

Commercial Tobacco Retail Licensing Enforcement Best Practices and Inspections Checklist for Minnesota Communities



Enforcement best practices go well beyond an annual or biannual compliance check.



This overview provides a high-level outline and checklist for enforcement best practices through all stages of commercial tobacco regulation, from pre-enactment or amending an ordinance, to the key provisions that could be included in the policy itself, and finally, post-policy enactment and ongoing engagement with retailers.

1

Plan & Prepare

Pre-enactment or amendment of the ordinance

2

Provisions

Enforcement-related provisions included in the ordinance

3

Sustain

Post-enactment and ongoing support for retailers

1

Plan & Prepare: Pre-Enactment or Amendment of the Ordinance



Identify retailers, give notice, and conduct outreach and education.

1. Identify all commercial tobacco retailers in the jurisdiction by checking with your city/county administrator, business licensing department, or others).
2. Follow state notice requirements if an ordinance is going to be enacted or amended.
 - 30-day notice to retailers is required before any vote on a new ordinance or substantial changes to an existing ordinance ([Minn. Stat. § 461.19](#))
 - *Resource: [Minnesota Commercial Tobacco Retail Licensing Ordinances: Procedural Requirements](#)*
3. Conduct outreach and education for retailers on the law's requirements. (*Resources: Minnesota's program, [Stop Sales to Minors](#), and FDA program, [This is Our Watch](#).)*)



Plan for enforcement of the ordinance.





1. Identify who will be in charge of enforcement.
 - i. Local public health, licensing department, law enforcement, or outside contractor
 - ii. Combination of above
2. Develop the enforcement protocol for all aspects of the ordinance.
 - i. Flavor prohibition
 - ii. Minimum legal sales age
 - iii. Coupon/price promotion restriction
 - iv. Minimum clerk age
 - v. Capping licenses
 - vi. Proximity restrictions
 - vii. Other components

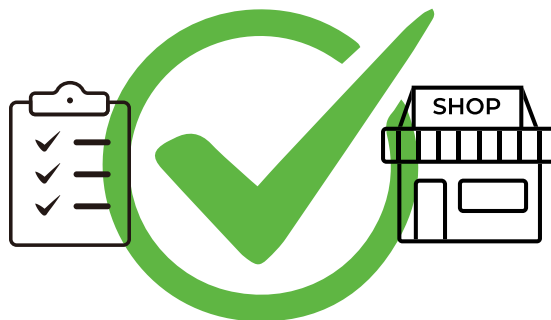
(Resource: See checklist below.)
3. Use the license fee worksheet or calculator to quantify the costs of enforcement and administering the license (*Resources: [Tobacco Retail Licensing Calculator](#) and [Retail License Fees \(2022\)](#).)*)

2

Provisions: Enforcement-Related Provisions Included in the Ordinance

(Resources: Public Health Law Center's [Minnesota City Tobacco Retail Licensing Model Ordinance](#) and [Minnesota County Tobacco Retail Licensing Model Ordinance](#).)





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Ensure the licensing fee covers the full costs of administering the licenses.
 (Resources: [Tobacco Retail Licensing Calculator](#) and [Retail License Fees \(2022\)](#).)
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Require Instruction Before a License is Granted and for Annual Renewal.
 1. Verify that all staff are trained.
 2. Use [Minnesota's Stop Sales to Minors Training](#) (stopsalestominors.org), which issues a certificate of completion at the end of the training.
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Limit the number of licensees through caps or proximity restrictions (fewer stores to inspect). (Resource: [Regulating the Location, Density, and Types of Tobacco Retailers](#)).
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Include a comprehensive compliance checks and inspections provision that addresses both underage sales as well as verifies compliance with all provisions in the ordinance. (Resources: see checklist for inspections below and PHLC's factsheet [Compliance and Local Enforcement Programs](#)).
 1. Require at least one underage sales compliance check per year, per retailer as required by state law. ([Minn. Stat. § 461.12, subd. 5](#))
 2. Multiple compliance checks and inspections are a best practice.
 - require two (2) or more annual inspections
 - require a follow-up check/inspection after any violations to verify compliance

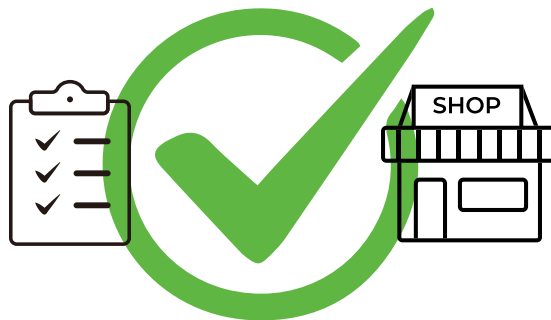


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Provisions: Enforcement-Related Provisions Included in the Ordinance

(Resources: Public Health Law Center's [Minnesota City Tobacco Retail Licensing Model Ordinance](#) and [Minnesota County Tobacco Retail Licensing Model Ordinance](#).)

