



# 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**).



Even short exposure to tobacco advertising influences adolescents’ way of thinking and view about smoking and their intentions to smoke.

## 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 engage 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.



Municipalities can determine requirements around the number, locations, and types of tobacco retailers they allow in their communities.

## 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

- <sup>1</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>
- <sup>2</sup> Medscape, Preventing Teen Tobacco Use: An Interview with the FDA. Laurie Scudder, DNP, NP, Mitch Zeller, JD February 10, 2014. <http://www.medscape.com/viewarticle/820327#4>
- <sup>3</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>
- <sup>4</sup> Campaign for Tobacco Free Kids Fact Sheets, The Path of Tobacco Addiction Starts at Very Young Ages. <http://www.tobaccofreekids.org/research/factsheets/pdf/0127.pdf>
- <sup>5</sup> Corey C, Wang B, Johnson SE et al. Electronic cigarette use among middle and high school students. *MMWR Morb Mortal Wkly Rep.* 2013;62:729-730. <http://www.medscape.com/viewarticle/811008>
- <sup>6</sup> U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012. <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>
- <sup>7</sup> The Family Smoking Prevention and Tobacco Control Act (Public Law 111-31) Tobacco Control Network, 2012 Policy Platform on Tobacco Prevention and Control [http://www.ttac.org/TCN/materials/pdfs/TCN\\_Executive\\_Summary\\_Policy\\_Platform\\_2012.pdf](http://www.ttac.org/TCN/materials/pdfs/TCN_Executive_Summary_Policy_Platform_2012.pdf)
- <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)
- <sup>9</sup> National Cancer Institute, The Role of the Media in Promoting and Reducing Tobacco Use, Smoking and Tobacco Control Monograph No. 19, NIH Pub. No. 07-6242, June 2008, [http://cancercontrol.cancer.gov/tcrb/monographs/19/m19\\_complete.pdf](http://cancercontrol.cancer.gov/tcrb/monographs/19/m19_complete.pdf)
- <sup>10</sup> Center for Public Health Systems Science at the George Warren Brown School of Social Work at Washington University in St. Louis, Regulating Price Discounting in Providence, RI Innovative Point-of-Sale Policies: Case Study #1. October 2013.
- <sup>11</sup> Center for Public Health Systems Science at the George Warren Brown School of Social Work at Washington University in St. Louis, Regulating Price Discounting in Providence, RI Innovative Point-of-Sale Policies: Case Study #1. October 2013.
- <sup>12</sup> Diemert L, Dubray J, Babayan A, Schwartz R. Strategies Affecting Tobacco Vendor Compliance with Youth Access Laws: A Review of the Literature. Toronto: Ontario Tobacco Research Unit, October 2013. [http://otru.org/wp-content/uploads/2013/10/special\\_vendor\\_compliance.pdf](http://otru.org/wp-content/uploads/2013/10/special_vendor_compliance.pdf)
- <sup>13</sup> The Center for Tobacco Policy & Organizing, Becoming a Policy Wonk on Local Tobacco Retailer Licensing: Answers to Tough Questions from Opponents and Elected Officials <http://www.smokefreemarin.com/documents/BecomingaPolicyWonkonLocalTobaccoRetailerLicensingMarch2011.pdf>
- <sup>14</sup> Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs — 2014. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

# Licensing Ordinance Checklist

A local licensing ordinance can be used to effectively enforce all laws that apply to tobacco sales.

A licensing ordinance not only requires retailers to obtain a license to sell tobacco products but also provides meaningful penalties if the merchant sells tobacco to minors or violates any other law related to tobacco sales. For

retailers who continue to violate these laws, licensing offers a means to eliminate them from the tobacco product marketplace.

ChangeLab Solutions' *Model California Ordinance Requiring a Tobacco Retailer License* and its accompanying "plug-in" provisions provide a range of policy options to consider when designing a local

licensing ordinance. The ordinance language you select should be part of a larger strategy to have the ordinance adopted in your community.

To guide your planning, the American Lung Association in California's Center for Tobacco Policy & Organizing has developed the five phase model below.

**Campaign Trail  
START**

Contact "The Center" for help planning your campaign steps and working through the phases.



## Investigation & Assessment

Assess the political environment and decision makers. Identify local issues and resources to build an understanding of what might influence decision makers. Determine your issue, a location (city or county), and a goal.



American Lung Association in California's Center for Tobacco Policy & Organizing (**The Center**) helps local coalitions wage effective tobacco control policy campaigns. The Center can provide you with resources, trainings, and effective strategies to help you narrow down your issue, do a political assessment, complete a strategy chart, recruit new members, and re-energize your coalition.

(916) 554-5864  
[www.center4tobaccopolicy.org](http://www.center4tobaccopolicy.org)

## Strategy & Planning

Develop a strategy chart and establish a rough timeline.



The checklist on page 2 is designed to help you begin drafting an ordinance based on your community's choices – this is the time to contact ChangeLab Solutions.

## Recruitment

Now that you've prepared the groundwork, it's time to involve more people. Train campaign members in outreach and recruitment strategies. Meet with key opinion leaders and recruit community residents who are influential with local officials.



## The Campaign

Finalize and then implement the timeline, strategy, and tactics with your newly recruited members. Form action teams: e.g., ordinance-drafting, media, tactic team, speakers' bureau. A key tactic will be meeting with decision makers.



## Implementation & Evaluation

Research how the policy should be implemented. Determine effectiveness of the campaign and tactics.



**WIN!**



**ChangeLab Solutions**

Law & policy innovation for the common good.

**ChangeLab Solutions** is a nonprofit organization that helps advocates, city and county attorneys, and elected officials by providing and reviewing ordinance language, researching and analyzing state and federal legal issues, and providing training and consulting on legal strategies for tobacco control. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

(510) 302-3380

[www.changelabsolutions.org/tobacco-control](http://www.changelabsolutions.org/tobacco-control)

This material was made possible by funds received from Grant Number 09-11182 with the California Department of Public Health, California Tobacco Control Program.

© 2013 California Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the California Department of Public Health.

# Licensing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. The options below are included in ChangeLab Solutions' *Model California Ordinance Requiring a Tobacco Retailer License* and accompanying "plug-ins," all of which are available at [www.changelabsolutions.org/publications/model-TRL-Ordinance](http://www.changelabsolutions.org/publications/model-TRL-Ordinance). The provisions that ChangeLab Solutions considers essential already include a check mark. Contact us for help drafting an ordinance based on your community's choices.

## POLICY OPTIONS IN MODEL ORDINANCE

### Who Must Obtain License

- All tobacco product retailers must obtain a nontransferable license
- Define "tobacco product" to include all nicotine and nontraditional products (e.g., e-cigarettes, snus)
- Retailers of "tobacco paraphernalia" (e.g., rolling papers, pipes) must also obtain license
- No license may be issued to mobile vendors

### Requirements and Prohibitions for Licenses

- Pay an *annual* licensing fee that *fully covers all program costs*, including administration and enforcement
- Violating *any* tobacco law is also a violation of the license
- Require license to be displayed in a prominent location
- Require clerks to check ID if purchaser appears under age 27
- Prohibit all self-service displays (including e-cigarettes)
- Clerks selling tobacco must be old enough to purchase tobacco under state law (e.g., 18 years old)

### Enforcement of License Requirements

- Licensing program will be administered by (e.g., who issues the license?): \_\_\_\_\_
- Licensing program will be enforced by \_\_\_\_\_ but also enforceable by *any* agency
- Youth decoy operations will be conducted by (if different from enforcement agency): \_\_\_\_\_
- Number of mandatory inspections is (e.g., times each store is checked per year): \_\_\_\_\_
- The hearing process will be an *administrative process* (attorneys and court system need not be involved)
- Grant youth decoys partial immunity

### Consequences of License Violation

- Each violation results in a *suspension* of the privilege to sell tobacco products (and paraphernalia, if applicable) for \_\_\_ days for a 1st licensing violation; \_\_\_ days for a 2nd violation; \_\_\_ days for a 3rd violation; and \_\_\_ days for a 4th violation
- Number of years past violations will be tracked (the "look-back period"): \_\_\_\_\_ (minimum of 5 years)
- Prohibit display of tobacco products during suspension period
- Prohibit display of tobacco product advertising during suspension period
- Increase suspension periods and penalties for retailers who sell tobacco without a license
- Seize and destroy tobacco products offered for sale without a license

---

## "PLUG-IN" POLICY PROVISIONS

### Restrictions on Eligibility for a License

- No license for a business that contains a pharmacy
- No licenses near schools and youth-populated areas
- New tobacco retailers must be located a specified minimum distance from existing retailers
- Number of available licenses is limited based on population
- No license for a retailer that primarily sells tobacco (e.g., head shop, discount cigarette store)
- No license for a restaurant or bar
- Only businesses that sell alcohol for off-site consumption may obtain licenses
- No license for a business that allows smoking anywhere on the premises

### Additional Requirements for Retailers

- No sales of individual cigars or cigars in small packages
- No sales of drug paraphernalia
- Retailers may not cover more than 15% of windows with signs

### Enforcement Options

- Allow the retailer to pay a fine in lieu of license suspension



## Options for Regulating Tobacco in the Retail Environment

This document sets forth some options for state and local regulation of tobacco at the point of sale. In many cases, these options may be implemented in more than one way. The information contained in this document is not intended to constitute or replace legal advice and we encourage you to consult with local legal counsel before attempting to implement these measures. Some of these options are the subject of ongoing legal challenges by the tobacco industry and its allies. For more information and to discuss considerations relating to specific options, please contact the [Public Health Law Center](http://publichealthlaw@wmitchell.edu) at [publichealthlaw@wmitchell.edu](mailto:publichealthlaw@wmitchell.edu).

### Basic Strategies<sup>1</sup>

- Require a retailer to obtain a license, renewable annually, to sell tobacco products.
- Set the license fee at an amount sufficient to fund adequate implementation and enforcement of the law (in Minnesota, the fee cannot exceed enforcement costs).
- Include incremental monetary fines and suspension as penalties for license violations.
- Expand the definition of “tobacco product” so the law’s restrictions encompass new and emerging tobacco products, such as dissolvable products or “e-cigarettes” (electronic cigarettes).
- Ensure that the license is nontransferable (i.e., if a licensee changes ownership or its place of business, it must reapply for a license).
- Prohibit the sale of any tobacco products to anyone under the age of 18.\*\*
- Prohibit self-service displays which allow tobacco products to be handled by a consumer prior to purchase (i.e., require all tobacco products to be located behind a sales counter).\*\*
- Prohibit the sale of any tobacco products through vending machines,\*\* in all locations.
- Eliminate free or nominal cost samples of any tobacco product.\*\*
- Prohibit the sale of single cigarettes (“loosies”) or of smokeless tobacco products broken out of the original packaging for sale in quantities smaller than the manufacturer’s smallest package.\*\*
- Establish minimum pack size requirements for non-cigarette and smokeless tobacco products.
- Require licensees to comply with all existing federal, state and local tobacco laws.
- Mandate that licensees train their employees prior to obtaining a retail license.

## Locational Strategies

- Prohibit the sale of tobacco products within a certain distance from youth-oriented facilities.
- Prohibit tobacco retailers from doing business within a certain distance of other tobacco retailers (i.e., reduce the density of tobacco retailers).
- Limit the overall number of tobacco retailers allowed within a community.
- Prohibit the sale of tobacco by health care-related stores such as pharmacies.
- Prohibit the sale of tobacco by or within educational facilities.

## Other Strategies

- Prohibit the sale of related non-tobacco products, such as novelty lighters and candy designed to look like cigarettes, chewing tobacco, and e-cigarettes.
- Restrict the sale of single non-cigarette tobacco products, such as single little cigars or cigarillos.
- Prohibit underage youth employees from handling tobacco products for sale.
- Prohibit high-speed roll-your-own machines.
- Increase the minimum legal sale age for all tobacco products.
- Restrict the retailer's ability to redeem coupons for tobacco products.

## Advanced Strategies

- Require retailers to display graphic signs that warn of the health consequences of tobacco product usage.
- Restrict the sale of flavored, non-cigarette tobacco products.
- Impose time, place and manner restrictions on tobacco advertisements.
- Restrict retailers' ability to sell products at a discounted price, other than through the redemption of coupons.
- Restrict retailers' ability to use tobacco product shelving strategies to create a wall of tobacco products (i.e., "powerwalls").

*Last updated: October 2012*

---

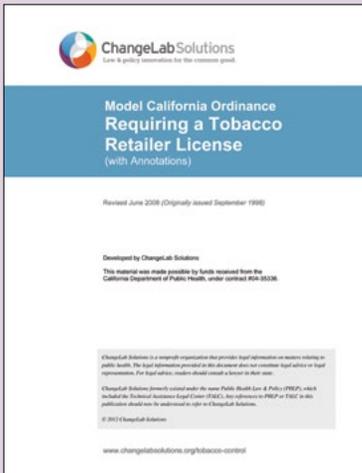
<sup>1</sup> These options are typical options for tobacco retailer licensing laws. In some jurisdictions, they have been established as stand-alone laws or regulations. Some options are already required in some form under federal law. However, including them in state or local law allows jurisdictions to enforce them using their own licensing or regulatory schemes.

\*\* Required under federal law, though in some cases there may be limited exceptions (e.g., for adults-only facilities).



ChangeLab Solutions has developed model language for a tobacco retailer licensing law in California cities and counties. The model language offers a variety of policy options that can be tailored to the specific goals and needs of your community.

In addition to the core provisions, ChangeLab Solutions has drafted supplementary “plug-in” provisions, which offer additional policy options that can be incorporated into the law. For more information, please see our resources on Tobacco Retailer Licensing at [www.changelabsolutions.org/publications/model-TRL-ordinance](http://www.changelabsolutions.org/publications/model-TRL-ordinance).



While ChangeLab Solutions’ model language for a tobacco retailer licensing law was designed for California communities, the model can be adapted for use in other states as well. It is important to carefully check the existing law in your state to learn if local tobacco retailer licensing is allowed. Consult with an attorney licensed in your jurisdiction.

## Tobacco Retailer Licensing An Effective Tool for Public Health

*Communities are adopting tobacco retailer licensing laws as one way to ensure compliance with tobacco laws and to combat the public health problems associated with tobacco use. In this fact sheet, we explain how tobacco retailer licensing works, why many communities are pursuing this policy, and what goes into creating and implementing a strong tobacco retailer licensing law.*

### What is tobacco retailer licensing?

Licensing is a common policy tool that state and local governments use to regulate businesses like alcohol retailers, pharmacists, or restaurants. A local government may want to similarly license tobacco retailers in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices.

Under a local tobacco retailer licensing law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.<sup>1</sup> Local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities such as store inspections and youth purchase compliance checks. Increasingly, tobacco retailer licensing is being used to promote other innovative policy solutions as well, including controlling the location and density of tobacco retailers and imposing additional restrictions on the sale and promotion of tobacco products.<sup>2</sup>

As of June 2012, more than 100 cities and counties in California had adopted a local tobacco retailer licensing law.<sup>3</sup> The Center for Tobacco Policy & Organizing (The Center) classifies 94 of these as “strong,”<sup>4</sup> meaning the laws have at a minimum:

- a requirement that all tobacco retailers obtain a license and renew it annually;
- an annual licensing fee high enough to fund sufficient enforcement;
- meaningful penalties for violators through fines and penalties, including the suspension and revocation of the license;<sup>5</sup> and
- a provision stating that any violation of existing local, state or federal tobacco laws constitutes a violation of the local law.



## Why adopt a tobacco retailer licensing law?

Many communities adopt tobacco retailer licensing laws because they are effective tools for limiting the negative public health consequences of tobacco use. While this tool provides many benefits, there are three main advantages to a tobacco retailer licensing law. First, these laws have been shown to be effective at limiting youth access to tobacco. Second, strong laws with annual fees create self-financing programs that allow for regular enforcement. Third, a tobacco retailer licensing law facilitates comprehensive local enforcement of all tobacco related laws. Each of these points is discussed below.

### Protecting youth

Despite state laws prohibiting sales of tobacco to minors, a 2007 survey found that nearly three-quarters of youth access enforcement agencies statewide issued warnings to merchants selling tobacco products to minors during the prior year.<sup>6</sup> Fortunately, strong local tobacco retailer licensing laws—that is, laws that meet the criteria above—have proven effective at reducing illegal tobacco sales to minors. The Center has found that local tobacco retailer licensing is extremely effective at reducing illegal sales to underage youth: the organization surveyed 31 municipalities that have implemented and enforced a strong tobacco retailer licensing law and found that the rates of illegal sales to minors decreased, often significantly, in all communities surveyed.<sup>7</sup>

### A self-financing program

An important strength of licensing is that the government may impose a licensing fee that is sufficient to cover the costs of enforcement. Because funding enforcement is often the best way to ensure compliance with a policy, ChangeLab Solutions recommends that the fee be calculated to include all enforcement activities. For more information on how to calculate a fee for a local tobacco retailer license, see our tobacco licensing cost worksheet at: [www.changelabsolutions.org/publications/tobacco-licensure-costs](http://www.changelabsolutions.org/publications/tobacco-licensure-costs).

### A comprehensive enforcement mechanism for local communities

A number of federal and California state laws already regulate tobacco sales and establish penalties for illegal sales to minors. But these laws each have separate enforcement mechanisms and penalty structures, making it difficult to enforce them at the local level. A local tobacco retailer licensing law, on the other hand, empowers *local law enforcement* to impose *meaningful penalties* for illegal sales to minors and ensure compliance with all existing laws—ensuring that local communities can prioritize enforcement even when state and federal authorities are unable to do so.

Meanwhile, some of these state and federal laws fail to address important public health concerns related to tobacco. For example, the federal regulations authorized by the 2009 Tobacco Control Act currently apply only to cigarettes and smokeless tobacco products—they do not apply to little cigars or other tobacco products that are aggressively marketed to youth. A local tobacco retailer licensing law is a tool communities can use to help bridge these gaps and address public health concerns in their communities.

### What is a tobacco product?

When people think of tobacco products, they may think of cigarettes, cigars, and chewing tobacco, but there are other products communities may want to restrict. Our model language defines tobacco products broadly to include all products containing tobacco leaf (including hookah, snuff, snus, and dissolvables) as well as nicotine-only products such as electronic cigarettes. This definition is written to restrict emerging tobacco industry products without interfering with FDA-approved cessation devices—like nicotine patches.



An electronic cigarette with charger.

## What else can a tobacco retailer licensing law do?

While a tobacco retailer licensing law may be the best tool to prevent sales to minors, it can also promote other innovative policy solutions, controlling the location and density of tobacco retailers, imposing additional restrictions on the sale of other tobacco products like little cigars, and preventing the sale of drug paraphernalia.

### **Zoning:** *location and density of retailers*

Another common way to limit where tobacco retailers can locate is through land use laws, also known as zoning laws. For a comparison between land use laws and licensing laws, see ChangeLab Solutions' factsheet, *Licensing & Zoning: Tools for Public Health*, available at: [www.changelabsolutions.org/publications/licensing-zoning](http://www.changelabsolutions.org/publications/licensing-zoning).

### **Location and density of retailers**

Local governments can use tobacco retailer licensing to control both the location and density of tobacco retailers in their communities. A licensing law could, for example, prohibit licenses for any businesses operating too close to a school or other area frequented by youth. Because tobacco sales near schools and child-oriented areas have been shown to increase youth smoking<sup>8</sup>, this policy can be used to keep tobacco retailers out of areas where youth typically congregate. A tobacco retailer licensing law also could cap the total number of licenses issued based on population, controlling the overall density of tobacco retailers in a community. California law limits alcohol licenses based on density, and this policy applies that same rationale to tobacco retailers.

### **Little cigars and cigarillos**

A tobacco retailer licensing law can also prohibit the sale of individual or small packages of low-priced cigars, including little cigars and cigarillos. Due to their low prices and candy flavoring, these products are particularly appealing to youth, and though they are often similar to cigarettes, they are not subject to the same restrictions against selling the product individually or in small quantities. This policy allows communities to close this loophole and regulate a product that is increasingly used by youth. For more on this policy, see our fact sheet at: [www.changelabsolutions.org/publications/limiting-teen-friendly-cigars](http://www.changelabsolutions.org/publications/limiting-teen-friendly-cigars).

### **Drug paraphernalia**

Many communities are using tobacco retailer licensing laws to address the sale of drug paraphernalia in their neighborhoods. Through this provision, a retailer found to have violated state laws regarding drug paraphernalia will also be in violation of the local tobacco retailer license, and the penalties of the licensing ordinance will apply. In this way, the tobacco retailer licensing law becomes an additional tool for local law enforcement to combat sales of drug paraphernalia. For more information on this policy option, see our fact sheet on this topic at: [www.changelabsolutions.org/publications/drug-paraphernalia](http://www.changelabsolutions.org/publications/drug-paraphernalia).

These are just a few examples of cutting-edge policy solutions for tobacco control. These innovative policy solutions—referred to as “plug-in” provisions—can be incorporated into our model language for a tobacco retailer licensing law. For more information about plug-in provisions, including the ones mentioned here, see: [www.changelabsolutions.org/publications/policy-provisions-trl](http://www.changelabsolutions.org/publications/policy-provisions-trl).

### **Implementation and enforcement**

It's up to individual communities to decide who will implement and enforce a tobacco retailer licensing law. Multiple agencies might be involved: one agency may issue the license (the city manager, for example, or the agency that issues general business licenses), while another agency, such as the environmental health or police department, may monitor compliance.

There is no one right way to implement and enforce a local tobacco retailer licensing program. That said, successful programs share some characteristics.



*Cigarillos in grape, strawberry and blueberry flavors, sold for under a dollar a piece.*



*Meth pipes for sale at a smoke shop in San Francisco, California.*

<sup>1</sup> In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that “[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.” Cal. Bus. & Prof. Code § 22971.3.

<sup>2</sup> See generally McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. Tobacco Control Legal Consortium, 2010. Available at: <http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>

<sup>3</sup> American Nonsmokers’ Rights Foundation. *California Municipalities with Laws Restricting Youth Access to Tobacco*. 2011. Available at: [www.changelabsolutions.org/publications/anrf-list](http://www.changelabsolutions.org/publications/anrf-list) (List includes only those laws which provide for suspension or revocation of a license).

<sup>4</sup> The Center. *Table of Strong Local Tobacco Retailer Licensing Ordinances*. 2012. Available at: [www.center4tobaccopolicy.org/localpolicies-licensing](http://www.center4tobaccopolicy.org/localpolicies-licensing).

<sup>5</sup> The threat of license suspension creates a greater financial deterrent to retailers than a simple fine. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products for a month can cost retailers far more than the largest fines that can be imposed under existing California laws, like Penal Code section 308 or the STAKE Act. See Cal. Penal Code § 308 (violators can be fined \$200, \$500, or \$1000 for first, second, or third violations, respectively); Cal. Bus. & Prof. Code 22958 (violators can be fined \$400-600 for a first violation and are subject to harsher penalties for each additional violation in a 5-year period).

<sup>6</sup> Rogers T, Feighery EC, Haladjian HH. *Current Practices in Enforcement of California Laws Regarding Youth Access to Tobacco Products and Exposure to Secondhand Smoke*. Sacramento, CA: California Department of Public Health, 2008. Available at: [www.cdph.ca.gov/programs/tobacco/Documents/CTCPEnforcementReport08-05.pdf](http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPEnforcementReport08-05.pdf).

<sup>7</sup> The Center. *Tobacco Retailer Licensing Is Effective*. 2011. Available at: [www.center4tobaccopolicy.org/CTPO/\\_files/\\_file/Tobacco%20Retailer%20Licensing%20is%20Effective%20March%202011.pdf](http://www.center4tobaccopolicy.org/CTPO/_files/_file/Tobacco%20Retailer%20Licensing%20is%20Effective%20March%202011.pdf).

<sup>8</sup> Henriksen et al. “Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?” *Preventative Medicine*, 47(210): 210-214, 2008. Abstract only is available at: [www.sciencedirect.com/science/article/pii/S0091743508002089](http://www.sciencedirect.com/science/article/pii/S0091743508002089).

Photos: Lydia Daniller (cover, top of page 2), ChangeLab Solutions (bottom of page 2, top of page 3), SFCityAttorney on flickr.com (bottom of page 3), and Flickr Creative Commons DC Central Kitchen (page 4)

For one thing, they are overseen by a single government agency with dedicated staff members. They also plan early for enforcement that engages all the key players. And they require a license fee that is large enough to cover the full costs of administering and enforcing the program. To assist agencies in coordinating and planning, ChangeLab Solutions created a checklist that includes all the recommended elements of a successful program. The checklist is available at: [www.changelabsolutions.org/publications/implementation-checklist-TRL](http://www.changelabsolutions.org/publications/implementation-checklist-TRL).

To help understand the variety of local approaches to tobacco retailer licensing, in 2006 we studied four communities that are effectively enforcing their local tobacco retailer licensing laws: Contra Costa County, Santa Barbara County, the City of Willits, and the City of Los Angeles. We chose these communities because they were among the first in California to suspend the tobacco licenses of retail outlets that violated sales-to-youth or other tobacco control laws. Read our review of these programs (visit: [www.changelabsolutions.org/publications/case-studies-local-trl-ords](http://www.changelabsolutions.org/publications/case-studies-local-trl-ords)) to see how, despite their differences, they all achieve the goal of holding retailers accountable for violations of tobacco sales laws.

## Licensing for healthy food retailers

Communities can use licensing to improve public health in other ways by ensuring that retailers are not only complying with existing laws but also benefiting the communities they serve. For example, in neighborhoods with limited access to fresh produce and staple foods, a licensing system could require food retailers to carry these items. For more information on healthy food retailer licensing, see our Model Licensing Ordinance for Healthy Food Retailers at: [www.changelabsolutions.org/publications/HFR-licensing-ord](http://www.changelabsolutions.org/publications/HFR-licensing-ord).



## For more information

**For support with model language and legal issues:**

ChangeLab Solutions

[www.changelabsolutions.org](http://www.changelabsolutions.org)

**For support with campaign issues:**

The Center for Tobacco Policy & Organizing, a project of the American Lung Association in California (The Center)

[www.Center4TobaccoPolicy.org](http://www.Center4TobaccoPolicy.org)



[changelabsolutions.org](http://changelabsolutions.org)

*This material was developed by ChangeLab Solutions with funds received from the California Department of Public Health, under contract #09-11182.*

*ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance Legal Center (TALC).*

*The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

© 2012 ChangeLab Solutions



# Point-of-Sale Strategies

## a Tobacco Control Guide

SPRING 2014

# Acknowledgements

This guide was produced by the Center for Public Health Systems Science (CPHSS) at the George Warren Brown School of Social Work at Washington University in St. Louis. The following individuals were primary contributors:

Laura Brossart, Sarah Moreland-Russell, Heidi Walsh, Anne Wachtel, Stephanie Andersen, Laura Edison, Laura Bach, Sarah Schell, Anneke Mohr, Douglas Luke

## Valuable input for this guide was provided by:

Kerry Cork, Tobacco Control Legal Consortium  
Maggie Mahoney, Tobacco Control Legal Consortium  
Ian McLaughlin, ChangeLab Solutions  
Mark Meaney, Tobacco Control Legal Consortium  
Kurt Ribisl, University of North Carolina Gillings School of Global Public Health  
Dave Schaibley, Assistant Attorney General of North Dakota (formerly of Tobacco Control Legal Consortium)

## Valuable input for the case studies was provided by:

Peter Asen, Healthy Communities Office, City of Providence  
Betsy Brock, Association for Nonsmokers-Minnesota  
Bonnie Broderick, Santa Clara County Public Health Department  
Janie Burkhart, Santa Clara County Public Health Department  
Pat McKone, American Lung Association of the Upper Midwest  
Allison Myers, Counter Tobacco  
Cassandra Stepan, Minnesota Department of Health

## Other contributions:

Photographs on front cover (left and right) and page 23 courtesy of Counter Tobacco.  
Photographs on front cover (center) and page 34 courtesy of the Community Partnerships for a Tobacco Free New York, funded by the New York State Tobacco Control Program.

## Suggested citation:

Center for Public Health Systems Science. *Point-of-Sale Strategies: A Tobacco Control Guide*. St. Louis: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the Tobacco Control Legal Consortium; 2014.

## Copyright © 2014 Center for Public Health Systems Science and the Tobacco Control Legal Consortium

All rights reserved. Without limiting under copyright reserved above, no part of this publication may be reproduced, stored in, or introduced into a retrieval system or transmitted in any form by any means (electronic, mechanical, photocopying, recording, or otherwise) without the prior written consent of the publisher.

# Table of Contents

Guide to the Reader .....	<b>1</b>
Making the Case .....	<b>2</b>
A Brief History.....	<b>3</b>
How to .....	<b>4</b>
Introduction to Point-of-Sale Strategies .....	4
Mechanisms for Implementing Point-of-Sale Strategies.....	7
Legal Considerations for Point-of-Sale Strategies.....	12
Types of Point-of-Sale Strategies .....	14
Reducing (or Restricting) the Number, Location, Density, and Types of Tobacco Retail Outlets .....	15
Increasing the Cost of Tobacco Products through Non-Tax Approaches .....	16
Implementing Prevention and Cessation Messaging.....	18
Restricting Point-of-Sale Advertising .....	22
Restricting Product Placement.....	24
Other Point-of-Sale Strategies .....	26
Table: Point-of-Sale Strategies Ranked by Legal Feasibility .....	28
The Impact of Point-of-Sale Strategies on Specific Populations.....	30
Building Support for Point-of-Sale Strategies.....	31
Providing Support.....	<b>37</b>
Case Studies.....	<b>38</b>
Conclusion: Case for Investment.....	<b>42</b>
Resources .....	<b>44</b>
References .....	<b>47</b>

# Guide to the Reader

## Purpose

The purpose of this guide series is to help state and local tobacco control staff build effective and sustainable comprehensive tobacco control programs. The guide will discuss strategies and interventions that fall under the coordination of state and local tobacco control programs and that have strong or promising evidence of effectiveness.<sup>1</sup>

## Content

This guide focuses on point-of-sale strategies that can be considered as part of a comprehensive tobacco control program. Not only are most tobacco products bought in stores, but the retail environment is also a major avenue for tobacco product marketing and promotion. The widespread presence of tobacco outlets, products, and advertising encourages initiation and discourages cessation of tobacco use.<sup>1-5</sup> There are many ways to reduce access to tobacco and exposure to tobacco industry influence in the retail environment, including: reducing (or restricting) the number, location, density, and types of tobacco retail outlets; increasing the cost of tobacco products through non-tax approaches; implementing prevention and cessation messaging; restricting point-of-sale advertising; restricting product placement; and pursuing other point-of-sale strategies, such as restricting the sale of flavored non-cigarette tobacco products.<sup>2,6</sup> This guide will give tobacco control program partners information on emerging strategies to limit the sale, display, and advertising of tobacco products in the retail environment.

## Organization

This guide is organized into seven sections:

- ▶ **Making the Case** – a brief overview of how tobacco control efforts benefit from implementing point-of-sale strategies
- ▶ **A Brief History** – how point-of-sale strategies have been used in tobacco control
- ▶ **How to** – ways to implement point-of-sale strategies
- ▶ **Providing Support** – how state tobacco control programs can support efforts to implement point-of-sale strategies
- ▶ **Case Studies** – real world examples of how to implement point-of-sale strategies or improve existing strategies
- ▶ **Conclusion: Case for Investment** – information needed to raise awareness of the effectiveness of point-of-sale strategies
- ▶ **Resources** – publications, toolkits, and websites to help in planning efforts

## The Potential Impact of Point-of-Sale Strategies

The retail environment is an important area of focus for tobacco control partners. Most tobacco products are bought in retail establishments (*e.g.*, convenience stores, gas stations, grocery stores, and pharmacies), and the industry focuses most of its marketing efforts in these settings. Point-of-sale strategies enhance state and local tobacco control efforts by reducing exposure to tobacco products and advertising in stores. These interventions can:

▶ **Decrease tobacco use and impulse purchases of tobacco products.**

Availability, advertising, promotion, and marketing of tobacco products in the retail environment increase youth and adult tobacco use and impulse buys.<sup>1-5</sup> Point-of-sale tobacco advertising encourages youth to try cigarettes and non-cigarette tobacco products and can persuade youth who are already experimenting with tobacco products to progress to regular use.<sup>4</sup> Research has also shown that youth who are exposed to advertising, live in areas with high retailer density, or both, are also more likely to smoke.<sup>3,7-11</sup> Point-of-sale strategies that reduce access and exposure to tobacco products are expected to decrease youth and adult tobacco use and impulse buys.

▶ **Reduce tobacco-related disparities.**

The tobacco industry uses several strategies that affect certain populations, including using price discounts (*e.g.*, multi-pack offers, coupons, and buy-one-get-one-free offers) to encourage consumption. Although all consumers take advantage of price discounts, studies show that women, youth, and African Americans use discounts more often, regardless of income.<sup>12</sup> Low-income and predominantly minority neighborhoods often have higher tobacco retailer density and more tobacco advertising than other neighborhoods.<sup>13,14</sup> Point-of-sale strategies that restrict advertising, limit the number of retailers in neighborhoods, and prohibit price discounting could help promote health equity, thereby reducing tobacco-related disparities.<sup>15</sup>

▶ **Counter the huge sums of money and effort channeled into the retail environment by the tobacco industry.**

The tobacco industry now spends most of its marketing budget in the retail environment.<sup>16,17</sup> Point-of-sale strategies that restrict advertising, product placement, and the number, location, density, and types of tobacco retail outlets could diminish the effect of this spending.

▶ **Increase community awareness of tobacco industry practices.**

Tobacco control partners who develop and implement point-of-sale strategies will likely spend more time in retail establishments as they conduct surveys, track compliance, and build partnerships with retailers. These retail assessments can offer opportunities to document industry practices and educate community members. Greater awareness of tobacco industry practices in the retail environment could increase community members' support for point-of-sale and other tobacco control strategies.

▶ **Communicate health information.**

The retail setting presents a natural opportunity to promote health by posting prevention and cessation messages that state the dangers of tobacco use and promote cessation services, such as quitlines.

▶ **Improve compliance with other tobacco control strategies.**

Robust licensing and zoning laws can make it easier for partners to check retailer compliance with existing federal, state, and local policies, such as advertising and youth access restrictions.<sup>18</sup>

# A Brief History

The federal government first addressed the tobacco retail environment in July 1992 by passing the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, also known as the Synar Program. This program aimed in part to reduce minors' access to tobacco. It required states to enact and enforce laws prohibiting the sale or distribution of tobacco products to anyone under the age of 18.<sup>19</sup>

In 1998, the Master Settlement Agreement (MSA) restricted many of the main tobacco companies' marketing avenues (e.g., tobacco transit ads and billboards), but left the retail setting largely untouched. Though the retail environment has been the highest spending category for tobacco industry marketing for over 25 years, the seven years after the MSA marked a sharp increase.<sup>20,21</sup> By 2005, the tobacco industry spent nearly 90% of its marketing budget in the retail environment,<sup>22</sup> with the greatest spending increase in price discounting.<sup>23</sup> After the MSA, the industry more than doubled the amount it spent exclusively on cigarette price discounts, spending over \$8 billion and accounting for 84% of total industry spending in 2008 alone.<sup>23</sup>

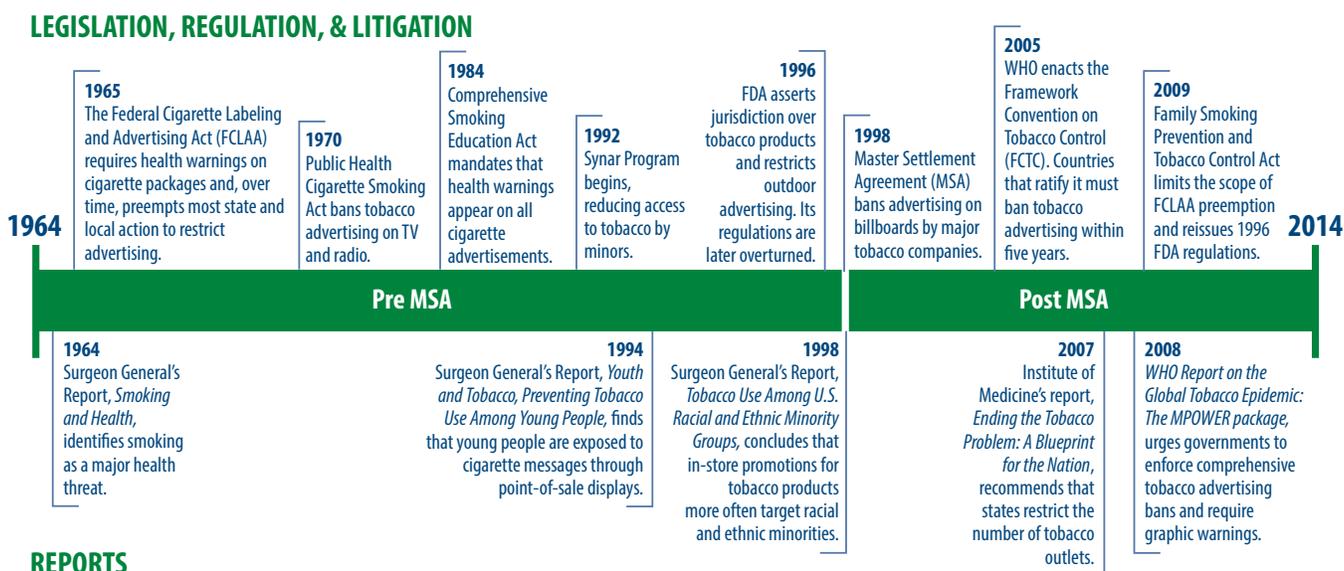
Until recently, point-of-sale strategies centered on restricting youth exposure and access to tobacco products.<sup>24</sup> The 2009 Family Smoking Prevention and Tobacco Control Act (the Tobacco Control

Act) gave the U.S. Food and Drug Administration (FDA) new regulatory authority to restrict aspects of tobacco advertising, marketing, and promotion; regulate misleading messages about the health effects of tobacco products (e.g., using words such as "light" or "ultra-light" to suggest that some products are safer than others); and require graphic warning labels on cigarette packaging and advertisements.<sup>25</sup> The Tobacco Control Act also allowed state and local governments to complement their existing policies with tobacco control legislation restricting the time, place, and manner (but not the content) of cigarette advertising and promotion.<sup>25</sup>

Communities across the U.S. have started to address reducing the number and location of tobacco product sales by restricting retailer presence through zoning, licensing, and stand-alone ordinances. In 2008, San Francisco prohibited the sale of tobacco products in pharmacies. In 2009, Boston prohibited the sale of tobacco products in all health care facilities (including pharmacies) as well as in institutions of higher education.<sup>26,27</sup>

International efforts to regulate tobacco products and the retail environment have been more extensive than those in the U.S. Over 30 countries now require graphic images on warning labels,<sup>28</sup> and at least five countries now prohibit tobacco product displays in retailers.<sup>29</sup>

## Timeline of Legislation and Reports Affecting the Tobacco Retail Setting



## Introduction to Point-of-Sale Strategies

Traditional tobacco control strategies (*e.g.*, implementing smoke-free policies, increasing tobacco taxes, and enforcing laws prohibiting sales to minors), along with efforts to secure full and sustained funding for tobacco control programs, should continue to be the core focus for states and communities seeking to reduce tobacco use. But evidence now suggests that the time has come for point-of-sale strategies to be implemented alongside traditional interventions, particularly for states that have made progress in other core areas of tobacco control.<sup>2,30</sup> Several mechanisms can be used to implement point-of-sale strategies, including direct or stand-alone laws, licensing laws, and laws related to zoning or conditional use permits (see page 7). The primary types of point-of-sale strategies are:

- Reducing (or restricting) the number, location, density, and types of tobacco retail outlets;
- Increasing the cost of tobacco products through non-tax approaches;
- Implementing prevention and cessation messaging;
- Restricting point-of-sale advertising;
- Restricting product placement; and
- Other point-of-sale strategies.

These strategies are important because:

- **The retail environment is now the major channel used by the industry to promote initiation and use of tobacco products.**

After restrictions imposed by the MSA went into effect, the tobacco industry began to channel even more of its marketing budget into the retail environment. In 2011, combined promotional allowances (*i.e.*, payments that secure retailer cooperation for product placement and promotion and make tobacco cheaper) paid to cigarette retailers and wholesalers accounted for 92.7% of total industry cigarette marketing and promotional spending.<sup>16</sup> Smokeless tobacco manufacturers have also increased their spending on retail marketing.

