

Tobacco Retailers Licensing Ordinance Frequently Asked Questions (FAQ)

1) Can you tell us about the Tobacco Ordinance?

Tobacco Free Youth Ordinance/Tobacco Retailers License Program

On 9-05-06 the Concord City Council voted to accept a change in the Tobacco Free Youth Ordinance in the City of Concord. The other ordinance did not include any enforcement or penalty for selling tobacco and tobacco products to minors. We are here to educate the public and businesses concerning the ordinance and what it entails. Part of what we want to do is accomplish training. We are handing out pamphlets and going to businesses that sell tobacco products for this purpose.

2) Why did the city change the ordinance?

Some info concerning smoking that helped motivate the change (provided by the Tobacco Prevention Project and Contra Costa County Health Services):

Despite the current law and restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates.

Each Year an estimated **924 million** packs of cigarettes are consumed by minors **12 to 17 years of age**, yielding the tobacco industry **\$480 million in profits from underage smokers.**

In a 2002 California youth buying survey, **19.3%** of retailers surveyed unlawfully sold tobacco products to minors.

In 2001 the California department of health services, food and drug branch found that **13.9%** of Contra Costa tobacco merchants sold tobacco to minors.

The prevalence of **self reported** youth tobacco use in Contra Costa ranges from **8.2% to 26 %** depending upon the survey used.

88% of adults who have ever smoked tried their first cigarette by the age of 18 and the average age at which smokers try their first cigarette is **14 ½**.

County Department of Health services statistics reflect an estimated rate of non-compliance in the City of Concord of approximately **28%** based on a “survey” conducted by having underage minors purchase cigarettes at some of the Concord retailers.

Of the 19 cities in Contra Costa County six have adopted a mandatory licensing provision in addition to the county, but currently only the county is pro-actively enforcing their ordinance. **The County’s efforts decreased illegal sales to minors from 37% to 7%.**

3) What does the ordinance do?

The new Ordinance, CMC 38-61 through 38-80, requires a licensing fee of \$160.00 (subject to change so explain only the initial rate) per retail license allowing the sales of tobacco. The licensing fee is designed to pay for an ongoing enforcement program, conducted by the Concord Police Department, to ensure compliance with state law 308 (a) PC, illegal sales of tobacco products to persons under the age of 18 years, as well as to suspend or revoke the business license of those businesses whose employees violate the law. Our goal is a measurable reduction in actual enforcement actions of 5% each year, with an ultimate goal of less than 10 % of stores requiring any enforcement actions during a given fiscal year. We hope that we will achieve voluntary compliance through all components of the program, including education, awareness and enforcement.

The ordinance requires this Tobacco Retailer's License in addition to a standard business license. Proof of having the license is a small sticker or stamp affixed to the Business License the business already has or obtains at the same time as the Tobacco Retailer's license.

4) Do you still need a standard City of Concord Business license?

Yes. The Tobacco Retailer's License is in addition to the standard business license. Even with a business license, a Concord business cannot sell tobacco or tobacco products without first obtaining a Tobacco Retailer's License. The penalties for selling without a license are outlined below.

5) Isn't there already a state law designed to impact selling cigarettes to minors?

Yes, 308 (a) PC selling the following to a person under the age of 18 years:

Tobacco, cigarette, or cigarette papers, or any other preparation of tobacco or instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance.

First offense \$200

Second offense \$500

Third and each subsequent offense \$1,000

If found in violation, the violator will be given a citation release, signed promise to appear. The offense will be heard in traffic court.

6) How does that work with the Tobacco Retailer's license ordinance?

Suspension of the Tobacco Retailers License: Under Muni-Code 38-61 through 38-80, suspension and revocation are set up as follows:

Revocation of license can occur when (38-73)

- Violation of 38-66 when license was issued; which means that the information must be complete and correct.
- The fee wasn't paid or payment wasn't good.
- Transferred license. You cannot transfer a license from one individual or business to another
- Violation of the section or law.

Suspension:

- Section 38-74
- 1st offense up to 30 days suspension
- 2nd offense within 2 years-up to 90 days suspension
- 3rd offense within 2 years-1 year suspension.
- While suspended cannot sell tobacco products and must either remove the product or cover it up so patrons cannot see it.

Sales without a license:

- 1st offense within 60 months of being cited for selling tobacco products without a license or with a suspended license-no license may be issued for 30 days.
- 2nd offense within 60 months-no license for 90 days
- 3rd with in 60 months no license for 5 years

Additionally, under this section, Police can seize the store's product-and can also prosecute under this section as an infraction or misdemeanor in addition to the suspension

Selling after suspension:

- 1st offense within 60 months of being cited for selling tobacco products-30 days additional suspension
- 2nd offense within 60 months-90 day additional suspension
- 3rd with in 60 months-5 years additional suspension

Although the Tobacco Retailers License is suspended, the business' standard City of Concord Business License is not. You cannot sell tobacco products, but can conduct normal business.

7) Why are you charging a license fee?

The fees reflect the minimum it would cost to enforce the section for all 95 retail sales outlets in the city. The fees therefore pay for the enforcement and inspections required by the police department to ensure compliance with the law and municipal code.

8) How will the enforcement program work?

The program uses a retired police officer at a set hourly rate, and includes a training component.

Underage youth will try to purchase cigarettes and cigarette related tobacco products.

They may use an ID, such as a State of California ID card or Drivers License. If they do it will be a real ID and reflect their true age.

The youth will not purposely lie or mislead, and will be supervised by an undercover officer.

9) Does the business have a right to a hearing?

Once the proprietor's sales license is suspended, a hearing will cost \$348.00 (fees associated with the hearing and subject to change), and there will be a \$110.00 fee for re-inspection of the business to ensure compliance of the section (again, subject to change in the future). Hearings may be held by the City Manager or her designee, but will not be done by the police department or involve the officer that issued the citation, except potential testimony by the officer, if needed.

There may be mitigating factors that the hearing officer may consider, such as training provided to employees (the BARS program is an example), or other employer efforts at compliance that may be taken into consideration.

For instance, if a business has a training program but an employee still violates the ordinances and the business' license is suspended, the hearing officer has the discretion to lower the number of days the license is suspended. If there is no training program or other efforts by the business the hearing officer may invoke the full penalty.

10) If I sell or transfer my business to another person can I transfer the Tobacco Retailer's License as well?

No. The Tobacco Retailer's License is not transferable, and must be the owner or local operator of the business. If the business is sold or transferred the new owner/operator must obtain a Tobacco Retailer's License before selling tobacco products.

11) When will enforcement start?

Enforcement will start January, 2007.

Again, our goal is **Voluntary Compliance**. We hope to reduce or eliminate illegal retail sales to minors of tobacco products, but would be very pleased to have the retailers themselves do this voluntarily.