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Require sales age and age verification signage and provide signage to retailers for free.
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Specify in the ordinance which city or county department is responsible for compliance checks and inspections.
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Ensure penalty provisions focus on the acts of the retailer. (Resource: PHLC's factsheet [Violations and Penalties](#)).
 1. If clerks are penalized, then retraining should be the penalty instead of a fine or in addition to a fine.
 2. Remove underage purchase/use/possession (PUP) penalties (Resource: PHLC's fact sheet [Youth Purchase, Use, or Possession Penalties PUP](#)).
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Specify due process and appeals process for violations. (Resource: PHLC's factsheet [Commercial Tobacco Licensing Ordinances Procedural Requirements](#)).



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Sustain: Post-Enactment and Ongoing Support for Retailers



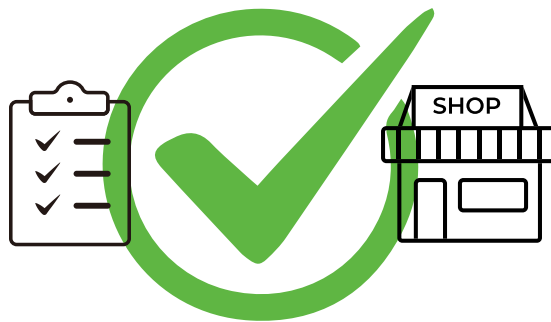
Make resources easy to find and educate retailers through proactive outreach.

1. Send a letter to retailers outlining any new or amended ordinance provisions.
 - Use plain language descriptions and graphics to explain the requirements of the ordinance (Resource: [Benton County's "Compliance Guide" for retailers](#)).
 - Provide a copy of the ordinance or say where it can be found online.
 - Specify the implementation date so retailers know when enforcement begins.
2. Host a webinar explaining the requirements and post the recording online.
3. Create web-based resources:
 - Consider an easy-to-find "landing page" for commercial tobacco retailer information.
 - Post easy-to-read resources online:
 - Link to the ordinance.
 - Overview of licensing requirements in easy-to-read format.
 - Recording of a webinar that explains the requirements.
 - Contact information for any follow-up questions.



Implement a comprehensive license application and renewal process.

1. Require the same comprehensive license application process for all license renewals.
2. Require a signed attestation form where the retailer attests that they will comply with all licensing requirements.
3. Require proof of retailer and clerk education program.



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Sustain: Post-Enactment and Ongoing Support for Retailers



Conduct compliance checks and inspections.

1. Follow best practices for compliance checks for minimum legal sales age of 21.
 - Know the community and tailor the compliance check accordingly:
 - What are the demographics of the customers for this store?
 - What are the products most frequently purchased? (Tip: ask schools what products they are most frequently confiscating)
 - What time of day would underage people most likely be shopping?
 - Follow a proven protocol for training underage shoppers used in the compliance checks.
 - Ensure checks are unannounced.
 - Ensure timing of checks is staggered to avoid retailers tipping off other retailers.
2. Follow best practices for comprehensive inspections for all provisions of the ordinance.
 - Train inspectors to inspect for all relevant components of the ordinance.
 - Create an inspection checklist tailored to the jurisdiction's ordinance. (*Resource: see enforcement checklist below*)
 - Checks are unannounced.
 - Checks are staggered in time for different stores to avoid retailers tipping off other retailers.
3. Follow due process and appeals processes for violations.
4. Conduct ongoing retailer education and relationship-building.
 - Send annual renewal notices to retailers with reminders about the requirements of the law.
 - Require signed attestation form for all renewals that includes the requirements of the law.



Compliance and Inspections Checklist for Provisions in Public Health Law 6 - Center's Minnesota Model Tobacco Retail Licensing Ordinance

*= beyond state and federal requirements

License Requirements and Licensee Restrictions

(A) License Requirements

- Does the business have a valid license from the city/county to sell licensed products?
- Is the license current and not expired?
- Has the license been suspended or revoked?
- Have the appropriate licensing fees been paid in full before issuing or renewing a license?

(B) License Transfers

- Is the license used only at the premises for which it was issued?
- Is the license issued only to the person or business named in the license?

(C) Display of License

- Is the license posted and displayed in plain view of the general public in the retail establishment?