In 2011, combined promotional allowances to tobacco retailers and wholesalers accounted for 56.1% of total smokeless tobacco advertising and promotional spending.<sup>31</sup>

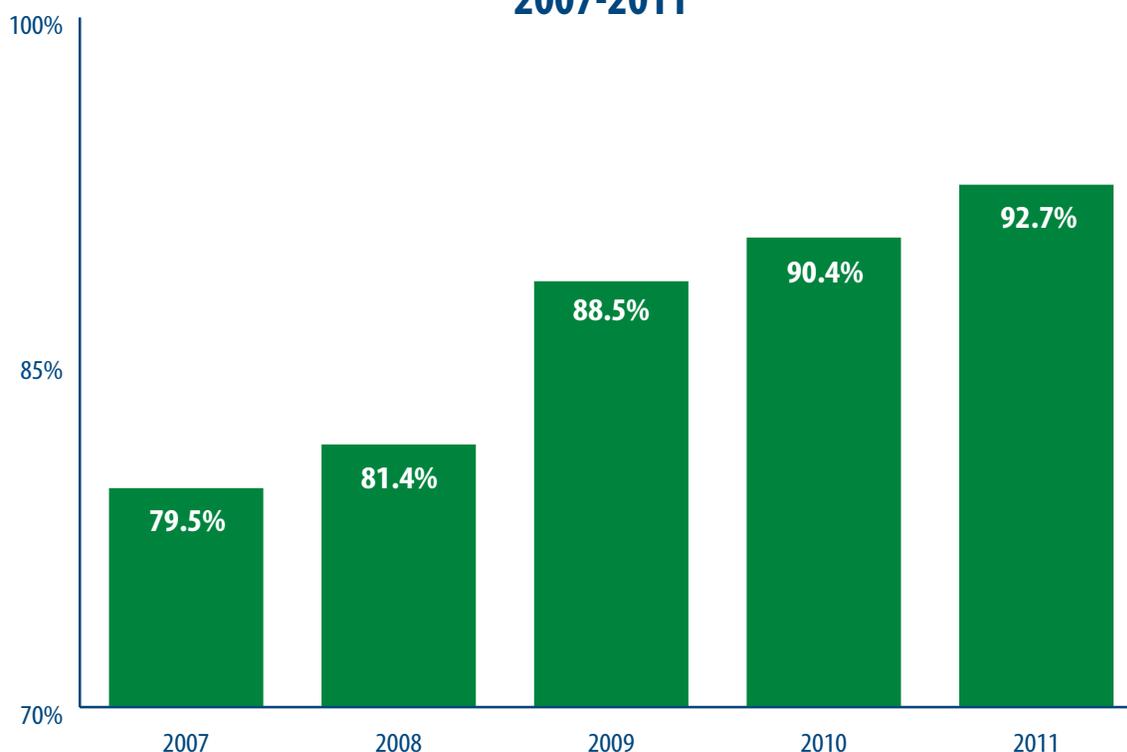
- **The 2009 Tobacco Control Act gave states and communities additional legal authority to pursue point-of-sale strategies and imposed new restrictions on the retail environment.**

The Tobacco Control Act is expected to enhance the ability of states and communities to pursue interventions in the retail setting that go beyond implementing and enforcing youth access restrictions. Other interventions could include restrictions on advertising and promotion as well as other point-of-sale policies that state and local governments have always had the authority to enact, but have largely neglected to date. The Tobacco Control Act imposes certain restrictions on the sale of cigarettes and smokeless tobacco products, including prohibiting self-service displays and vending machines. While these restrictions are significant, state and local governments can replicate and expand the federal provisions. This would allow local governments to enforce federal and local laws consistently. They can also create stronger penalties for violations and close the loopholes that exist in the federal law

**“[Point-of-sale] advertising exposes and potentially affects everyone: the young who grow up seeing tobacco as a benign cultural commonplace in the market on par with milk and bread and come to underestimate its risks; the adult smoker who is reminded and cued to smoke now and more often; the occasional smoker who is cued to consume more; the would-be quitter whose intentions to quit are undermined; and the ex-smoker tempted to relapse and resume smoking.”**

– Richard Pollay,<sup>6</sup>  
University of British Columbia

## Percent of Industry Cigarette Promotional Spending Paid to Retailers 2007-2011



Over time, the tobacco industry has spent increasing amounts on promotional allowances paid to cigarette retailers and wholesalers. This graph illustrates the percentage of the total promotional expenditure budget spent on these payments.

Source: Federal Trade Commission Cigarette Report for 2011<sup>16</sup>

(e.g., strengthening the existing ban on the sale of single cigarettes known as “loosies” to include the sale of single cigars).

- **The same community mobilization efforts that have proven highly effective with other recent tobacco control policies (e.g., smoke-free policies) can be used for point-of-sale strategies.** In communities that have already successfully implemented smoke-free policies, tobacco control partners may be looking for new challenges. Point-of-sale strategies can offer a new focus for these partners, renew interest in tobacco control efforts, and rally community support. The same mobilization efforts needed for traditional policy approaches (e.g., informing community members, engaging policy makers, identifying key partners, and highlighting priority issues) can be revitalized for use with point-of-sale strategies.
- **An infrastructure is already in place to track interventions in the retail environment.** Tobacco control partners can expect the FDA to rely on and contract with state and local tobacco control programs to track compliance with youth access and advertising restrictions, as well as to enforce provisions of the Tobacco Control Act. As states fund their coalitions to conduct store surveys, they can also identify tactics used by the tobacco industry at the point of sale to promote tobacco use in their communities. Some of these industry strategies may be designed to evade the Tobacco Control Act’s restrictions or to diminish their impact. States and communities can track:
  - Introduction of new tobacco products;
  - Marketing tactics;
  - Product displays and placement; and
  - Price discounts.

# How to: Introduction to Point-of-Sale Strategies

## IMPORTANT CONSIDERATIONS

When considering point-of-sale strategies, tobacco control partners must be aware of potential obstacles. These obstacles can include legal, economic, political, funding, and infrastructure challenges. Tobacco control partners should carefully plan how to address these challenges and seek legal advice when appropriate.

## Legal Considerations

The tobacco industry and retailers may use existing laws as grounds to challenge point-of-sale strategies in court. Legal challenges vary by strategy and location, but the tobacco industry and its allies will argue most often that the U.S. or a state Constitution limits a state or local government's ability to adopt the new law. They will argue that state and local communities are preempted from enacting tobacco control laws that are stricter than laws set by higher levels of government.

## Point-of-Sale Provisions of the Tobacco Control Act

The 2009 Tobacco Control Act gave the Food and Drug Administration (FDA) new regulatory authority over tobacco products. Several parts of the Act apply to the point-of-sale environment. Provisions of the Tobacco Control Act relevant to states and most local governments include:

### ► **Expanded state and local authority to regulate advertising and marketing**

The 1965 Federal Cigarette Labeling and Advertising Act (FCLAA) and its amendments preempted states and communities from imposing requirements related to cigarette advertising or promotion based on concerns about smoking or health. The Tobacco Control Act changed this provision by allowing states and communities, where allowed by state law, to restrict or regulate the time, place, and manner (but not the content) of cigarette advertising and promotion. For example, states and many communities are now authorized to enact advertising restrictions, limit the size of product ads, and regulate the location of ads in stores.<sup>32</sup> However, states and communities considering these strategies will need to make sure that the policies pursued do not violate the First Amendment (see page 13).

### ► **Restrictions on cigarette and smokeless tobacco sales to youth**

The Tobacco Control Act took several steps to protect youth from tobacco. Besides prohibiting sales to minors and the sale of "loosies," the Act prohibits vending machines and self-service displays for cigarettes and smokeless tobacco, except in adult-only locations.<sup>17</sup>

### ► **Warning labels**

The Tobacco Control Act mandated larger and stronger warning labels for cigarettes to more effectively communicate the health risks of tobacco use. The law required large graphic warning labels covering the majority of cigarette packages and on cigarette advertisements.<sup>33</sup> Though the FDA issued final regulations on June 22, 2011 (see page 20), five tobacco companies filed a lawsuit claiming that the regulation violated their First Amendment rights. The court found the specific graphic warnings required by the FDA unconstitutional, and the ruling was upheld on appeal.<sup>33</sup> The federal government did not appeal this decision to the Supreme Court and instead plans to develop new graphic warnings consistent with the decisions of the court.<sup>33</sup>

# How to: Mechanisms for Implementing Point-of-Sale Strategies

Tobacco control partners should get legal assistance at the start of the policy process, draft legislative language carefully, and have legal assistance in place if strategies are challenged (refer to page 12 for more information on legal considerations for point-of-sale strategies).

## Economic and Political Considerations

Certain point-of-sale strategies are likely to prompt opposition from the tobacco industry, retailers, and allied interests. This opposition can stem from the economic and political influence of the tobacco industry and the large number of retailers that sell tobacco products. One argument is related to the common perception that retailers depend on revenue from tobacco product sales. Tobacco control partners should strategically plan their efforts to educate policy makers and the public and mobilize support. Assessing the following conditions will help decide if there is enough support to move forward or if more education is necessary:

- The extent of public awareness and understanding of the problem;
- The level of public support for the proposed solution;
- Advocacy resources within the community; and
- The strength of opposing interests.

## Funding and Infrastructure Considerations

Because some point-of-sale strategies are relatively new and untested in the U.S., some of the specifics of implementation, monitoring, and enforcement will need to be worked out through experience. These include:

- What new government infrastructure will need to be developed;
- The investment of funds and staff time that will be needed for implementation, enforcement, evaluation, and legal defense; and
- The agencies that should be involved.

## Mechanisms for Implementing Point-of-Sale Strategies

Tobacco control strategies at the point of sale can be implemented through three main mechanisms at the state or local level:

- Direct or stand-alone laws, such as state statutes or local ordinances not directly tied to a licensing or zoning law;
- Licensing laws; and
- Zoning laws, including conditional use permits (CUPs).

### STATE AND LOCAL STAND-ALONE LAWS

At the state and local level, direct regulation often occurs by passing a state statute or local ordinance. Although processes vary by municipality, ordinances are generally passed by a legislative body (*e.g.*, city council), signed by a city or county executive (*e.g.*, mayor), and enforced by local agencies (*e.g.*, health departments) and government attorneys. State laws can be enacted in a similar way, with the state legislature passing the measure and the governor signing it into law.

### LICENSING LAWS

All states and many local governments have the power to require retailers to obtain a license before selling tobacco products.<sup>34</sup> Most states already license tobacco retailers, though these licenses are largely underused in tobacco control. In the U.S., 40 states have tobacco retailer licensing policies,<sup>35</sup> and a recent study found that only 37% of local governments (within a sample of 78 counties from all 50 states) had enacted tobacco retailer licensing policies.<sup>36</sup> Among the stronger laws is the California Licensing Act, which carries a range of criminal penalties for violations of state tax laws, including graduated fines and potential imprisonment.<sup>37</sup> The ability of local governments to adopt tobacco retailer licensing laws, or to place conditions on retailers within local licensing laws,

# How to: Mechanisms for Implementing Point-of-Sale Strategies

depends on the amount of authority given by the state to the local government. It is important to consult with legal counsel before including any of the following components in a retailer licensing law. If local authority is sufficient, tobacco retailer licensing laws should include at least the following requirements:<sup>37</sup>

- **Require all tobacco retailers to obtain a license and renew it annually.**  
Annual license records can give the state or community important data on the retail environment. An annual renewal process makes it easier to change provisions as the tobacco industry changes its tactics at the point of sale, or as a state or community solidifies its tobacco control goals.
- **Make sure that violation of any federal, state, or local tobacco control law is also a violation of the license.**  
The FDA places limits on the sale, distribution, and promotion of certain tobacco products as part of the Tobacco Control Act. These limits include restrictions on the sale of single cigarettes, commonly known as “loosies,” and prohibitions on selling cigarettes or smokeless tobacco products through vending machines or self-service displays.<sup>38</sup> Adopting these same restrictions—at a minimum—at the state and local level helps with local enforcement. Requirements should be clearly stated, with graduated fines for each violation.
- **Authorize the license to be suspended or revoked for any violation and name a dedicated enforcement agency.**  
The threat of lost revenue from being unable to sell tobacco products increases retailers’ motivation to comply with existing federal, state, and local laws, including the licensing law. Law enforcement agencies, public health departments, or code enforcement departments can be responsible for administering licenses and enforcing licensing laws.<sup>37</sup> Penalties for violations of the licensing law can include monetary fines or license suspension and/or revocation.

- **Impose a license fee based on a reasonable estimate of all the costs of administration, implementation, and enforcement of the license.**  
At the local level, most fees range from \$150 to \$400 annually.<sup>37</sup> Unjustifiably high fees may prompt litigation, so fees should be based on the community’s administration costs to implement and enforce its licensing program.

Licensing laws also can be used to place conditions on retailers that sell tobacco products, such as the strategies described later in this guide, which include restrictions on:

- **The use of coupons and two-for-one deals and the provision of free samples.**  
These “consumer-based pull strategies” are used by the tobacco industry to maximize sales and increase consumption.<sup>39</sup>
- **The sale of flavored tobacco products.**  
Flavored tobacco products are appealing to youth and are often incorrectly presumed to be safer than non-flavored tobacco products. The Tobacco Control Act made all flavored cigarettes except menthols illegal in September 2009. However, other flavored non-cigarette tobacco products are still commonly sold.<sup>40</sup> New York City passed an ordinance to restrict the sale of flavored tobacco products in 2009. The U.S. Court of Appeals for the Second Circuit upheld the ordinance in February 2013.<sup>41</sup> Providence, Rhode Island, also restricted the sale of flavored tobacco products by building upon the city’s existing licensing law. The law went into effect in January 2013 after being upheld by a U.S. District Court.<sup>42</sup> It was later upheld by the U.S. Court of Appeals for the First Circuit.
- **The use of vending machines and self-service displays.**  
The Tobacco Control Act prohibits self-service displays for cigarettes and smokeless tobacco and the sale of these products through vending machines, except in adult-only locations. Replicating self-service display restrictions for these and non-cigarette tobacco products (*e.g.*, cigars and pipe tobacco) at the local level will give state and local governments more options to enforce the federal laws and reduce youth access to all products.

# How to: Mechanisms for Implementing Point-of-Sale Strategies

- **The types of retailers allowed to sell tobacco products.**  
Prohibiting pharmacies and other health care institutions from selling tobacco can help support their roles as health care service providers. Some communities are also considering restricting other types of retailers. Currently, 80 localities in Massachusetts have laws prohibiting tobacco product sales in health care institutions.<sup>43</sup>
- **The location of retailers near schools, child care centers, or other places youth visit.**  
Prohibiting tobacco retailers near places youth visit reduces tobacco retailer density<sup>44,45</sup> and limits the availability of and exposure to tobacco products. This could help reduce youth smoking rates.<sup>34</sup>

## ZONING LAWS AND CONDITIONAL USE PERMITS (CUPS)

Zoning is the use of a community's police power to regulate activities within a local community by areas, called zones, and can play an important role in tobacco control. It is used almost exclusively by local governments.<sup>46</sup> Use-based codes are the most common types of zoning codes and determine what can be built, where certain uses are allowed, and what activities can take place.<sup>47</sup> For example, residential, commercial, industrial, or agricultural zones tell us where people can live, shop, manufacture, and farm within a community.<sup>48</sup> Use-based codes typically include detailed information on the uses that are allowed or prohibited in certain zones. For instance, an area that is zoned for residential use may prohibit firearms dealers

## Effect of Zoning Laws on Existing Retailers

When changes in licensing requirements occur, local governments may decide to allow existing businesses to continue operating as they had before, resulting in more gradual change. Zoning laws, however, can sometimes offer other ways to address existing businesses when changing the point-of-sale landscape. Approaches that can be used with tobacco retailers in areas with zoning changes include:

- ▶ **Legal nonconforming use**  
Also known as “grandfathering,” legal nonconforming use allows existing businesses to keep operating as they had before the new land use regulation. However, these businesses can be restricted from expanding, changing, or transferring ownership unless they obtain a conditional use permit. Over time, these retailers would be eliminated through attrition (*i.e.*, the gradual reduction in retailers that results from the restrictions).
- ▶ **Deemed approved status**  
This strategy lets an existing business that is in an otherwise unlawful location to continue to stay in business, as long as it complies with some regulatory requirements. Like a conditional use permit, a retailer's ability to continue to operate is tied to its compliance with specific conditions (*e.g.*, restrictions on the hours during which tobacco products can be sold).<sup>48</sup>
- ▶ **Amortization**  
When referring to land use, amortization is the payment of a financial obligation over time. In some circumstances, governments may have to compensate property owners if the use of the land is changed (*e.g.*, tobacco products can no longer be sold). Instead of “buying out” the business and closing it at once, a period of time is set (usually several years) during which the business can stay open to recoup part of its investment or conform to the new zoning regulation. Because amortization often prompts litigation, it is unpopular, expensive, and rarely used.<sup>49</sup>

# How to: Mechanisms for Implementing Point-of-Sale Strategies

## Which Mechanism Can be Used—Licensing or Zoning?

Feature of Regulation	Zoning	Licensing
Applies to a specific parcel of land	✓	
Controls location	✓	✓
Controls density or number of uses	✓	✓
Controls the individualized design of sites and buildings	✓	
Imposes operational standards	✓	✓
Applies to existing businesses and future businesses	✓*	✓
Grants privileges that apply for a defined period of time		✓
Requires regular enforcement; fees may be charged	✓**	✓

\*Legally possible but politically and practically difficult, especially when applied to existing businesses

\*\*Enforcement will be required if CUPs or other conditions are imposed

Source: *ChangeLab Solutions Report*<sup>50</sup>

and adult entertainment businesses from operating within its boundaries.

Certain uses can be permitted, prohibited, or subject to conditional use. Conditional use permits (CUPs) are special use permits that traditionally specify the conditions that a business must meet to operate in an area where it may not normally be allowed. When CUPs are combined with zoning, they allow local governments to make individualized decisions about whether a proposed business should be allowed in a neighborhood.<sup>51</sup> For example, a community might have an existing zoning ordinance that prohibits the sale of tobacco products within 1,000 feet of schools, parks, or libraries. But this ordinance could contain a loophole that allowed a tobacco retailer to open next door to a Boys and Girls Club or other non-school youth club. If CUPs are required for all tobacco retailers in that community, an application for a retailer near a Boys and Girls Club could be denied on an individual basis because youth would be nearby.

CUPs allow for tailored restrictions to reduce negative impacts that certain businesses might have on the surrounding area.<sup>49</sup> These restrictions can be developed to support other tobacco control policies related to youth tobacco access laws, including the Tobacco Control Act's restrictions on tobacco sales to youth.<sup>17,48</sup> CUPs can also require tobacco retailers to submit a plan or checklist that shows they intend to comply with local tobacco control regulations.

Zoning requirements and CUPs can play an important role in tobacco control by:

- Requiring that tobacco retailers conduct business only within specific zones or under certain conditions;
- Restricting tobacco retailers from conducting business in areas where tobacco product sales are not appropriate (*e.g.*, a residential area or near places youth visit); and
- Limiting the number of tobacco retailers by prohibiting new stores from opening in a particular zone.<sup>52</sup>

# How to: Mechanisms for Implementing Point-of-Sale Strategies

General sign codes (*i.e.*, a set of laws that governs how businesses can post signs) that can be implemented through a zoning system may limit point-of-sale advertising and impact tobacco control efforts. A coalition in St. Paul, Minnesota, made up of people supporting varying causes (*e.g.*, public health, neighborhood beautification, and community safety) successfully advocated for changes to the County's sign code to limit all outdoor and outward-facing indoor ads, regardless of content, to no more than 25% of a retailer's window space.<sup>53</sup> (See page 39 for a case study on St. Paul, Minnesota's content-neutral sign code.)

Tobacco control advocates can take the following steps to begin work on licensing or zoning strategies:

- Identify potential partners, advocates, legal advisors, and researchers from the community;
- Decide if licensing or zoning strategies will work with existing regulations and local policy goals;

- Collect data on local tobacco retailer location and density;
- Create maps illustrating the local situation;
- Assess the costs of starting a licensing program; and
- Consider setting license fees at a level that will cover the costs of enforcing the program.<sup>52</sup>

In a municipal or county zoning code, descriptions of zones include maps showing the boundaries of each zone. Mapping and using Geographic Information Systems (GIS) is common practice in city and regional planning, but may be less familiar to tobacco control partners. Acquiring partners with GIS knowledge, or developing those skills internally, can be helpful when developing, implementing, and evaluating licensing and zoning policies.

## At-a-Glance: Reforming the “Corner Store”

Reducing the presence of tobacco retailers is part of a broader effort to create healthier communities, so it is valuable to look for partners outside of tobacco control. Nationally, there is a growing interest in reforming the “corner store,” which is often a main source of tobacco, alcohol, and unhealthy foods in urban areas.<sup>46</sup> The flexibility of retailer licensing and conditional use permits allows governments to attach a range of conditions, such as requiring outdoor lighting to improve neighborhood safety or requiring stores to stock fresh fruits and vegetables. In San Francisco, the nonprofit group Literacy for Environmental Justice started the Good Neighbor Program, which offers incentives to local corner stores to

make their businesses healthier. In exchange for energy-efficient building improvements, local advertising, and business training, retailers must replace alcohol and tobacco products with fresh produce and healthy, affordable foods. They also agree to reduce tobacco and alcohol advertising in their stores.<sup>54</sup>

Partners should explore ways to coordinate efforts or develop integrated approaches to improve the “corner store” or convenience store retail environment. Developing a coalition of local groups interested in promoting neighborhood beauty, health, and safety can be an effective way to build support for tobacco control policies.

## Legal Considerations for Point-of-Sale Strategies

Policies that affect the tobacco retail environment are often opposed by tobacco retailers, retail associations, and the tobacco industry. Industry allies will likely try to delay, weaken, or block the passage of retail tobacco laws.<sup>55</sup> This section summarizes common legal arguments related to point-of-sale strategies. It is not intended to be comprehensive or to be used as a substitute for legal advice. Policy language should always be drafted carefully and in consultation with legal experts.

The tobacco industry and retailers are likely to challenge policies in the retail environment based on any or all of the following four legal principles:

- Takings;
- Preemption;
- First Amendment compelled speech; and
- First Amendment restricted speech.

### TAKINGS

The Fifth Amendment states that “private property [shall not] be taken for public use, without just compensation.”<sup>56</sup> Traditionally, this concept only referred to the government’s physical taking of private property. However, it has been extended by the courts to include protection against reduced economic benefits or value derived from a property, known as a “regulatory taking.”<sup>57</sup> To determine if a regulatory taking has occurred, courts weigh the economic impact on the property owner against the purpose of the governmental action (*e.g.*, Does it deprive a business owner of all economic use of the property? Is it in response to an important public health issue?). Some states have adopted additional provisions and regulations addressing the use and/or regulation of private property. These are often more protective of property rights than the federal Takings Clause.<sup>57</sup>

Tobacco control advocates should be aware of common economic arguments against regulatory takings. Private businesses facing restrictions on the sale of tobacco products may argue that their businesses will suffer because of decreased patronage and revenue. In fact, economic studies have shown the opposite is true.<sup>55,58</sup> It is helpful to be familiar with state and local laws and ways in which past legal challenges about the Takings Clause have been addressed. Whether a restriction on retailers violates the Takings Clause depends on the specific law and how it affects the business challenging the law.

### PREEMPTION

Preemption is a doctrine based on the Supremacy Clause of the U.S. Constitution.<sup>48,59</sup> It creates a hierarchy for laws that might conflict with each other. Preemption exists when a law passed by a higher level of government restricts or prohibits a lower level of government from enacting or enforcing a particular law.

Federal law does not preempt state or local governments from regulating the number, placement, or type of tobacco retailers, nor does it preempt state or local sales restrictions or licensing laws. Most state tobacco retailer licensing laws do not preempt local governments from simply licensing retailers. But other state laws may preempt some of the conditions a local government wants to include in its licensing law. For example, Pennsylvania prohibits its local communities from restricting youth access further than restricted by state law.<sup>60</sup> Existing state laws may also preempt certain types of land use regulation. For example, Minnesota preempts counties from closing an existing retailer through amortization.<sup>61</sup>

Tobacco control partners should conduct careful and thorough research, as well as seek legal consultation, to understand how point-of-sale policies may interact with existing laws. Federal law partially preempts state and local governments from restricting cigarette advertising. The Tobacco Control Act amended FCLAA so that states and communities can now restrict the time, place, and manner of advertising. But FCLAA still preempts states and communities from restricting the content

# How to: Legal Considerations for Point-of-Sale Strategies

of advertisements, such as restrictions on the specific words or images used in cigarette advertising.<sup>62</sup> Though the amendment expanded the authority of state and local governments, it left ambiguity about the scope of their authority. Because FCLAA only regulates cigarette advertising, a law related to non-cigarette tobacco product advertising may face fewer legal challenges on federal preemption grounds. However, states can preempt local advertising laws. As of 2010, as many as 18 states preempted local advertising restrictions.<sup>63</sup> Communities should seek legal assistance to understand how preemption may affect their policy approaches.

## FIRST AMENDMENT COMPELLED SPEECH

The First Amendment compelled speech doctrine restricts the government's ability to force an individual speak a message. Potential lawsuits in reaction to required countermarketing might claim that retailers are being forced to advertise against themselves (*i.e.*, tell their customers not to buy their products).<sup>64</sup> Tobacco control advocates can prepare for this challenge by requiring that retailers not display cessation and prevention message signs directly on or tie them to tobacco advertising. Messages should also be factual and clearly identified as coming from the government, not from the retailer or manufacturer. These strategies may protect cessation and prevention messaging policies from violating the First Amendment and should be discussed with an attorney.



## FIRST AMENDMENT COMMERCIAL SPEECH

When crafting policies, partners should be careful that their point-of-sale strategies do not violate First Amendment protections of commercial speech. Commercial speech is defined as “expression related solely to the economic interests of the speaker and its audience.”<sup>62</sup> Product advertising, branding, and logos are types of commercial speech. Commercial speech has notable First Amendment protections based on court decisions over the past 30 years.<sup>65</sup> Any effort to restrict advertising should respect those protections. When designing a law, tobacco control staff can use a legal precedent called the *Central Hudson* test to help understand how a court might analyze the constitutionality of a law that places targeted restrictions on tobacco advertisements. The court will generally ask four questions when reviewing a law restricting commercial speech:<sup>62,65-67</sup>

- **Does the advertisement refer to unlawful activity or is it misleading?**  
If yes, the law restricting the advertisement will generally be found valid and the analysis will stop here. If the ad is discussing lawful activity in a non-misleading way, the court's analysis will continue.
- **What is the government's reason for restricting the advertisement?**  
If the government does not have a strong, legitimate reason (a “substantial interest”), the law will be found unconstitutional. If the government is able to make a strong case for why it wants to restrict commercial speech, the court's analysis will continue.
- **Does the restriction directly advance the government's interest?**  
If the law does not achieve reductions in tobacco use or harmful youth exposure to tobacco advertising, the law will be found unconstitutional.
- **Does the law restrict more commercial speech than necessary to achieve the government's interest?**  
If the law is too broad and restricts more speech than necessary to accomplish its goal, it might be found unconstitutional. If the law is tailored to

# How to: Types of Point-of-Sale Strategies

restrict only the forms of speech that achieve its goal, without affecting other aspects of speech that are unrelated to its goal, the law should be upheld.

Though the *Central Hudson* test is considered the standard for commercial speech protection, tobacco control partners must consult with legal counsel about any new standards the courts may apply. Recent cases interpreting the First Amendment like *Sorrell v. IMS Health* may lead the industry and its allies to argue that heightened judicial scrutiny (*i.e.*, a more rigorous test) is called for.<sup>68</sup> Tobacco control partners can strengthen their case for a restriction by:<sup>62</sup>

- Documenting the problem the law is meant to address;
- Analyzing the law's impact on commercial speech;
- Providing a clear statement of the government's goal;
- Indicating clearly that the law directly advances the government's stated goal;
- Justifying why that action must be taken instead of alternatives or why alternate measures have not worked; and
- Making sure that the law does not limit speech more than is necessary to achieve its goal.

## Types of Point-of-Sale Strategies

The mechanisms on page 7 and legal considerations on page 12 can help guide communities when considering the following point-of-sale strategies:

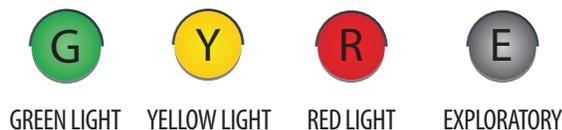
- 1 ▶ Reducing (or restricting) the number, location, density, and types of tobacco retail outlets;
- 2 ▶ Increasing the cost of tobacco products through non-tax approaches;
- 3 ▶ Implementing prevention and cessation messaging;
- 4 ▶ Restricting point-of-sale advertising;
- 5 ▶ Restricting product placement; and
- 6 ▶ Other point-of-sale strategies.

## LEGAL FEASIBILITY

The legal feasibility of the strategies discussed in this section varies greatly. Below, we assess a wide range of policies using a 'Red-Yellow-Green Light' categorization system like the one introduced by ChangeLab Solutions and the Center for Tobacco Policy & Organizing in 2010.<sup>69</sup> This classification system is not perfect, but helps explain the general legal feasibility of these strategies. Communities that are just beginning to work on interventions in the retail environment should consider starting with 'Green Light Interventions,' or strategies that have successfully been implemented in other communities and are generally thought to be legally sound. These interventions are the least likely to draw legal challenges. States and communities that have already worked on 'Green Light Interventions' can consider 'Yellow Light Interventions.' These interventions have not been widely tested and are more likely to trigger lawsuits, but some communities have had success implementing them. 'Red Light Interventions' are much more complex, and pursuing them is not recommended at this time. Other strategies are considered 'Exploratory' because they have potential, but generally have not been tested by many communities. The extent to which these interventions

# How to: Types of Point-of-Sale Strategies

would encounter legal challenges is unknown. As always, communities should consult an attorney at the beginning of policy work to understand the legal environment and to make sure that drafted laws are as legally sound as possible.<sup>69</sup> The feasibility rankings below do not take into account any state preemption of local policy making.



## 1 REDUCING (OR RESTRICTING) THE NUMBER, LOCATION, DENSITY, AND TYPES OF TOBACCO RETAIL OUTLETS

The presence of tobacco retail outlets is unrestricted in most communities, making tobacco products easily accessible, particularly in low-income and minority neighborhoods.<sup>70</sup> Many studies show that greater tobacco retail outlet density is related to increased youth and adult tobacco use.<sup>11,70</sup> Smoking rates are higher among students in schools located in areas with greater tobacco retail density compared with students in schools without any tobacco retailers nearby.<sup>23</sup> The perception that cigarettes are easily available strongly predicts youth experimentation.<sup>70,71</sup> Tobacco retailers located near schools with high smoking rates generally have lower cigarette prices, fewer government-sponsored health warnings, and more in-store tobacco product promotions.<sup>23</sup> The Institute of Medicine recommends that governments develop and implement ways to restrict the impact of tobacco in the retail environment.<sup>38</sup> Strategies to regulate tobacco retailer presence include:

### 1a Establishing a licensing system with fees or increasing licensing fees

**G** *Examples include:* 1) requiring each tobacco retailer to register with the department of revenue or the local health department and pay an annual licensing fee that covers administration costs; or 2) increasing the fees for the government's current retailer licensing system to an adequate level to administer its program.

*Important considerations:* Although tobacco retailer licensing can be a mechanism to implement other strategies, it can also be considered a strategy. A policy creating or increasing licensing fees can reduce retailer density if retailers who violate the terms of the license have their license suspended or revoked. Licensing fees have the added benefit of generating revenue that can be used to enforce the requirements of the licensing ordinance, such as compliance with all local, state, and federal laws. Some communities prohibit retailers from displaying tobacco advertisements while they have suspended or revoked licenses. This protects the community from exposure to tobacco in stores that cannot sell tobacco products.

### 1b Reducing the number of tobacco retail outlets

**G** *Examples include:* 1) capping the number of retailers at the current number; 2) limiting the number of retailers based on population density; or 3) allowing only one new retailer into a city for every two that go out of business.

*Important considerations:* If used alone, this approach could reduce density, but it could also transfer density problems to other areas if retailers move their businesses to locations where density had been low before.

### 1c Restricting the location of tobacco retail outlets

**G** *Examples include:* 1) prohibiting sales within 1,000 feet of places youth visit (e.g., schools, parks, and libraries); or 2) barring tobacco product sales in certain zoning districts (e.g., residential zones).

*Important considerations:* Although this approach could reduce retailer density in certain areas, it could also increase density in other areas by forcing retailers to move. It is important to carefully consider how restrictions may affect existing retailers.

# How to: Types of Point-of-Sale Strategies

## 1d Requiring a minimum distance between tobacco retail outlets

**G** *Example:* Prohibiting new tobacco retailers from operating within a certain distance of existing tobacco retailers (e.g., 500 feet).

*Important considerations:* This approach would directly reduce tobacco retailer density as well as reduce the overall number of tobacco retailers if the requirement meant not enough suitable business locations were available.

## 1e Prohibiting the sale of tobacco products at certain types of establishments

**G** *Examples include:* 1) restricting tobacco product sales in bars, restaurants, pharmacies, or on college campuses; or 2) prohibiting sales of tobacco products in businesses that allow smoking on site.<sup>72</sup>

*Important considerations:* This approach would directly reduce tobacco retailer density and could decrease the social acceptability of tobacco use. Reducing the presence of tobacco products, specifically in health-related locations such as pharmacies, enables health professionals to better promote wellness.<sup>73</sup> This policy can be implemented through licensing, zoning, or stand-alone ordinances. Communities that have successfully prohibited tobacco product sales in pharmacies have done so with few legal challenges.<sup>43,73</sup>

## 1f Limiting the number of hours or days when tobacco products can be sold

**Y** *Example:* Prohibiting tobacco product sales during the hours or days when youth are more likely to be present.

*Important considerations:* This approach, though largely untested, could reduce youth access and exposure to tobacco products if retailers were only allowed to

sell tobacco products during school hours or after a local curfew. Limiting access could reduce youth experimentation and established tobacco use, and limiting exposure could change the social acceptability of tobacco use.

## 2 INCREASING THE COST OF TOBACCO PRODUCTS THROUGH NON-TAX APPROACHES

Research has shown that when price cuts are offered and advertised where tobacco products are displayed, sales increase by as much as 30%.<sup>23</sup> Increasing the cost of tobacco products, thus making them less affordable, has been shown to decrease smoking rates.<sup>74,75</sup> Low-income smokers and youth are the most price-sensitive consumers. By increasing the price of tobacco products, communities can reduce tobacco-related disparities.<sup>76</sup> Non-tax approaches can be combined with tax increases to help preserve the product price that excise taxes are intended to achieve. In communities where tax increases are not feasible, tobacco control partners can raise the price of tobacco products by implementing non-tax approaches. State governments have the authority to pass, implement, and enforce laws about the sale and price of tobacco products. However, states often preempt local governments from implementing or enforcing pricing requirements. This preemption can be overridden by a state action directly giving that authority to local units of government.<sup>77</sup> Non-tax policy approaches include:

### 2a Establishing minimum price laws

**G** *Examples include:* 1) Requiring that a minimum percentage markup be added to the wholesale and/or retail price of cigarettes; or 2) establishing a set price for each type of product, regardless of brand.

*Important considerations:* Most minimum price laws now in place are ineffective for tobacco control because they allow for tobacco industry discounts.<sup>22</sup>

# How to: Types of Point-of-Sale Strategies

For minimum price laws to be effective, they should specifically exclude trade discounts when setting minimum price.<sup>78</sup> Minimum prices can also be set at much higher specific amounts and tied to inflation.

## 2b Prohibiting price discounting

**G** *Example:* Prohibiting cents-off or dollars-off discounts, coupon redemption, buy-one-get-one-free deals, and/or multi-pack discounts (e.g., two-for-one deals) for all tobacco products.<sup>22</sup>

*Important considerations:* A policy that prohibits tobacco industry discounting schemes could reduce tobacco use, particularly in low-income individuals and youth, who are among the most price-sensitive shoppers.<sup>79</sup> But any policy restricting tobacco product price discounts will likely be challenged under the First Amendment and, if the law applies to cigarettes, under FCLAA. Attorneys can help craft restrictions that relate to the discounting activity itself and do not address or change the content of any advertisements. Price-discounting can be prohibited by amending an existing tobacco retailer licensing ordinance or by enacting a new stand-alone ordinance.

## 2c Restricting sale based on pack size for non-cigarette tobacco products

**G** *Example:* Requiring that cheap cigars be sold in packages of at least four or that little cigars be sold in packages of at least 20.

*Important considerations:* States and many communities have the authority to pass sales restrictions. These policies do not set requirements on manufacturers, just retailers, so it is important to make sure that they are not mischaracterized as requirements about the manufacture or packaging of the products themselves.

## 2d Implementing mitigation fees

**E** *Example:* Placing a fee on each pack of cigarettes sold to cover the costs the government incurs as a result of improperly discarded cigarette butts. These include the costs of litter clean up, extinguishing wildfires, and implementing environmental protection programs.

*Important considerations:* Fees should be tied to costs that are supported by data and related to a problem that the law is trying to lessen. In some states, these fees cannot be imposed. Tobacco control partners should check whether state laws limit either state or local governments from imposing mitigation fees.

## 2e Implementing sunshine or disclosure laws

**E** *Example:* Requiring that tobacco companies disclose payments and incentives made to retailers in exchange for offering price-discounting promotions.

*Important considerations:* A disclosure policy would be helpful in assessing the use of price-discounting schemes in communities that are starting to work on point-of-sale policies. However, state laws on data practices might limit the ways in which this data can be used. Other state laws might preempt local governments' authority to require this information. If so, it may be possible to amend those state laws.

## 3 IMPLEMENTING PREVENTION AND CESSATION MESSAGING

The 2007 Institute of Medicine report, *Ending the Tobacco Problem: A Blueprint for the Nation*, recommends requiring tobacco retailers to display and distribute health warnings and cessation signs.<sup>80</sup> Just as tobacco companies use the retail setting to advertise their products, tobacco control partners can use the retail setting to implement health warnings and cessation message signs. These warnings educate consumers about the health effects of tobacco use.<sup>80</sup> These signs are similar to countermarketing campaigns on television, billboards, and tobacco product packages in that they use text and/or graphic images to give information on the health effects of tobacco use. They also often include information about cessation services that encourages users to quit. Prevention and cessation message signs can include:

- Graphic images depicting the harmful consequences of tobacco use;
- Factual statements by the government;
- Text stating that the warning sign is produced by the government; and
- Promotion of a cessation service, such as a quitline telephone number.

New York City's Board of Health adopted and implemented a resolution in 2009 requiring tobacco retailers to display signs with graphic health messages and a quitline number near tobacco product displays and cash registers. The policy was in effect for less than a year when a trial court voided the law after the tobacco industry sued the city (refer to page 21 At-a-Glance for more information). A study found that during the law's short implementation, awareness of health warning signs more than doubled and thoughts about quitting smoking increased by 11%.<sup>81</sup>

Requiring graphic point-of-sale prevention and cessation messages is too new to have developed a broad evidence base. However, the findings from New York City's experience, along with the effectiveness of television and radio countermarketing campaigns,

suggest that prevention and cessation message signs are likely to have positive impacts. Research shows that smokers know little about tobacco-related illnesses other than lung cancer.<sup>15</sup> Smokers also underestimate their personal risk of developing lung cancer and other tobacco-related illnesses.<sup>82</sup> Prevention and cessation signs can help counter this lack of knowledge and low perception of risk, thus reducing tobacco use and initiation and encouraging quit attempts.

