcement can be paired with public health data to support efforts to improve health outcomes and to reduce health disparities. Adequate funding through license fees and other funding sources is needed to support adoption of these best practices in tobacco retail licensing enforcement.

If you're working on New York State commercial tobacco control issues and need assistance, contact the Public Health Law Center at (651) 290-7506 or phlc.nys@mitchellhamline.edu.

This technical report was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health, and was made possible through a contract with the New York State Department of Health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.

Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. In contrast, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.
- 2 CHANGELAB SOLUTIONS, *EQUITABLE ENFORCEMENT TO ACHIEVE HEALTH EQUITY: AN INTRODUCTORY GUIDE FOR POLICYMAKERS AND PRACTITIONERS 6* (2020), https://www.changelabsolutions.org/sites/default/files/2020-06/Equitable_Enforcement_to_Achieve_Health_Equity-GUIDE-ACCESSIBLE_FINAL_20200610.pdf.
- 3 CTR.FOR BLACK HEALTH, *EQUITABLE ENFORCEMENT IN TOBACCO CONTROL*, <https://www.centerforblackhealth.org/equitableenforcement>.
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- 5 CHANGELAB SOLUTIONS, *EQUITABLE ENFORCEMENT IN COMMERCIAL TOBACCO CONTROL WEBINAR* (Feb.9, 2021), <https://www.changelabsolutions.org/product/equitable-enforcement-commercial-tobacco-control>.
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- 7 CITY OF SYRACUSE, *LOCAL LAW NO. __* (2023), <https://www.syr.gov/files/sharedassets/public/v/1/1/2-departments/permits/documents/2023-tobacco-ordinance.pdf>. Note that while the Syracuse licensing law takes important steps to protect its communities from the harms of commercial tobacco, the language of the law does not fully reflect public health best practices. For model policy language, please refer to the Public Health Law Center's *Comprehensive Tobacco Retailer Licensing: Model Ordinance 9* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/TRL-Model-Ordinance-NYS.pdf>.

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- 9 PREVENTING TOBACCO ADDICTION FOUND., TOBACCO RETAIL LICENSING: AN ESSENTIAL TOOL TO REDUCE YOUTH USAGE AND FOSTER HEALTH EQUITY: A GUIDE TO BEST PRACTICES IN TOBACCO RETAIL LICENSING (TRL) FOR YOUR CITY, COUNTY OR STATE (2020), <https://tobacco21.org/wp-content/uploads/2020/09/TRL-BEST-PRACTICES-GUIDE-PTAF-September-2020.pdf>.
- 10 Public Health Law Center, *Comprehensive Tobacco Retailer Licensing: Model Ordinance 9* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/TRL-Model-Ordinance-NYS.pdf>.
- 11 Amani Alharthy et al., *Association Between Tobacco Retailer Density and Smoking Among Adults with Diabetes and Serious Mental Illness in New York State*, 19 PREVENTING CHRONIC DISEASE E01 (2022) (recommending that local health departments in New York State allocate more smoking cessation resources to areas with a high density of tobacco retailers).
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- 13 N.Y.TAX LAW §§ 480-a(1)(a)-(b)
- 14 N.Y.TAX LAW § 1183(a).
- 15 N.Y.TAX LAW §§ 480-a(1)(a)-(b) and § 1183(a).
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- 18 N.Y.TAX LAW § 480-a(2).
- 19 N.Y.Pub.Health Law § 1399-bb(1).
- 20 N.Y.TAX LAW §§ 480-a(2)(d) and § 1183(d).
- 21 *Id.* at §§ 480-a(3)-(4) and § 1183(2)(h).
- 22 N.Y.TAX LAW § 480-a(4)(d).
- 23 N.Y.STATE DEPT. OF HEALTH, YOUTH ACCESS TOBACCO ENFORCEMENT PROGRAM REPORT: APRIL 1, 2018 – MARCH 31, 2020 12 (2020), https://www.health.ny.gov/prevention/tobacco_control/docs/tobacco_enforcement_annual_report_2018-2020.pdf.
- 24 21 U.S.C. § 387a(a).
- 25 21 U.S.C. § 387p.
- 26 *See, e.g.*, Public Health Law Center, *Why Preemption Matters for Tobacco Control* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/Preemption-Tobacco-Control.pdf>; Centers for Disease Control & Prevention, *STATE System Preemption Fact Sheet*, <https://www.cdc.gov/statesystem/factsheets/preemption/Preemption.html#:~:text=Some%20states%2C%20preempt%2C%20or%20prevent,or%20only%20in%20some%20categories.>
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- 28 N.Y.PUB.HEALTH LAW § 308.Many counties in New York State are governed by a local board of health, the county executive, or a combination of these entities.For information about the role and authority of a particular board of health, contact the board in question.*See Function of Local Health Departments in New York State*, County Health Officials of New York, <https://www.nysacho.org/wp-content/uploads/2021/02/Function-of-Local-Health-Departments-1.pdf>.
- 29 CHANGELAB SOLUTIONS, IMPLEMENTATION CHECKLIST FOR TOBACCO RETAILER LICENSING (2012), https://www.changelabsolutions.org/sites/default/files/TRL_Implementation-Checklist_FINAL_20120907.pdf.