(D) Instructional Program

- Have all employees completed a training program on the legal requirements related to the sale of licensed products? *
- Was the training program pre-approved by the city/county? *
- Does the licensee maintain documentation of compliance with training requirements? *

(E) Minimum Clerk Age

- Are all individuals employed to sell licensed products at least the minimum age set by the city/county (18 or 21)? *

(F) Proximity to Youth-Oriented Facilities

- Is the retail establishment located at least the required distance (e.g., 1,000 feet) away from any youth-oriented facilities? *
- If not, has the license been renewed in violation of this proximity restriction? *

(G) Proximity to Other Licensed Retailers

- Is the retail establishment located at least the required distance (e.g., 2,000 feet) away from any other licensed retail establishment? *

(H) Pharmacies Ineligible for Licensure

- Does the retail establishment operate a pharmacy? *

(I) Smoking Prohibited

- Is smoking, including for the purposes of sampling, prohibited within the indoor area of the retail establishment? *

(J) Samples Prohibited

- Are samples of licensed products distributed free of charge or at a nominal cost? *

(A) General

- Are licensed products being sold through vending machines? *
- Are "loosies" (individual licensed products sold outside of their original packaging) being sold? *
- Are licensed products containing other prohibited substances (like controlled substances, cannabis, etc.) being sold?
- Are all licensed products stored in a manner that is not freely accessible to the public (e.g., behind a counter, in a locked case, or in a storage unit)?
- Are delivery sales of licensed products prohibited, ensuring all sales occur in person at a licensed retail establishment? *

(B) Legal Age

- Are licensed products being sold only to customers who are at least 21 years old?
- Is age verification for any person under age 30 conducted using a government-issued ID with a photo and date of birth?
- Are signs indicating the legal sales age and penalties for underage sales posted in plain view at each sales location?

(C) Flavored Products

- Are flavored products being sold or offered for sale? This includes any flavor other than natural tobacco flavor, including menthol, clove, fruit, or candy flavors. *

See *Public Health Law Center's publication [Flavored Tobacco Sales Prohibitions: Enforcement Options](#)* (Nov. 2022).

(D) Cigars or Other Commercial Tobacco Products Minimum Price/Package Sizes

- Are cigars being sold in packages containing fewer than five cigars, or individual cigars priced under a specified minimum (e.g., \$4.00)? *
- Are packages of cigars being sold for less than a specified minimum (e.g., \$15.00 per package)? *

Insert minimum price and package size requirement questions pertinent to your jurisdiction.

(E) Imitation Tobacco Products

- Are imitation tobacco products being sold or offered for sale within the city? *

(F) Liquid Packaging

- Are e-liquids for vaping sold in child-resistant packaging?
- Upon request, can the licensee provide documentation demonstrating compliance with child-resistant packaging requirements?

(G) Coupon and Price Promotion

- Are price promotions and coupons prohibited, ensuring that all licensed products are sold at or above the standard listed price? *
- Are redemption of product discounts, including "buy-one-get-one," "multi-pack offers," or other similar price reduction strategies, prohibited? *

This resource was prepared by the Public Health Law Center and Association for Nonsmokers--Minnesota. It was funded by, and developed in partnership with, the Minnesota Department of Health as part of its Commercial Tobacco-Free Communities Grant Program.

For more information about commercial tobacco retail licensing in Minnesota and policy options, see:

Public Health Law Center's publications:

- [Minnesota County Tobacco Retail Licensing Model Ordinance](#)
- [Minnesota City Tobacco Retail Licensing Model Ordinance](#)
- [Tobacco Retail Compliance Checks: A Review of Best Practices](#)
- [Minnesota Tobacco Point-Of-Sale Policy Toolkit](#)
 - [Coupons and Other Price Discounting Policy Options](#)
 - [Youth Purchase, Use, or Possession Penalties \(PUP\)](#)
 - [Regulating the Location, Density and Type of Tobacco Retailers](#)
 - [Commercial Retail Tobacco Licensing Ordinances: Procedural Requirements](#)
 - [Setting a Minimum Price and Package Size for Cigars](#)
 - [Compliance and Local Enforcement Programs](#)
 - [Establishing a Minimum Clerk Age](#)
 - [Retail License Fees](#)
 - [Violations and Penalties](#)
 - [Policy Options to Address Commercial Tobacco Product Samples and Sampling](#)
 - [Online and Other Delivery Sales of Commercial Tobacco Products](#)

Training Materials can be found at: Stopsalestominors.org

Free materials such as posters, calculators and other webinars are provided through the FDA, This is Our Watch program. <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/our-watch>