Telephone-based cessation services, or quitlines, are also an effective intervention for smoking cessation. Easy accessibility to quitlines is a key reason for their success and is especially helpful for smokers who have limited mobility and those who live in rural areas.<sup>83</sup> Quitlines are also used by tobacco users of ethnic minority backgrounds—populations who are underrepresented in traditional cessation services.<sup>83</sup> Requiring that tobacco retailers post a quitline number at the point of sale is a cost-effective way to increase awareness of cessation services.<sup>84,85</sup>

Requiring prevention and cessation messaging at certain establishments where tobacco or nicotine products are bought and consumed (e.g., hookah or water pipe smoking lounges and vaping or e-cigarette lounges) would also raise awareness of cessation services and of the health concerns associated with using these products. Studies recommend that hookah pipes and hookah tobacco carry strong health warnings.<sup>86</sup> Although awareness of the health risks of traditional tobacco products has increased, there are still many misconceptions about the risks of these emerging products. Hookah has gained in popularity, especially among 18 to 24 year-olds.<sup>87</sup> Studies have shown that hookah smokers generally believe that hookah tobacco is less harmful than cigarettes.<sup>87</sup> Prevention signs should help correct this common misunderstanding, stating that the products consumed are not proven to be safe alternatives to cigarettes.<sup>88</sup> Hookah smoking has health risks similar to cigarette smoking. Because hookah smokers inhale over a longer period of time, they actually inhale the smoke content of 100 or more cigarettes in one session.<sup>87</sup> Hookah users are also at risk for infectious diseases because the mouthpiece used for smoking is usually shared by a group of individuals.<sup>87</sup>

# How to: Types of Point-of-Sale Strategies

Communities that are ready to work on more untested policies could consider well-crafted regulations that require graphic health message signs and cessation information in the retail environment. Images showing smoking as threatening to survival evoke a strong emotional response, grab attention, and discourage smoking.<sup>89</sup> If successful, a policy requiring graphic health message signs and cessation information could positively affect public health by discouraging initiation and prompting thoughts about quitting.<sup>90</sup>

## Important Components of Graphic Health Message Signs

Laws implementing graphic health message signs should require:

- ▶ Signs in all places where tobacco products are sold;<sup>80</sup>
- ▶ Clear statements that the signs are produced and edited by the government;<sup>91</sup>
- ▶ Only factual statements and images;<sup>91</sup>
- ▶ Information about the signs' purpose, such as: 1) to protect citizens' health; and 2) to reveal the potential for consumers to be deceived or harmed without the proper factual warnings;<sup>67</sup>
- ▶ Information about the negative health effects of tobacco use, including those that fewer people know about;<sup>2,62</sup>
- ▶ Emotionally compelling negative images illustrating the health effects of tobacco use;<sup>18,91</sup> and
- ▶ Information on resources available to help users quit and reasons to seek help,<sup>80</sup> such as a quitline number that is shared by using informative statements (e.g., "To quit smoking, call 555-5555"), not commands (e.g., "Quit smoking today. Call 555-5555").<sup>91</sup>

Strategies to implement prevention and cessation messaging interventions include:

### 3a Requiring the posting of quitline information in retail stores

**G** *Example:* Requiring that a quitline sign be posted on tobacco vending machines and in all locations selling tobacco products.<sup>92</sup> The sign could be printed in letters and numbers at least one-half inch high and display a toll-free phone number to help callers quit using tobacco products.

*Important considerations:* A policy that requires posting quitline information in retail stores is an inexpensive and visible way to share information about cessation services. Most tobacco users can access quitline services, including people in minority, low-income, and rural communities. Improving awareness about these services could increase cessation attempts and decrease tobacco-related disparities.

### 3b Requiring the posting of health warnings at hookah lounges

**G** *Example:* Requiring lounges that sell hookah for use on the premises to post signs warning that hookah tobacco is addictive and contains nicotine, and that hookah smoking puts users at risk for cancer, heart disease, lung disease, and infectious diseases like herpes, tuberculosis, and hepatitis.<sup>93</sup> As more research is published on effects of e-cigarette use and exposure, vaping lounges and similar venues could be included in this strategy.

*Important considerations:* Posting health warnings about hookah tobacco and smoking will combat the misconception that hookah is safer than cigarettes, while also reducing the spread of infectious diseases. These health warnings have the added benefit of targeting important audiences: 18 to 24 year-olds (a group that has rapidly increased hookah use) and ethnic minority groups such as Arabs and Arab Americans (groups that have traditionally smoked hookah).

# How to: Types of Point-of-Sale Strategies

## FDA Required Warnings for Cigarette Packages and Advertisements

In 2011, the FDA adopted rules that would require larger, more prominent cigarette health warnings on all cigarette packaging and advertisements in the United States. These rules marked the first change in cigarette warnings in more than 25 years and were considered by the tobacco control community to be a significant advance in communicating the dangers of smoking. The final set of cigarette health warnings included nine different text warnings and color graphics designed to:

- Increase awareness of the specific health risks of smoking, such as death, addiction, lung disease, cancer, stroke, and heart disease;
- Encourage smokers to quit; and
- Empower youth to resist tobacco.<sup>94</sup>

Five tobacco companies filed a lawsuit against the federal government in August 2011, arguing that the warning labels violated the companies' constitutional right to free speech under the First Amendment.<sup>33</sup> The trial court sided with the tobacco companies. Using the *Central Hudson* test, the U.S. Court of Appeals for the D.C. Circuit affirmed this ruling in August 2012. The court stated that there was not enough evidence to show that the warnings would achieve the government's goal of reducing smoking initiation and encouraging cessation.<sup>85</sup> After the Court of Appeals denied the FDA's petition for a rehearing, the FDA indicated that it would not appeal to the U.S. Supreme Court. Instead, the FDA plans to explore other options and develop new warning labels based on evidence about their effectiveness.



Examples of the proposed cigarette graphic warning labels

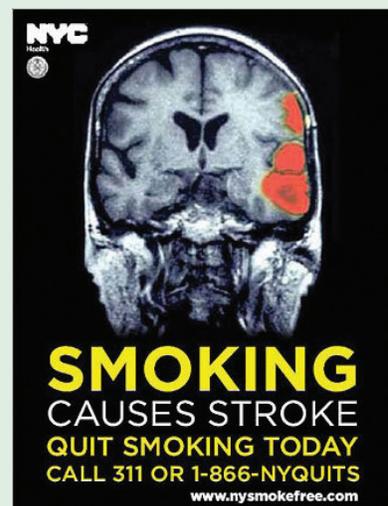
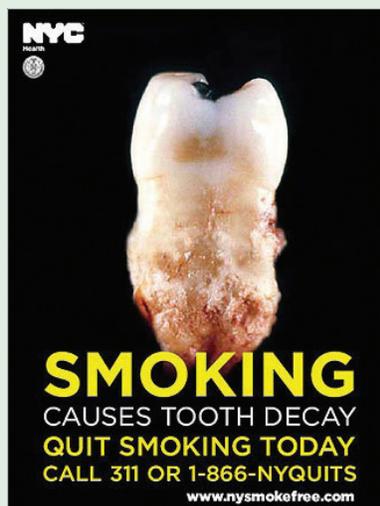
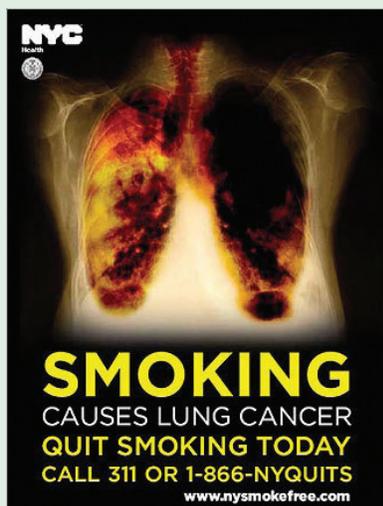
## At-a-Glance: Graphic Health Message Signs in New York City

New York City was the first city in the U.S. to require that tobacco retailers display graphic health message signs. New York City's Board of Health passed this health regulation in September 2009. The health department developed signs to illustrate the negative health effects of smoking (e.g., lung cancer, tooth decay, and brain damage) and give quitline information. Tobacco retailers were required to post the signs next to any tobacco products and near the cash register or point of sale. In June 2010, three tobacco companies, two tobacco retailers, and two trade associations sued the Board.

The trial court sided with the plaintiffs, ruling the regulation void based on FCLAA's 1969 preemption provision.<sup>94</sup> FCLAA already prohibited state and local governments from imposing warning requirements on cigarette packages; the 1969 provision also prohibited state or local requirements about cigarette advertising. This FCLAA provision made sure that warnings on cigarette packages and advertising were consistent. The court found that since only the federal government could impose health warnings on cigarette advertising and promotion, New York City had overstepped its authority.

The City appealed, but in July 2012 the U.S. Court of Appeals for the Second Circuit upheld the ruling.<sup>94</sup> This was not the outcome New York's tobacco control advocates expected. First, the regulation was a requirement on retailers, not the industry. Second, the 2009 Tobacco Control Act amended FCLAA so that advocates thought that even if FCLAA applied, this activity would still be allowed. The amendment to FCLAA allowed state and local governments to "enact statutes and promulgate regulations...imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes." The appeals court ruled that the New York City regulation addressed the content of cigarette promotion because the signs were required to be placed next to tobacco product displays. However, the court did not rule out other similar requirements.

New York's experience should not discourage tobacco control advocates from moving forward with retail strategies. A 2012 study found that after New York City implemented the signs, awareness of health warning signs more than doubled and thoughts about quitting smoking increased by 11%.<sup>81</sup> Other communities can learn from New York City's experience and be better prepared to defend against legal challenges.



*New York City point-of-sale graphic health message signs*

# How to: Types of Point-of-Sale Strategies

## 3c Requiring the posting of graphic health messages at the point of sale



*Example:* Requiring that all licensed tobacco retailers display graphic signs that include tobacco product information, details of the negative health effects of tobacco use, pictures illustrating those effects (e.g., cancerous lungs and decaying teeth), and cessation resource information.<sup>94</sup>

*Important considerations:* Graphic health message signs in retailers are inexpensive to implement and reach both tobacco consumers and non-tobacco customers. This strategy is likely to be met with legal challenges. To date, no jurisdictions in the U.S. have successfully adopted point-of-sale graphic warning requirements. Communities that want to work on adopting graphic warning requirements should seek legal advice at the start of policy work. Tobacco control partners should collect and analyze community data and determine community readiness and support. These efforts can help build awareness and understanding of the importance of graphic health message signs.

## 4 RESTRICTING POINT-OF-SALE ADVERTISING

Studies have consistently shown a link between tobacco advertising and tobacco use.<sup>3,4,95</sup> Most notably, the National Cancer Institute's *Tobacco Control Monograph 19* concluded, "The total weight of evidence...demonstrates a causal relationship between tobacco advertising and promotion and increased tobacco use, as manifested by increased smoking initiation and increased per capita tobacco consumption in the population."<sup>2</sup>

Youth are at greater risk for exposure to tobacco advertising because tobacco ads are often placed at their eye-level or near candy, and 75% of teens visit a convenience store at least once a week. Greater exposure to tobacco advertising is linked to more favorable attitudes towards tobacco use and increased odds of smoking.<sup>23,96,97</sup> Research has found that tobacco advertising is greater in stores most visited by youth. Youth are also more likely to smoke the brand of cigarette most heavily advertised in the tobacco

retailer nearest their school.<sup>3,98</sup> Furthermore, tobacco advertisements often show images that appeal to youth (e.g., bold behavior, independence, adventure, social approval, good health, and sophistication).<sup>23</sup> This pervasive advertising promotes a perception that tobacco is accessible, acceptable, and popular, especially among young people.<sup>57</sup>

Point-of-sale advertising also negatively affects established tobacco users. Advertising has been found to encourage unplanned purchases of tobacco products, which undermines quit attempts by people trying to reduce or end their tobacco use.<sup>5,59,99</sup> One of the key strategies recommended in the 2008 *WHO MPOWER* report was to "enforce bans on tobacco advertising, promotion, and sponsorship."<sup>30</sup> Several countries have eliminated the negative influence of tobacco advertising in the retail environment by implementing restrictions as part of the WHO Framework Convention on Tobacco Control (FCTC), which requires participating countries to completely ban advertising.<sup>30,100</sup> International studies have found that these comprehensive advertising restrictions reduce tobacco use.<sup>2,100-102</sup>

Tobacco companies pay retailers for prime shelf space and work with retailers to post advertisements throughout stores. Tobacco companies predetermine the most effective way to display their products and often sign contracts with retailers that make sure their products will be promoted that way.<sup>98</sup> An assessment of tobacco retail advertising in New York State found an average of 18 tobacco ads per store, with even greater numbers in tobacco stores and combination gas and convenience stores.<sup>103</sup>

States and communities have several choices to limit the influence of tobacco advertising and promotion in the retail environment, including:

## 4a Implementing content-neutral advertising laws



*Examples include:* 1) restricting all window signs to no more than 30% of window space; or 2) amending a jurisdiction's sign code to reduce the window area that can be covered by temporary and permanent signs.

# How to: Types of Point-of-Sale Strategies

## At-a-Glance: Tobacco Advertising in the Retailer Setting

Legal settlements prohibit posting advertisements of a certain size for cigarette or smokeless tobacco products sold by the primary tobacco companies.<sup>20</sup> The advertisements cannot be larger than 14 square feet. They also cannot form a single “mosaic” advertisement larger than 14 square feet.<sup>20</sup> However, many convenience stores have windows or walls covered by smaller ads placed side-by-side. Tobacco advertising at the point of sale takes a variety of forms, including:

- Exterior and interior;
- Permanent and temporary;
- Affixed (e.g., neon signs; signs attached to a building by nails, screws, or brackets; and signs attached to poles cemented into the ground);
- Not affixed (e.g., portable signs, free-standing signs, and sandwich boards);
- Functional (e.g., gas pump toppers, trash cans, and store hour signs with brand logos); and
- Non-functional (e.g., sandwich boards outside stores and advertising on windows).



Outward-facing interior sign



Affixed neon window sign



Interior advertisement



Sandwich board



Promotional offer display



Counter display



Gas pump topper



Interior advertisement

# How to: Types of Point-of-Sale Strategies

*Important considerations:* States and communities can widely restrict all types of advertising at once, without focusing on content (*i.e.*, not just tobacco advertisements). This is referred to as a “content-neutral” advertising restriction. This strategy is likely to face fewer legal challenges than any tobacco-specific advertising restrictions, as long as the intent behind it is truly neutral. It can also offer added benefits like increased visibility into store interiors for retailer safety (by freeing up window space) and improved neighborhood appearance.<sup>67,104</sup> Content-neutral advertising laws are likely to be supported by community groups with varying priorities, such as safety and neighborhood beautification. Most communities have sign code laws already in place. Tobacco control partners should check their local laws and find ways to either strengthen or enforce conditions of their communities’ existing sign code ordinances.

## 4b Limiting the placement of tobacco retail advertising outside certain store locations

**R** *Example:* Limiting the placement of outdoor ads on stores within a certain distance from locations that youth visit, such as schools, playgrounds, or parks.<sup>67</sup>

*Important considerations:* Youth attitudes and beliefs about tobacco are influenced by their exposure to tobacco advertising.<sup>105</sup> Tobacco advertising normalizes cigarette use and non-cigarette tobacco products. Exposure to tobacco advertising can also influence young people’s intention to start smoking.<sup>105</sup> Placing buffers around locations that youth visit could limit the amount of advertising youth are exposed to, which could decrease youth initiation.<sup>45,67</sup>

The Tobacco Control Act amended FCLAA to allow states and communities the authority to regulate the time, place, and manner, but not the content (*i.e.*, the specific words or images in the advertisements) of cigarette promotions and advertising. However, most strategies in this category are more legally challenging because of First Amendment commercial speech protections. Any strategies within this category should only be considered in communities working closely with legal counsel.

## 4c Limiting the times when tobacco retail advertising is allowed

**R** *Example:* Requiring retailers to remove or cover tobacco advertising with screens during certain times, particularly when youth are most likely to be present (*e.g.*, after school hours).<sup>59,67</sup>

*Important considerations:* See 4b.

## 4d Limiting the placement of tobacco retail advertising inside stores

**R** *Examples include:* 1) prohibiting tobacco advertising near the cash register; or 2) prohibiting tobacco advertising near product displays.

*Important considerations:* See 4b.

## 4e Limiting the manner of tobacco retail advertising

**R** *Example:* Banning certain types of tobacco advertisements (*e.g.*, outdoor sandwich board-style ads).<sup>67</sup>

*Important considerations:* See 4b.

## 5 RESTRICTING PRODUCT PLACEMENT

Besides advertising, tobacco companies rely on product placement to sell their products. Product displays influence youth purchase attempts,<sup>106</sup> encourage impulse purchases, and undermine cessation attempts.<sup>99</sup> According to tobacco industry documents, a product display includes “a portable... unit presented in open view, generally on retail setting counters, with the capacity to merchandise... packs, cartons, and promotional products for sale.”<sup>107</sup> Product displays also include the area behind the counter where products are visible.

# How to: Types of Point-of-Sale Strategies

Youth exposure to product displays distorts their beliefs about the popularity of tobacco use and enhances brand imagery, which are both linked to increased risk of smoking initiation.<sup>57,99</sup> Research has found that the influence of product displays on initiation of and experimentation with tobacco use is similar to the influence of parental smoking.<sup>108</sup> These effects have been shown even in the absence of standard point-of-sale advertising, indicating that the influence of product displays cannot be entirely reduced by partial or total advertising restrictions.<sup>57,99</sup> In fact, product displays often become more prominent after passing advertising restrictions.<sup>23</sup>

In 2011, the tobacco industry spent about 9.1% of total spending (over \$750 million) on product placement.<sup>16</sup> Tobacco companies often compete with each other for shelf space in tobacco retailers.<sup>98</sup> In return for financial incentives such as volume discounts and sales, the tobacco industry requires retailers to use branded shelving units and displays and follow explicit marketing plans that impose shelf space and brand location requirements.<sup>23</sup> Industry representatives often develop a diagram called a “planogram” that shows where retailers should place their products and advertising. When large numbers of tobacco product packages are placed side-by-side, they create a “power wall” that becomes a form of advertising.<sup>57</sup>

Several countries have ended the negative influence of product displays in retailers by instituting comprehensive restrictions on tobacco advertising, promotion, and sponsorship, including product displays.<sup>28,98</sup> In 2001, Iceland became the first country to prohibit product displays. Since then, Canada, Thailand, Ireland, Norway, and Australia have implemented similar laws.<sup>57</sup> Several other countries including Scotland and the U.K. have enacted display restrictions that are expected to be fully implemented soon.<sup>77</sup> Both Canada and Iceland have reported declines in youth smoking after implementing advertising and display restrictions.<sup>57</sup> As of 2013, six more countries have passed product display laws that are awaiting implementation.<sup>109</sup>

First Amendment protections and FCLAA’s preemptive provisions may present significant challenges to implementing product display prohibitions in the U.S. In April 2012, the village of Haverstraw, New York, adopted the first-ever comprehensive product display

law in the U.S. Before the law took effect, the New York Convenience Store Association and seven tobacco companies filed a federal lawsuit claiming that the law was an unconstitutional violation of their free-speech rights.<sup>110</sup> As a result, the village decided to withdraw the law. Communities in the U.S. that are considering comprehensive product display bans can expect similar legal challenges. Without more research, communities in the U.S. are not encouraged to try product display prohibitions at this time.

Approaches that limit the influence of tobacco product placement in the retail environment include:

---

## 5a Prohibiting self-service access to non-cigarette tobacco products

**G** *Example:* Requiring cigars to be placed out of reach so that a store clerk must get the product for the consumer.

*Important considerations:* The Tobacco Control Act and FDA regulations prohibit self-service access to cigarettes and smokeless tobacco, except in adult-only locations. This restriction does not keep tobacco products out of view; it requires that cigarettes and smokeless products be stored behind the counter<sup>17</sup> and helps prevent shoplifting and youth access. Many communities have complemented the federal requirements by adding self-service restrictions for all tobacco products, not just cigarettes and smokeless tobacco. Replicating parts of the Tobacco Control Act also gives state and local governments the authority to enforce those laws and make stricter penalties for violations.

---

## 5b Limiting the times when tobacco products are displayed

**R** *Example:* Requiring retailers to cover product displays with screens when youth are most likely to be present (e.g., after school hours on weekdays).

*Important considerations:* The Tobacco Control Act amended FCLAA to allow states and communities the authority to regulate the time, place, and manner,

# How to: Types of Point-of-Sale Strategies

but not the content, of cigarette advertisements or promotions. However, this strategy may be legally challenging because no court has yet offered guidance on the scope of FCLAA or the First Amendment as they may relate to this specific intervention. This strategy should only be considered in close collaboration with legal counsel.

## 5c Restricting the number of products that can be displayed

**R** *Example:* Allowing retailers to display just one package of each product that is for sale, essentially eliminating power walls.

*Important considerations:* See 5b.

## 5d Prohibiting product displays

**R** *Example:* Requiring retailers to store tobacco products out of view of the consumer (e.g., under the counter or behind opaque shelving).

*Important considerations:* To date, no U.S. jurisdiction has successfully enacted a partial or full product display restriction. The tobacco industry and retailers will likely oppose tobacco product display laws. Retailers, particularly convenience stores, may oppose these laws because of the they believe they will lose sales, as well as payments and incentives they receive from the tobacco industry to display products. However, it is important to consider that if consumers reduce tobacco purchases, they will likely spend their money on other products, supplementing tobacco retailers' income.<sup>98</sup> Although product display restrictions have been implemented in several countries, partners should know that the legal challenges of instituting product display restrictions are different in the U.S. Currently, these strategies are not recommended without more research.

## 6 OTHER POINT-OF-SALE STRATEGIES

As communities have passed more comprehensive tobacco control regulations, the industry has developed and promoted non-cigarette tobacco products, such as snus, candy-flavored cigarillos, and e-cigarettes. These products have helped tobacco companies keep their current customer base and attract new consumers. Many communities have started to enact other point-of-sale strategies to combat the industry's response to traditional tobacco control regulations. These other point-of-sale strategies are generally thought to be legally feasible and have varying effects. Strategies include:

### 6a Prohibiting the sale of flavored non-cigarette tobacco products

**G** *Example:* Amending a community's licensing law to prohibit licensed retailers from selling any tobacco product that has characterizing flavors.

*Important considerations:* New York City and Providence, Rhode Island, have both successfully enacted flavored sales restrictions. The tobacco industry uses flavored products to attract youth, who are more receptive to characterizing candy and fruit flavors.<sup>111</sup> By restricting the sale of flavored tobacco products, communities can reduce youth initiation.

### 6b Raising the minimum legal sale age (MLSA) to buy tobacco products

**G** *Examples include:* 1) restricting the sale or distribution of tobacco products to any person under 21 years of age; or 2) increasing the legal age to buy tobacco products to age 21, but leaving the legal age for possession or use at 18.<sup>112</sup>

*Important considerations:* In most states and communities, the MLSA for tobacco products is still 18, though a few places have increased the MLSA

# How to: Types of Point-of-Sale Strategies

to 19.<sup>112</sup> In 2013, New York City raised the MLSA to 21, making it the highest in the U.S.<sup>113</sup> Increasing the MLSA is expected to be an effective strategy for reducing or delaying tobacco use, leading to lower overall rates of tobacco use.<sup>112</sup>

## 6c Requiring that tobacco retail clerks meet the minimum legal sale age (MLSA)

**G** *Example:* Adding a provision to the tobacco retail licensing law that all clerks who sell tobacco products meet the local minimum legal sale age.

*Important considerations:* Young retail clerks may be a major source of tobacco products for their underage friends and peers. Increasing the age requirement for retail clerks to the MLSA would make it more difficult for youth to get tobacco products.<sup>112</sup>

## 6d Implementing stricter laws on the sale and use of commercial roll-your-own (RYO) tobacco

**G** *Examples include:* 1) prohibiting commercial RYO machines; or 2) increasing state or local taxes for RYO tobacco products.

*Important considerations:* The federal tax on cigarette tobacco has increased in recent years, but pipe tobacco is still taxed at a lower rate. Tobacco companies have rebranded RYO tobacco as pipe tobacco and sold it for use with high volume cigarette rolling machines. This practice has made RYO tobacco in cigarette form easy to obtain at much cheaper prices than mass-produced cigarettes.<sup>114</sup> Prohibiting commercial RYO machines, raising the tax on RYO tobacco, or both, will greatly reduce access to these cheaper products.

## 6e Including a “shame law” in the tobacco retailer licensing ordinance

**G** *Example:* Amending local licensing laws to suspend licenses of tobacco retailers who commit three licensing violations in a one-

year period and to require them to display a highly visible sign for the rest of the suspension that reads: “This retailer has violated important public health laws regulating tobacco. Tobacco product sales are currently banned at this location.”<sup>115</sup>

*Important considerations:* This strategy informs the public of retailers that do not comply with tobacco retail licensing laws and may persuade customers concerned about youth access and public health to shop elsewhere. A shame law may motivate licensed retailers to comply with licensing laws and could help protect youth from tobacco retailers who sell to minors.

## 6f Implementing a license incentive program

**G** *Example:* Giving an incentive to tobacco retailers that lowers the cost of their annual licensing fee if they meet certain requirements such as: 1) they have no violations in the last year; and 2) they use a cash register that reads the magnetic strip on drivers’ licenses to verify age.

*Important considerations:* A license incentive could help motivate licensed retailers to comply with licensing laws and decrease youth access by modernizing the age-verification process.

## 6g Regulating the sale of e-cigarette and other nicotine-delivery systems

**G** *Examples include:* 1) Updating the definition of “tobacco products” in youth access laws to prohibit the sale of e-cigarettes to minors; 2) requiring licensing for e-cigarette sales; 3) prohibiting samples of e-cigarettes; or 4) prohibiting sales of flavored e-cigarettes.

*Important considerations:* The dangers of e-cigarette use and vapor exposure are not fully known. The FDA has yet to regulate e-cigarettes. In many states, e-cigarettes can be bought and used by youth, potentially leading them to try other tobacco products known to be harmful.<sup>116</sup>

# How to: Types of Point-of-Sale Strategies

## Point-of-Sale Strategies Ranked by Legal Feasibility\*

Policy	Page #	Rating	Examples
<b>1 REDUCING (OR RESTRICTING) THE NUMBER, LOCATION, DENSITY &amp; TYPES OF TOBACCO RETAIL OUTLETS</b>			
<b>1a</b> Establishing a licensing system with fees or increasing licensing fees	15		At least 126 communities
<b>1b</b> Reducing the number of tobacco retail outlets	15		Huntington Park, CA
<b>1c</b> Restricting the location of tobacco retail outlets	15		Santa Clara, CA; Santa Barbara, CA; New Orleans, LA; Baldwin Park, CA
<b>1d</b> Requiring a minimum distance between tobacco retail outlets	16		Santa Clara, CA
<b>1e</b> Prohibiting the sale of tobacco products at certain types of establishments	16		San Francisco, CA; 80 MA localities
<b>1f</b> Limiting the number of hours/days when tobacco products can be sold	16		
<b>2 INCREASING THE COST OF TOBACCO PRODUCTS THROUGH NON-TAX APPROACHES</b>			
<b>2a</b> Establishing minimum price laws	16		Over 25 states; New York, NY
<b>2b</b> Prohibiting price discounting	17		Providence, RI; New York, NY
<b>2c</b> Restricting sale based on pack size for non-cigarette tobacco products	17		Boston, MA; New York, NY; Many MA localities
<b>2d</b> Implementing mitigation fees	17		San Francisco, CA
<b>2e</b> Implementing sunshine or disclosure laws	17		
<b>3 IMPLEMENTING PREVENTION AND CESSATION MESSAGING</b>			
<b>3a</b> Requiring the posting of quitline information in retail stores	19		Indiana; Boston, MA
<b>3b</b> Requiring the posting of health warnings at hookah lounges	19		Suffolk, NY
<b>3c</b> Requiring the posting of graphic health messages at the point of sale	22		

= Green Light or 'recommended' = Yellow Light or 'recommended with caution' = Red Light or 'not recommended' = Exploratory

\*Feasibility at the local level will depend on state law

# How to: Types of Point-of-Sale Strategies

## Point-of-Sale Strategies Ranked by Legal Feasibility\*

	Policy	Page #	Rating	Examples
<b>4</b>	<b>RESTRICTING POINT-OF-SALE ADVERTISING</b>			
4a	Implementing content-neutral advertising laws	22		Ramsey County, MN; Henderson, NV; Milwaukee, WI
4b	Limiting the placement of tobacco retail advertising outside certain store locations	24		
4c	Limiting the times when tobacco retail advertising is allowed	24		
4d	Limiting the placement of tobacco retail advertising inside stores	24		
4e	Limiting the manner of tobacco retail advertising	24		
<b>5</b>	<b>RESTRICTING PRODUCT PLACEMENT</b>			
5a	Prohibiting self-service access to non-cigarette tobacco products	25		Bristol, MA; many states
5b	Limiting the times when tobacco products are displayed	25		
5c	Restricting the number of products that can be displayed	26		
5d	Prohibiting product displays	26		
<b>6</b>	<b>OTHER POINT-OF-SALE STRATEGIES</b>			
6a	Prohibiting the sale of flavored non-cigarette tobacco products	26		Maine; Providence, RI; New York, NY
6b	Raising the minimum legal sale age (MLSA) to buy tobacco products	26		Alabama; Alaska; New Jersey; Hawaii
6c	Requiring that tobacco retail clerks meet the minimum legal sale age (MLSA)	27		Alabama; Alaska; Utah
6d	Implementing stricter laws on the sale and use of commercial roll-your-own (RYO) tobacco	27		Vermont; Illinois
6e	Including a “shame law” in the tobacco retailer licensing ordinance	27		Sierra Madre, CA
6f	Implementing a licensing incentive program	27		Vista, CA
6g	Regulating the sale of e-cigarette and other nicotine-delivery systems	27		California; Minnesota; Tennessee; Wisconsin

= Green Light or ‘recommended’ = Yellow Light or ‘recommended with caution’ = Red Light or ‘not recommended’ = Exploratory

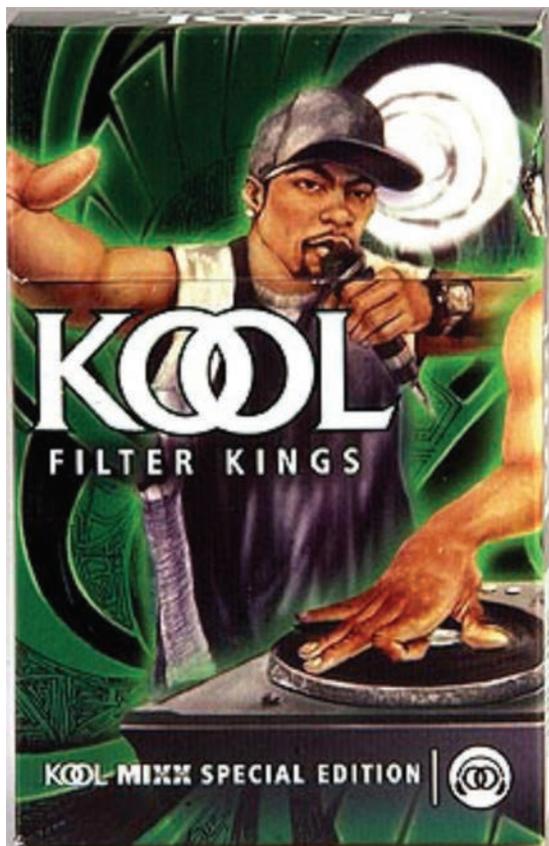
\*Feasibility at the local level will depend on state law

# How to: The Impact of Point-of-Sale Strategies on Specific Populations

## The Impact of Point-of-Sale Strategies on Specific Populations

### THE EFFECT OF TARGETED MARKETING PRACTICES

The tobacco industry helped create and continues to sustain disparities in tobacco use and secondhand smoke exposure by targeting the marketing of its products, tailoring its advertising, and making its products readily available to specific populations.<sup>117</sup> When considering point-of-sale strategies, tobacco control partners should understand how these groups, particularly minority and low-income populations, are targeted by the industry's many activities and huge spending at the point of sale.



*Example of tobacco industry targeted marketing*

The density of tobacco retail outlets is higher in low-income census tracts and counties with large racial and ethnic minority populations.<sup>13,118-120</sup> These findings highlight important population disparity issues, especially given that low-income Americans are significantly more likely to smoke.<sup>121</sup> Policies that limit the density of tobacco retail outlets in all neighborhoods can reduce density disparities that influence advertising exposure, tobacco product availability, and tobacco use.<sup>122</sup> An analysis of the potential impact of a law eliminating tobacco retail outlets within 1,000 feet of schools in New York and Missouri showed that this type of policy could reduce or eliminate disparities in point-of-sale marketing and store density.<sup>105</sup>

### WAYS TO COUNTER TARGETED MARKETING STRATEGIES

The tobacco industry directs coupons and price promotions at specific groups to influence purchases and use. Although pricing strategies can affect all consumers, studies have shown that the tobacco industry's discounts and multi-pack coupons are used most often by women, young people, African Americans, and other minority groups, regardless of income.<sup>12</sup> Smokers of menthol cigarettes and Camel brand cigarettes, most of whom are African Americans and young adults, are more likely to take advantage of discounts than users of other brands.<sup>12</sup> Non-tax pricing approaches such as coupon and pack size regulations and implementing or strengthening minimum price laws can help combat these tobacco industry tactics. State and local governments have the authority to explore tobacco pricing control, but should seek technical assistance to draft laws that can withstand legal challenges by the tobacco industry.<sup>123</sup>

Just as tobacco companies market coupons to low-income and minority groups, tobacco control partners can direct prevention and cessation messaging toward these groups. If health promotion efforts do not consider high risk groups, they can actually increase disparities by delivering messages that do not resonate or that are difficult to act on.<sup>47</sup> As mentioned earlier, prevention and cessation message signs in the retail environment that are required by a government entity, and include negative images,

# How to: Building Support for Point-of-Sale Strategies



Example of tobacco industry targeted marketing

should also include factual statements, text stating that the signs are produced by the government, and information about how to access cessation services. When designed correctly, signs can improve access to health information among low-income and minority populations, including non-English speakers and persons with low reading ability.<sup>124</sup>

Tobacco product retail advertising is often concentrated in low-income and minority communities.<sup>98,125</sup> In Boston, high-income neighborhoods have much less retail advertising than low-income neighborhoods.<sup>65,125</sup> More point-of-sale advertising has been found in African American, Asian American, and Hispanic American neighborhoods.<sup>117,126</sup> The tobacco industry also advertises particular products to certain demographic groups. For instance, advertisements for menthol products are more common in African American and other minority neighborhoods.<sup>117,125-128</sup> According to a 2011 report by the FDA Tobacco Products Scientific Advisory Committee (TPSAC), this targeted marketing has played a large role in menthol use by minority (particularly minority youth) and low-income populations.<sup>129</sup> Based on findings about the public health impact of menthol, TPSAC recommended the removal of menthol cigarettes from the market.<sup>129</sup> In

2009, the Tobacco Control Act banned all flavored cigarettes except menthol,<sup>32</sup> leaving this disparity in place. Many young consumers have shifted to using the industry's many other types of flavored non-cigarette tobacco products. By regulating these flavored non-cigarette tobacco products, communities can address the disparities that have increased because of the industry's youth-targeted marketing.

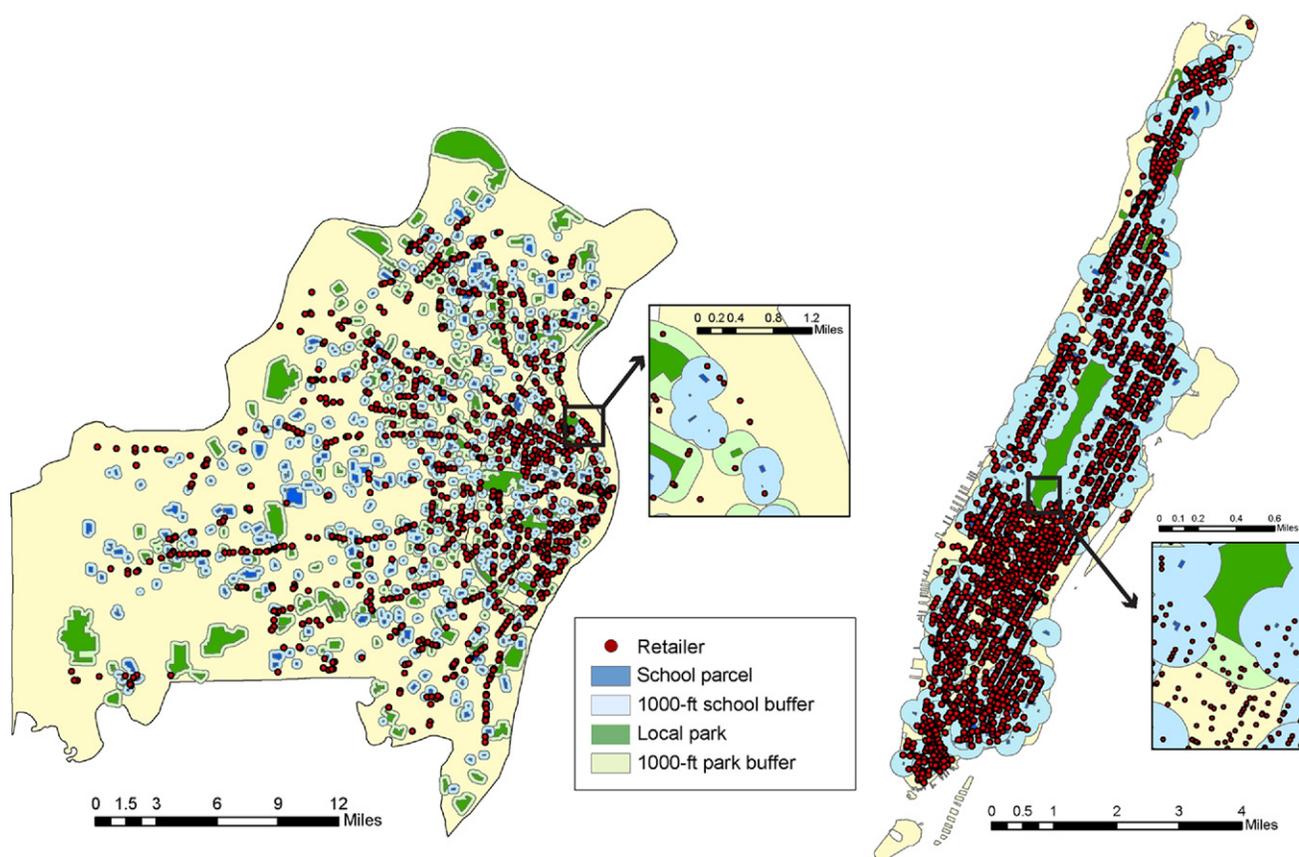
Tobacco product displays also encourage tobacco use among adults and children. Youth exposed to tobacco product displays are more likely to recognize tobacco product brands, feel that using tobacco products is normal, and start smoking.<sup>112</sup> As with advertising, the tobacco industry gives menthol products more shelf space to make sure that those products stay more visible in minority communities.<sup>129,130</sup> Though there are substantial legal feasibility concerns in the U.S., banning product displays could help to address the higher number of menthol products in retailers located in African American neighborhoods, as well as protect the vulnerable youth population from targeted marketing.

## Building Support for Point-of-Sale Strategies

### MAPPING THE TOBACCO RETAIL LANDSCAPE

Understanding the tobacco retail environment is an important first step in building support for point-of-sale policies. Tobacco control partners can use tools such as Geographic Information Systems (GIS) software to map the location and density of tobacco retailers. For example, partners in Buffalo, New York, use maps highlighting disparities in retailer density to educate policy makers about the benefits of restricting tobacco retail licenses. GIS can also show the effect of creating buffers around places youth visit, such as schools, and to highlight the presence of the tobacco industry in areas visited by youth. Because of their visual impact, maps are powerful tools for educating the community and policy makers about the pervasive presence of tobacco retailers. They can also model the potential effects of point-of-

## GIS Map of Tobacco Retailers and Advertising Restriction Buffers for St. Louis and New York City



Source: Luke et al., 2011<sup>105</sup>

sale policies. For example, one study used GIS to show the potential effects of outdoor advertising restrictions within 350, 500, and 1,000 feet of schools and parks in St. Louis and New York City.<sup>105</sup>

### SURVEYING RETAIL ADVERTISING AND PRODUCT PLACEMENT

States and communities can also do assessments and store audits to better understand the environment within tobacco retailers. Tobacco control partners can assess the type, location, and amount of advertising within and near stores, as well as the types of tobacco

products displayed. Tobacco control partners can conduct store audits using publicly available tools, such as those developed for Operation Storefront, StoreAlert, and CounterTobacco.org.<sup>131-134</sup> To save time and resources, store audits can be carried out along with regular compliance checks that already take place. Like GIS mapping, store audits offer powerful, tangible evidence of tobacco industry presence within stores that can educate key stakeholders about the importance of point-of-sale strategies. Regular audits and compliance checks can also help tobacco control partners stay aware of new products and marketing tactics used by the tobacco industry.