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- 34 *Id.*
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- 36 CAYUGA COUNTY HEALTH DEPT., CAYUGA COUNTY, N.Y., APPLICATION FOR A TOBACCO RETAIL LICENSE (2013), <https://www.cayugacounty.us/DocumentCenter/View/2191/Tobacco-License-Application-PDF>.
- 37 CITY OF SYRACUSE, N.Y., ONLINE APPLICATION PORTAL, <https://www.syr.gov/Departments/Central-Permit-Office/Tobacco-Retail-License>.
- 38 ECONOMIC DEVELOPMENT AND PLANNING, TOWN OF BETHLEHEM, TOBACCO RETAIL LICENSE APPLICATION, <https://www.townofbethlehem.org/DocumentCenter/View/13052/Tobacco-Retail-License-Application-FormFINAL?bidId=>.
- 39 See Public Health Law Center, *Tobacco Retail License Enforcement Guide*, *supra* note 9.
- 40 See CAYUGA COUNTY, N.Y., APPLICATION FOR A TOBACCO RETAIL LICENSE, *supra* note 32.
- 41 See CITY OF SYRACUSE, N.Y., ONLINE APPLICATION PORTAL, *supra* note 33.
- 42 See CHANGELAB SOLUTIONS, IMPLEMENTATION CHECKLIST, *supra* note 25.
- 43 ULSTER COUNTY, N.Y., APPLICATION FOR PERMIT TO SELL OR DISTRIBUTE TOBACCO PRODUCTS, https://ulstercountyny.gov/sites/default/files/documents/Tobacco_App%5B1%5D.pdf; see also DEPT. OF BEHAVIORAL & COMMUNITY HEALTH, DUTCHESS COUNTY, APPLICATION FOR PERMIT TO SELL OR DISTRIBUTE TOBACCO & VAPING PRODUCTS, <https://dutchessny.gov/departments/dbch/docs/Checklist-Workers-Comp-Disability-Instructions-2022-Tobacco-Permit-App.pdf> (containing the following affirmation: “I certify that I have read and understand the contents of the notice Retail Tobacco Dealers and New York’s Youth Access Tobacco Control Laws and Article 25: Dutchess County Sanitary Code. I have reviewed this information with my employees and understand that as the legal vendor of tobacco products, I am responsible for any violations of ATUPA law or Dutchess County Sanitary Code Article 25, that are committed by my establishment.”)
- 44 ASPIRE, TOBACCO RETAIL POLICY TRENDS IN 2019: INSIGHTS FROM THE FIELD (2019), https://aspirecenter.org/wp-content/uploads/2020/07/TobaccoRetailPolicyTrends_2019.pdf.
- 45 *Id.*
- 46 ULSTER COUNTY, N.Y., CODE § 301-11(E).
- 47 ULSTER COUNTY, N.Y., CODE § 301-12.
- 48 ULSTER COUNTY, N.Y., MAP OF ALL K–12 SCHOOLS WITH PROHIBITED 1000’ RADIUS, https://ulstercountyny.gov/sites/default/files/documents/health/School%20Tobacco%20Proximity%2005.10.22_0.pdf
- 49 CITY OF NEWBURGH, N.Y., CODE § 276-7(B).
- 50 PREVENTING TOBACCO ADDICTION FOUND., TOBACCO RETAIL LICENSING: AN ESSENTIAL TOOL TO REDUCE YOUTH USAGE AND FOSTER HEALTH EQUITY: A GUIDE TO BEST PRACTICES IN TOBACCO RETAIL LICENSING (TRL) FOR YOUR CITY, COUNTY OR STATE (2020), <https://tobacco21.org/wp-content/uploads/2020/09/TRL-BEST-PRACTICES-GUIDE-PTAF-September-2020.pdf>.