## At-a-Glance: CounterTobacco.org and Counter Tools

In 2011, Counter Tobacco launched CounterTobacco.org, the first comprehensive resource for local, state, and federal organizations working to counteract tobacco product sales and marketing at the point of sale. The website describes in detail the consequences of the tobacco industry spending the vast majority of its advertising and promotional dollars at the point of sale and



# COUNTER TOBACCO

includes an image gallery exposing tobacco industry tactics. Counter Tobacco suggests a menu of policy solutions that can be implemented by states and communities to counter the industry's efforts and offers advocacy materials and news updates through the CounterTobacco.org website, Facebook, and Twitter.<sup>135</sup>

In July 2012, the founders of Counter Tobacco introduced a new resource, Counter Tools, a nonprofit organization that provides software tools, training, and technical assistance to state and local public health workers in the United States and abroad. To build a local evidence base and take tobacco control partners from a community problem to a policy solution, Counter Tools offers two tools delivered at cost, a Store Audit Center assessment tool and a Store Mapper tool.<sup>136</sup>

Using a smart phone or another web-enabled mobile device such as an iPad (or paper assessment form, if neither is available), the Store Audit Center helps tobacco control partners collect current data about tobacco marketing and promotional activities in local stores. Users can mobilize a team, upload a list of stores, build a survey form from a menu of items, and launch an assessment campaign. Allison Myers, Counter Tobacco and Counter Tools co-founder, explains that the true value of the Store Audit Center is the result—the tool creates a report that does the data analysis for the user. “It moves the user from ‘How do I do this?’ to ‘I have a report,’” Myers says. “It shows people what’s happening in their backyards.”<sup>136</sup>

The second tool, the Store Mapper, is an interactive mapping web tool that allows tobacco control partners to find and display tobacco retailer data. The tool analyzes and displays relationships such as proximity to certain store types (e.g., places frequented by youth) between tobacco retailers and other important locations. The Store Mapper also compares tobacco retailer density with neighborhood variables, such as household income level. Counter Tools customizes the Store Mapper for each community. It allows for overlay of demographic variables and can simulate the impact of a proposed tobacco product sales ban on nearby stores. The tool generates a report that can display information for counties, legislative zones (e.g., House or Senate districts), or any visible map area. “It simplifies the complex process of geographic information analysis,” explains Myers.<sup>136</sup>

According to Myers, Counter Tools’ advantage is its adaptive and mobile nature. “It is a great way to get kids on board and it helps people get started on implementing point-of-sale policies,” she says. Counter Tools offers training and technical assistance to tobacco control staff interested in using the tools. Myers says the goal of both CounterTobacco.org and Counter Tools is to be a central hub for advocates interested in counteracting tobacco advertising at the point of sale. “People need to know what’s happening in their communities. That’s the first step.”<sup>136</sup>

# How to: Building Support for Point-of-Sale Strategies

## EDUCATING POLICY MAKERS AND COMMUNITY MEMBERS

### Assessing Support

Point-of-sale policies must have strong support to be adopted and implemented. Assessing both policy maker and public support for point-of-sale policies can help partners tailor messages for different audiences and gauge how much education will be needed. Preliminary steps partners can take to help understand their community include:<sup>137</sup>

- **Collecting background data.**  
This could include researching demographic information, crafting neighborhood profiles, and interviewing influential community organizations.
- **Understanding how the government works.**  
This includes assessing how elections are conducted, election terms, legal processes, voting records, and enforcement processes.
- **Creating a profile of elected officials.**  
Partners should become familiar with their elected officials, especially those representing committees that are relevant to tobacco control. Partners must also understand relationship dynamics between these officials (e.g., alliances and leaders).

Tobacco control partners can then look for answers to the following questions to help gauge support for tobacco control policies in their community:<sup>137</sup>

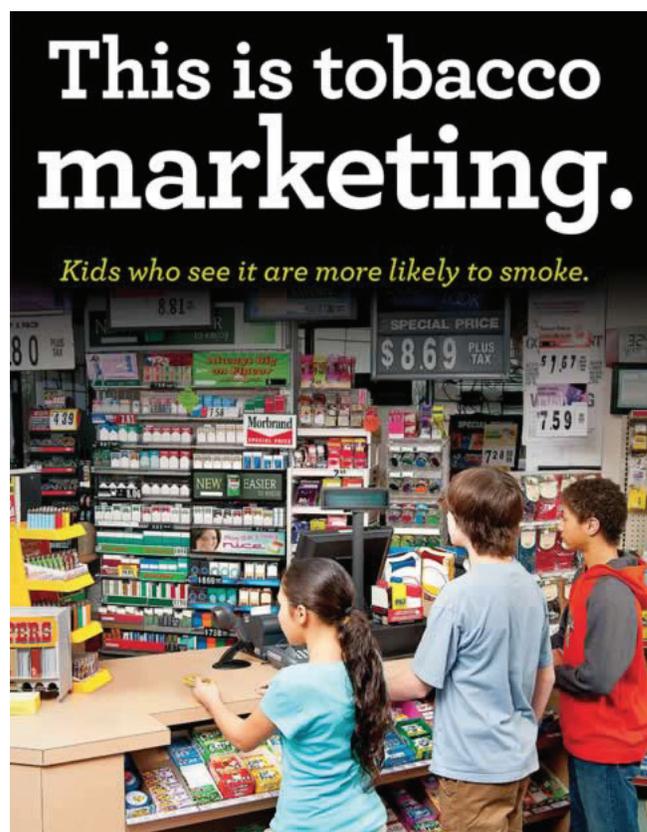
- What tobacco control policies have already been discussed, voted on, passed, or defeated?
- How strong are pro-tobacco influences?
- How strong are pro-health influences?
- What is the current public opinion on the tobacco problem of interest and the proposed policy solution?

To answer these questions, partners can survey community members, interview elected officials, and examine voting records. This process should help partners understand community member and policy maker knowledge and awareness about the

issue, evaluate baseline support, and identify potential obstacles and collaborators.

### Framing the Issue

Framing the issue in a way that resonates with community members is a critical part of policy education efforts. The education of both policy makers and the community should focus on how point-of-sale strategies help counter tobacco industry influence in the retail setting. Data on tobacco use, results of tobacco retail assessments such as store audits and GIS mapping studies, and data on tobacco industry spending on marketing can help tobacco control partners explain the need for certain policies. Framing tobacco use as a social or political issue rather than as a risky personal behavior can help gain community and policy maker support. For example, highlighting the higher number of tobacco advertisements in low-income areas may help fuel



Example of New York state point-of-sale education campaign

# How to: Building Support for Point-of-Sale Strategies



community support by framing tobacco product sales in the retail setting as a social justice issue.<sup>138</sup> Framing point-of-sale policies as a way to protect youth is a powerful way to gain support from community members, including parents, teachers, and policy makers.<sup>42</sup> Messages could discuss:<sup>95,139,140</sup>

- How the tobacco industry selectively targets its marketing towards youth;
- How youth experience tobacco marketing in their daily lives (e.g., on the way to school, in grocery and convenience stores, and in pharmacies); and
- The impact of targeted marketing on youth tobacco use rates.

## Using Earned and Paid Media

Earned and paid media both help increase public understanding of tobacco retail issues. If funds are available, a paid media campaign that carries persuasive messages to target audiences can reach large populations and capture the attention of policy makers.

Earned media can enhance paid media efforts and serve as a call to action for community members to join the campaign by talking about the issue, writing letters to the editor, or contacting lawmakers.<sup>139</sup> Earned media is low-cost and can help raise community awareness about an issue at critical times, such as during a campaign for a ballot initiative. Letters to the

editor, formal editorials, and articles are all examples of effective earned media formats. New low-cost social media platforms such as Facebook and Twitter can also be used to alert supporters about upcoming legislative votes, to collect and share information and resources, and to track community buzz about an issue. This information can help tailor messages to certain audiences and respond to community concerns.<sup>140</sup>

## MOBILIZING POLICY MAKERS AND COMMUNITY MEMBERS

Strong community education efforts should lead to mobilization. As with all areas of tobacco control, mobilizing the community around point-of-sale strategies through involvement and shared decision making is crucial to effective policy implementation. Community members can be valuable partners in planning, implementing, evaluating, and enforcing point-of-sale strategies.<sup>141</sup> By engaging diverse sectors of the community in all phases of the policy making process, tobacco control partners can:

- Tie point-of-sale policies to community benefits;
- Bring together people with a range of abilities and connections;
- Increase the likelihood that messages resonate with all parts of the community; and
- Make sure that all community populations are represented and included as active participants.<sup>1</sup>

## Identifying Key Partners and Priority Issues

Tobacco control staff can seek opportunities to partner with groups working on other community and public health issues. Communities with high tobacco retailer density and youth tobacco use rates are often also affected by issues like poverty, violence, obesity, cardiovascular disease, diabetes, and cancer. These issues may take higher priority in a community than point-of-sale tobacco control issues.<sup>1</sup> For that reason, linking tobacco point-of-sale strategies to other priority issues can help engage and mobilize new partners.

# How to: Building Support for Point-of-Sale Strategies

## Engaging Youth

Youth engagement is a key part of community mobilization around point-of-sale strategies. Because youth are directly targeted by the tobacco industry, particularly in the retail setting, they must be engaged as powerful allies. Youth can help build community support for tobacco control by:<sup>140</sup>

- Advocating for policy change to political leaders and the media;
- Educating their peers and other community members about tobacco industry influences and tactics;
- Bringing energy, creativity, and insight to decision making; and
- Mobilizing their peers.

## At-a-Glance: New York's "Reality Check" Youth Action Program Runs Media Advocacy Campaign

New York State's youth action program Reality Check launched a campaign as part of "Kick Butts Day" 2010 to educate the community about tobacco advertising targeted towards youth. The campaign involved paid and earned media, community events, and work with key decision makers. Mock stores were set up so the community could see, from a young person's perspective, what products youth are exposed to on a typical visit to a tobacco retailer. Partners distributed displays and handouts highlighting the billions of dollars spent by the tobacco industry on point-of-sale advertising. Advocates presented to local organizations such as the PTA, Chambers of Commerce, and other groups with youth-centered missions. All of these efforts helped to strengthen public support by making sure that decision makers took notice and by motivating community members to advocate for change.

**25,000** lives lost  
each year from smoking-related illness

**AND IT STARTS IN OUR STORES.**

*Sign from New York's "Reality Check" youth action program media advocacy campaign*

## How Can Tobacco Control Programs Support Point-of-Sale Strategies?

Here are some ways that tobacco control staff can support point-of-sale strategies as part of comprehensive tobacco control programs:

### EDUCATION & CAPACITY BUILDING

- ✓ Educate partners about the policies and legal mechanisms available as tobacco control strategies at the point of sale.
- ✓ Help partners prepare for legal challenges to point-of-sale strategies.
- ✓ Connect partners to tools for tracking and mapping tobacco retailer locations and advertising practices.

### ADMINISTRATIVE & EVALUATION SUPPORT

- ✓ Perform state- and community-level assessments to determine public support for point-of-sale strategies and share results.
- ✓ Support or conduct evaluation and share evaluation results in a strategic manner.

### COORDINATION & COLLABORATION

- ✓ Communicate to decision makers and key stakeholders the harms of tobacco retail marketing, particularly for young people, and the benefits of point-of-sale strategies.
- ✓ Help support and coordinate media campaigns. Make sure to communicate a clear and unified message that ties in with youth, cessation, and other tobacco control program activities.
- ✓ Engage influential individuals and groups to build support for and mobilize the community around point-of-sale strategies.
- ✓ Identify other groups with complementary goals (e.g., neighborhood beautification and public safety) that would benefit from coordinating point-of-sale efforts.
- ✓ Identify other groups with that can provide technical assistance (e.g., legal organizations, revenue departments, and city councils) to help with point-of-sale efforts.

# Case Study #1: Providence, Rhode Island

## Providence, Rhode Island, addresses youth tobacco consumption by prohibiting price discounting.

Concerned about youth tobacco consumption, Providence, Rhode Island, implemented a city-wide policy that effectively raised the price of tobacco products, protecting youth, who are the most price-sensitive shoppers. The policy prohibited price discounting, a method the tobacco industry uses to lessen the impact of tobacco price increases.

### Protecting Providence youth motivates price-discounting policy work

In 2009, as part of the Communities Putting Prevention to Work (CPPW) initiative, the CDC asked communities to apply for funding to implement evidence-based interventions focusing on tobacco or obesity. Because Rhode Island already had a high tobacco excise tax,<sup>142</sup> the state Department of Health (known as HEALTH) and the Providence Mayor's Substance Abuse Prevention Council (MSAPC) proposed an intervention that would raise the cost of tobacco products by eliminating vendors' ability to redeem coupons or provide other price discounts (e.g., buy-one-get-one and two-for-one deals).<sup>143</sup>

### Providence lays the foundation for policy work by assessing the retail environment

Tobacco control partners began by identifying their objective—to reduce youth tobacco consumption. Next, partners identified allies (e.g., partners, coalitions, and community champions) and identified resources and data needed to build community support. In April 2011, three community-based organizations (CBOs) conducted store assessments that measured the frequency of price-discount offers.<sup>144</sup> The collected data informed the public and decision makers about the impact of pricing strategies on tobacco use and cessation. In response, city lawyers drafted policies based on help that partners received from the Tobacco Control Legal Consortium.<sup>143</sup> Providence first passed a licensing ordinance, which required tobacco retailers to apply for a license and pay a \$100 annual fee.<sup>2</sup> The ordinance served as the foundation

for other policy work. In February 2012, a new stand-alone ordinance was enacted to eliminate the price discounting<sup>143</sup> that had lowered the price of tobacco products through coupon redemption and multi-pack discounts. Violations of the law are punishable by fines or revocation of the tobacco retail license.<sup>145</sup> The policy went into effect in January 2013 after being upheld by a U.S. District Court.<sup>146</sup>

### Tobacco control partners join forces and address retailer concerns

Policy efforts were informed and supported by both local and national stakeholders. National partners provided policy education and trainings. HEALTH staff and partners from other cities that had done similar policy work shared their resources and experience. The Consortium provided draft language for partners to consider, and local lawyers shaped it to fit Providence's legislative landscape.<sup>143</sup>

Although the policy had strong community and city council support,<sup>147</sup> there was some opposition. Tobacco retailers worried customers would travel to neighboring towns to make purchases. Lawmakers were concerned the new pricing policies would be viewed as anti-business. Tobacco control partners were prepared for this opposition and used the data gathered in the store assessments to launch a public ad campaign.<sup>143</sup>

### Community-based organizations prove essential in building support

Garnering community support for the initiative was integral in making sure lawmakers were acting on the wishes of constituents. CBOs played a crucial role in building this support—data collected by CBOs during the store assessments was used in the decision making process for developing the licensing ordinance. With this ordinance, Providence was one of the first U.S. cities to prohibit price discounting, which will effectively increase the price of tobacco products and reduce youth tobacco use.<sup>147</sup> The MSAPC continues to promote a healthier Providence by encouraging kids to stay tobacco-free.

# Case Study #2: St. Paul, Minnesota

## St. Paul, Minnesota, adopts a content-neutral advertising ordinance.

With strong community and youth engagement, the Ramsey Tobacco Coalition and other partners successfully persuaded the City of St. Paul, Minnesota, to adopt an ordinance regulating the amount of window space that can be covered by signs at local businesses. Passing this type of content-neutral advertising restriction can have an added benefit of limiting the influence of tobacco advertising at the point of sale.

### Coalition assesses point-of-sale advertising

Since 1996, the Ramsey Tobacco Coalition (RTC) of the Association for Nonsmokers-Minnesota (ANSR), with funding from a Minnesota Department of Health Tobacco-Free Communities Grant, has worked to reduce the harms caused by tobacco products in Ramsey County, Minnesota.<sup>148</sup> In 2007, the coalition conducted an assessment of point-of-sale tobacco advertisements in Ramsey County, which includes the St. Paul metro area. The assessment revealed a disproportionate amount of advertising in low-income and minority neighborhoods.<sup>53</sup>

### Partners explore options for revising sign codes

In 2010, RTC focused on reducing the impact of tobacco retail advertisements. Neighborhood and church groups, a coalition of organizations interested in neighborhood beautification and safety, and youth from areas disproportionately affected by these advertisements joined forces to form a broad coalition. The coalition focused on St. Paul's sign code, a set of laws that governs how businesses can post signs. Local governments often restrict advertising to improve aesthetics or safety. Restricting all advertising, regardless of content, is known as "content-neutral restriction." This is usually within the authority of local governing bodies because it does not violate First Amendment protections of content.<sup>104</sup>

While researching this concept, RTC found a loophole in St. Paul's sign code; though the code placed restrictions on exterior window signs, it did not restrict outward-facing interior window signs.<sup>53,149</sup> The RTC and other advocates proposed that St. Paul change its code to restrict signs to no more than 30% of the total window area of a business and to include outward-facing interior signs in the code. This change would promote safety (by ensuring that the clerk and interior of the store are visible from the outside) and neighborhood beauty (by reducing cluttered storefronts), and have the benefit of restricting tobacco product advertising.<sup>51,149</sup> In May 2011, the broad coalition of advocates took this sign code change to a public hearing. In December 2011, the sign ordinance passed. It took effect on January 1, 2013.<sup>149</sup>

### Diverse coalition achieves success

Betsy Brock, Director of Research at ANSR, believes the victory was due to the diverse group of advocates working towards change. "We came together for multiple reasons," Brock says, "which is why we were successful." Brock cautions that sign code changes are complex and that advocates should be prepared for resistance from groups that oppose business regulation. Even though they lacked support from St. Paul's mayor, the RTC and other advocates were successful in promoting the ordinance to St. Paul's district council members. RTC maps illustrating greater advertising in low-income neighborhoods offered persuasive evidence. Youth advocates were especially effective messengers throughout the process.

Brock strongly recommends obtaining technical assistance from lawyers who understand the complexity and politics of city ordinances and zoning laws. The RTC worked with a former St. Paul city attorney to better understand the ordinance-drafting process. Though the ordinance has passed, the work is not over. ANSR is now collaborating with the St. Paul Department of Safety and Inspections to enforce the changes in the sign code. "It's an ongoing process," Brock says, "but it speaks to the power of a coalition."<sup>149</sup>

# Case Study #3: Santa Clara County, California

## Santa Clara County, California, successfully adopts tobacco retailer licensing ordinance.

In the fall of 2010, with funding from the Centers for Disease Control and Prevention (CDC) and a positive political climate, Santa Clara County adopted three new tobacco control ordinances: a tobacco retail licensing requirement, a multi-unit housing smoking ban, and a smoking pollution ordinance. The licensing requirement included three innovative policies addressing tobacco retailer density and location, the sale of flavored tobacco products, and the sale of tobacco in pharmacies. These policies were designed to tackle the issue of youth smoking by reducing the availability, visibility, and appeal of tobacco products.

### Health department recommends tobacco retailer permits

In March 2010, Santa Clara County was awarded funding from the CDC's Communities Putting Prevention to Work (CPPW) initiative to implement changes that would reduce youth tobacco use.<sup>150,151</sup> Once funding was in place, the County Board of Supervisors asked for input from the county health department on tobacco control interventions. The health department recommended a tobacco retailer permit ordinance that would reduce tobacco retail outlet density, limit sales near schools, and prohibit the sale of flavored tobacco products.<sup>152</sup>

### Collaboration with local, state, and national partners proves integral to success

Janie Burkhart, program manager of the Santa Clara County Public Health Department, stressed that working from the beginning with local and national partners who provided technical assistance, trainings, and draft ordinances was integral to the county's success. Guidance from the California Tobacco Control Program, which places a high priority on tobacco point-of-sale policy, was also key to a successful process. "Our work is very much informed by our collaboration with our state tobacco control program, and they are extremely supportive of progressive tobacco control policies that can be passed at the local level," said Burkhart.

Santa Clara County based its new retail licensing policy on model ordinances from ChangeLab Solutions, a California-based law and policy organization. The County supplemented its funds from the CPPW grant with resources from California's Proposition 99, which reserves 20% of cigarette tax revenues for tobacco control program funding and research.<sup>153</sup> This broad sharing of resources between state, local, and national partners led to the passage of the tobacco retailer permit ordinance by the Santa Clara Board of Supervisors on October 19, 2010.

### Innovative point-of-sale regulations complement measures to strengthen traditional policies

The tobacco retailer permit ordinance was designed to cover the sales of all tobacco products in unincorporated Santa Clara County and required that all tobacco retailers obtain a permit and pay a \$425 annual fee administered by the Department of Environmental Health.<sup>150,154</sup> The law included three important parts. First, the ordinance created zoning restrictions prohibiting new tobacco retail outlets from being located within 1,000 feet of schools or within 500 feet of other tobacco retailers.<sup>150</sup> Existing lawfully-operating retailers were grandfathered and not subjected to the new location restrictions. Second, the ordinance included a provision prohibiting tobacco retailers from selling flavored tobacco products (except menthol-flavored products).<sup>152,154</sup> And third, the ordinance prohibited pharmacies from obtaining tobacco retailer permits.<sup>154</sup> Because no pharmacies were operating in unincorporated Santa Clara County at the time the ordinance was implemented, partners met no opposition from the tobacco industry.<sup>150</sup>

In addition to passing the innovative permit ordinance, Santa Clara County also took the opportunity to amend and strengthen the county's existing tobacco control ordinances, closing loopholes around secondhand smoke in certain indoor and outdoor areas and prohibiting smoking in multi-unit residences. The end result was a comprehensive package that will protect the youth of Santa Clara County and serve as a model for other counties in California and across the nation.

# Case Study #4: Northern Minnesota

## Minnesota partners with Counter Tools to assess the tobacco retail environment in the state's northern counties.

Encouraged by tobacco control partners at the state and federal level, Minnesota used CounterTobacco.org's newly launched Counter Tools audit tool in 2012 to assess the retail environment in northern Minnesota. The ongoing assessment of retail density, licensing and oversight, and point-of-sale advertising is revealing unexpected findings and paving the way for communities to use local data to assess different strategies.

### Community Transformation Grant sparks new ideas and partnerships

In 2012, the Minnesota Department of Health (MDH) received a \$3.6 million CDC Community Transformation Grant (CTG) to reduce health disparities by decreasing tobacco use and exposure and obesity rates in 22 mostly rural northern counties of Minnesota and on one tribal reservation. MDH chose to focus on youth initiation of tobacco use and the retail environment in these counties. MDH and its longtime partner, the American Lung Association (ALA) of the Upper Midwest, worked together with Counter Tools, the new online resource for point-of-sale assessments and mapping (see page 33), to assess the Minnesota tobacco retail environment. ALA and Counter Tools helped MDH and its local public health grantees do a comprehensive retail environment assessment in the CTG region. In July 2012, Counter Tools traveled to northern Minnesota to conduct trainings with almost 30 partners from ALA, MDH, and local health departments.<sup>155</sup>

### Assessment exposes high retailer density, variation in licensing, and poor compliance

After Counter Tools' training, and with their continued technical assistance, Minnesota partners got to work doing store audits, advertising and policy assessments, and retailer mapping of the northern counties. The assessment will continue for three years, but has already revealed that youth access is a larger problem

in northern Minnesota than expected. Cassandra Stepan of MDH said, "Gathering tobacco retail data is helping local communities assess the challenges they face and effectively tackle problems with youth access to tobacco." The assessment has exposed higher retailer density than expected in a sparsely populated area, a wide variation in local retailer licensing policies, and low compliance with state laws. Licensing fees range from \$15 to \$340, and in many rural areas the required local compliance checks are not taking place because of the lack of an oversight system. The assessment also revealed some other surprises. Pat McKone of ALA remarked, "Some gut feelings were dispelled. During the training, I had the sense that there was more outdoor advertising than was found. Also, the prevalence of e-cigarettes and little cigars is much higher than anticipated."<sup>155</sup>

### Counter Tools partnership helps communities use data to tackle tobacco problems

The assessments are allowing communities to explore the retail environment and find out what is most needed before proposing solutions. Once the assessments are complete, community leaders will review the data to find gaps and consider the range of policy options that they can use to reduce local youth access to tobacco. At a minimum, the community data is highlighting the need for community leaders to meet state standards by improving local licensing and compliance check practices across the region. Leaders may also consider other options, such as changing retailer-density and location policies.

Stepan encourages others to embrace the "exploration mode." The Counter Tools assessment has been a learning experience for Minnesota partners, and Stepan and McKone both promote use of the resource. "I have relied heavily on Counter Tools," McKone says. "They understand how data can help communities transform health problems with policy solutions. There are all kinds of information we can gather, but unless we think strategically about how it plays into policy work, it's wasted energy."<sup>155</sup>

# Conclusion: Case for Investment

## Why Invest in Point-of-Sale Strategies?

**P**oint-of-sale strategies can counteract tobacco product marketing and promotion that encourages initiation and undermines quit attempts.<sup>1-6</sup> Point-of-sale strategies include reducing (or restricting) the number, location, density, and types of tobacco retail outlets; increasing the cost of tobacco through non-tax approaches; implementing prevention and cessation messaging; restricting point-of-sale advertising; restricting product placement; and pursuing other point-of-sale strategies.

### HISTORY AND ADOPTION

After the Master Settlement Agreement, the tobacco industry began to shift a staggering amount of funds towards advertising and promotion efforts at the point of sale, which has increased the need for tobacco control interventions that target the retail environment.<sup>20-22</sup>

Although the Federal Cigarette Labeling and Advertising Act (FCLAA) formerly preempted states and communities from certain point-of-sale strategies, the 2009 Tobacco Control Act has given states and communities new opportunities to restrict the time, place, and manner (but not the content) of tobacco product promotions and advertisements. These changes to federal law energized communities that already had strong smoke-free laws and other key tobacco control policies in place, resulting in greater attention on the point-of-sale environment.

Some communities have started to pave the way. San Francisco and at least 80 municipalities in Massachusetts prohibit the sale of tobacco products in pharmacies, and Boston prohibits a broad range of health care institutions from selling tobacco products.<sup>25,43</sup> New York City and Providence, Rhode Island, have taken measures to restrict the sale of flavored tobacco products and prohibit price discounting.<sup>42</sup> Although examples of advertising restrictions in the U.S. are limited, international experience has shown that comprehensive tobacco advertising and promotional restrictions reduce tobacco use.<sup>30</sup> Furthermore, the WHO Framework Convention on Tobacco Control (FCTC) requires all countries that ratify the treaty to implement a complete ban on the advertising, promotion, and sponsorship of tobacco products within five years and to create guidelines for large, clear health warnings on cigarette packages.<sup>156</sup> Iceland and Canada have both seen reductions in youth tobacco consumption since implementing comprehensive advertising and product display restrictions.<sup>59</sup>

### SCIENTIFIC EVIDENCE

Research shows that advertising and promotion at the point of sale increase youth and adult tobacco use, normalize and exaggerate the popularity of tobacco use, trigger impulse purchases, and discourage cessation attempts.<sup>1,3,5,9,11,71,95,157</sup> Advertising and promotion efforts have also increased tobacco-related disparities through the high density of tobacco retailers and targeted marketing, particularly of menthol products, in minority and low-income neighborhoods.<sup>13,119,120,125,129,130,158,159</sup> Tobacco control strategies at the point of sale, such as those that restrict tobacco retailer density, price discounts, and the sale of certain products, can counter these trends by decreasing access to tobacco products and exposure to the tobacco industry's marketing tactics.

# Conclusion: Case for Investment

## COST

The cost of implementing point-of-sale strategies varies by intervention and each community's political and legal environment, but investment in these policies can result in an overall benefit to society and decreased health spending. From 2009 to 2012, cigarette smoking was estimated to result in \$289 to \$332.5 billion in annual health-related economic losses in the U.S.<sup>159</sup> Point-of-sale strategies are an effective way to reduce both youth and adult tobacco use, thereby decreasing economic losses in the long run. Strategies that are well implemented and have community support will have a larger cost benefit. States and communities can increase community support by doing community assessments, educating stakeholders, and mobilizing diverse parts of the community. Point-of-sale strategies and advocacy efforts can help to counter the millions of dollars spent by the tobacco industry on promotion at the point of sale.

## SUSTAINABILITY

Engaging the community in efforts to restrict tobacco industry influence at the point of sale can help build a sustainable tobacco control program. By creating ties with organizations that share similar concerns (e.g., community beautification, safety, and protecting youth) about protecting the community, point-of-sale assessments and strategies create support that may carry over to other tobacco control policies. Building the capacity to work on policy issues is a critical part of a comprehensive tobacco control program. Lessons learned from point-of-sale policy efforts can also inform future policy development and implementation. Point-of-sale strategies that use licensing and zoning can also increase a government's capacity to track compliance with other tobacco control laws (e.g., youth access).

## ARTICLES AND BOOKS

Ashe M, Jernigan D, Kline R, Galaz R. Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants. *American Journal of Public Health*. 2003;93(9):1404-1408. <http://1.usa.gov/1fHndp>

Barbeau EM, Wolin KY, Naumova EN, Balbach E. Tobacco advertising in communities: associations with race and class. *Preventive Medicine*. 2005;40(1):16-22.

Feighery EC, Ribisl KM, Schleicher NC, Clark PI. Retailer participation in cigarette company incentive programs is related to increased levels of cigarette advertising and cheaper cigarette prices in stores. *Preventive Medicine*. 2004; 38(6):876-884.

Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Preventive Medicine*. 2008;47(2):210-214.

Henriksen L, Schleicher NC, Feighery EC, Fortmann SP. A longitudinal study of exposure to retail cigarette advertising and smoking initiation. *Pediatrics*. 2010;126(2):232-238. <http://bit.ly/1gPhmGf>

Lavack AM, Toth G. Tobacco point-of-purchase promotion: examining tobacco industry documents. *Tobacco Control*. 2006;15(5):377-384. <http://1.usa.gov/1kyrSaz>

Lovato C, Linn G, Watts A, Stead LF. Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours. *Cochrane Database of Systematic Reviews* 2011, Issue 10. Art. No.: CD003439.

Luke DA, Ribisl KM, Smith C, Sorg AA. Family Smoking Prevention and Tobacco Control Act: banning outdoor tobacco advertising near schools and playgrounds. *American Journal of Preventive Medicine*. 2011;40(3):295-302.

Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Archives of Pediatric and Adolescent Medicine*. 2007;161(5):440-445. <http://bit.ly/1kVp1pm>

Wakefield M, Germain D, Henriksen L. The effect of retail cigarette pack displays on impulse purchase. *Addiction*. 2008;103(2):322-328.

## MANUALS, REPORTS, AND TOOLKITS

Center for Public Health and Tobacco Policy. *Tobacco Product Display Restrictions*. Boston, MA: New England Law | Boston; 2012. <http://bit.ly/NsC0DP>

Center for Public Health Systems Science. *Policy Strategies: A Tobacco Control Guide*. St. Louis, MO: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the Tobacco Control Legal Consortium; 2014. <http://bit.ly/1cC9UMh>

Center for Public Health Systems Science. *Pricing Policy: A Tobacco Control Guide*. St. Louis, MO: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the Tobacco Control Legal Consortium; 2014. <http://bit.ly/1NwwgsB>

Center for Public Health Systems Science. *Regulating Pharmacy Tobacco Sales: Massachusetts. Innovative Point-of-Sale Policies: Case Study #2*. St. Louis, MO: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the National Cancer Institute at the National Institutes of Health; 2014. <http://bit.ly/1i89yBP>

Center for Public Health Systems Science. *Regulating Price Discounting in Providence, RI. Innovative Point-of-Sale Policies: Case Study #1*. St. Louis, MO: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the National Cancer Institute at the National Institutes of Health; 2013. <http://bit.ly/OoxFS5>

Center for Tobacco Policy & Organizing. *Table of Strong Local Retailer Licensing Ordinances*. Sacramento, CA: American Lung Association in California; 2013. <http://bit.ly/1hJHc0n>

Counter Tobacco. *Tobacco Free Pharmacies Action Guide*. Chapel Hill, NC: Counter Tobacco; 2014. <http://bit.ly/1iFdfOn>

Counter Tobacco. *Youth and Community Engagement Activity Center*. Chapel Hill, NC: Counter Tobacco; 2011. <http://bit.ly/1c5QkNJ>

Federal Trade Commission. *Cigarette Report for 2011*. Washington, DC: Federal Trade Commission; 2013. <http://1.usa.gov/1iByq5p>

# Resources

Institute of Medicine. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC: The National Academies Press; 2007. <http://bit.ly/10sPBJG>

National Cancer Institute. *The Role of the Media in Promoting and Reducing Tobacco Use*. Tobacco Control Monograph No. 19. Bethesda, MD: US Dept of Health and Human Services, National Institutes of Health, National Cancer Institute; 2008. <http://1.usa.gov/1hJKaU>

Operation Storefront. *Operation Storefront Data Collection Form*. <http://bit.ly/OXEdrQ>

StoreAlert. *Store Alert Report Card*. <http://bit.ly/1fFoXVo>

StoreAlert. *Store Alert Training Guide*. <http://bit.ly/OXFkrY>

Tobacco Control Legal Consortium. *Content-Neutral Advertising Laws: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011. <http://bit.ly/MLuym6>

Tobacco Control Legal Consortium. *Federal Regulation of Tobacco: Impact on State and Local Authority*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2009. <http://bit.ly/NsGA4S>

Tobacco Control Legal Consortium. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2010. <http://bit.ly/1c5Umpd>

Tobacco Control Legal Consortium. *Local Land Use Regulation for the Location and Operation of Tobacco Retailers*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2004. <http://bit.ly/1q2ki9d>

Tobacco Control Legal Consortium. *Location, Location, Location: Regulating Tobacco Retailer Locations for Health*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2012. <http://bit.ly/1fYjVbi>

Tobacco Control Legal Consortium. *Placement of Tobacco Products: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011. <http://bit.ly/1eSFf1R>

Tobacco Control Legal Consortium. *Regulating Tobacco Marketing: "Commercial Speech" Guidelines for State and Local Governments*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2010. <http://bit.ly/1crIxu6>

Tobacco Control Legal Consortium. *Regulating Tobacco Retailers: Options for State and Local Governments*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2010. <http://bit.ly/1mTi5xC>

Tobacco Control Legal Consortium. *Restricting Tobacco Advertising: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011. <http://bit.ly/1crJ2nP>

Tobacco Control Legal Consortium. *Tobacco Control and the Takings Clause: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011. <http://bit.ly/1dYEujN>

Tobacco Control Legal Consortium. *Using Licensing and Zoning to Regulate Retailers: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011. <http://bit.ly/1g8hyin>

World Health Organization. *MPOWER: A Policy Package To Reverse The Tobacco Epidemic*. Geneva: World Health Organization; 2008. <http://bit.ly/16IKpr0>

## WEBSITES

Campaign for Tobacco-Free Kids  
<http://tobaccofreekids.org>

Center for Public Health and Tobacco Policy  
<http://www.tobaccopolicycenter.org>

Center for Tobacco Policy & Organizing  
<http://center4tobaccopolicy.org>

Centers for Disease Control and Prevention, Smoking and Tobacco Use  
<http://www.cdc.gov/tobacco>

ChangeLab Solutions  
<http://changelabsolutions.org/tobacco-control>

Counter Tobacco  
<http://www.countertobacco.org>

# Resources

Counter Tools

<http://countertools.org>

Federal Trade Commission

<http://ftc.gov>

Healthy Corner Stores Network

<http://healthycornerstores.org>

StoreAlert

<http://www.storealert.org>

The Association for Convenience & Fuel Retailing

<http://www.nacsonline.com/Pages/default.aspx>

Tobacco Control Legal Consortium

<http://www.publichealthlawcenter.org>

US Census Bureau, Retail & Wholesale Trade

<http://www.census.gov/econ/www/retmenu.html>

US Food and Drug Administration

<http://www.fda.gov>

World Health Organization

<http://www.who.int/en>

## MODEL DOCUMENTS

ChangeLab Solutions. *Model Legislation Establishing a Minimum Retail Sales Price for Cigarettes (and Other Tobacco Products)*. Oakland, CA: ChangeLab Solutions; 2013. <http://bit.ly/1msDm06>

ChangeLab Solutions. *Model Ordinance (and Associated Plug-ins): Tobacco Retailer Licensing*. Oakland, CA: ChangeLab Solutions; 2013. <http://bit.ly/1c5YYvv>

ChangeLab Solutions. *Model Ordinance: Land Use for Tobacco Retailers*. Oakland, CA: ChangeLab Solutions; 2002. <http://bit.ly/1q2q5vn>

ChangeLab Solutions. *Model Ordinance: Self-Service Displays of Tobacco Products*. Oakland, CA: ChangeLab Solutions; 2002. <http://bit.ly/1f3kYSJ>

ChangeLab Solutions. *Restricting Sales of Flavored Tobacco Products: Model Ordinance and Fact Sheet*. Oakland, CA: ChangeLab Solutions; 2014. <http://bit.ly/1c9CEkx>

Public Health Law Center. *Model Tobacco Licensing Ordinance*. St. Paul, MN: Public Health Law Center; 2010. <http://bit.ly/1gPnKgO>

## CASE STUDIES

### Providence, Rhode Island

City of Providence, Rhode Island Healthy Communities Office

<https://www.providenceri.com/healthy-communities>

State of Rhode Island Department of Health

<http://www.health.ri.gov>

### St. Paul, Minnesota

Minnesota Department of Health, Tobacco-Free Communities in Minnesota

<http://www.health.state.mn.us/divs/hpcd/tpc/grantees/tfc.html>

Public Health Law Center

<http://publichealthlawcenter.org>

Ramsey Tobacco Coalition of the Association for Nonsmokers-Minnesota

<http://www.ansrmn.org/programs/ramsey-tobacco-coalition>

### Santa Clara County, California

California Tobacco Control Program

<http://www.cdph.ca.gov/programs/Tobacco/Pages/default.aspx>

ChangeLab Solutions

<http://changelabsolutions.org>

Santa Clara County Public Health

<http://www.sccgov.org/sites/sccphd/en-us/Pages/phd.aspx>

### Northern Minnesota

American Lung Association of the Upper Midwest

<http://www.lung.org/associations/charters/upper-midwest>

Counter Tools

<http://countertools.org>

Minnesota Department of Health, Tobacco-Free Communities in Minnesota

<http://www.health.state.mn.us/divs/hpcd/tpc/grantees/tfc.html>

# References

1. Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs-2014*. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services; 2014.
2. National Cancer Institute. *The Role of the Media in Promoting and Reducing Tobacco Use*. Bethesda, MD: National Institutes of Health; 2008.
3. Paynter J, Edwards R. The impact of tobacco promotion at the point of sale: a systematic review. *Nicotine & Tobacco Research*. 2009;11(1):25-35.
4. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Archives of Pediatrics & Adolescent Medicine*. 2007;161(5):440-445.
5. Wakefield M, Germain D, Henriksen L. The effect of retail cigarette pack displays on impulse purchase. *Addiction*. 2008;103(2):322-328.
6. Pollay R. More than meets the eye: on the importance of retail cigarette merchandising. *Tobacco Control*. 2007;16(4):270-274.
7. Gilpin EA, White MM, Messer K, Pierce JP. Receptivity to tobacco advertising and promotions among young adolescents as a predictor of established smoking in young adulthood. *American Journal of Public Health*. 2007;97(8):1489-1495.
8. Lovato C, Linn G, Stead LF, Best, A. The impact of tobacco advertising and promotion in increasing adolescent smoking behaviours. *Cochrane Database of Systematic Reviews*. 2003(3).
9. Leatherdale S, Strath J. Tobacco retailer density surrounding schools and cigarette access behaviors among underage smoking students. *Annals of Behavioral Medicine*. 2007;33(1):105-111.
10. Henriksen L, Feighery EC, Wang Y, Fortmann SP. Association of retail tobacco marketing with adolescent smoking. *American Journal of Public Health*. 2004;94(12):2081-2083.
11. Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Preventive Medicine*. 2008; 47(2):210-214.
12. White VM, White, MM, Freeman, K, Gilpin, EA, Pierce, JP. Cigarette promotional offers: who takes advantage? *American Journal of Preventive Medicine*. 2006;30(3):225-231.
13. Hyland A, Travers MJ, Cummings KM, Bauer J, Alford T, Wiecezorek WF. Tobacco outlet density and demographics in Erie County, New York. *American Journal of Public Health*. 2003;93(7):1075-1076.
14. Woodruff S. Point-of-purchase tobacco advertising: prevalence, correlates, and brief intervention. *Health Values*. 1995;19(5):56-52.
15. Oncken C, McKee S, Krishnan-Sarin S, O'Malley S, Mazure CM. Knowledge and perceived risk of smoking-related conditions: a survey of cigarette smokers. *Preventive Medicine*. 2005;40(6):779-784.
16. Federal Trade Commission. *Federal Trade Commission Cigarette Report for 2011*. Washington, DC: Federal Trade Commission; 2013.
17. Campaign for Tobacco Free Kids. FDA regulation of tobacco products: a common sense law to protect kids and save lives. <http://www.tobaccofreekids.org/research/factsheets/pdf/0352.pdf>. Accessed July 1, 2013.
18. Tobacco Control Legal Consortium. *Using Licensing and Zoning to Regulate Retailers: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011.
19. US Department of Health and Human Services. *Tobacco Sales to Youth: FFY 2011 Annual Synar Reports*. Rockville, MD: Substance Abuse and Mental Health Services Administration, US Dept of Health and Human Services; 2011.
20. Wakefield MA, Terry-McElrath YM, Chaloupka FJ, et al. Tobacco industry marketing at point of purchase after the 1998 MSA billboard advertising ban. *American Journal of Public Health*. 2002;92(6):937-940.
21. Loomis BR, Farrelly MC, Nonnemaker JM, Mann NH. Point of purchase cigarette promotions before and after the Master Settlement Agreement: exploring retail scanner data. *Tobacco Control*. 2006;15(2):140-142.
22. Feighery E, Rogers T, Ribisl K. Tobacco retail price manipulation policy strategy summit proceedings. Sacramento, CA: California Tobacco Control Program, 2009.
23. US Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2012.
24. Centers for Disease Control and Prevention. *Designing and Implementing an Effective Tobacco Counter-marketing Campaign*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; October 2003.
25. Campaign for Tobacco Free Kids. FDA authority over tobacco. [http://www.tobaccofreekids.org/what\\_we\\_do/federal\\_issues/fda/](http://www.tobaccofreekids.org/what_we_do/federal_issues/fda/). Accessed July 1, 2013.
26. Americans for Nonsmokers' Rights. Tobacco free pharmacies. <http://www.no-smoke.org/learnmore.php?id=615>. Accessed July 1, 2013.
27. Woodward AC, Henley PP, Wilson DJ. Banning tobacco sales in Massachusetts' pharmacies. *Journal of the American College of Nutrition*. 2012;31(3):145-148.

# References

28. The World Bank. Tobacco pack information. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTHEALTHNUTRITIONANDPOPULATION/EXTPHAAG/0,,contentMDK:20799704~menuPK:1314842~pagePK:64229817~piPK:64229743~theSitePK:672263,00.html>. Accessed July 1, 2013.
29. Action on Smoking and Health. *Jurisdictions that have Removed Tobacco Retail Displays*. Newmarket, Auckland; March 2011.
30. World Health Organization. *MPOWER: A Policy Package to Reverse the Tobacco Epidemic*. Geneva: World Health Organization; 2008.
31. Federal Trade Commission. *Smokeless Tobacco Report for 2011*. Washington, DC: Federal Trade Commission; 2013.
32. US Food and Drug Administration. Overview of the Family Smoking Prevention and Tobacco Control Act, 2012. <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm246129.htm>. Accessed April 5, 2012.
33. Tobacco Control Legal Consortium. *Cigarette Graphic Warnings and the Divided Federal Court*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2013.
34. McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. St. Paul, MN: Tobacco Control Legal Consortium; April 2010.
35. American Lung Association. Tobacco policy project/State Legislated Actions on Tobacco Issues (SLATI). <http://www.lungusa2.org/slati/> Accessed July 1, 2013.
36. Luke D, Moreland-Russell S, Sorg A. Local point-of-sale policy activity. Presented at: Washington University in St. Louis, George Warren Brown School of Social Work; May 22, 2013.
37. The Center for Tobacco Policy & Organizing. *Table of Strong Local Retailer Licensing Ordinances*. Sacramento, CA: American Lung Association of California; 2011.
38. US Food and Drug Administration. Regulations restricting the sale and distribution of cigarettes and smokeless tobacco. <http://www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/RegsRestrictingSale/default.htm>. Updated April 2013. Accessed July 1, 2013.
39. Feighery EC, Ribisl KM, Achabal DD, Tyebjee T. Retail trade incentives: how tobacco industry practices compare with those of other industries. *American Journal of Public Health*. 1999;89(10):1564-1566.
40. US Department of Health and Human Services. *Flavored Tobacco Product Fact Sheet*. Silver Spring, MD: Food and Drug Administration, US Dept of Health and Human Services; 2011.
41. ChangeLab Solutions. *I Heard that Tobacco Companies Challenged Local Laws Restricting the Sale of Flavored Tobacco Products. What Happened?* Oakland, CA; ChangeLab Solutions; 2013.
42. Center for Public Health Systems Science. *Regulating Price Discounting in Providence, RI. Innovative Point-of-Sale Policies: Case Study #1*. St. Louis, MO: Washington University in St. Louis; 2013.
43. Center for Public Health Systems Science. *Regulating Pharmacy Sales: Massachusetts. Innovative Point-of-Sale Policies: Case Study #2*. St. Louis, MO: Washington University in St. Louis; 2014.
44. McCarthy WJ, Mistry R, Lu Y, Patel M, Zheng H, Dietsch B. Density of tobacco retailers near schools: effects on tobacco use among students. *American Journal of Public Health*. 2009;99(11):2006-2013.
45. Luke DA, Stamatakis KA, Brownson RC. State youth-access tobacco control policies and youth smoking behavior in the United States. *American Journal of Preventive Medicine*. 2000;19(3):180.
46. University of Minnesota. Local policies for zoning code/conditional use permit policy format. [http://www.epi.umn.edu/alcohol/aepolicy/aepolicieslisting\\_B.asp?ID=4](http://www.epi.umn.edu/alcohol/aepolicy/aepolicieslisting_B.asp?ID=4). Accessed July 1, 2013.
47. Adler NE, Newman K. Socioeconomic disparities in health: pathways and policies. *Health Affairs*. 2002;21(2):60-76.
48. Kline R. *Local Land Use Regulation for the Location and Operation of Tobacco Retailers*. St. Paul, MN: Tobacco Control Legal Consortium; March 2004.
49. Ashe M, Jernigan D, Kline R, Galaz R. Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants. *American Journal of Public Health*. 2003;93(9):1404-1408.
50. ChangeLab Solutions. *Licensing and Zoning: Tools for Public Health*. Oakland, CA; ChangeLab Solutions; 2012.
51. Public Health Law Center. Zoning. <http://www.publichealthlawcenter.org/topics/tobacco-control/land-use/zoning/zoning>. Accessed December 3, 2014.
52. ChangeLab Solutions. *Model Land Use Ordinance: Regulating the Location and Operations of Tobacco Retailers*. Oakland, CA; ChangeLab Solutions, Technical Assistance Legal Center; 2002.
53. Brock B. Regulating point-of-sale tobacco advertising: the St. Paul, Minnesota experience. Association for Nonsmokers-Minnesota webinar; September 27, 2011.
54. sfenvironment.org. Good neighbor program: our city's programs. [http://sfenvironment.com/our\\_programs/interests.html?ssi=1&ti=33&ii=89](http://sfenvironment.com/our_programs/interests.html?ssi=1&ti=33&ii=89). Accessed May 20, 2011.

# References

55. The Center for Tobacco Policy & Organizing. *The Neighborhood Market Association and Local Ordinances Related to Tobacco Retailers*. Sacramento, CA; The Center for Tobacco Policy & Organizing, American Lung Association; April 2011.
56. US Constitution. Amendment V.
57. Tobacco Control Legal Consortium. *Tobacco Control and the Takings Clause*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011.
58. Ribisl KM, Evans WN, Feighery EC. Falling cigarette consumption in the U.S. and the impact upon tobacco retailer employment. In Bearman P, Neckerman KM, Wright L, eds. *After Tobacco: What Would happen If Americans Stopped Smoking?* New York, NY: Columbia University Press; 2011:131-159.
59. The Center for Public Health and Tobacco Policy. *Tobacco Product Display Restrictions*. Boston, MA: The Center for Public Health and Tobacco Policy, New England Law; 2010.
60. American Lung Association. *State Legislated Actions on Tobacco Issues (SLATT) State Information: Pennsylvania*. Washington, DC; 2012.
61. Minnesota Office of the Revisor of Statutes. 2011 Minnesota Statutes: 394.21 Authority to carry on county planning and zoning. Subdivision 1A. Amortization prohibited. <https://www.revisor.mn.gov/statutes/?id=394.21>. Revised 2012. Accessed July 2, 2013.
62. Tobacco Control Legal Consortium. *Regulating Tobacco Marketing: A "Commercial Speech" Factsheet for State and Local Governments*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2010.
63. Griffin M, Babb SD, MacNeil AE. State preemption of local tobacco control policies restricting smoking, advertising, and youth access—United States, 2000-2010. *Morbidity and Mortality Weekly Report Surveillance Summary*. 60(33):1124-1127.
64. Hoek J, Wong C, Gendall P, Louviere J, Cong K. Effects of dissuasive packaging on young adult smokers. *Tobacco Control*. 20:183-188
65. Tobacco Control Legal Consortium. *Regulating Tobacco Marketing: "Commercial Speech" Guidelines for State and Local Governments*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2010.
66. *Central Hudson Gas & Elec. Corp. v Public Service Commission of New York*, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980).
67. Tobacco Control Legal Consortium. *Restricting Tobacco Advertising: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011.
68. *Sorrell v. IMS Health Inc.*, 131 S.Ct. 2653 (2011).
69. ChangeLab Solutions. After the FDA Tobacco Control Law: which policies are legal to pursue? [http://changelabsolutions.org/sites/default/files/documents/After\\_the\\_FDA\\_Law\\_COLOR\\_update\\_FINAL\\_FINAL2\\_20100708.pdf](http://changelabsolutions.org/sites/default/files/documents/After_the_FDA_Law_COLOR_update_FINAL_FINAL2_20100708.pdf). Updated July 2010. Accessed July 1, 2013.
70. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *Journal of Epidemiology and Community Health*. 2005 Jul;59(7):568-573.
71. Doubeni CA, Wenjun L, Fouayzi H, DiFranza JR. Perceived accessibility as a predictor of youth smoking. *Annals of Family Medicine*. 2008;6(4):323-330.
72. ChangeLab Solutions. *Plug-in Policy Provisions for a Tobacco Retailer License*. Oakland, CA; ChangeLab Solutions; 2012.
73. Tobacco Control Legal Consortium. *Prohibiting the Sale of Tobacco Products in Pharmacies*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2012.
74. US Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2000.
75. Jha P Chaloupka FJ, Corrao M, Jacob B. Reducing the burden of smoking world-wide: effectiveness of interventions and their coverage. *Drug & Alcohol Review*. 2006;25(6):597-609.
76. Siahpush M, Wakefield MA, Spittal MJ, Durkin SJ, Scollo MM. Taxation reduces social disparities in adult smoking prevalence. *American Journal of Preventive Medicine*. 2009;36(4):285-291.
77. Center for Public Health & Tobacco Policy. Point of sale display regulation: international successes. <http://www.tobaccopolicycenter.org/documents/FS%20International%20Display%20Ban%20FINAL.pdf>. Accessed July 1, 2013.
78. Feighery EC, Ribisl KM, Schleicher NC, Zellers L, Wellington N. How do minimum price laws affect cigarette prices at the retail level? *Tobacco Control*. 2005;(14):80-85.
79. Chaloupka FJ, Cummings KM, Morley CP, Horan JK. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tobacco Control*. 2002;11(suppl 1):162-172.
80. Bonnie R, Stratton, K, Wallace, RB. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC: National Academies Press, Institute of Medicine; 2007.
81. Coady MH, Chan, CA, Auer, K, Farley SM, Kilgore EA, Kansagra SM. Awareness and impact of New York City's graphic point-of-sale tobacco health warning signs. *Tobacco Control*. 2012.

# References

82. Weinstein N, Slovic P, Waters E, Gibson G. Public understanding of the illnesses caused by cigarette smoking. *Nicotine & Tobacco Research*. 2004;6(2):349-355.
83. Centers for Disease Control and Prevention. *Telephone Quitlines: A Resource for Development, Implementation, and Evaluation*. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2004.
84. Cummins SE, Bailey L, Campbell S, Koon-Kirby C, Zhu S. Tobacco cessation quitlines in North America: a descriptive study. *Tobacco Control*. 2007;16(suppl 1):i9-i15.
85. Tobacco Control Legal Consortium. *Family Smoking Prevention and Tobacco Control Act Litigation Update*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; October 23, 2012.
86. Martinasek MP, McDermott RJ, Martini L. Waterpipe (hookah) tobacco smoking among youth. *Current Problems in Pediatric and Adolescent Health Care*. 2011;41(2):34-57.
87. American Lung Association. An emerging deadly trend: waterpipe tobacco use. [http://www.lungusa2.org/embargo/slati/Trendalert\\_Waterpipes.pdf](http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf). Accessed May 1, 2013.
88. Noonan D, Patrick ME. Factors associated with perceptions of hookah addictiveness and harmfulness among young adults. *Substance Abuse*. 2013;34(1):83-85.
89. Tobacco Free Center. Tobacco advertising, promotion, and sponsorship. [http://tobaccofreecenter.org/files/pdfs/en/APS\\_essential\\_facts\\_en.pdf](http://tobaccofreecenter.org/files/pdfs/en/APS_essential_facts_en.pdf). Accessed July 1, 2013.
90. CounterTobacco.org. POS health warnings. <http://countertobacco.org/pos-health-warnings>. Updated 2013. Accessed July 1, 2013.
91. Farley SM. Evaluating the impact of tobacco health warning signs at the point-of-sale. Assessing change in the tobacco retail environment webinar; May 11, 2011.
92. Ind Code § 35-46-1-11.
93. American Lung Association. Hookah smoking: a growing threat to public health. [www.lung.org/stop-smoking/tobacco.../hookah-policy-brief.pdf](http://www.lung.org/stop-smoking/tobacco.../hookah-policy-brief.pdf). Accessed July 3, 2013.
94. Tobacco Control Legal Consortium. *New York City Graphic Warning Sign Requirement & Litigation*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011.
95. Henriksen L, Schleicher NC, Feighery EC, Fortmann SP. A longitudinal study of exposure to retail cigarette advertising and smoking initiation. *Pediatrics*. 2010;126(2):232-238.
96. DiFranza JR, Wellman RJ, Sargent JD, Weitzman M, Hipple BJ, Winickoff JP. Tobacco promotion and the initiation of tobacco use: assessing the evidence for causality. *Pediatrics*. 2006;117(6):e1237-e1248.
97. Wellman RJ, Sugarman DB, DiFranza JR, Winickoff JP. The extent to which tobacco marketing and tobacco use in films contribute to children's use of tobacco: a meta-analysis. *Archives of Pediatrics & Adolescent Medicine*. 2006;160(12):1285-1296.
98. Campaign for Tobacco-Free Kids, American Heart Association, Counter Tobacco. *Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-saving Policies*; 2012.
99. Carter OBJ, Mills BW, Donovan RJ. The effect of retail cigarette pack displays on unplanned purchases: results from immediate postpurchase interviews. *Tobacco Control*. 2009;18(3):218-221.
100. WHO Framework Convention on Tobacco Control. *Guidelines for Implementation of Article 13: Guidelines on Tobacco Advertising, Promotion, and Sponsorship*. Geneva: World Health Organization; 2008.
101. Campaign for Tobacco Free Kids. Tobacco advertising and youth: the evidence. [http://tobaccofreecenter.org/files/pdfs/en/APS\\_youth\\_evidence\\_en.pdf](http://tobaccofreecenter.org/files/pdfs/en/APS_youth_evidence_en.pdf). Accessed July 1, 2013.
102. Saffer H, Chaloupka F. The effect of tobacco advertising bans on tobacco consumption. *Journal of Health Economics*. 2000;19(6):1117-1137.
103. Girlando M, Loomis B, Watson K, Farrelly M. *Retail Advertising and Promotions for Cigarettes in New York*. Research Triangle Park, NC: RTI International; 2007.
104. Tobacco Control Legal Consortium. *Content-neutral Advertising Laws: Tips and Tools*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011.
105. Luke DA, Ribisl KM, Smith C, Sorg AA. Family Smoking Prevention and Tobacco Control Act: banning outdoor tobacco advertising near schools and playgrounds. *American Journal of Preventive Medicine*. 2011;40(3):295-302.
106. Kim AE, Nonnemaker JM, Loomis BR et al. Influence of tobacco displays and ads on youth: a virtual store experiment. *Pediatrics*. 2013;131(1):e88-e95.
107. Philip Morris USA. Retail leaders 2001 agreement: plans P and P+. <http://legacy.library.ucsf.edu/tid/gqh75a00/pdf>. Accessed July 3, 2013.

# References

108. Paynter J, Edwards R, Schluter PJ, McDuff I. Point of sale tobacco displays and smoking among 14-15 year olds in New Zealand: a cross-sectional study. *Tobacco Control*. 2009;18(4):268-274.
109. CounterTobacco.org. Restricting product placement. <http://www.countertobacco.org/restricting-product-placement>. Updated 2013. Accessed April 12, 2013.
110. *New York Association of Convenience Stores et al v Village of Haverstraw, New York et al* (complaint filed)(2012).
111. Tobacco Control Legal Consortium. *Sample Language to Restrict the Sale of Flavored Non-cigarette Tobacco Products*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2012.
112. Tobacco Control Legal Consortium. *Raising the Minimum Legal Sale Age for Tobacco and Related Products*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2012.
113. CNN Staff. NYC gets tough on tobacco, raises purchase age to 21. *CNN*. November 19, 2013. <http://www.cnn.com/2013/11/19/us/new-york-city-tobacco-age-law/>. Accessed December 16, 2013.
114. Tobacco Control Legal Consortium. *Regulating Roll Your Own Tobacco Machines*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2012.
115. The Center for Tobacco Policy & Organizing. *Matrix of Strong Local Retailer Licensing Ordinances*. Sacramento, CA: American Lung Association of California; March 2011.
116. The Tobacco Control Network and the National Association of Local Boards of Health. An introduction to e-cigarettes for states and locals webinar; April 2013.
117. US Department of Health and Human Services. *Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General*. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 1998.
118. Hyland A, Travers MJ, Cummings KM, Bauer J, Alford T, Wieczorek WF. Demographics and tobacco outlet density. *American Journal of Public Health*. 2003;93(11):1794.
119. Primack BA, Bost JE, Land SR, Fine MJ. Volume of tobacco advertising in African American markets: systematic review and meta-analysis. *Public Health Reports*. 2007;122(5):607-615.
120. Yu D, Peterson NA, Sheffer MA, Reid RJ, Schnieder JE. Tobacco outlet density and demographics: analysing the relationships with a spatial regression approach. *Public Health*. 2010;124(7):412-416.
121. Garrett BE, Dube SR, Troscclair A, Caraballo RS, Pechacek TF. Cigarette smoking - United States, 1965-2008. *Morbidity and Mortality Weekly Report Surveillance Summary*. 2011;14(60):109-113.
122. Ribisl KM, Luke DA, Sorg, AA. Reducing tobacco related disparities through point-of-sale regulation: differential impact of regulating tobacco advertising and sales near schools. Poster presentation at the Annual Meeting and Convention of the American Public Health Association, Washington, DC.
123. Tobacco Control Legal Consortium. *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments*. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2010.
124. Hammond D. *Health Warnings on Tobacco Packages: Summary of Evidence and Legal Challenges*. Waterloo, Ontario: University of Waterloo, Canada; 2008.
125. Barbeau EM, Wolin KY, Naumova EN, Balbach E. Tobacco advertising in communities: associations with race and class. *Preventive Medicine*. 2005;40(1):16-22.
126. Feighery EC, Schleicher NC, Boley Cruz T, Unger JB. An examination of trends in amount and type of cigarette advertising and sales promotions in California stores, 2002-2005. *Tobacco Control*. 2008;17(2):93-98.
127. Laws MB, Whitman J, Bowser DM, Krech L. Tobacco availability and point of sale marketing in demographically contrasting districts of Massachusetts. *Tobacco Control*. 2002;11(suppl II):ii71-ii73.
128. Rising J, Alexander L. Marketing of menthol cigarettes and consumer perceptions. *Tobacco Induced Diseases*. 2011;9(suppl 1):S2.
129. Tobacco Products Scientific Advisory Committee. Menthol cigarettes and public health: review of the scientific evidence and recommendations. <http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm247605.htm>. Updated August 3, 2012. Accessed July 2, 2013.
130. Cruz TB, Wright, LT, Crawford, G. The menthol marketing mix: targeted promotions for focus communities in the United States. *Nicotine & Tobacco Research*. 2010;12(suppl 2):147-153.
131. Battelle Memorial Institute: Battelle Centers for Public Health Research and Evaluation. Store Alert training guide. <http://www.storealert.org/docs/trainingguide.pdf>. Accessed July 1, 2013.

# References

132. Battelle Memorial Institute: Battelle Centers for Public Health Research and Evaluation. Store Alert report guide. <http://www.storealert.org/docs/reportcard.pdf>. Accessed July 1, 2013.
133. North Carolina Health and Wellness Trust Fund Commission. Operation Storefront data collection form. [http://www.healthwellnc.com/TUPCHERITAGETOOLKIT/General/general\\_activities\\_Storefront.html](http://www.healthwellnc.com/TUPCHERITAGETOOLKIT/General/general_activities_Storefront.html). Accessed July 1, 2013.
134. CounterTobacco.org. *Youth Activity: Store Audit for FDA Compliance*. Chapel Hill, NC: CounterTobacco.org, UNC Gillings School of Global Public Health; December 5, 2011.
135. CounterTobacco.org. About CounterTobacco.org. <http://www.countertobacco.org/about>. Accessed February 15, 2013.
136. Myers A. Interview on the nonprofit organization Counter Tools; February 20, 2013.
137. The Center for Tobacco Policy & Organizing. *Assessing the Political Environment Checklist*. Sacramento, CA: American Lung Association of California; 2010.
138. ChangeLab Solutions, Technical Assistance Legal Center. Going beyond TRL: emerging tobacco retailer policies webinar; November 8, 2011.
139. Anker L, Rhodes-Devey A, Kuon, S. Framing point of sale messages to build public support for policy action. Presented: New York State's Point of Sale initiative; 2010; Albany, NY.
140. Centers for Disease Control and Prevention. *Best Practices User Guide: Youth Engagement-State and Community Interventions*. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2010.
141. Rogers T, Feighery EC, Tencati EM, Butler JL, Weiner L. Community mobilization to reduce point-of-purchase advertising of tobacco products. *Health Education & Behavior*. 1995;22(4):427-442.
142. Campaign for Tobacco Free Kids. *State Cigarette Excise Tax Rates & Rankings*. Washington, DC: Campaign for Tobacco Free Kids; 2011.
143. Healthy Communities Office. Providence, Rhode Island price discounting interview; October 15, 2012.
144. Roberts C. Rhode Island Department of Health interview; March 11, 2013.
145. City of Providence. *Building a Tobacco-free Providence*. Providence, RI: Mayor's Substance Abuse Prevention Council; 2010-2012.
146. Reynolds M. Limits on sales survive: federal judge upholds city ban on flavored tobacco & pricing ordinances. *Providence Journal*. January 7, 2013.
147. Campaign for Tobacco Free Kids. Federal court upholds Providence, RI, measures to reduce tobacco sales to kids. [http://www.tobaccofreekids.org/press\\_releases/post/2012\\_12\\_11\\_providence](http://www.tobaccofreekids.org/press_releases/post/2012_12_11_providence). Accessed July 1, 2013.
148. Association for Nonsmokers-Minnesota. Ramsey Tobacco Coalition Web site. <http://www.ansrmn.org/programs/ramsey-tobacco-coalition>. Accessed July 1, 2013.
149. Brock B. Interview on the city of St. Paul window sign ordinance; January 29, 2013.
150. Burkhart J. Santa Clara, California point-of-sale interview; November 6, 2012.
151. Centers for Disease Control and Prevention. *Communities Putting Prevention to Work: Santa Clara County, California. Obesity and Tobacco Use Prevention*. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
152. Simoneau A, Zellers L, Laird-Metke E, Marvin V, Pearson A, Burkhart J. From Congress to California communities: a webinar about the Federal Tobacco Control Act. ChangeLab Solutions; March 2012.
153. University of California, San Francisco. California's tobacco propositions Web site. <http://legacy.library.ucsf.edu/research/calprops/prop99.jsp>. Accessed July 1, 2013.
154. County of Santa Clara. County of Santa Clara adopts third tobacco ordinance. <http://www.sccgov.org/sites/opa/nr/Pages/County-of-Santa-Clara-Adopts-Third-Tobacco-Ordinance.aspx>. Accessed July 1, 2013.
155. McKone P, Stepan C. Interview on the assessment of the retail environment in northern Minnesota; February 5, 2013.
156. Framework Convention Alliance. Advertising, promotion and sponsorship: the FCTC commitments. <http://www.fctc.org/index.php/what-is-the-fctc-5/the-work-of-the-fca/advertising-promotion-and-sponsorship/the-fctc-commitments>. Accessed July 3, 2013.
157. Wakefield M, Morley C, Horan JK, Cummings KM. The cigarette pack as image: new evidence from tobacco industry documents. *Tobacco Control*. 2002;11(suppl 11):73-80.
158. Seidenberg AB, Caughey RW, Rees VW, Connolly GN. Storefront cigarette advertising differs by community demographic profile. *American Journal of Health Promotion*. 2010;24(6):e26-e31.
159. Adhikari B, Kahende J, Malarcher, A, Pechacek T, Tong V. Smoking-attributable mortality, years of potential life lost, and productivity losses- United States, 2000-2004. *Morbidity and Mortality Weekly Report Surveillance Summary*. 2008;57(45):1226-1228.





# Point-of-Sale Report to the Nation

THE TOBACCO RETAIL AND POLICY LANDSCAPE



JUNE  
2014

# Acknowledgements

Advancing Science and Policy in the Retail Environment (ASPiRE) is funded by the National Cancer Institute's (NCI) State and Community Tobacco Control (SCTC) Research Initiative. ASPiRE is a consortium of researchers from the Center for Public Health Systems Science (CPHSS) at Washington University in St. Louis, the Stanford Prevention Research Center, and the University of North Carolina Gillings School of Global Public Health.

- **Center for Public Health Systems Science at Washington University in St. Louis**  
Douglas A. Luke, Sarah Moreland-Russell, Amy A. Sorg, Heidi Walsh, Doneisha L. Snider, Jason B. Roche, Janice Jones, Christopher B. Robichaux, Colleen Barbero, and Laura Brossart
- **Stanford Prevention Research Center**  
Lisa Henriksen, Nina C. Schleicher, Trent Johnson, Lindsey Winn, and Nina Parikh
- **University of North Carolina Gillings School of Global Public Health**  
Kurt M. Ribisl, Ashley Feld, and Katie Byerly



Center for Public Health  
Systems Science

---

GEORGE WARREN BROWN  
SCHOOL OF SOCIAL WORK



STANFORD PREVENTION  
RESEARCH CENTER  
*the science of healthy living*



UNC  
GILLINGS SCHOOL OF  
GLOBAL PUBLIC HEALTH



*Funded by grant number U01-CA154281 from the State and Community Tobacco Control Research Initiative, National Cancer Institute at the National Institutes of Health, Rockville, Maryland.*

ASPiRE's advisory board provided valuable input, including expertise on survey design, the selection of case studies, and dissemination of study findings. The board is comprised of national, state, and local public health officials; attorneys; and members of advocacy organizations, including: (\*denotes past member)

- Kirsten Aird, Oregon Department of Human Services
- Micah Berman, The Ohio State University
- Ann Boonn, Campaign for Tobacco Free Kids
- Seema Dixit, Rhode Island Tobacco Control Program\*
- Monica Eischen, Centers for Disease Control and Prevention
- Karen Girard, Oregon Department of Human Services\*
- Geri Guardino, Rhode Island Department of Health
- Lois Keithly, Massachusetts Department of Public Health
- Christine Laucher, Youth Empowered Solutions (YES!)
- Maggie Mahoney, Tobacco Control Legal Consortium
- Danny McGoldrick, Campaign for Tobacco Free Kids\*
- April Roeseler, California Tobacco Control Program
- Stephanie Sheehan, New York State Health Department
- Michael Tynan, Oregon Health Authority, Public Health Division
- Jeffrey G. Willett, Kansas Health Foundation

## Suggested Citation

Center for Public Health Systems Science. *Point-of-Sale Report to the Nation: The Tobacco Retail and Policy Landscape*. St. Louis, MO: Center for Public Health Systems Science at the Brown School at Washington University in St. Louis and the National Cancer Institute, State and Community Tobacco Control Research Initiative, 2014.

## Main Contact

Heidi Walsh, MPH  
Center for Public Health Systems Science  
700 Rosedale Avenue  
St. Louis, MO 63112-1408  
314.935.3750  
heidawalsh@wustl.edu

## Photo Citations

Photographs on cover and pages 6, 13 (2<sup>nd</sup> column), 14, 15, 16 (1<sup>st</sup> column), and 25 courtesy of CounterTobacco.Org

Photograph on page 12 courtesy of BOLD-Teens

Photograph on page 16 (2<sup>nd</sup> column) courtesy of nycsmokefree.com

# Table of Contents

Preface .....	i
Executive Summary .....	ii
Introduction .....	1
The Retail Environment .....	2
Retailer Density .....	2
Pricing and Marketing .....	6
The Policy Environment .....	9
POS Policy Activity .....	9
POS Policy Importance .....	18
POS Policy Barriers .....	20
POS Policy Resources.....	22
Recommendations.....	27
Resources .....	30
References .....	34
Appendix A .....	36
Appendix B .....	39

# Preface

The tobacco industry is known for its savvy marketing and promotional campaigns, so it is pretty telling that it spends the overwhelming majority of its marketing dollars at the point of sale (POS). Given restrictions on other forms of marketing and the fact that POS marketing and promotions are effective in stimulating demand for tobacco products, it is no surprise that the tobacco industry highly regards this marketing and distribution channel. In fact, since the 1980s the number one venue for spending on tobacco marketing has been the POS. This *Report to the Nation* is unique in that it is entirely dedicated to POS and covers multiple areas. The report discusses findings from our study, the first ever to establish a national monitoring system for POS policy activities.

Tobacco control professionals are building on previous successes to intervene at the POS. They have spent considerable attention on raising the prices of tobacco products, advancing clean indoor air policies, implementing mass media campaigns, and promoting tobacco use cessation. POS is the next frontier. This landmark study will help guide the policy debate. It is based on a rigorous design that provides data on POS tobacco control efforts, tobacco retailer density, and marketing data that are representative of the contiguous U.S. This national study helps provide much needed evidence for the emerging field of POS policy work.

This report shows that states and communities are actively working to address tobacco control issues at the POS. While these pages outline many successes, tobacco control professionals still face a number of real barriers. They are vastly outspent by a large and powerful industry, and the complexity and range of POS policy solutions is at times daunting. Practitioners ask for more guidance and evidence as they navigate this new terrain. This report outlines a number of ways to improve the implementation and dissemination of tobacco control efforts focused on POS.

Data presented in this report document that there are approximately 375,000 tobacco retailers in the U.S. Given the evidence that greater tobacco retailer density and proximity has been linked to greater youth initiation of tobacco use and greater difficulty for smokers to quit, many programs are starting to pursue efforts to reduce the number, type, and locations of tobacco retailers. In fact, this report shows that there are 27 tobacco retailers for every one McDonald's in the U.S. That shocking statistic shows the great challenges that lie ahead. Moreover, additional data show the widespread availability of candy and fruit flavored little cigars at retail outlets coupled with extensive marketing and promotions. This report clearly illustrates an alarming picture of the challenges the field will face at the POS.

We are excited that POS tobacco control is now becoming mainstream tobacco control. We hope that you find this report helpful as you begin or continue your own work at the POS.



Kurt M. Ribisl, PhD  
Professor, UNC Gillings School of Global Public Health



Kurt M. Ribisl, PhD

# Executive Summary

## INTRODUCTION

Advancing Science and Policy in the Retail Environment (ASPiRE) is funded by the National Cancer Institute's (NCI) State and Community Tobacco Control (SCTC) Research Initiative. ASPiRE is a consortium of researchers from the Center for Public Health Systems Science (CPHSS) at Washington University in St. Louis, the Stanford Prevention Research Center, and the University of North Carolina Gillings School of Global Public Health. In 2011, ASPiRE received a five-year grant from SCTC to conduct research on how to maximize state and local policies to restrict tobacco marketing at the point of sale (POS) and in the broader retail environment.

Tobacco companies promote their brands through advertising, product placement, and price promotions. Advertising and promotions at the POS increase impulse purchases and normalize the presence of tobacco products in everyday life.<sup>1</sup> Tobacco product exposure and price promotions at the POS encourage initiation and discourage cessation.<sup>2-4</sup>

It is important for professionals looking to advance POS work to understand the current retail and legal landscape, as well as potential policy options. This report provides data on the tobacco retail environment, tangible next steps and resources to get started in the POS area, and important evidence to help guide the tobacco control policy debate.

## FINDINGS

### What does the tobacco retail environment look like?

In the U.S. only 36 states mandate tobacco retailer licensing. Without a nationwide mandatory licensing system for tobacco retailers, it is impossible to know how many tobacco retailers

operate in the U.S. We estimate that there are 374,584 retailers in the contiguous U.S. Relative to consumer demand for tobacco products, the number of tobacco retailers is excessive.

We found that tobacco retailer density is highly correlated with population density and tobacco retailers are frequently clustered together. The majority of tobacco is sold at convenience stores. In the U.S. supermarkets are another top seller of tobacco products. Other common tobacco retailers include: liquor stores, pharmacies, and tobacco shops. The high number of retailers correlates to a vast amount of POS advertising and marketing in the retail environment.

The tobacco industry spends most of its marketing budget at the POS.<sup>5</sup> The tobacco industry uses the strategic placement of products, price promotions and price discounts, signage and functional items containing product logos, and the products themselves to advertise and market tobacco products. Marketing and advertising in the POS is ever-present, yet policies to restrict advertising and promotions at the POS are largely underused in the U.S.

### What policy activity is occurring across the nation?

The majority of states perceive POS policies as important to their state tobacco control programs. However, most states and communities are underusing POS policies. Policy activity was reported in all six policy areas surveyed, including policies that: address licensing and density, use non-tax approaches to raise tobacco prices, restrict product placement, restrict advertising at the POS, require health warnings, and 'Other' POS policies. The majority of states surveyed reported state-level activity in at least one area. California reported the greatest amount of POS policy activity, yet its policy activity was low when compared to the total number of policy options examined in this study.

Overall, the two most common of the six policy areas were the Licensing and Density area and the Non-tax Approaches area. The most common activity reported within the Licensing and Density area was to establish or increase tobacco licensing fees. Still, most states either have no licensing fee provision or require just a small fee (less than \$75 annually) for licenses. The most common activity reported in the Non-tax Approaches area was implementing cigarette minimum price laws.

## What are the barriers to policy implementation?

Given that POS is still an emerging area and that policy activity is low, we asked states what barriers they have experienced when trying to plan or implement POS policies. The most common barriers reported include:

- Lack of background knowledge;
- Lack of funding; and
- Competing priorities.

## What resources would help advance POS policy work?

States were also asked to describe resources that have been helpful in advancing POS efforts and to identify what resources are needed to advance POS work in the future.

The most helpful resources reported include:

- Relationships with national organizations;
- Legal and policy support; and
- Learning from successful campaigns in other communities.

The most needed resources reported include:

- Funding and
- Model case studies.

## RECOMMENDATIONS

Given the national tobacco retail and policy environment, states and communities should consider POS policies as a core strategy of tobacco control. States that have already achieved levels of success with strong smoke-free air policies and higher than average excise taxes could consider expanding their efforts into the POS policy area. States at other stages of tobacco control policy success may also benefit from incorporating POS policies into their current tobacco control programs. Tobacco control advocates in the planning stages of POS policy adoption should take the following steps:

### #1: Assess the retail environment

Map and visit retailers. Find out what products are being sold, survey where advertising and products are situated inside and outside stores, and monitor prices and price promotions.

### #2: Examine public opinion and assess the policy and legal landscape

Survey the public and conduct interviews with key leaders and decision makers. Work with legal counsel to understand what agency has administrative authority in the state or community and to understand if and how preemption and other legal concerns will affect policy development.

### #3: Strategize and design the campaign

Build support by understanding the target audience and use appropriate messages that reflect their interests and concerns. Include strategies that will garner support from decision makers. Seek guidance from states and communities that have implemented similar policies.

### #4: Implement the policy and evaluate the process

Raise both retailer and public awareness about provisions of the policy to aid in compliance and enforcement. Highlight successes by demonstrating the positive effects the implemented policy is having in the community or state.

# Introduction

The point of sale (POS) has become the main venue for tobacco product marketing and promotion, as it was left largely unregulated after the Master Settlement Agreement. As a result tobacco companies now spend the majority of their annual marketing budget at the POS.<sup>5</sup> The POS refers to any location where tobacco products are advertised, displayed, or purchased. POS includes not only the final point of purchase (i.e., the register) but also advertising on the inside and outside of retail establishments. POS marketing and promotion includes tobacco product placement and prices.

Tobacco companies use the retail environment to attract and maintain customers by promoting their brands through advertising, product placement, and price promotions. Advertising and promotions at the POS increase impulse purchases, and normalize the presence of tobacco products in everyday life. Tobacco product exposure and price promotions at the POS encourage initiation and discourage cessation.<sup>2-4</sup>

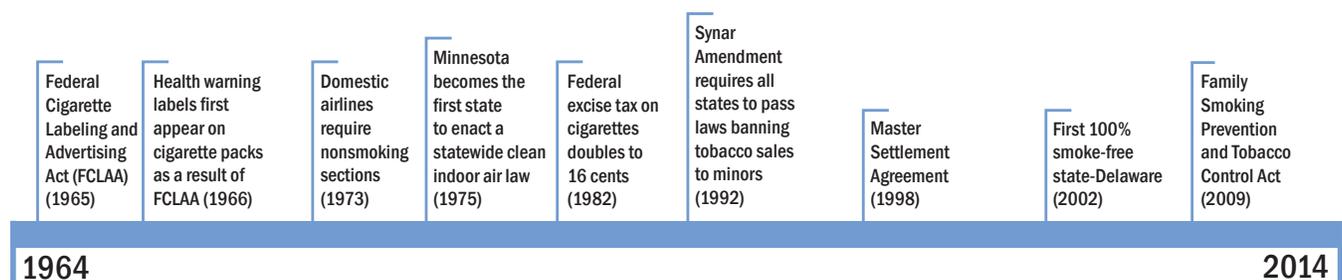
Overcoming industry presence at the POS is recognized as a fifth core strategy of tobacco control programming, along with: (1) raising cigarette excise taxes, (2) establishing smoke-free policies, (3) encouraging cessation, and (4) launching hard-hitting countermarketing campaigns.<sup>6</sup> Many states and communities are considering new policies for the retail

environment since the passage of the 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Figure 1).<sup>7</sup> The Tobacco Control Act gave the Food and Drug Administration new regulatory authority to restrict aspects of tobacco advertising, marketing, and promotion. States and communities are also placing a greater emphasis on eliminating tobacco related disparities by addressing the higher tobacco retailer density and the greater amount of marketing and price discounting in low-income and minority communities.<sup>8</sup>

## REPORT PURPOSE

This report provides a comprehensive snapshot of the retail environment and POS policy activity across the nation. State and local tobacco control staff, advocacy partners, and policymakers will find this report particularly useful as they consider new policies that would help combat tobacco initiation and use. Aside from providing details about the current retail environment, (e.g., POS marketing, tobacco outlet density, and influence of related policies), this report also provides tangible next steps and resources that state and local tobacco control staff and partners can use to get started in this area. Finally, this report includes highlights from our two case studies that feature recent POS victories in communities across the nation.

Figure 1. Tobacco Control Policy Highlights (1964-2014)



# The Retail Environment

Understanding the tobacco industry’s role in the retail environment is crucial for informing existing POS measures and for promoting new POS policy development and implementation.<sup>1</sup> This includes knowing the type, number, and density of tobacco retail stores, as well as the type of tobacco products, marketing materials, and price promotions used by the tobacco industry.

To further assess tobacco industry presence in the retail environment and at the POS, we first created a list of likely tobacco retailers in the contiguous U.S. We used the full list to characterize the quantity, composition, and location of tobacco retailers. Next we created a representative sample of retailers from the full list to visit stores and assess pricing, marketing, and the availability of tobacco products. Additional details of the study methods can be found in Appendix A.

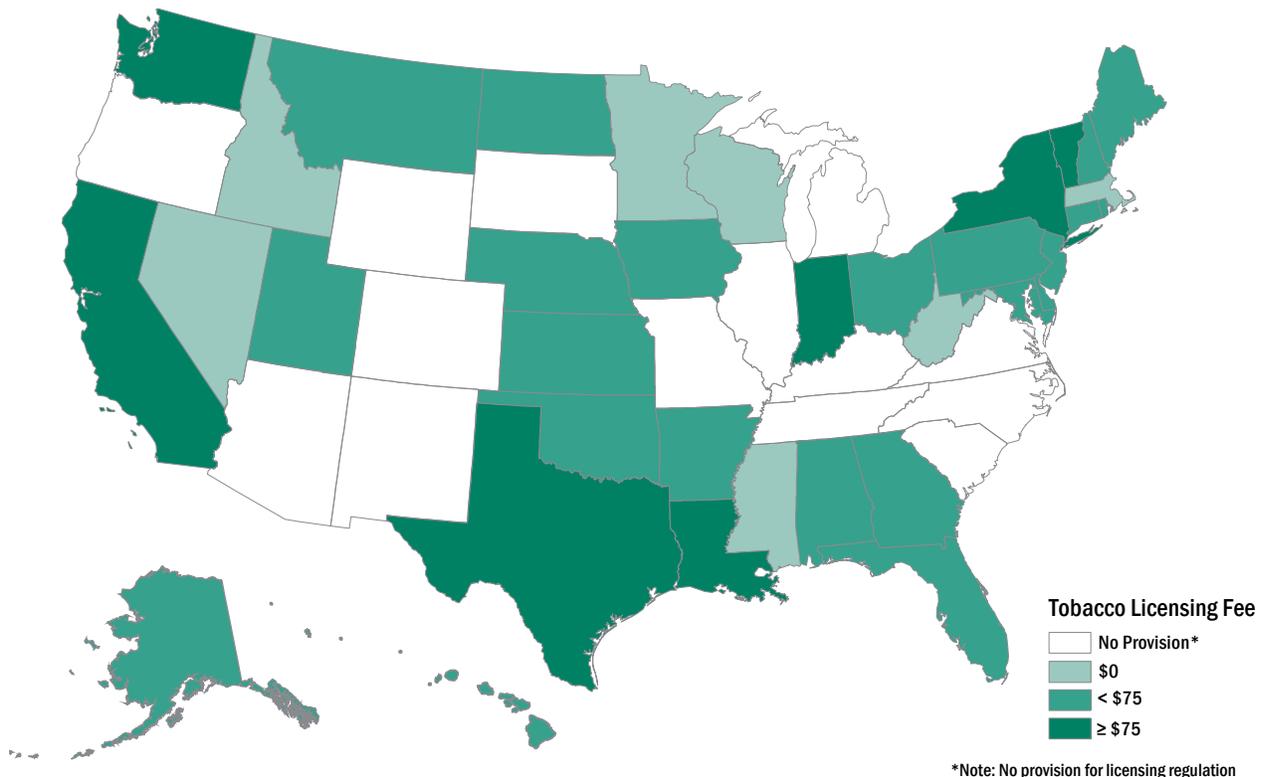
## RETAILER DENSITY

Greater tobacco retailer density has been linked to higher smoking rates.<sup>9,10</sup> To define a sample of retailers, we pulled a list of tobacco retailers from two independent business sources: the North American Industry Classification System (NAICS) and ReferenceUSA. Then we used the full list of likely tobacco retailers in the contiguous U.S. to study retailer density.