- 51 Please note that this is a representative, not comprehensive, list of local tobacco retail laws. For a complete and current list of laws, see Public Health Law Center, *Local Retail Environment Policies in New York State* (2023), <https://www.publichealthlawcenter.org/resources/local-retail-environment-policies-new-york-state>.
- 52 ECONOMIC DEVELOPMENT AND PLANNING, TOWN OF BETHLEHEM, TOBACCO RETAIL LICENSE APPLICATION, <https://www.townofbethlehem.org/DocumentCenter/View/13052/Tobacco-Retail-License-Application-FormFINAL?bidId=>.
- 53 TOWN OF BETHLEHEM, N.Y., CODE § 114-11. Although the law says “may conduct periodic inspections,” it does not require it. Ultimately, the number of inspections is discretionary. As noted earlier, best practices are to “set a minimum number of compliance checks per retailer in a specific timeframe.” This applies as well to the laws in Cayuga County, Village of Endicott, City of Newburgh, Salina, Syracuse and Ulster County cited below.
- 54 See CAYUGA COUNTY, N.Y., APPLICATION FOR A TOBACCO RETAIL LICENSE, *supra* note 32.
- 55 CAYUGA COUNTY, N.Y., LOCAL LAW NO. 5 (2013), <https://www.cayugacounty.us/DocumentCenter/View/2190/Local-Law-Number-5For-The-Year2013---Tobacco-Retail-Licensing-Ordinance-PDF>.
- 56 VILLAGE OF DOLGEVILLE, N.Y., LOCAL LAW NO. 2 (2019), <https://static1.squarespace.com/static/5cc5a2cce8ba44a89b6e5a85/t/5cd1e7338165f5cf8481a374/1557260089383/Local+Law+%23+2-2019+-+Local+Law+Establishing+Tobacco+Retail+Lice.pdf>.
- 57 *Id.*
- 58 DEPT. OF BEHAVIORAL & COMMUNITY HEALTH, DUTCHESS COUNTY, APPLICATION FOR PERMIT TO SELL OR DISTRIBUTE TOBACCO & VAPING PRODUCTS, <https://dutchessny.gov/departments/dbch/docs/Checklist-Workers-Comp-Disability-Instructions-2022-Tobacco-Permit-App.pdf>.
- 59 DUTCHESS COUNTY, N.Y., SANITARY CODE § 25.5, <https://www.dutchessny.gov/Departments/DBCH/Docs/HDSanitaryCodeArt25Amend.pdf>.
- 60 VILLAGE OF ENDICOTT, N.Y., CODE § 230-7.
- 61 *Id.* at § 230-9.
- 62 NEW YORK CITY, N.Y., ADMIN.CODE § 20-202.
- 63 NEW YORK CITY, N.Y., ADMIN.CODE § 20-114(a).
- 64 CITY OF NEWBURGH, N.Y., CODE § 163-1.
- 65 CITY OF NEWBURGH, N.Y., CODE § 276-9.
- 66 Town of Salina, N.Y., Local Law No.13 (2022), <https://ecode360.com/SA0325/laws/LF1729815.pdf>.
- 67 *Id.*
- 68 CITY OF SYRACUSE, N.Y., LOCAL LAW NO. ___ § 16-2 (2023), <https://www.syr.gov/files/sharedassets/public/v/1/2-departments/permits/documents/2023-tobacco-ordinance.pdf>.
- 69 CITY OF SYRACUSE, N.Y., LOCAL LAW NO. ___ § 16-7 (2023), <https://www.syr.gov/files/sharedassets/public/v/1/2-departments/permits/documents/2023-tobacco-ordinance.pdf>.
- 70 ULSTER COUNTY, N.Y., APPLICATION FOR PERMIT TO SELL OR DISTRIBUTE TOBACCO PRODUCTS, https://ulstercountyny.gov/sites/default/files/documents/Tobacco_App%5B1%5D.pdf.
- 71 ULSTER COUNTY, N.Y., CODE § 301-17(A).
- 72 See CTR.FOR BLACK HEALTH, EQUITABLE ENFORCEMENT, *supra* note 3.
- 73 ASPIRE, TOBACCO RETAIL POLICY TRENDS IN 2019, *supra* note 40.