### How many retailers sell tobacco products?

Knowledge about the number, type, and location of tobacco retailers is essential to monitor tobacco industry activities and to enforce marketing restrictions at the POS.<sup>11</sup> Although such information is best obtained through retailer

Figure 2. State Tobacco Retailer Licensing (2012)

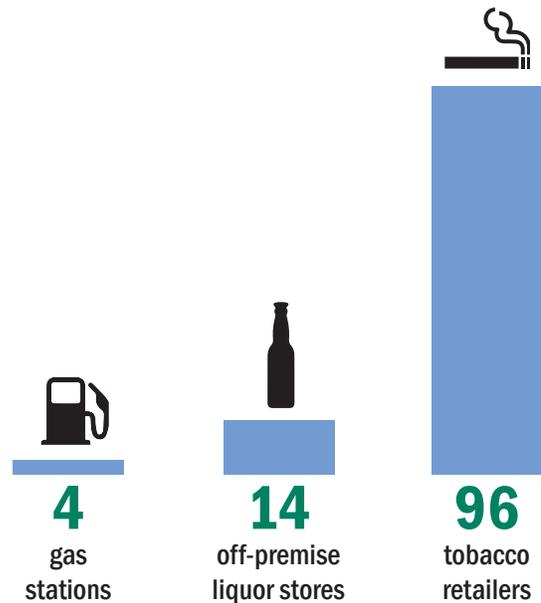


licensing, there is no mandatory nationwide licensing system for tobacco retailers (Figure 2). Thirty six states mandate licensing. Of those, three states issue free licenses to sell tobacco products, and many states either have no provision or require just a small fee (less than \$75 annually) for tobacco retailer licenses.

An estimated 374,584 retailers sell tobacco products in the contiguous U.S. This is equivalent to 28 tobacco retailers for every Starbucks and 27 tobacco retailers for every McDonald's.<sup>12</sup> Like fast food restaurants, tobacco retailers are concentrated in densely populated areas and along arterial roads, as the map from Alameda County, California illustrates (Figure 3).

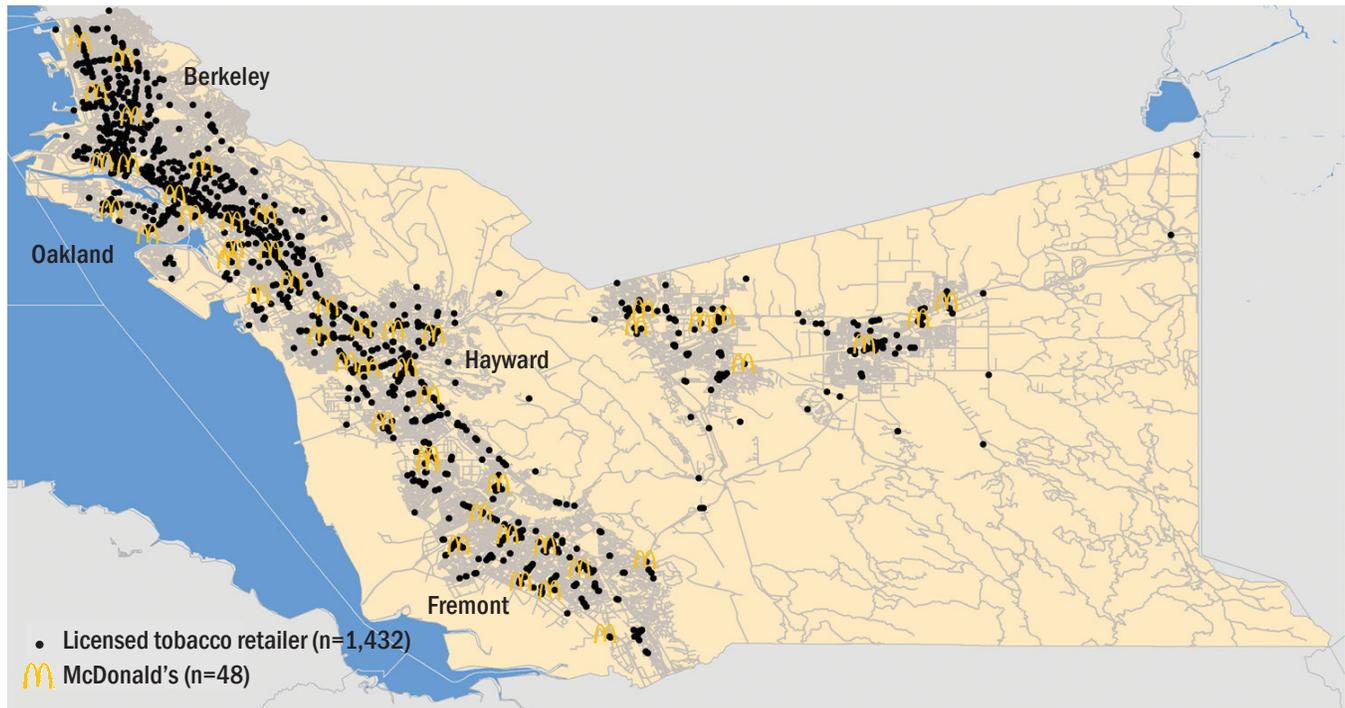
In the U.S. the number of tobacco retailers is excessive relative to consumer demand for tobacco products. For example, for every 10,000 consumers in California, there are approximately 4 gas stations,<sup>13</sup> 14 off-premise liquor stores,<sup>14</sup> and 96 tobacco retailers (Figure 4).<sup>15</sup>

Figure 4. Retailers per 10,000 Consumers: California (2012)\*



\*Data sources: U.S. Census Bureau, Statistical Abstract of the United States, 2012; U.S. Census Bureau, County Business Patterns, 2011; National Alcohol Beverage Control Association, Annual Survey Book, 2012; Behavioral Risk Factor Surveillance System, 2012; California Board of Equalization, Licensed Tobacco Retailers, 2012.

Figure 3. Spatial distribution of tobacco retailers and McDonald's locations in Alameda County, CA (2012)



Data source: California Board of Equalization and AggData, Inc. 2012.

## Who sells tobacco products?

The 97 study counties contained 92,167 tobacco retailers that met our inclusion criteria. The top 10 retailer names (see Table 1) account for 15% of all tobacco retailers in the study counties. The list reflects the most frequent store names and does not take into account subsidiaries (companies that are completely or partly owned by another corporation). For example, Duane Reade Inc., a chain of pharmacy and convenience stores located primarily in New York City, is a subsidiary of the Walgreens Company, and is not included in Walgreen’s ranking. The list also does not reflect data about sales volume or percent of total sales derived from tobacco products.

Weighted data from the study counties were used to estimate the composition of tobacco retailers in the U.S. Convenience stores, either with or without gas, represented the largest category (48% of all tobacco retailers) (Figure 5). This is noteworthy because of the current and historical alliances between the trade associations for convenience stores and the tobacco industry.<sup>1</sup>

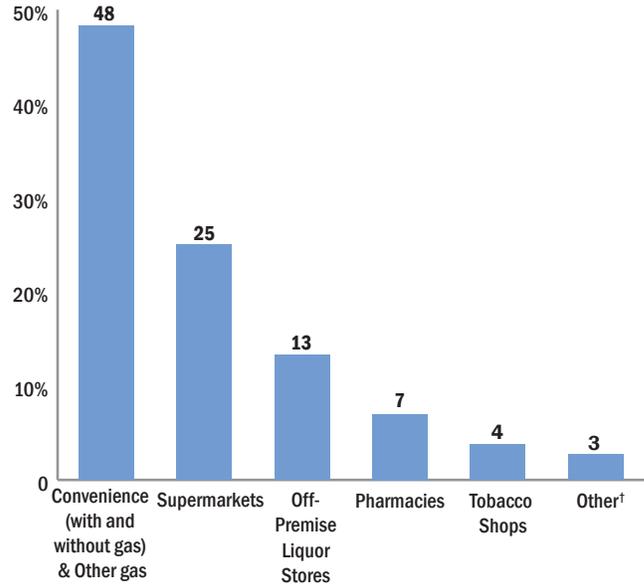
**Table 1. Top Ten Tobacco Retailer Names in Sample (2012)\* †**

Retailer	Rank
7-Eleven	1
Walgreens	2
Shell	3
Chevron	4
Mobil	5
Rite Aid	6
Circle K	7
British Petroleum (BP)	8
Valero	9
Walmart	10

\* CVS was previously #3 but announced plans to discontinue sales of all tobacco products by October, 2014.

† This list reflects the most frequent store names and does not take into account subsidiaries. It does not reflect data about sales volume or percent total sales derived from tobacco products.

**Figure 5. Composition of U.S. Tobacco Retailers (2012)\***



\* Estimates for contiguous United States.

† Other: Refers to a combination of discount department stores, warehouse stores, and newsstands.

The second largest category of tobacco retailers is supermarkets and other grocery stores. These are establishments primarily engaged in selling fresh, canned, and frozen foods. This category does not include convenience stores that often stock a limited supply of grocery items for sale. To avoid confusion, it is referred to simply as ‘Supermarkets’ in our figures.

Off-premise liquor stores represented approximately 13% of tobacco retailers. Tobacco products are available almost everywhere that alcoholic beverages are sold.<sup>16</sup> This is not surprising given the high rates of alcohol use among tobacco users and their responsiveness to advertising cues for both substances.<sup>17,18</sup> Some bars and restaurants that sell alcohol also sell tobacco products, but these types of establishments were excluded from the sampling frame.

## CVS Quits Tobacco!

### TOBACCO-FREE PHARMACIES

CVS, the second largest pharmacy chain in the U.S., announced it will stop selling tobacco products by October 1st, 2014. CVS explained that the practice is inconsistent with its mission of improving health. Many pharmacies, such as CVS, are expanding their role in the delivery of patient care by adding retail health clinics to help customers manage chronic diseases, which are exacerbated by tobacco use.

Although pharmacies represented approximately 7% of tobacco retailers in the sample, this estimate is likely conservative. For example, any other store type with a pharmacy counter and a different primary classification (e.g., supermarket, discount department stores, and warehouse) would be excluded from the estimate.

Tobacco shops accounted for approximately 4% of tobacco retailers. This category is anticipated to grow as Standard Industrial Classification (SIC) and (NAICS) codes assign e-cigarette vendors to the tobacco retailer category.

The remaining store types accounted for a very small proportion of tobacco retailers: newsstands (1.1%), discount department stores (1.0%), and warehouse/big box stores (0.6%). These figures were estimated before the Dollar Store chain, with 18,000 locations, announced intentions to sell tobacco products in November 2012.<sup>19-23</sup> Of course, tobacco products are found in a variety of other small retailers (e.g., donut shops, bait and tackle stores, and auto repair shops), but these categories of retailers were not represented in the sample.

## Where are tobacco retailers concentrated?

Tobacco retailer density measures the concentration of places where tobacco products are sold, typically per population or per area.<sup>9</sup> In the contiguous U.S., there are:

- 1.5 retailers per 1,000 residents;
- 6.9 retailers per 1,000 school-age youth (ages 5-17); and
- 1.3 retailers per 10 square miles.

In the 97 study counties, the median value of tobacco retailer density was 1.25 retailers per 1,000 residents. Tobacco retailer density is highly correlated with population density, and tobacco retailers are frequently clustered together. An estimated 70% of tobacco retailers are located within 1,000 feet of one another – less than 2 blocks apart. The median distance from a tobacco retailer to its nearest competitor was 385 feet.

Of course, tobacco retailers are not distributed uniformly, and the inequities in their concentration are believed to contribute to racial and socioeconomic disparities in tobacco use.<sup>24,25</sup> Demographics of the study counties are summarized in Table 2. Nearly all of the county

**Table 2. Demographic Characteristics for Study Counties (n=97) (2012)**

Demographic	Average
Population Size (total)	813,200
Tobacco Retailer Density (per 1,000 population)	1.3
Median Household Income (\$)	56,542
Households Receiving Public Assistance (%)	2
African Americans (%)	12
Hispanic (%)	15
County Smoking Prevalence (%)	17
Rural Residents (%)	21
Youth (Under age 18) (%)	24

characteristics were correlated with tobacco retailer density before adjustments for other variables. The strongest association was with percent of households receiving public assistance. In a multivariate model using data from our sample, counties with a higher proportion of African-American residents, a higher proportion of residents living in a rural area, and a lower proportion of youth (under 18 years) tended to have higher tobacco retailer density.<sup>26</sup>

## PRICING AND MARKETING

To understand in-store characteristics such as pricing and marketing of tobacco products, we studied a smaller sample from our full list. Data collectors visited a random sample of 2,231 stores within our 97 study counties in 40 states. We limited the sample to stores that sold cigarettes. This data collection took place between June-October 2012.

### What tobacco products are available in retail outlets?

The availability of novel and non-cigarette tobacco products such as cigars and other flavored tobacco products is widespread. Use of these products is a concern to several communities, due in part to their relatively inexpensive prices compared to cigarettes. Knowing the product lineup, pricing structure, and marketing strategies of the tobacco

industry provides a more complete retail profile. This information helps to build an evidence base to inform new and existing tobacco control measures.

We sampled stores that sold cigarettes and found that they sold a variety of other tobacco products:

- 86% of stores sold cigars (regular or little);
- 71% of stores sold other smokeless tobacco (spitting tobacco, chew);
- 62% of stores sold loose or pipe tobacco;
- 48% of stores sold snus; and
- 35% of stores sold e-cigarettes.

A vast majority of stores sold both flavored cigars (82%) and regular or little single cigars (78%). In addition, 9% of stores displayed tobacco products at heights of less than three feet (not including behind the counter), and 10% of stores displayed tobacco products within 12 inches of candy. These types of marketing techniques may have particular appeal to youth.

### What types of tobacco product marketing are in the retail environment?

The 2012 report from the Surgeon General states that marketing efforts of the tobacco companies have caused young people to smoke.<sup>9</sup> Tobacco companies and retail outlets use a variety

**Figure 6. Tobacco Marketing Materials**



**Branded Signs**



**Branded Displays**



**Branded Shelving Units**



**Branded Functional Items**

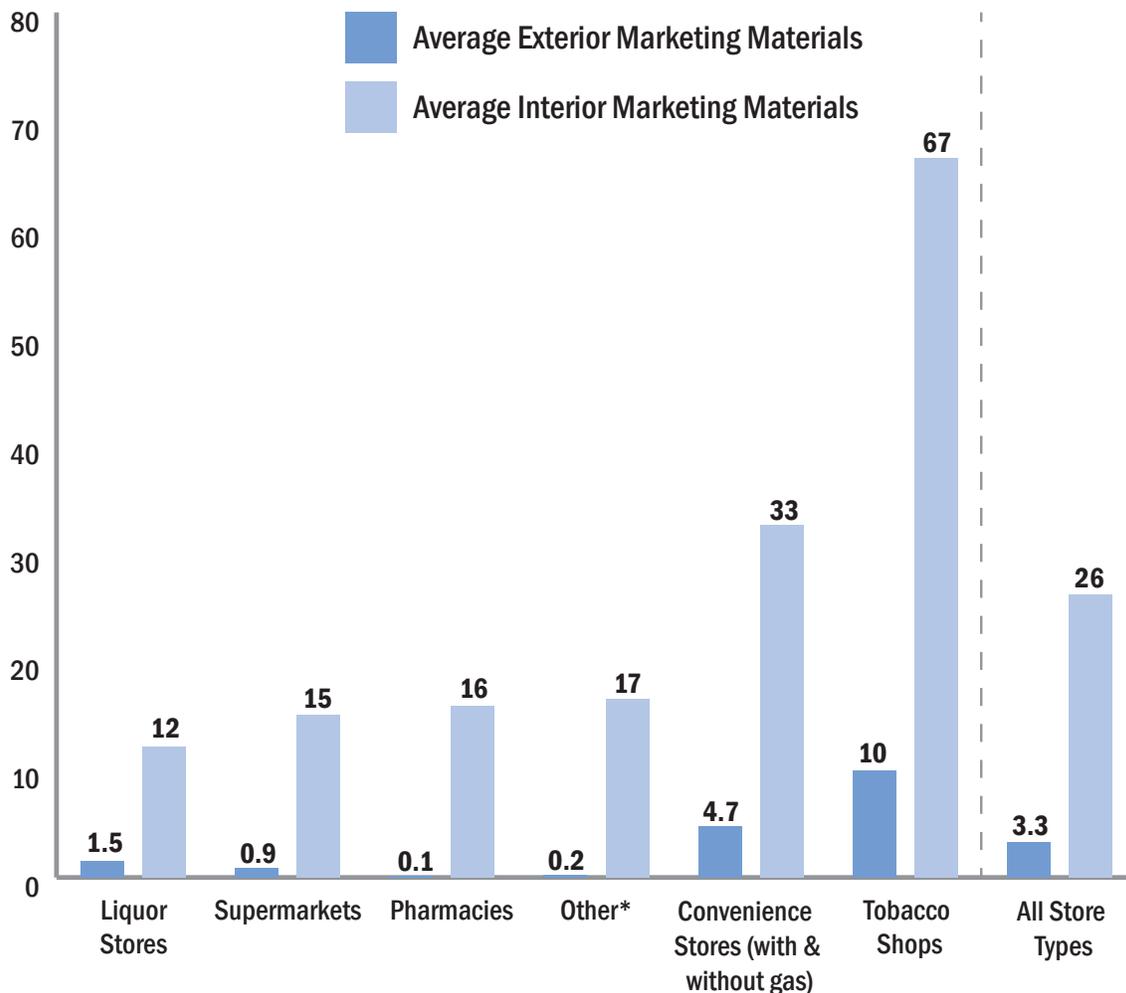
of marketing materials to advertise tobacco products at the POS. Marketing materials include branded signs, displays, and shelving units, as well as functional items such as door mats and cigarette receptacles (Figure 6). We found that tobacco marketing materials are very common on the interior of stores, especially in gas stations, convenience stores, and tobacco shops. Although restricting tobacco marketing is legally complex, some communities have had success in this area. Of the 2,231 stores that we visited, most (96%) had at least one marketing material, with an average of 29.5 marketing materials per store (Figure 7).

## What types of price promotions are available in tobacco retail outlets?

Tobacco companies spend the overwhelming majority of their marketing budgets on price promotions. The Federal Trade Commission reports that 84% of tobacco companies' cigarette marketing budget is spent on price discounting.<sup>5</sup> According to the 2012 Surgeon General's Report, both youth and adult smokers are sensitive to price promotions.<sup>9</sup>

In the study, we used two categories of price promotions—special price (e.g., 50 cents off a pack) or multi-pack (e.g., buy 1 pack, get 1 pack free). Table 3 shows the percent of stores with price promotions, both on the exterior and interior

Figure 7. Average Number of Marketing Materials by Store Type (2012)



\*Other: Refers to a combination of discount department stores, warehouse stores, and newsstands.

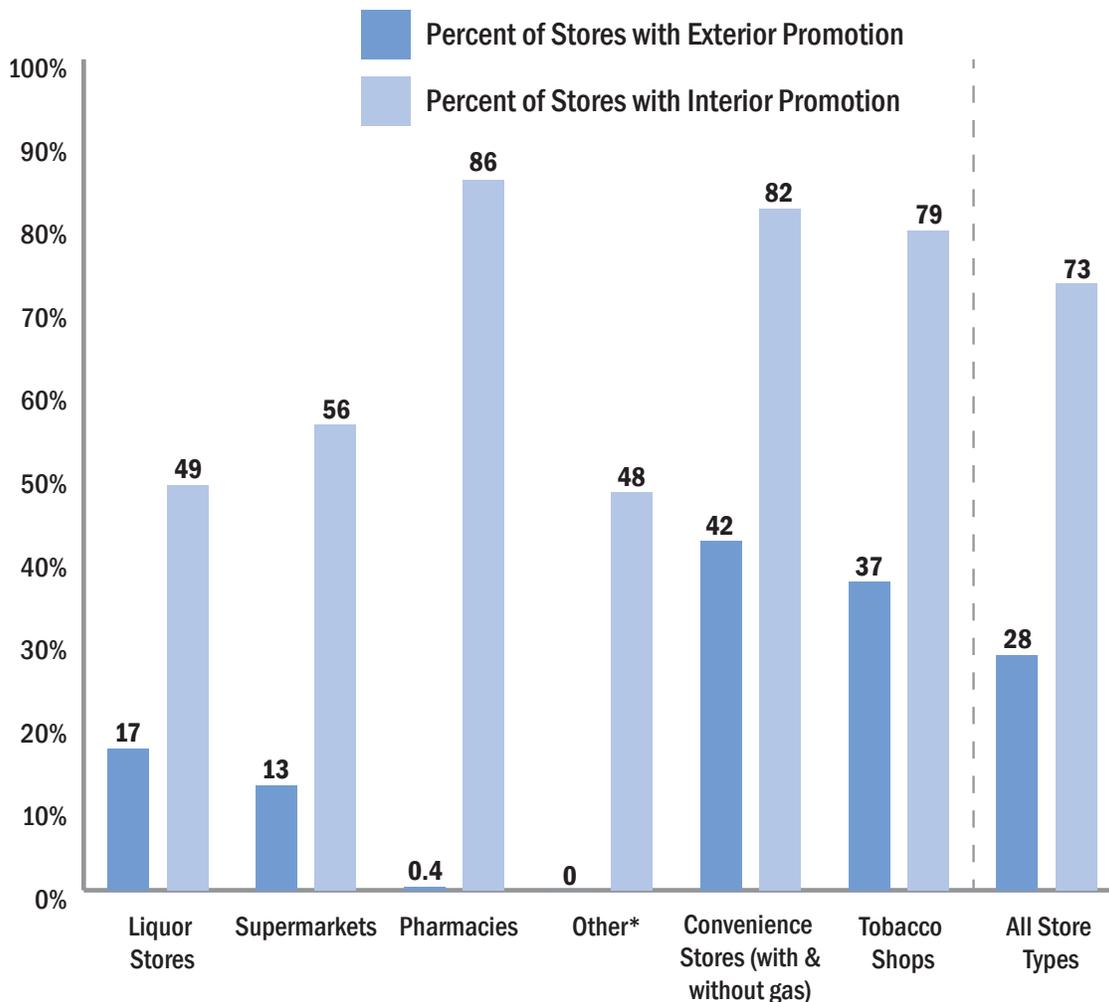
of retail outlets, for three brands of cigarettes (Marlboro, Newport, and Camel). Special price promotions on the interior of the store are the most common type of price promotion.

Price promotions differ by store type (Figure 8). While convenience and tobacco stores have the most price promotions on both the exterior and interior of the store, all store types have a fair amount of price promotions on the interior of the store. One community, Providence, Rhode Island, successfully banned price discounting. Their policy was challenged and ultimately upheld in court. (To read more about price-discounting regulations in Providence, see page 14.)

**Table 3. Percent of Stores by Price Promotions by Brand (2012)**

			
	Marlboro	Newport	Camel
<b>Exterior of Retail Outlet</b>			
Special price	4.2%	14%	4.5%
Multi-pack	5.2%	4.4%	3.9%
<b>Interior of Retail Outlet</b>			
Special price	24%	23%	40%
Multi-pack	13%	10%	8.5%

**Figure 8. Price Promotions by Store Type (2012)**



\*Other: Refers to a combination of discount department stores, warehouse stores, and newsstands.

# The Policy Environment

To provide the first comprehensive snapshot of POS policy activity in the U.S., we conducted a national phone survey of state tobacco control staff. Representatives from 48 states agreed to participate. We assessed overall POS policy activity, barriers to POS policy efforts, and resources that are helpful or needed to expand POS work.

In 2009, the Tobacco Control Act gave the U.S. Food and Drug Administration new regulatory authority to restrict certain aspects of tobacco advertising, marketing, and promotion. The Act also allowed state and local governments to complement their existing policies with new POS legislation. For a state or local community to successfully pass POS regulations, it is important to identify resources that are available, as well as resources that are needed to overcome existing and potential barriers to POS policy implementation.

## POS POLICY ACTIVITY

Since passage of the Tobacco Control Act, there is a general perception reported by states that POS policy work is important. However, despite the new regulatory authority clarified by the Tobacco Control Act, policy activity in the POS area remains limited.

### How was POS policy activity assessed?

To assess a state's level of overall POS policy activity, respondents were asked to report state-level activity as well as their awareness of any local-level activity towards POS policy options in six activity areas:

- Licensing and Density;
- POS Advertising;

- Product Placement;
- Health Warnings;
- Non-tax Approaches; and
- 'Other' POS Policies.

The study's advisory board, comprised of state and local tobacco control staff, researchers, and legal experts, recommended the survey activity areas (Table 4).

Survey respondents reported the status of each policy option on a policy continuum (Figure 9) (e.g., no formal activity, planning/advocating, and policy implemented) at the state level and then reported their awareness of progress for each policy option at the local level. The methods section of this report describes the survey measures in more detail (see Appendix A).

We observed that states with higher policy activity scores were likely to contain locales with higher policy activity scores. This suggests that perhaps local-level activity diffuses to neighboring locales and leads to state-level adoption of POS policies or states with higher policy activity scores may be more supportive of local efforts to advance POS work. Overall, 85% of the 48 state respondents reported state-level activity in at least one POS policy area while 60%

Figure 9. POS Policy Continuum

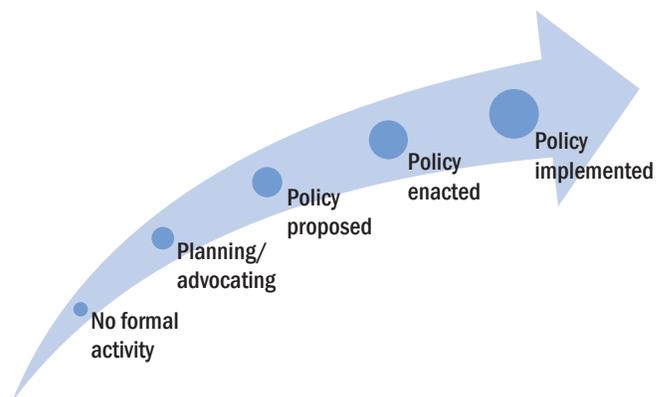


Table 4. POS Activity Areas and Policy Options

POS Activity Area	Policy Options
Licensing and Tobacco Retailer Density	<ul style="list-style-type: none"> <li>■ Limiting or capping the total number of licenses in a specific area</li> <li>■ Establishing or increasing licensing fees</li> <li>■ Prohibiting tobacco sales in locations youth frequent (e.g., near schools or parks)</li> <li>■ Restricting retailers operating within a certain distance of other tobacco sellers</li> <li>■ Restricting retailers in certain zones (e.g., banning retailers in residential zones)</li> <li>■ Prohibiting the sale of tobacco at certain establishment types (e.g., pharmacies or restaurants)</li> <li>■ Limiting number of hours or days in which tobacco can be sold</li> </ul>
POS Advertising	<ul style="list-style-type: none"> <li>■ Limiting the times during which advertising is permitted (e.g., after school hours on weekdays)</li> <li>■ Limiting placement of advertisements at certain store locations (e.g., within 1000 ft. of schools)</li> <li>■ Limiting the placement of advertisements within the store (e.g., near cash register)</li> <li>■ Limiting placement of outdoor store advertisements</li> <li>■ Limiting manner of retail advertising by banning certain types of tobacco advertisements (e.g., outdoor sandwich board style ads)</li> <li>■ Banning all types of ads regardless of content (e.g., sign codes that restrict ads to 15% of window space)</li> </ul>
Product Placement	<ul style="list-style-type: none"> <li>■ Banning product displays/requiring retailers to store tobacco products out of view (e.g., under counter or behind opaque shelving)</li> <li>■ Banning self-service displays for other tobacco products or all tobacco products</li> <li>■ Restricting the number of products that can be displayed (e.g., only allow retailers to display one sample of each tobacco product for sale) or the amount of square footage dedicated to tobacco products</li> <li>■ Limiting times during which products are visible (e.g., after school hours on weekdays)</li> </ul>
Health Warnings	<ul style="list-style-type: none"> <li>■ Requiring graphic warnings at the point of sale</li> </ul>
Non-tax Approaches	<ul style="list-style-type: none"> <li>■ Establishing cigarette minimum price laws</li> <li>■ Banning price discounting/multi-pack options</li> <li>■ Banning use of coupons</li> <li>■ Establishing mitigation fees (e.g., a fee to clean up cigarette litter)</li> <li>■ Requiring disclosure or Sunshine Law for manufacturer incentives given to retailers</li> </ul>
'Other' POS Policies	<ul style="list-style-type: none"> <li>■ Banning flavored other tobacco products</li> <li>■ Requiring minimum pack size for other tobacco products</li> </ul>

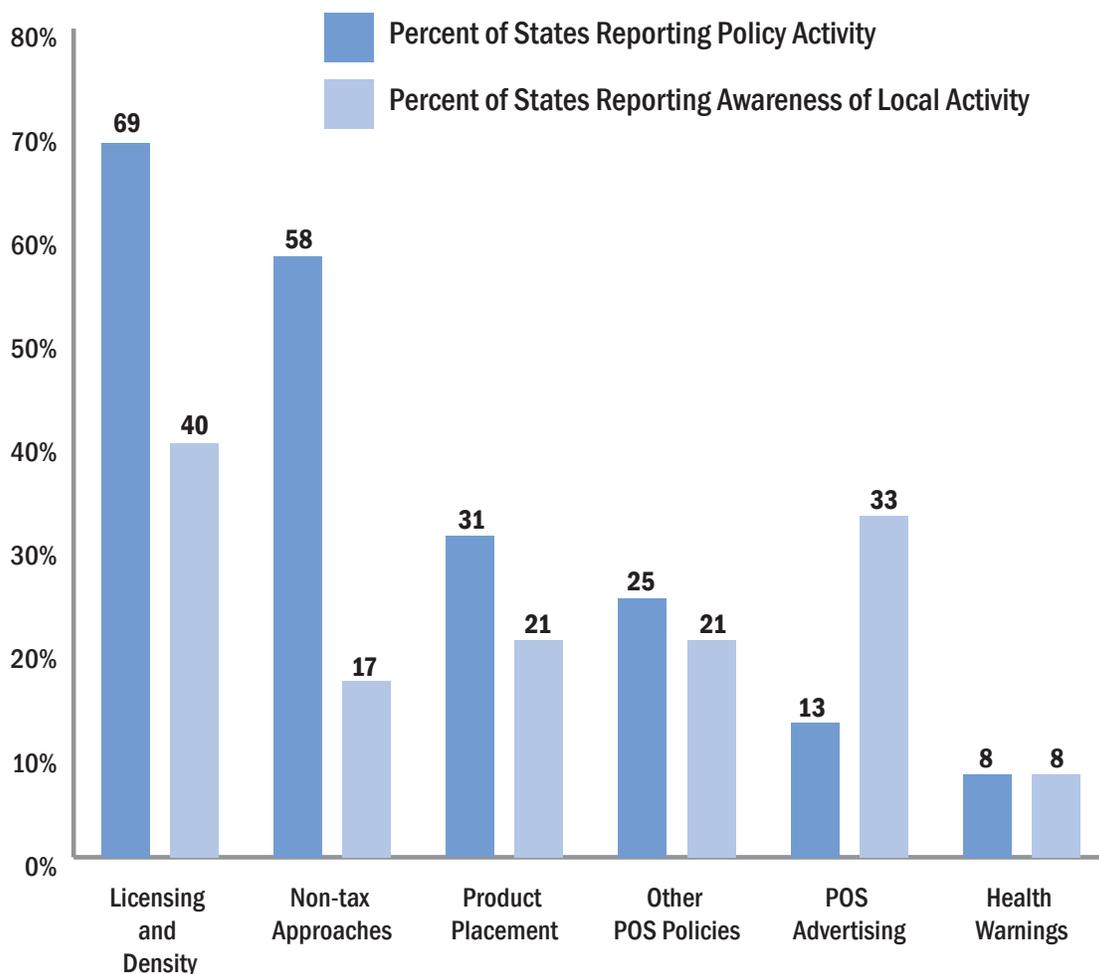
reported awareness of local-level activity in at least one POS policy area. Activity was reported across all six POS policy areas (Figure 10) with most states reporting similar policy activity at the state and local levels. Details about the types of policies that are included within each POS policy area are provided in the following section.

## What policy activity is occurring at the state and local levels?

### Licensing and Density

POS policies can affect the number, location, density, and type of tobacco retail outlets. Proximity to tobacco retail outlets, higher retailer density, and higher prevalence of tobacco is associated with increased tobacco consumption and decreased quit attempts.<sup>10,25,27</sup> Policies designed to reduce retailer density include establishing or increasing licensing fees or prohibiting tobacco sales in certain establishment types, such as pharmacies. (See Table 4 for more options.)

Figure 10. Overall State & Local POS Policy Activity (2012)



## Tobacco-Free Pharmacies Spread Quickly

### THE STORY OF MASSACHUSETTS

In 2008, Boston's Board of Health banned the sale of tobacco products in health care institutions and in all retailers containing health care institutions (e.g., grocery stores, warehouse clubs, and big box stores with pharmacies). Former tobacco users are particularly vulnerable to the presence of tobacco products in pharmacies.<sup>28</sup> Tobacco in pharmacies discourages cessation, normalizes tobacco, and is contradictory to the primary objective of these institutions, which is to promote the health of customers. Boston's law was passed to protect public health by reducing both exposure to tobacco industry influences and tobacco retailer density.



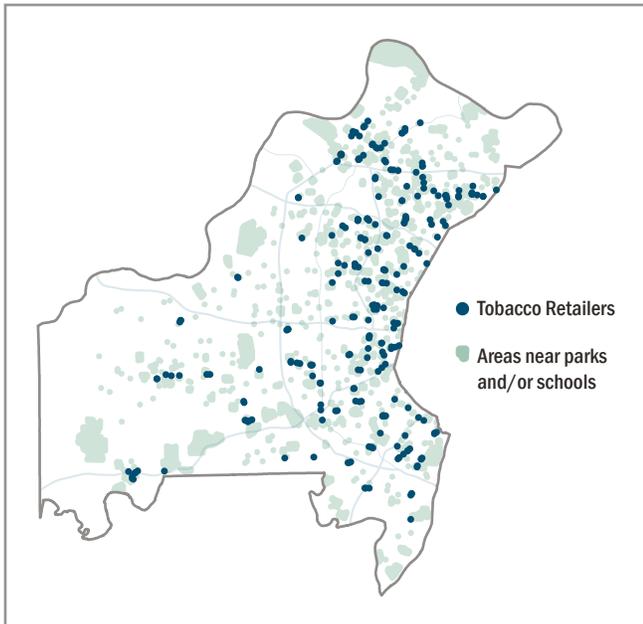
Following Boston's example, 80 municipalities in Massachusetts have gone on to pass tobacco-free pharmacy laws. Local officials and youth groups such as BOLD-Teens encouraged their local boards of health to adopt tobacco-free pharmacy policies. The Massachusetts Municipal Association and the Massachusetts Association of Health Boards provided local officials with technical assistance and model policy language. Youth groups, community organizations, and professional associations, such as the Massachusetts Medical Society, invited its members to testify in support of the policies during public hearings. Tobacco-free pharmacy laws have been enacted in every Massachusetts state senate district, indicating widespread acceptance for the policies. State public health officials are optimistic that the legislature will support a statewide tobacco-free pharmacy policy.

The successful spread of tobacco-free pharmacy policies can be largely attributed to diverse partnerships, youth involvement, and strong support from community members. States and communities considering similar policies can learn from Massachusetts' experience and take away practical next steps for banning tobacco sales in pharmacies in the future.

### What are the next steps for your state or local community?

- Find out about possible preemptions in your state/community by consulting legal counsel;
- Involve youth in advocacy campaigns to strengthen policy efforts;
- Build diverse partnerships with pharmacy schools and professional associations; and
- Carefully craft your policy using model ordinances provided by national legal centers such as the Tobacco Control Legal Consortium or ChangeLab Solutions and adapt them for your community.

To learn more about tobacco-free pharmacies, read our case study, available at: <http://bit.ly/1i89yBP>



**Retailer density policies can restrict tobacco sales in areas frequented by youth (CPHSS, 2010)<sup>32</sup>**

Overall, 69% of states reported state-level activity in the retailer density policy area. The most reported policy activity was establishing or increasing license fees (reported by 58% of states). Two states also reported implementing policies to prohibit tobacco sales in locations frequented by youth. Several states (17%) reported planning or proposing many of the other policy options in this area including: prohibiting tobacco sales in locations frequented by youth, limiting or capping the total number of tobacco licenses, and restricting retailers within a certain distance from other sellers. A slightly lower percentage of states (15%) reported activity in prohibiting sales at certain establishment types. San Francisco and many communities in Massachusetts have successfully banned tobacco sales in pharmacies. (To read more about tobacco-free pharmacy regulations in Massachusetts, see page 12.)

Forty percent of state respondents also reported awareness of local-level policy activity in this area. Frequently cited local policy options included establishing or increasing licensing fees and prohibiting tobacco sales in locations frequented by youth.

## Non-tax Approaches

Raising the price of tobacco through non-tax approaches can significantly increase the price of tobacco for all consumers, helping to reduce initiation, decrease smoking rates, and encourage cessation.<sup>29-31</sup> Price increases affect tobacco-use rates, particularly for those who are price sensitive. Other policies that use non-tax strategies to increase tobacco prices include establishing mitigation fees (e.g., a fee to clean up cigarette litter) and requiring disclosure or 'Sunshine Laws' (e.g., laws that would require retailers to disclose what incentives they have been given by tobacco manufacturers to promote their products). Overall, 58% of states reported state-level activity in the Non-tax Approaches area. The most commonly reported activity was implementing cigarette minimum price laws (reported by 48% of states). Only 17% of states reported awareness of local-level activity in this policy area, suggesting that perhaps locales are leaving pricing policy up to states. Providence, Rhode Island successfully passed a price-discounting ordinance that eliminated the ability of vendors to redeem coupons or offer price discounts through other strategies.



**Buy-one-get-one-free deals are prohibited under price-discounting policies**

## Price-Discounting Bans Successful!

### THE STORY OF PROVIDENCE, RHODE ISLAND

In 2012, Providence, Rhode Island passed a price-discounting ordinance that eliminated the ability of vendors to redeem coupons or offer price discounts through other strategies (e.g., multi-pack discounts). This ordinance was passed to help reduce tobacco consumption among youth. Given that youth are price sensitive consumers, controlling price-discounting options (e.g., coupons) would effectively increase the price of cigarettes, thereby reducing the likelihood that youth would purchase them. This ordinance was challenged in court twice but was upheld by the U.S. First Circuit Court of Appeals on September 30, 2013.

Providence's success in establishing a price-discounting ordinance can be attributed to three main approaches:

1. Conducting store assessments; 2. Developing strong partnerships at the local and national levels; and 3. Establishing a tobacco retailer licensing ordinance early in the process. States and communities considering similar policies can learn from Providence's experience and take away practical next steps for restricting tobacco company price discounting in the future.



### What are the next steps for your state or local community?

- Conduct a store assessment of retailers in the community to provide evidence for a ban;
- Seek legal assistance and use model ordinances from national legal centers such as the Tobacco Control Legal Consortium or ChangeLab Solutions; and
- Start by establishing a tobacco retailer licensing ordinance to help provide better oversight of the retailers selling tobacco in your community.