- 74 Public Health Law Center, *Tobacco Retail Compliance Checks: A Review of Best Practices* (2022), <https://www.publichealthlawcenter.org/sites/default/files/resources/Retail-Compliance-Checks-Best-Practices.pdf>.
- 75 See CHANGELAB SOLUTIONS, *EQUITABLE ENFORCEMENT TO ACHIEVE HEALTH EQUITY*, *supra* note 2.
- 76 *Id.*
- 77 Technical Assistance Legal Center, *Case Studies: Implementation and Enforcement of Local Tobacco Retailer Licensing Ordinances in California* (2006), https://www.changelabsolutions.org/sites/default/files/documents/Case%20Studies%20on%20the%20Implementation%20and%20Enforcement%20of%20Local%20Tobacco%20Retailer%20Licensing%20Ordinances%20in%20CA_6_06.pdf.
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- 80 N.Y. PUB. HEALTH LAW § 1399-ee.
- 81 CAYUGA COUNTY, N.Y., LOCAL LAW NO. 5 (2013), <https://www.cayugacounty.us/DocumentCenter/View/2190/Local-Law-Number-5For-The-Year2013---Tobacco-Retail-Licensing-Ordinance-PDF>.
- 82 VILLAGE OF ENDICOTT, N.Y., CODE § 230-9(B).
- 83 CITY OF SYRACUSE, LOCAL LAW NO. __ (2023), <https://www.syr.gov/files/sharedassets/public/v/1/2-departments/permits/documents/2023-tobacco-ordinance.pdf>.
- 84 *Id.*
- 85 *Id.*
- 86 See CTR. FOR BLACK HEALTH, *EQUITABLE ENFORCEMENT*, *supra* note 3.
- 87 NEW YORK CITY, N.Y., ADMIN.CODE § 20-202(e).
- 88 *Id.*
- 89 *Id.*
- 90 *Id.*
- 91 *Id.*
- 92 *Id.*
- 93 *Id.*
- 94 Daniel P.Giovenco et al., *Impact and Equity of New York City's Tobacco Retail Reduction Initiative*, 66 AM. J. PREVENTIVE MED. 235-42 (2024), [https://www.ajpmonline.org/article/S0749-3797\(23\)00406-3/pdf](https://www.ajpmonline.org/article/S0749-3797(23)00406-3/pdf).