*To learn more about the price-discounting ban in Providence, read our case study, available at:*

<http://bit.ly/OoxFS5>

## Product Placement

In 2011, the tobacco industry spent approximately 9% of total spending (over \$750 million) on product placement expenditures.<sup>5,10</sup> Policies that can limit the influence of tobacco product displays at the POS include: banning product displays (e.g., requiring retailers to store tobacco products behind opaque shelving), banning self-service displays for non-cigarette tobacco products, restricting the number of products that can be displayed, and limiting the times during which product displays are visible. Some policies that restrict product placement are thought to be more legally feasible than others, such as self-service display bans that can prevent shoplifting and youth access.<sup>10</sup>

Overall, 31% of states reported state-level policy activity in the Product Placement area. Many



Product placement policies can prohibit self-service displays for non-cigarette tobacco products

states (19%) reported implementing bans on self-service displays for non-cigarette tobacco products (e.g., cigars or chewing tobacco), while an additional 13% of states reported planning or proposing this option. States also reported planning and proposing bans on product displays or requirements that retailers store products out of view (reported by 13% of states). A fifth of states surveyed (21%) reported awareness of local-level POS policy activity in this area.

## ‘Other’ POS Policies

Many respondents reported policy activity in the survey’s ‘Other’ POS area. In 2009, the Tobacco Control Act banned cigarettes and their component parts from containing any flavors or herbs/spices (e.g., strawberry or cinnamon) excluding menthol.<sup>7</sup> This regulation did not extend to other non-cigarette tobacco products, such as little cigars or pipe tobacco. Given the increased use and relative affordability of these products, the survey specifically asked about two POS policy options in the ‘Other’ POS policy area (banning flavored and requiring minimum pack size for other tobacco products) that may help reduce tobacco use.

Overall, 25% of states reported state-level activity in the ‘Other’ POS policy area. Planning or proposing bans on other flavored tobacco



‘Other’ POS policy options include banning flavored non-cigarette tobacco products

products (i.e., products in addition to cigarettes and smokeless tobacco) was the most common activity reported (21% of states). Additionally, 21% of state respondents reported awareness of local-level policy activity in the ‘Other’ POS policy area.

## POS Advertising

The use of tobacco advertising in the retail environment is pervasive. There is a significant association between exposure to POS advertising and smoking initiation.<sup>1</sup> POS policies have the potential to reduce the influence of tobacco advertising by restricting the time, place, and/or manner of tobacco retail advertising.



**Content-neutral laws address tobacco advertising as well as other product advertising**

Overall, 13% of states reported state-level policy activity regarding POS advertising. One state reported implementing a policy that aimed to limit the number of ads, not just tobacco ads, displayed at the POS (i.e., a “content-neutral” advertising restriction). Content-neutral advertising restrictions reduce the area of a storefront that can be covered by signs. This type of policy broadly restricts all types of advertising and is therefore less likely to face legal challenges than tobacco-specific advertising restrictions.<sup>10</sup>

Other options to limit the time, place, and manner of tobacco advertising had either very limited or no activity. Awareness of local-level activity (33%) was greater than reported state-level activity in the restricting POS Advertising area. This may be because “content-neutral” advertising restrictions are typically implemented at the local level as they are written into a city’s sign codes.

## Health Warnings

Graphic health warning signage can serve as an immediate reminder to consumers about the dangers of tobacco use. These signs are intended to elicit an emotional response by featuring vivid images of tobacco-related ailments that would motivate consumers to reduce tobacco purchases at the POS or quit using tobacco. Signage may also highlight information on cessation and other support services to assist current users with quit attempts.

Policies that require health warnings at the POS had the least amount of activity at both the state- and local-levels (8% for both). Policies that address these POS issues, such as requiring that graphic health messages be displayed at the POS, are likely to be met with First Amendment challenges.<sup>10</sup>



**Health warning policies can depict the dangers of tobacco use**

## What are states' overall policy activity scores?

To develop a state level measure of policy activity, we looked at policy activity occurring only at the state-level. We computed an overall score that reflects state-level POS policy activity occurring at any stage of the policy continuum (Figure 11). The state-level score does not reflect policy activity occurring at the local level. The POS policy activity score was based on a rating scale out of 100. The average score for all states was 7.8 and California obtained the highest score (25) among states. The methods section provides more details on how this score was generated (see Appendix A). These scores reflect activity as reported in 2012 and are intended to serve as a baseline for future waves of the study's state policy survey.

## Which states are 'POS-ready' states?

Figure 12 illustrates the relationship between each state's current cigarette excise tax,<sup>32</sup> American Lung Association 'Smoke-free Air' score,<sup>33</sup> and POS policy activity score. The figure is divided into four quadrants by the median tax (\$1.35) and the median 'Smoke-free Air' score (.91). The 'Smoke-free Air' score was adjusted so that all states had the same maximum possible score. Each state's POS policy activity score is represented by a circle, with larger circles reflecting higher scores. (See Appendix B for a detailed list of score components.)

Figure 12 suggests a way to think about staging states for future POS policy activity. States in or near Quadrant 1 have already achieved some measures of success by implementing smoke-free air policies and relatively high excise taxes. These states (noted in green) appear well-

Figure 11. State POS Policy Activity Score (2012)

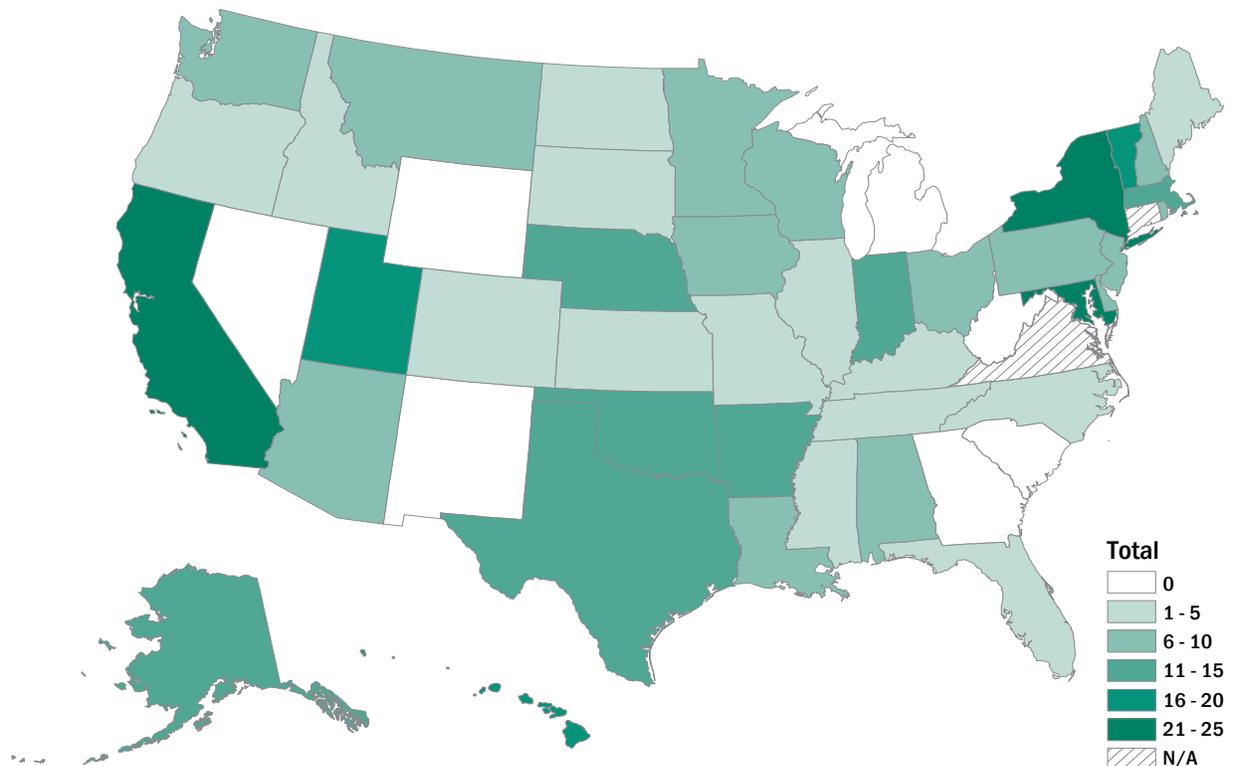
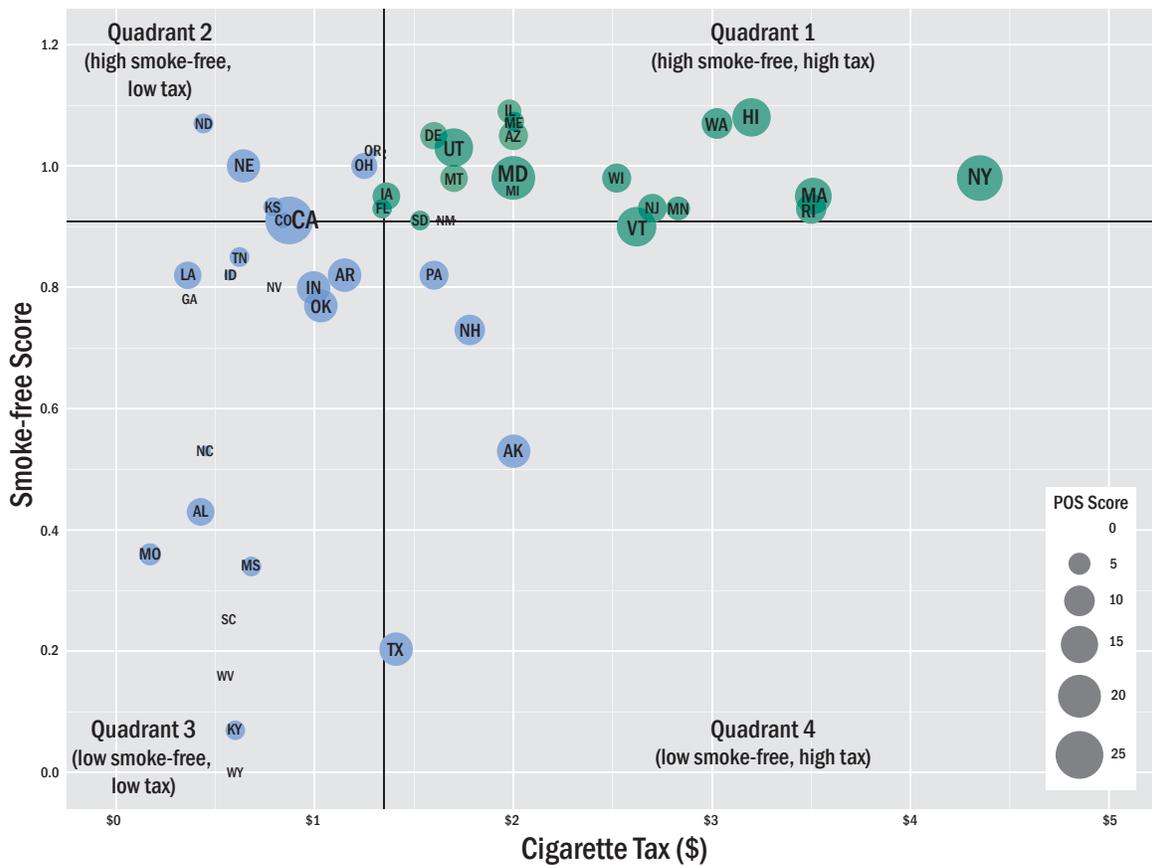


Figure 12. Identification of ‘POS-ready’ states



positioned to consider expanding their efforts into the POS policy area.

However, states in the other three quadrants, may also benefit from incorporating POS policy activities into their current tobacco control programming. States in Quadrant 2 have implemented relatively strong smoke-free policies, but still have excise taxes below the national median. In general, these states could continue to work on tax policy while doing modest POS policy work. States in Quadrant 3 have few protections from secondhand smoke and taxes below the national median. These states could continue to address these policy areas, but consider adding POS policy work as funding and time allow. Finally, states in Quadrant 4 have taxes above the national median, but offer few protections from secondhand smoke. These states could focus efforts on strengthening their smoke-free policies, while adding some POS policy work to their state programming.

The figure suggests general guidelines only. Each state’s tobacco control funding and policy environment is unique. States that have encountered significant barriers to implementing smoke-free policies or increasing their cigarette excise tax may still find it strategic to consider POS policy options.

## POS POLICY IMPORTANCE

The tobacco industry focuses most of its marketing budget in the retail environment.<sup>5</sup> By implementing evidenced-based POS policies, states and communities can counter the powerful presence that the tobacco industry has in and around tobacco retailers.<sup>10</sup> Implementing POS policies is an effective way to have an impact on large segments of the population, decrease tobacco use and impulse purchases, and reduce tobacco-related disparities.<sup>10,34</sup>

# Common Legal Considerations for POS Policies

## UNDERSTANDING LEGAL STRUCTURE AND LEGISLATIVE CHALLENGES

Every state and community has its own governmental structure; therefore it is important to understand the entities that have the power to enact laws or adopt regulations in your state or community. Knowing which bodies (e.g., legislature, state health department, city council, or board of health) have the policymaking authority to address public health issues will allow efforts to be focused and presented to the appropriate decision makers.

Tobacco control partners and advocates should consult with legal counsel from the start of policy work to ensure that all policies are legally sound and that potential challenges are identified and understood. Legal challenges vary across states and communities and across policy areas. The following are three common legal considerations that tobacco control staff may encounter when pursuing POS policies.

### Preemption

Preemption occurs when a law at the federal or state level limits the ability of a lower level of government from enacting laws or adopting rules on a certain topic. Preemption at the federal level trumps state or local legislation or regulations, while state level preemption trumps laws or rules at the local level. The tobacco industry will often argue that proposed or enacted policies are preempted by higher levels of government to try and stop new policies from being implemented. It is important to know the scope of any laws before engaging in policy development so efforts and resources are properly allocated.

### First Amendment Compelled Speech

Under the First Amendment compelled speech doctrine, the government is restricted in its ability to require companies to make statements that in essence, result in those businesses advertising against themselves. This was a doctrine the tobacco industry relied on when arguing that the federal government could not require retailers and tobacco companies to display graphic health warnings directly on cigarette packages or advertisements. However, laws requiring that retailers display factual messages that are clearly identified as government health warnings may be legally feasible.

### First Amendment Commercial Speech

Care should be taken that POS policies do not violate First Amendment commercial speech protections, which involve the right of businesses to advertise and promote their products. Commercial speech includes advertising, branding, and logos. Generally, in order for the government to restrict commercial speech the message must be misleading or refer to unlawful activity, or the government must have a substantial interest in restricting the commercial speech. Additionally, the restriction must be tailored in a way that it achieves that goal.

By understanding all policy options, potential barriers, and the unique legal environment in your state or community, you will be better equipped to avoid or address any legal challenges that may arise. To learn more about legal considerations, refer to Legal Assistance under the resources section (p. 30). The information presented should be considered as informational only. It is advised that legal experts be consulted prior to any policy development efforts.

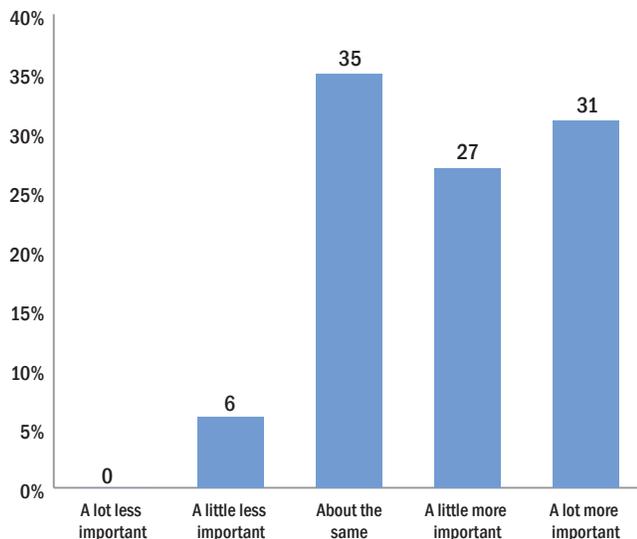
## How important are POS policies to state tobacco control programs?

States were asked to gauge the importance of POS policies since the passage of the Tobacco Control Act. States most frequently reported that POS policies were “about the same” (35%) priority for their tobacco control program since passage of the Act. States that perceived POS policies to be “about the same” noted competing priorities, preemption, and constraints due to limited capacity and funding.

States also frequently reported that POS policies were “a lot more important” (31%) and “a little more important” (27%). No states perceived POS policies to be “a lot less important” and a few (6%) reported POS as “a little less important” (Figure 13).

Overall, states reported a positive perception toward POS policies. The majority of states (58%) perceive POS policies as a little or a lot more important to their state tobacco control program. These states cited that after passage of the Tobacco Control Act, there was increased national awareness, information, and momentum from other states and national organizations. These states also said that having more local control and authority over POS policy work were factors that have made POS policies more important.

**Figure 13. Importance of POS policies since passage of the Tobacco Control Act (2012)**



“I’d say in our state it’s probably about the same. I think we have so many other competing policy priorities that awareness is there, but it’s still not a major focus.”

## POS POLICY BARRIERS

State tobacco control staff identified several barriers to implementing POS policies at the state level. Since many states have not yet attempted to address POS policies, these reported barriers reflect current stages of work. These findings highlight the need to enact strong POS policies based on, and tailored to, community demographics.

### What are the major barriers to advancing POS policies?

To understand what is preventing states from planning or implementing new POS policies, we asked tobacco control staff what barriers they have encountered when trying to plan or implement new POS policies at the state level.

State tobacco control staff reported similar barriers when conducting POS policy work. Out of all states surveyed, the top three barriers were:

- Poor awareness and lack of background knowledge (31%);
- Competing priorities (31%); and
- Lack of funding (29%).

Several states (21%) have not experienced barriers or could not speak to barriers around the POS, mainly due to inactivity in this area. However, many of these states expected barriers to arise if they proceeded to work on POS in the future.

## Poor Awareness and Lack of Background Knowledge

Roughly one third of states identified poor awareness and lack of background knowledge (education around POS) as a major barrier to their POS policy efforts. State tobacco control staff reported that decision makers, partners, the general public, and internal staff members have a poor awareness and understanding of POS issues overall. A lack of background knowledge and awareness around the POS often hindered POS policy development and implementation. This may be one of the most tangible barriers for states to address at this time.

---

**“There’s poor awareness and understanding by government decision makers as well as the public regarding the powerful influence of the retail environment on tobacco use.”**

---

## Competing Priorities

States reported that competing priorities from other areas within the tobacco control sphere, (e.g., cessation or smoke-free air laws) and outside of tobacco control (e.g., obesity prevention or nutrition), often hindered their efforts to focus on POS policy development.

---

**“Our two biggest barriers have been competing priorities and time. Our priorities have been taxes and smoke-free policies for the last number of years... POS has just come up on our radar recently.”**

---

## Lack of Funding

Availability of funding is a frequently identified barrier to POS activities at the state level. Addressing this barrier would also speak to other identified barriers such as limitations with staff retention, capacity, geographic scope, and program development. Furthermore, significant cuts in this area have made it harder to execute new and emerging tobacco control strategies, specifically around the POS.

---

**“And since we’re at such a low funding level, we don’t prioritize point-of-sale policies that we don’t know to be effective...”**

---

## Other Barriers

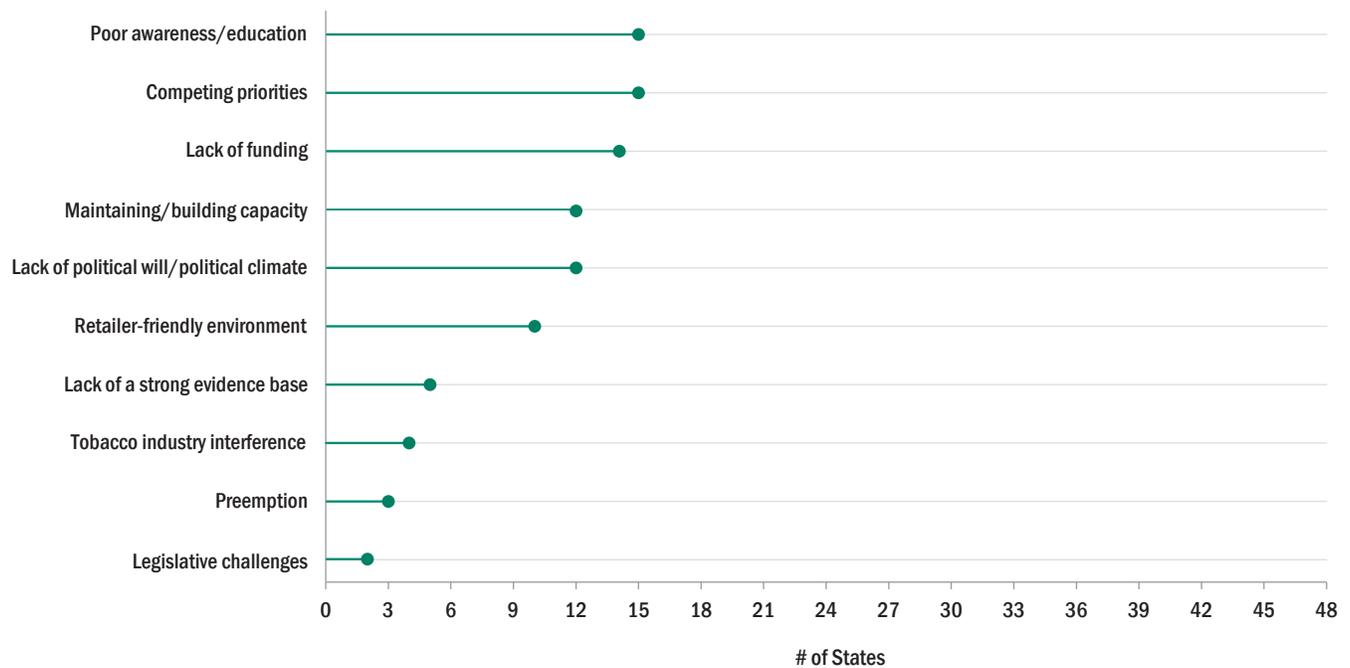
State tobacco control staff identified several other barriers to POS policy adoption and implementation (Figure 14). States reported that being a “retailer-friendly state” was a barrier because policies focusing on the retail environment were seen as “anti-business” and often faced opposition from retailer associations. Other barriers included lack of political will, inability to maintain and/or build capacity, and lack of a strong evidence base. Some states also faced preemption, legislative challenges, and monitoring by the tobacco industry. These barriers may be difficult to navigate depending on the policy. Tobacco control staff should seek legal counsel and resources at the beginning of policy work.

---

**“...our health department doesn’t want to ruffle the feathers of pharmacies because they’re an important partner for vaccination campaigns....”**

---

Figure 14. Barriers to POS policy efforts (2012)



## POS POLICY RESOURCES

State tobacco control staff identified resources that have been helpful in advancing their POS efforts (Figure 15). Understanding what resources are available and which have been helpful will provide a starting point for states that have not yet worked on POS policy development.

States also identified resources that they needed most to advance their work around POS (see Figure 16 on page 24). These findings highlight areas that can be addressed to move POS policy activity forward. Increasing access to some of these most needed resources will likely prompt POS policy activity across the U.S.

### What resources were helpful for advancing POS policies?

We asked state tobacco control staff about resources that have been helpful in planning or implementing POS efforts.

Out of all states surveyed, the most helpful resources were:

- Relationships with national organizations (29%);
- Legal and policy support (27%); and
- Successful campaigns in other communities (25%).

Several states (25%) could not or did not identify any helpful resources, mainly due to inactivity in POS policy development and implementation.

### Relationships with National Organizations

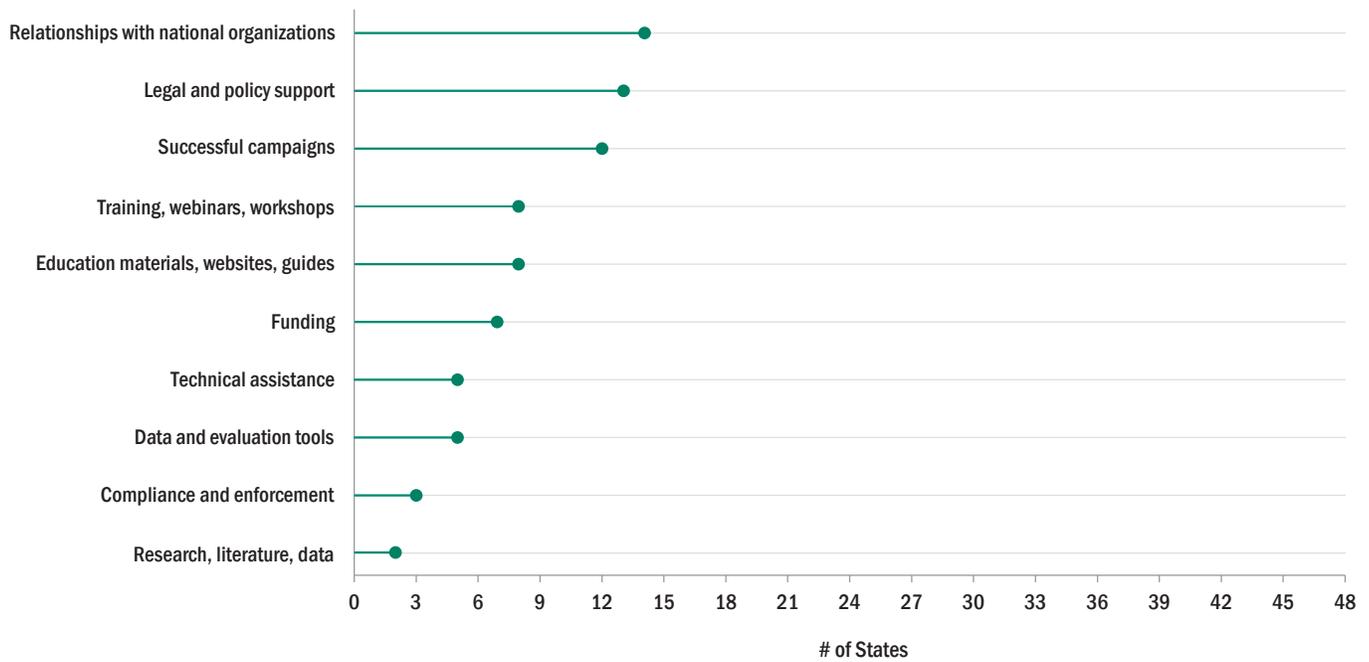
States identified key relationships with larger national organizations, networks, and established programs as being helpful resources. Relationships with these frequently cited national

---

**“We’ve had a lot of really great national support...now we’ll really be able to work with them more closely and take advantage of their expertise.”**

---

**Figure 15. Most helpful resources for advancing POS policy efforts (2012)**



organizations strengthen networks and assure support within the tobacco control community (Table 5). Contacts within these groups have been helpful by providing their tools and expertise.

**Table 5. Most Frequently Cited Organizations (2012)**

Organizations Cited	Frequency
Tobacco Control Legal Consortium (TCLC)*	13
Centers for Disease Control and Prevention (CDC)	11
U.S. Food and Drug Administration (FDA)	6
Counter Tobacco (www.countertobacco.org)	5
Communities Putting Prevention to Work Initiative (CPPW)	4
Tobacco Control Network (TCN)	4

\*TCLC has seven affiliated legal centers including ChangeLab Solutions, the Public Health Law Center, and the Center for Public Health and Tobacco Policy.

### Legal and Policy Support

Legal and policy support have been helpful when planning or implementing POS policies. States mentioned helpful support from attorneys or law centers in drafting legislation or model policies, and “technical assistance” in the legal arena.

“...it was helpful that the Tobacco Control Legal Consortium did an analysis of our laws and helped us understand the preemption better...”

### Successful Campaigns

Learning from the experiences of other states, as well as neighboring counties or localities, has been helpful to states that are planning or

implementing POS policies. States identified case studies, success stories of other states, model policies, and strategies used to overcome challenges as most valuable.

“...just being able to talk to other states that are working on this issue...we were able to work with them on [POS] issues and learn from them.”

### Other Helpful Resources

States identified several other helpful resources, including specific POS related presentations, in-person trainings, meetings, conferences, workshops, and webinars. State tobacco control staff found educational materials such as guides or handbooks, websites, fact sheets, and other documents helpful when trying to plan or implement new POS policies. States also indicated that targeted funding sources have been helpful in moving forward with tobacco control activities. Funding from the American Recovery and Reinvestment Act (ARRA) was mentioned by three states (6%).

### What resources are needed to advance POS policies?

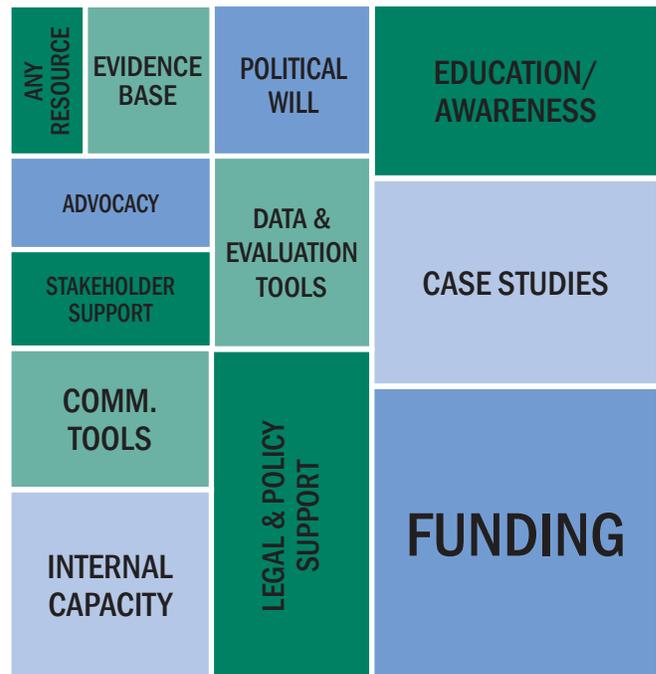
Although states reported several resources that have been helpful with POS, they also identified resources most needed to advance POS efforts moving forward (Figure 16).

Out of all states surveyed, the most needed resources were:

- Funding (17%) and
- Model case studies (13%).

Several states (10%) reported that they were not able to speak to this question due to inactivity in the POS policy arena.

**Figure 16. Most needed resources to advance POS policy efforts (2012)**



### Funding

Funding was cited as the most needed resource to advance POS efforts across the nation. States noted that funding is necessary to provide different media to educate the public and decision makers about the POS. Funding is also needed to hire more staff and build internal capacity. Funding cuts over the past few years, which have affected the allocation of funds to community partners, have considerably reduced the scope of work that states are able to do.

### Case Studies

States cited the need for case studies to learn from other states’ experiences and to understand the best practices around the POS policy arena. There is also a need for real-life case examples detailing specific strategies that states could use to move POS policy efforts forward. States noted that strategies should start with policy approaches that would result in “quick wins.”

## Using Surveillance to Address Barriers

### ASSESSING THE TOBACCO RETAIL ENVIRONMENT

Assessments of the tobacco retail environment can help states and local communities address barriers related to poor awareness and lack of background knowledge. The first step is to build support by collecting data about the current tobacco retail landscape in your community. The information collected will help in advocacy efforts as it can be used to educate decision makers, staff members, and the public about the importance of developing and implementing strong POS policies.

More than half of all states surveyed (54%) currently conduct surveillance activities or have done so in the last few years. Operation Storefront and Store Alert were the most common assessment forms used. More than one third of states that reported surveillance activities used unique assessment forms (35%), many of which were modifications to the Operation Storefront and Store Alert tools. Over two thirds of states that reported conducting surveillance activities (69%) noted that these activities were not routine. Nineteen percent reported routine surveillance activities and 12% of states did not know the frequency at which assessments were taking place. Overall, states reported that most surveillance work has been done by volunteer staff (e.g., youth, coalitions, and local boards of health) at the local level.

Unique assessment forms make state and community comparison difficult. Up until recently no standard assessment tool existed and the ability for them to be used by professionals and volunteers alike varied. A group of practitioners and researchers recently developed the Standardized Tobacco Assessment for Retail Settings (STARS) tool. STARS can be used to inform state-and local-tobacco control policies for the POS and is designed to be user friendly. The form can be filled out by professionally trained data collectors as well as self-trained youth and adults in communities across the U.S.

### What are the next steps to surveying tobacco marketing at the POS?

- Conduct a store assessment of retailers in the community to gain an understanding of the retailer environment.
- Use the information gleaned from the retailer assessments to develop and disseminate policy briefs and other materials to target audiences (e.g., policymakers, advocacy organizations, internal staff, and the general public).

*STARS and its accompanying training materials are available for download on the SCTC website:*  
<http://bit.ly/1sciz4s>



**54% of states conduct or have conducted surveillance at the POS**

States would also specifically like to know the methodologies and arguments being used around the POS. States would like to see information from evaluations of POS efforts, notably those that show positive impacts. One of the major concerns brought up was in translating the experiences of certain states to states with different landscapes.

---

**“...evidence from states or local jurisdictions that show a specific policy enacted that [has] an effect on reducing tobacco use on the target population would be helpful.”**

---

## Other Needed Resources

State tobacco control staff identified several other resources needed to advance POS efforts. Education and awareness, and legal and policy support were each cited by 10% of states. States also cited the need to build internal capacity around POS policy (8%). Several of the resources needed most by states could be addressed with additional funding.

Other resources that states identified as most needed to advance POS efforts include: data and evaluation tools, political will, stakeholder support, advocacy, communication tools, and a POS evidence base. One state noted that “any resource” would be helpful. Some of these most needed resources are currently available and simply need to be disseminated to state level tobacco control staff.



Two recently published CPHSS case studies highlight the experience of communities that have implemented POS policies

# Recommendations

POS policies discourage initiation of tobacco use, support quit attempts, and promote public health, yet they are largely underused in the U.S. Given the national tobacco retail and policy environment, states and communities should consider POS policies as a fifth core strategy of tobacco control along with: (1) raising cigarette excise taxes, (2) establishing smoke-free policies, (3) encouraging cessation, and (4) launching hard-hitting countermarketing campaigns.<sup>6</sup>

States that have already achieved levels of success with strong smoke-free air policies and higher than average excise taxes should consider expanding their efforts into the POS policy area. However, states at other stages of tobacco control policy success may also benefit from incorporating POS policies into their current tobacco control programs. Based on the findings of this report, the following are recommendations for tobacco control advocates and staff wanting to advance POS efforts:

## #1: ASSESS THE RETAIL ENVIRONMENT

Convincing the public and decision makers of the need for policy change will be more successful if advocates can first provide proof of a problem. Understanding the tobacco retail landscape is the first step to building community and decision maker support. A thorough assessment of the tobacco retail landscape includes many components.

### Map your retailers

Show the location of tobacco retail outlets relative to other tobacco retail outlets and near locations that are frequented by youth, such as schools and parks. As our results show, 70% of tobacco retailers are located within 1,000 feet of one another. Our study found that counties

with a higher proportion of African-American residents and a higher proportion of residents living in rural areas were more likely to have higher tobacco retailer density. A visual that shows the pervasive number of retailers may be effective in increasing support. A map showing an overabundance of stores situated near youth-frequented locations, for instance, can serve as an affective visual to gain support from parents, teachers, and other youth advocates. Maps can also be used to model the effects that different policies would have, if implemented, on tobacco retailer density.<sup>10</sup>

### Visit your retailers

Find out what types of stores are selling tobacco products and what specific products are being sold in your community. Assess the availability of products the tobacco industry uses to attract youth, such as menthol cigarettes, cigars and cigarillos, chewing tobacco, e-cigarettes, and flavored non-cigarette products.<sup>10,35</sup> Our study found that most cigarette retailers are also selling non-cigarette tobacco products.

### Check the placement of tobacco products and advertising in stores

Survey the presence of self-service displays of e-cigarettes or other products, as well as the visibility of tobacco products to customers. Note any products or advertising that are located near candy. Document the number and type of both interior and exterior signs, displays, and functional items for cigarettes and smokeless tobacco that are at or below three feet, which is a height that is predominantly visible to youth.<sup>35</sup> Around one in ten stores in our study displayed tobacco products below three feet and within 12 inches of candy.

## Monitor the type of advertised price promotions

Assess the type of price promotions (e.g., multi-pack discounts or buy-one-get-one-free deals) that are advertised and document the presence of countermarketing materials (e.g., age-of-sale signage or the quit line number). Youth and low-income individuals are among the most price-sensitive shoppers, so policies that reduce price discounting can prevent initiation, reduce consumption, and encourage cessation.<sup>31,36</sup> Our study found that 86% of pharmacies contained interior price promotions. Findings such as this may be surprising to state or community decision makers.

## Assess the price of tobacco products

Compare tobacco prices in the community and take note of any inconsistencies in prices in different neighborhoods and in different store types. Our findings show that 86% of tobacco retailers sold cigars, which are often sold individually and priced inexpensively. Implementing policies that keep the price of tobacco products high leads to a reduction in tobacco use and is an effective way to reduce tobacco-related disparities.<sup>31</sup>

## #2: EXAMINE PUBLIC OPINION AND ASSESS THE POLICY AND LEGAL LANDSCAPE

After examining the retail environment, advocates should understand policy options and the feasibility of implementing them based on the legal and political landscape of their community or state. Certain policy options may be more feasible than others due to some of the barriers that were reported in our study, such as lack of political will and competing priorities. Overcoming barriers such as poor awareness and background knowledge may be possible with adequate data collection, assessments,

and results that can be shared with the community and decision makers to demonstrate the problem. Along with results from retail assessments, gather data about youth purchase rates, existing tobacco control policies, and local smoking rates in your state or community. Know what local, county, state, and national organizations you can approach for support, and capitalize on those relationships when developing tobacco control policy campaigns.

## Interview key leaders

Investigate both public and key decision maker opinions on policy options that would address your biggest tobacco POS problems.

## Understand public opinion

Conduct surveys on the street or check voting records on other tobacco-related ballot measures to understand the public's opinion about POS policy options.

## Identify the opposition and other barriers

Assess the strength of organizations, individuals, and decision makers who are most likely to oppose your policy and predict who they know and have influence over.<sup>37</sup>

Some policy options may be legally impossible in certain states or communities due to preemption or other legislative challenges. Document how your government works and consult legal counsel to clarify what agency has the administrative authority (e.g., legislature, state health department, city council, or board of health) to pass ordinances in your community. Legal counsel can help determine how preemption may impact policy development.<sup>38</sup> Work with and seek guidance from national legal centers such as those affiliated with the Tobacco Control Legal Consortium who have developed several resources on tobacco control policy legal considerations.

## #3: STRATEGIZE AND DESIGN YOUR CAMPAIGN

Individuals, organizations, and decision makers who already back your policy work can help you gain support through their connections with other community members and key decision makers.<sup>39</sup> Identifying your allies will help you gain additional support. Include youth, who can play a critical role in policy development and advocacy.<sup>38,40,41</sup> Messages about protecting youth have been effective in many states and communities. Parents, teachers, members of local youth-based organizations, and youth themselves are likely to be concerned about youth safety and health.

### Know your target audience

Use messaging that reflects the interests and concerns of your target audience.<sup>42</sup>

### Build and implement a campaign

Design a campaign that will build support for the proposed policy and implement activities that will increase public and decision maker support.

### Seek guidance from other states and communities

States and communities that have passed similar policies can provide you with lessons learned and direct you to other helpful resources. Understand their experience regarding challenges, implementation, and successes.<sup>43</sup>

Campaigns include strategies that will influence decision makers to support your policy and gain the support of the community. Common strategies include:

- Earned media (e.g., op-eds and letters to the editor);
- Media events;
- Petitions;

- Letter writing campaigns;
- Rallies; and
- Testimony at a hearing.<sup>44</sup>

## #4: IMPLEMENT THE POLICY AND EVALUATE THE PROCESS

Even after a policy has passed, challenges related to implementation and enforcement may arise. Think about potential challenges at every stage of policy planning and try to prevent them early on by working with national legal centers, such as the Tobacco Control Legal Consortium and state or local legal counsel to develop legally sound ordinances. Evaluate the process of policy implementation and the effects the policy has had on your community or state.

### Increase retailer and public awareness

Increase retailer and public awareness about provisions of the policy in advance of policy implementation. Enlist the help of tobacco retailers with implementation and the public and law enforcement with identifying violations and assisting with enforcement efforts.

### Highlight your successes

Report any measurable outcomes the implemented policy had in your community or state. Study policy results such as decreased tobacco retailer density and reduced youth purchase rates. Showing improvement in these areas can provide the public and decision makers with evidence that the implemented policy has been successful.<sup>45</sup>

# Resources

## GENERAL POINT-OF-SALE ASSISTANCE

### CounterTobacco.Org

CounterTobacco.Org is a comprehensive resource for local, state, and federal organizations working to counteract tobacco product sales and marketing at the POS. The organization provides policy solutions, advocacy materials, news updates, and an image gallery exposing tobacco industry tactics at the POS.

<http://countertobacco.org>

### Counter Tools

Counter Tools is a nonprofit organization with a mission to disseminate store audit and mapping tools for tobacco control and prevention. Counter Tools was established and is managed by the co-founders of CounterTobacco.Org.

<http://countertools.org>

## LEGAL ASSISTANCE

### Tobacco Control Legal Consortium (TCLC)

The Tobacco Control Legal Consortium (TCLC) is a national legal network for tobacco control policy. Its team of legal and policy specialists provides legislative drafting and policy assistance to community leaders and public health organizations. The Consortium works to assist communities with tobacco law-related issues, including POS policies.

<http://publichealthlawcenter.org/>

### Affiliate Legal Centers

#### CALIFORNIA–ChangeLab Solutions

<http://changelabsolutions.org/tobacco-control>

#### MARYLAND–Legal Resource Center for Tobacco Regulation, Litigation & Advocacy (LRC)

<http://law.umaryland.edu/programs/publichealth/index.html>

#### MASSACHUSETTS–Public Health Advocacy Institute (PHAI)

<http://phaionline.org/category/tobacco/>

#### MICHIGAN–Smoke-Free Environments Law Project (SFELP)

<http://tcsg.org/sfelp/>

#### MINNESOTA–Public Health Law Center

<http://publichealthlawcenter.org/>

#### NEW JERSEY–Tobacco Control Policy and Legal Resource Center New Jersey GASP (Group Against Smoking Pollution)

<http://njgasp.org/>

#### NEW YORK & VERMONT–Center for Public Health & Tobacco Policy at New England Law–Boston

<http://tobaccopolicycenter.org>

## REPORTS

### General

#### Point-of-Sale Strategies: A Tobacco Control Guide

*Produced by:* Center for Public Health Systems Science. This guide helps state and local tobacco control staff build effective and sustainable tobacco control programs.

<http://bit.ly/SRq7KI>

#### Deadly Alliance

*Produced by:* Campaign for Tobacco-free Kids, American Lung Association, and CounterTobacco.Org. This report describes the role of tobacco in the retail environment.

<http://bit.ly/1pyV5BC>

## Licensing and Retailer Density

### Using Licensing and Zoning to Regulate Tobacco Retailers

*Produced by:* Tobacco Control Legal Consortium. This guide describes how licensing and zoning can be used to control the locations of tobacco retailers and increase compliance with tobacco control laws.

<http://bit.ly/1g8hyin>

### License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool

*Produced by:* Tobacco Control Legal Consortium. This report provides the legal basis for tobacco retailer licensing and describes its role as an enforcement tool.

<http://bit.ly/1rhNOG8>

### Tobacco Retailer Licensing Model Ordinance

*Produced by:* ChangeLab Solutions. This model ordinance and its related plug-ins assists California cities and counties that want to implement local tobacco retailer licensing.

<http://bit.ly/1c5YYw>

### A Prescription for Health: Tobacco Free Pharmacies

*Produced by:* ChangeLab Solutions. This guide outlines policy options and potential legal challenges to banning tobacco sales in pharmacies and shows local policymakers what they can do in their communities.

<http://bit.ly/1nVSZKR>

### Prohibiting the Sale of Tobacco Products in Pharmacies

*Produced by:* Tobacco Control Legal Consortium. This guide highlights policy options and potential legal challenges to regulating tobacco sales in pharmacies.

<http://bit.ly/RCuxDB>

### Regulating Pharmacy Tobacco Sales: Massachusetts

*Produced by:* Center for Public Health Systems Science. This case study describes the economic and public health impacts of regulating tobacco sales in pharmacies and provides lessons learned from communities in Massachusetts.

<http://bit.ly/1i89yBP>

## Raising Tobacco Prices Through Non-tax Approaches

### Model Legislation Establishing a Minimum Retail Sales Price for Cigarettes (and Other Tobacco Products)

*Produced by:* ChangeLab Solutions. This resource is available for download and can assist practitioners in establishing a minimum retail sales price for cigarettes and other tobacco products.

<http://bit.ly/1msDm06>

### Tobacco Price Promotion: Policy Responses to Industry Price Manipulation

*Produced by:* Center for Public Health and Tobacco Policy. This resource provides recommendations for policy responses to tobacco industry price manipulation and discounting.

<http://bit.ly/1k1RQmS>

### Pricing Policy: A Tobacco Control Guide

*Produced by:* Center for Public Health Systems Science. This guide focuses on the role pricing policies can play as part of a comprehensive tobacco control program.

<http://bit.ly/NwwgsB>

### Regulating Price Discounting in Providence, RI

*Produced by:* Center for Public Health Systems Science. This case study describes the public health impact of regulating price discounting and describes lessons learned from the city of Providence, Rhode Island.

<http://bit.ly/0oxFS5>

### Cigarette Pricing Differs by U.S. Neighborhoods

*Produced by:* Bridging the Gap. This report describes how cigarette pricing differs by U.S. neighborhood based on race and ethnicity.

<http://bit.ly/1mGQJYJ>

## Restricting Product Placement

### Placement of Tobacco Products

*Produced by:* Tobacco Control Legal Consortium. This guide describes tips and tools for communities wanting to regulate the placement of tobacco products in retail stores.

<http://bit.ly/1ouZ8BF>

## 'Other' POS Policies

### Providence's Sweet Deceit Campaign

*Launched by:* Providence Mayor's Substance Abuse Prevention Council (MSAPC). This campaign was used to educate the residents of Providence, Rhode Island about how the tobacco industry targets youth with price discounts and flavored tobacco products.

<http://bit.ly/1jrMrAX>

### The Sweet Deceit Campaign's Flavor Survey

*Launched by:* Providence Mayor's Substance Abuse Prevention Council (MSAPC). This survey introduces community members to the abundance of products available in candy and fruit flavors and demonstrates how flavored tobacco products encourage tobacco consumption, especially by youth.

<http://bit.ly/1iogF7q>

### The Sweet Deceit Campaign's Pricing Survey

*Launched by:* Providence Mayor's Substance Abuse Prevention Council (MSAPC). This survey can be used in communities to consider the role price discounting and promotion has in making tobacco products cheaper and more accessible to those who are price sensitive.

<http://bit.ly/TK759b>

### Cool, Minty, & Toxic

*Produced by:* Public Health Law Center. This fact sheet describes the problem of menthol flavoring in tobacco products and policy options to address it.

<http://bit.ly/1nlgX02>

### Regulating Tobacco Products Based on Pack Size

*Produced by:* Tobacco Control Legal Consortium. This guide describes policy benefits and options for regulating tobacco products based on pack size.

<http://bit.ly/1qi0DzK>

## Restricting Tobacco Advertising and Promotion

### Content-Neutral Advertising Laws

*Produced by:* Tobacco Control Legal Consortium. This guide provides legal rationale for implementing content-neutral advertising laws.

<http://bit.ly/1tonvP3>

### Restricting Tobacco Advertising

*Produced by:* Tobacco Control Legal Consortium. This guide describes important considerations when restricting tobacco advertising.

<http://bit.ly/1rhNfB6>

## POS Health Warnings

### New York City Graphic Warning Sign Requirement & Litigation

*Produced by:* Tobacco Control Legal Consortium. This fact sheet describes New York City's resolution requiring graphic health warning signs, the resulting litigation, and its impact on similar efforts.

<http://bit.ly/1ioQp21>

### Cigarette Graphic Warnings and the Divided Federal Courts

*Produced by:* Tobacco Control Legal Consortium. This fact sheet describes two separate challenges to the graphic health warning requirement of the FSPTCA and discusses the implications for future tobacco regulation.

<http://bit.ly/1ICMiQF>

## Legal Reports

### Federal Regulation of Tobacco and its Impact on the Retail Environment

*Produced by:* Tobacco Control Legal Consortium. This fact sheet focuses on federal tobacco restrictions that impact the retail environment.

<http://bit.ly/SRskFI>

### What Tobacco Products Are Covered by the 2009 FDA Law?

*Produced by:* ChangeLab Solutions. This document describes the tobacco products covered by the Tobacco Control Act.

<http://bit.ly/1vaRsVF>

### Checked at the Check-Out Counter: Preemption at the Tobacco Point-of-Sale

*Produced by:* Tobacco Control Legal Consortium. This fact sheet explains preemption, related legal considerations for tobacco control staff, and how it can apply to tobacco at the point of sale.

<http://bit.ly/1rhLLqt>

### **Preemption and Public Health Advocacy: A Frequent Concern with Far-Reaching Consequences**

*Produced by:* ChangeLab Solutions. This report explains the legal concept of preemption and why it matters for public health.

<http://bit.ly/SfyxWm>

### **Regulating Tobacco Marketing: A “Commercial Speech” Factsheet for State and Local Governments**

*Produced by:* Tobacco Control Legal Consortium. This factsheet describes how regulation of tobacco product marketing and promotion can be limited by federal regulation and the First Amendment.

<http://bit.ly/1kLXclb>

## **ASSESSMENT TOOLS**

### **The Standardized Tobacco Assessment for Retail Settings (STARS)**

*Produced by:* SCTC researchers with stakeholders from five state health departments, the CDC, and the Tobacco Control Legal Consortium. This assessment tool can be used to inform state- and local-tobacco-control policies at the POS. STARS is user-friendly and can be filled out by professionally trained data collectors as well as self-trained youth and adults.

<http://bit.ly/1sciz4s>

## **TOOLKITS**

### **Community Leaders Toolkit**

*Produced by:* Center for Public Health and Tobacco Policy. These materials help community coalitions plan and prepare for meetings with community leaders.

<http://bit.ly/1too5wc>

### **Tobacco-free Pharmacies Toolkit**

*Produced by:* CounterTobacco.Org. This toolkit provides recommendations to help tobacco control advocates and staff build support for and implement tobacco-free pharmacy policies.

<http://bit.ly/SRu9Cq>

# References

1. Campaign for Tobacco-Free Kids. Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies. 2012.
2. Paynter J, Edwards R. The impact of tobacco promotion at the point of sale: A systematic review. *Nicotine Tob Res.* Jan 2009;11(1):25-35.
3. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Arch Pediatr Adolesc Med.* May 2007;161(5):440-445.
4. Wakefield M, Germain D, Henriksen L. The effect of retail cigarette pack displays on impulse purchase. *Addiction.* Feb 2008;103(2):322-328.
5. Federal Trade Commission. Cigarette Report for 2011. 2013. <http://1.usa.gov/1n69LX6>. Accessed June 16, 2014.
6. CounterTobacco.Org. Public Opinion Surveys. n.d; <http://countertobacco.org/public-opinion-surveys>. Accessed June 16, 2014.
7. The Family Smoking Prevention and Tobacco Control Act of 2009. § 203, Section 5. Vol 15 U.S.C. 133420092009.
8. Ribisl KM, Luke DA, Sorg AA. Reducing tobacco related disparities through point-of-sale regulation: Differential impact of regulating tobacco advertising and sales near schools. Annual Meeting and Convention of the American Public Health Association. Washington, D.C. 2011.
9. Centers for Disease Control and Prevention. Preventing tobacco use among youth and young adults. A report of the Surgeon General. Atlanta, Ga. Washington, D.C. 2012. <http://1.usa.gov/111wGFY>. Accessed June 16, 2014.
10. Center for Public Health Systems Science. Point-of-Sale Strategies: A Tobacco Control Guide. Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the Tobacco Control Legal Consortium. 2014. <http://bit.ly/SRq7Kl>. Accessed June 16, 2014.
11. Henriksen L. Comprehensive tobacco marketing restrictions: promotion, packaging, price and place. *Tob Control.* Mar 2012;21(2):147-153.
12. AggData. Catalog of Data: Complete List of McDonald's Locations. 2013; <http://bit.ly/1lnxW4V>. Accessed June 16, 2014.
13. U.S. Census Bureau. 2011 County Business Patterns In: U.S. Department of Commerce, 2013 ed.
14. National Alcohol Beverage Control Association. 2012 Survey Book. 2012.
15. California State Board of Equalization. Licensed California Distributors. 2014.
16. Ogneva-Himmelberger Y, Ross L, Burdick W, Simpson SA. Using geographic information systems to compare the density of stores selling tobacco and alcohol: youth making an argument for increased regulation of the tobacco permitting process in Worcester, Massachusetts, USA. *Tob Control.* Dec 2010;19(6):475-480.
17. Falk DE, Yi HY, Hiller-Sturmhofel S. An epidemiologic analysis of co-occurring alcohol and tobacco use and disorders - Findings from the National Epidemiologic Survey on Alcohol and Related Conditions. *Alcohol Res Health.* 2006;29(3):162-171.
18. Kandel D, Chen K, Warner LA, Kessler RC, Grant B. Prevalence and demographic correlates of symptoms of last year dependence on alcohol, nicotine, marijuana and cocaine in the US population. *Drug Alcohol Depend.* Jan 10 1997;44(1):11-29.
19. Forbes. Dollar Chains Tap Smokes, Booze to Drive Sales, Fight Wal-Mart's Small-Format Stores. 2012; <http://onforb.es/118XJJI>. Accessed June 16, 2014.
20. Campaign for Tobacco-Free Kids. Health Groups: Family Dollar Stores Should Reverse Decision to Start Selling Tobacco Products. 2012; <http://bit.ly/118Y5Qn>. Accessed June 16, 2014.
21. Convenience Store Petroleum. Dollar General Rolling Out Tobacco. 2012; <http://bit.ly/1oOa37T>. Accessed June 16, 2014.
22. Dollar General. About Dollar General. 2013; <http://bit.ly/1xJgZY6>. Accessed June 16, 2014.
23. Family Dollar. FAMILY DOLLAR FACTS. 2014; <http://bit.ly/UtHDFs>. Accessed June 16, 2014.
24. Loomis BR, Kim AE, Goetz JL, Juster HR. Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York. *Public Health.* Apr 2013;127(4):333-338.
25. Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med.* Aug 2008;47(2):210-214.
26. Henriksen L. Tobacco retailer density and demography. Unpublished presentation, Point-of-Sale Meeting, UNC Chapel Hill, May 23, 2013. Stanford Prevention Research Center.

27. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573.
28. The Center for Public Health and Tobacco Policy. Countering common concerns: prohibiting the sale of tobacco products at pharmacies. 2013. <http://bit.ly/1qPkong>. Accessed June 16, 2014.
29. Centers for Disease Control and Prevention. Reducing Tobacco Use: A Report of the Surgeon General. 2000.
30. Jha P, Chaloupka FJ, Corrao M, Jacob B. Reducing the burden of smoking world-wide: effectiveness of interventions and their coverage. *Drug Alcohol Rev*. Nov 2006;25(6):597-609.
31. Center for Public Health Systems Science. Pricing Policy: A Tobacco Control Guide. St. Louis: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the Tobacco Control Legal Consortium; 2014. <http://bit.ly/NwwgsB>. Accessed June 16, 2014.
32. Center for Public Health Systems Science. St. Louis County CPPW Evaluation: Point of Sale Advertising. 2010. St. Louis: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis. <http://bit.ly/Pojt83>. Accessed June 16, 2014.
32. American Lung Association. State of Tobacco Control Report 2014. Washington, DC: American Lung Association. <http://www.stateoftobaccocontrol.org/> Accessed June 16, 2014.
33. American Lung Association. (2014), unpublished data provided upon request.
34. Center for Public Health Systems Science. Policy Strategies: A Tobacco Control Guide. St. Louis: Center for Public Health Systems Science, George Warren Brown School of Social Work at Washington University in St. Louis and the Tobacco Control Legal Consortium; 2014. <http://bit.ly/1cC9UMh>. Accessed June 16, 2014.
35. Schleicher N, Johnston T, Dauphinee AL, Henriksen L. Tobacco Marketing in California's Retail Environment (2008-2011), Final report for the California Tobacco Advertising Survey (2011). Stanford, CA. Stanford Prevention Research Center. 2013.
36. Chaloupka FJ, Cummings KM, Morley CP, Horan JK. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tob Control*. Mar 2002;11 Suppl 1:162-72.
37. The Center for Tobacco Policy & Organizing. Assessing the Political Environment Checklist. 2013. <http://bit.ly/1jkFoty>. Accessed June 16, 2014.
38. Center for Public Health Systems Science. Regulating Pharmacy Tobacco Sales: Massachusetts. St. Louis: Center for Public Health Systems Science, George Warren Brown School of Social Work, Washington University in St. Louis; 2014. <http://bit.ly/1i89yBP>. Accessed June 16, 2014.
39. The Center for Tobacco Policy & Organizing. Circle of Influence. 2013. <http://bit.ly/1oOb4wS>. Accessed June 16, 2014.
40. Center for Public Health Systems Science. Regulating Price Discounting in Providence, RI. St. Louis: Center for Public Health Systems Science, George Warren Brown School of Social Work, Washington University in St. Louis; 2013. <http://bit.ly/OoxFS5>. Accessed June 16, 2014.
41. Centers for Disease Control and Prevention. Best Practices User Guide: Youth Engagement-State and Community Interventions. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health;2010. <http://bit.ly/S5RtbA>. Accessed June 16, 2014.
42. The Center for Tobacco Policy & Organizing. How to make a pitch. 2011. <http://bit.ly/1hIXMRq>. Accessed June 16, 2014.
43. The Center for Tobacco Policy & Organizing. How to become a policy wonk. 2013. <http://bit.ly/1hJ5r2a>. Accessed June 16, 2014.
44. The Center for Tobacco Policy & Organizing. Midwest Academy Strategy Chart. 2013. <http://bit.ly/1u7uIDB>. Accessed June 16, 2014.
45. The Center for Tobacco Policy & Organizing. After passing the policy: What's next? 2013. <http://bit.ly/1xJi6qY>. Accessed June 16, 2014.

# Appendix A

## METHODS

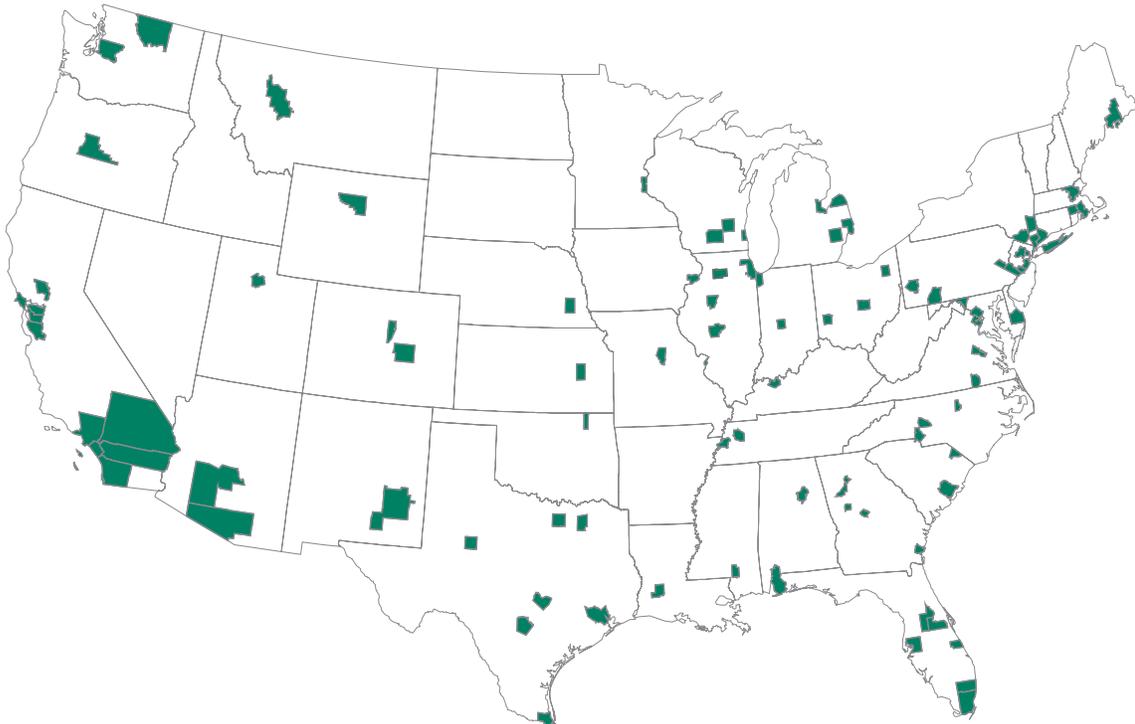
### Study Sample

As part of the State and Community Tobacco Control (SCTC) Research Initiative, our consortium of researchers known as Advancing Science and Policy in the Retail Environment (ASPiRE) created a representative sample of retailers in the contiguous U.S. in order to characterize (1) the quantity, composition, and location of tobacco retailers, and (2) the pricing, marketing, and availability of tobacco products at the POS. We sampled counties based on 2010 Census population data, given the 0.98 correlation between total population size and the number of probable tobacco retailers in California. We used 2010 Census data to identify all 3,109 counties in the contiguous U.S. We

selected 100 counties with their probability of selection proportional to the county's total population. Ninety-seven of the counties were unique (Figure 17).

To identify likely tobacco retailers in the study counties, address data were purchased for the 10 business categories that constitute 98% of U.S. tobacco retailers.<sup>49</sup> These are supermarkets/grocery stores, convenience stores (with and without gas), liquor stores, pharmacies, newsstands, tobacco shops, discount department stores and warehouse/supercenters. In the pharmacy category, only the top 50 chains that sell tobacco products were included. Fifteen chains that do not sell tobacco products were excluded from the lists. In the discount department store category, only Walmart stores were retained. The sampling frame of likely tobacco retailers did not include recent entrants

Figure 17. National POS Study: 97 Counties Sampled (2012)



to the marketplace, such as the 18,000 locations of Dollar Stores that announced their intention to sell tobacco products in November 2012.<sup>19-23</sup> Nor did it include retailers that sell exclusively electronic nicotine delivery systems (so-called vaporiums).

Address lists of likely tobacco retailers were purchased from two independent sources, one that maintains address data for credit inquiries (NAICS) and one that maintains address data for telemarketing and direct mail (ReferenceUSA). The two address lists were de-duplicated and merged for the 97 study counties. The study counties contained 92,167 tobacco retailers that met our inclusion criteria.

## Density Analyses

The cleaned list of tobacco retailers from NAICS and ReferenceUSA was used to estimate the total number of retailers for the contiguous U.S. using the probability proportional to size sampling design. Because Alaska and Hawaii were excluded from the sampling frame, an estimate for the entire U.S. was not possible.

## Data Collection in Retail Outlets

In order to collect data in retail outlets in the 97 study counties, we randomly selected stores within each county. Staff called stores to verify store address and sale of cigarettes; only stores that could be verified were retained in the study. We trained professional data collectors to visit the stores and collect data using an electronic survey on iPads. The data collectors visited 3,346 stores between June and October 2012. We found 2,236 stores to be eligible, and completed full data collection in 2,164 of the stores and exterior data collection only in an additional 67 stores.

## State Survey Assessment Tool

In 2011, we developed a survey that assessed POS policy activity and barriers and facilitators to POS policy adoption. Twenty-five different POS policy options were identified through expert input (e.g., ASPIRE Advisory Board and CDC partners)

and extensive literature reviews. These policy options were then grouped into six main policy activity areas: 1. Tobacco Retailer Density, 2. Point-of-Sale Advertising, 3. Product Placement, 4. Health Warnings, 5. Non-tax Approaches, and 6. 'Other' POS Policies.

This tool was pilot tested in three states. Modifications were made to the tool based on the pilot interviews and additional expert input.

## Qualitative Interviews & Analysis

We recruited tobacco control staff across the nation and in the study counties. Recruitment efforts were facilitated by the Program Services Branch of the Center for Disease Control and Prevention's Office on Smoking and Health who helped identify appropriate state and local level tobacco control contacts. We conducted semi-structured telephone interviews that lasted up to an hour with tobacco control partners from 48 states (96%) between April and September 2012.

Over three-fourths of respondents interviewed (77%) were state tobacco control managers or directors. Remaining respondents include policy staff and education coordinators.

## Policy Activity Score

To create the state-level POS policy activity score, each stage on the policy continuum (Table 6) was assigned a value from 0-4 (No formal activity=0, Planning/Advocating=1, Policy Proposed=2, Policy Enacted=3, Policy Implemented=4). If there was more than one policy for an option, we selected the highest value achieved on the continuum as the score for that option. Next, the 25 option scores were added together to create an overall score for each state.

## Case Study Development

As part of the study, we produced and disseminated two case studies in order to highlight states and localities that have implemented innovative POS policies.

The ASPIRE advisory board provided suggestions and advice in the selection of potential case study topics, locations, and interview participants. We selected topics with the intention of highlighting different states and localities that have implemented innovative POS policies.

Case studies were largely informed by semi-structured qualitative interviews with key tobacco control partners who were involved with policy efforts. Relevant literature, news articles, and legal documents were also obtained and analyzed to inform the case study. The first case study covered price-discounting bans in Providence, RI, and the second detailed local bans on tobacco sales in Massachusetts pharmacies.

**Table 6. Policy Continuum**

Policy Continuum	Definition
No Formal Activities	General POS information gathering and fact finding, but no formal activities on the specific POS area have been completed
Planning/Advocating	Planning and advocating activities (e.g., partnership development and informal education of policy makers) focused on the specific POS policy area
Policy Proposed	A POS policy that has been developed and proposed to a legislative body/ decision makers; includes both policies that are currently being considered and policies that have been proposed but failed to be enacted
Policy Enacted	A POS law, resolution, or ordinance that has been passed
Policy Implemented	A POS law, resolution, or ordinance that has passed and been administered/ put into action

# Appendix B

## State Scores by Quadrant

State	POS Score*	Smoke-free Score <sup>33+</sup>	Cig. Excise Tax (\$) <sup>32</sup>
<b>Quadrant 1</b> ( <i>high smoke-free, high tax</i> )			
Michigan	0	.98	2.00
New Mexico	0	.91	1.66
Florida	4	.93	1.34 <sup>†</sup>
Maine	4	1.07	2.00
South Dakota	4	.91	1.53
Illinois	6	1.09	1.98
Minnesota	6	.93	2.83
Delaware	8	1.05	1.60
Iowa	8	.95	1.36
Montana	8	.98	1.70
Arizona	9	1.05	2.00
New Jersey	9	.93	2.70
Wisconsin	9	.98	2.52
Rhode Island	10	.93	3.50
Washington	10	1.07	3.03
Massachusetts	15	.95	3.51
Hawaii	16	1.08	3.20
Utah	16	1.03	1.70
Vermont	17	.90 <sup>†</sup>	2.62
Maryland	21	.98	2.00
New York	23	.98	4.35
<b>Quadrant 2</b> ( <i>high smoke-free, low tax</i> )			
Oregon	1	1.02	1.31
Colorado	3	.91	.84
Kansas	4	.93	.79
North Dakota	4	1.07	.44
Ohio	8	1.00	1.25
Nebraska	12	1.00	.64
California	25	.91	.87

## State Scores by Quadrant

State	POS Score	Smoke-free Score	Cig. Excise Tax (\$)
<b>Quadrant 3</b> ( <i>low smoke-free, low tax</i> )			
Virginia	-	.36	.30
Georgia	0	.78	.37
Nevada	0	.80	.80
South Carolina	0	.25	.57
West Virginia	0	.16	.55
Wyoming	0	.00	.60
Idaho	1	.82	.57
North Carolina	1	.53	.45
Kentucky	4	.07	.60
Mississippi	4	.34	.68
Tennessee	4	.85	.62
Missouri	5	.36	.17
Alabama	8	.43	.43
Louisiana	8	.82	.36
Arkansas	12	.82	1.15
Indiana	12	.80	1.00
Oklahoma	12	.77	1.03
<b>Quadrant 4</b> ( <i>low smoke-free, high tax</i> )			
Connecticut	-	.82	3.40
Pennsylvania	9	.82	1.60
New Hampshire	10	.73	1.78
Alaska	12	.53	2.00
Texas	12	.20	1.41

<sup>33</sup>American Lung Association, unpublished data provided upon request, 2014

<sup>32</sup>American Lung Association State of Tobacco Control Report, 2014

\*States without a POS Score were unable to be contacted.

<sup>†</sup>The 'Smoke-free Air' score was adjusted so that all states had the same maximum possible score.

<sup>‡</sup>States with POS policy activity score circles crossing the median lines were included in Quadrant 1.





## Cigarettes Generate Big Revenue for Convenience Stores

### Analysis of 2013 State of the Industry Report



The Association for Convenience & Petroleum Retailing (NACS) is an international trade association that represents convenience and fuel retailers. NACS releases an annual report on product sales, store operations, motor fuel and other topics of interest to the convenience store industry. This report is important to the tobacco control community because it includes figures about cigarette and tobacco product sales at convenience stores, which demonstrate just how lucrative selling tobacco can be. This fact sheet highlights data from the 2013 State of the Industry Annual Report of 2012 data. Please note, all of these numbers are national averages for 2012 data, not California specific.

#### Cigarettes Are the Number One Product Sold at Convenience Stores and Generate \$622,248 in Sales

- Cigarettes accounted for 36.27% of sales inside convenience stores in 2012, by far the number one product. Non-alcoholic packaged beverages were second, with only 14.74% of inside sales.
- This number is a slight decrease from 2011, when cigarettes accounted for 37.73% of sales.
- Average sales of cigarettes per store were \$622,248, a decrease of 0.91% from 2011. This figure is almost \$370,000 higher than any other product's per store average.
- Other tobacco products were the fourth best selling product, accounting for 4.38% of inside sales with average sales of other tobacco products per store at \$78,864, a decrease of 6.48% from 2011.
- Smokeless tobacco products make up 61.09% of other tobacco product sales, followed by cigars at 32.11%.

#### Cigarettes Generate 16.74% of Gross Margin and Are a Very Important Product for Convenience Stores' Bottom Line

- Convenience stores were the top sellers of cigarettes nationwide. According to this report, in 2012, 86.2% of total cigarette sales were made at convenience stores.
- Other tobacco products were the most common item found in stores, with 99.56% of stores selling them. This is significantly higher than its fifth place standing last year. Cigarettes were sold in 99.09% of stores, the sixth most common item found in stores.
- The average gross margin dollars per store for cigarettes was \$88,908.
- While cigarettes were the top selling product, they rank second in gross margin dollar contribution. Cigarettes contributed 16.74% of the average gross margin dollars per store, ranking behind non-alcoholic packaged beverages which were first at 18.78% and \$99,708.

#### What This Means for Local Tobacco Retailer Licensing Ordinances

Convenience store owners and other cigarette retailers often oppose efforts to enact strong local tobacco retailer licensing ordinances, which 107 cities and counties in California have adopted (as of June 2013) in order to reduce illegal sales of tobacco products to minors. A strong local tobacco retailer licensing ordinance requires all tobacco retailers to obtain a license with an annual renewal fee and includes enforcement efforts that result in the suspension of a retailer's license for selling tobacco products to minors. The State of the Industry Report shows just how lucrative selling cigarettes is to convenience stores. It is a product that accounts for more than a third of sales inside convenience stores and generates more than \$622,248 in sales for the average convenience store. Being unable to sell cigarettes for a month or longer due to a suspended license would be very detrimental to the bottom line of any store.

Sources: The Tobacco Education Clearinghouse of California (TECC) has a copy of the 2013 State of the Industry Report available for checkout. Call (800) 258-9090 to borrow the report.

The Center has many other resources related to local tobacco retailer licensing ordinances, including a matrix of communities with strong local licensing ordinances and a fact sheet on the effectiveness of local licensing efforts, available at [www.Center4TobaccoPolicy.org/localpolicies-licensing](http://www.Center4TobaccoPolicy.org/localpolicies-licensing).

# Regulating Price Discounting in Providence, RI

## INNOVATIVE POINT-OF-SALE POLICIES: CASE STUDY #1



OCTOBER  
2013

# Acknowledgements

This case study was produced by the Center for Public Health Systems Science at the George Warren Brown School of Social Work at Washington University in St. Louis. *The following individuals were primary contributors to the publication:*

Amy Sorg  
Heidi Walsh  
Janny Jones  
Alisa Surenskaya  
Doneisha Snider  
Laura Brossart  
Jason Roche  
Sarah Moreland-Russell  
Douglas Luke

*Valuable input for this case study was provided by:*

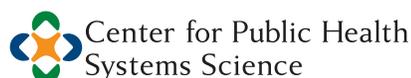
Lisa Henriksen, Stanford Prevention Research Center  
Kurt Ribisl, University of North Carolina Gillings School of Public Health  
Maggie Mahoney, Tobacco Control Legal Consortium

We would like to thank the people interviewed for this case study for their time and assistance, including staff from: the Rhode Island Department of Health and the Providence Healthy Communities Office (formerly the Mayor's Substance Abuse Prevention Council).

Photographs on cover, page 3, and page 4 courtesy of CounterTobacco.org  
Photographs and images on page 9, 10, 12, and 13 courtesy of Tobacco-Free Providence

*For more information, please contact:*

Amy Sorg, MPH  
Center for Public Health Systems Science  
700 Rosedale Avenue  
St. Louis, MO 63112-1408  
314.935.3732  
asorg@brownschool.wustl.edu



---

GEORGE WARREN BROWN  
SCHOOL OF SOCIAL WORK



*Funded by grant number U01-CA154281 from the National Cancer Institute at the National Institutes of Health.*

# Introduction

Tobacco companies spend the overwhelming majority of their annual marketing budget at the point of sale (POS), an area in which they have enjoyed the greatest freedom from regulation. The POS refers to any location where tobacco products are advertised, displayed, and purchased. The POS encompasses not only the final point of purchase (i.e., the register) but also indoor and outdoor advertising at retail locations, product placement, and price.

Tobacco companies use the retail environment to attract and maintain customers by promoting their brands, increasing the likelihood of impulse product purchases, and establishing the presence of tobacco products in everyday life as commonplace. Exposure to tobacco products and price promotions at the point of sale encourages initiation and discourages cessation.<sup>1,2,3</sup>

Solving the POS problem is recognized as a fifth core strategy of tobacco control programming, along with: (1) raising cigarette excise taxes, (2) establishing smokefree policies, (3) encouraging cessation, and (4) launching hard-hitting counter-marketing campaigns.<sup>4</sup> Since the 2009 passage of the Family Smoking Prevention and Tobacco Control Act (FSPTCA), many states and communities are considering new policies in the retail environment.<sup>5</sup> State and local agencies are also increasingly focused on eliminating tobacco-related disparities by addressing higher tobacco-retailer density and the greater amount of marketing and price discounting found in low-income and minority communities.<sup>6</sup>

This report is the first in a series of case studies to highlight communities that are implementing innovative POS policies. The case studies are intended to provide tobacco control advocates with practical, real world examples that may be used to inform future policy efforts. To learn about the processes, facilitators, and challenges of implementing and enforcing POS policies, we conducted in-depth interviews with



*Retail environment product display*

key stakeholders. We also reviewed relevant literature, legal documents, and news articles.

This case study focuses on price discounting and, specifically, Providence, Rhode Island's efforts to pass the first ban on coupon redemption and multi-pack discounts in the US. The following pages provide a short background on price discounting, its use by the tobacco industry to influence purchases, and the impact pricing strategies have on vulnerable populations. States and communities considering similar policies can learn from Providence's experience and take away practical next steps for restricting tobacco company price discounting in the future.

# Policy Background

## PRICE DISCOUNTING

### What is Price Discounting?

Price discounting is a strategy employed by the tobacco industry to influence tobacco purchasing and use among potential customers who would otherwise be deterred by higher tobacco prices. Price discounting involves a number of tactics that may be geared toward tobacco wholesalers, retailers, or directly to consumers. Popular direct-to-consumer promotions include:

- Cents or dollar-off promotions<sup>7</sup>
- Multi-pack discounts<sup>7</sup>
- Other price-related incentives such as buy-some-get-some-free deals<sup>8</sup>

Cents or dollar-off promotions, special prices for multi-pack purchases, and other multi-pack discounts may be advertised and used at the point of sale or made available through coupons. These discounts reduce the cost of tobacco products to the consumer and can counteract the impact of tax increases or existing high cigarette excise taxes.<sup>8,9</sup> The industry also targets price-sensitive smokers through these strategies.<sup>10</sup>

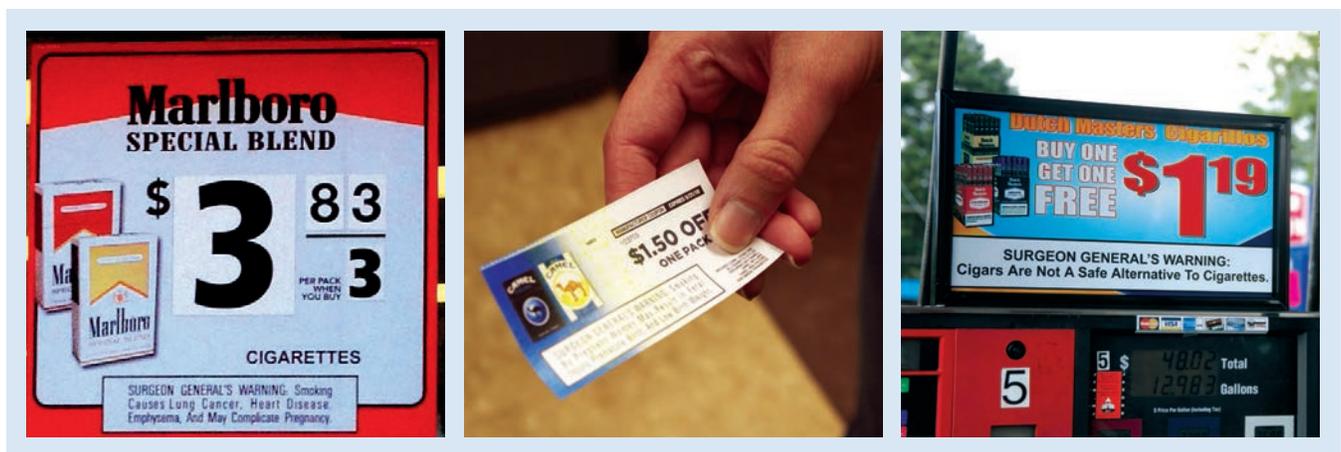
### Tobacco Industry Spending

Price discounts are the largest single category of advertising and promotional expenditures for both cigarette<sup>11</sup> and smokeless<sup>12</sup> manufacturers. In 2011, the tobacco industry spent \$6.9 billion on cigarette price discounting, which accounted for 83.6% of its advertising and promotional budget.<sup>11</sup> An additional \$171.2 million was spent on cigarette coupons.<sup>11</sup> Smokeless tobacco manufacturers spent \$168.8 million on price discounts and \$37.5 million on smokeless-coupons.<sup>12</sup>

### Impact on Vulnerable Populations

While pricing strategies can affect all consumers, research has shown that youth, young adults,<sup>19</sup> African Americans, and low-income groups are more likely to take advantage of promotional offers.<sup>13</sup> Other price sensitive groups include women and heavy smokers.<sup>13</sup>

Use of promotional offers is highest among smokers age 18-24.<sup>13</sup> The more youth are exposed to cigarette promotional activities, the more likely they are to try smoking and then to continue.<sup>14</sup> Extensive use of price-discounting strategies by the tobacco industry has led to higher rates of tobacco use among young people and



Popular price-related incentives include multi-pack discounts, cents or dollar-off promotions, and buy-some-get-some-free deals

encourages them to progress from experimental to established smokers.<sup>14</sup> In particular, buy-some-get-some-free offers may lead to purchasing a larger quantity of a tobacco product than a consumer would have without the offer.<sup>13</sup> Experts estimate that if all stores had price promotions, the number of youth who smoke regularly would increase by 17%, while if there were no price promotions that number would decrease by 13%.<sup>2</sup>

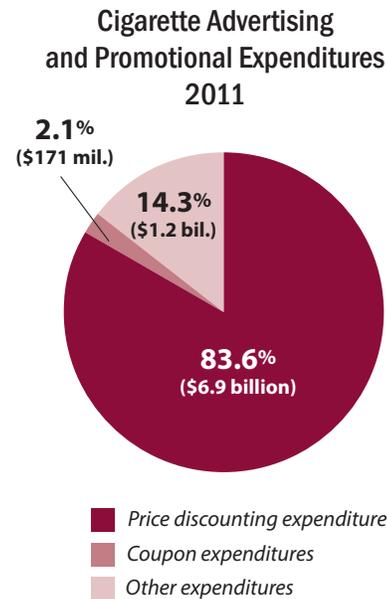
Smokers of menthol cigarettes have also been found to be highly responsive to price discounts. A 2002 California study found that African Americans who smoke menthol brands were more likely to respond to price discounts than individuals purchasing other brands.<sup>13</sup> Recent research also suggests that increased availability of price promotions for menthol cigarettes is targeted in neighborhoods with higher concentrations of African-American youth.<sup>15</sup>

## Policy Options

The tobacco industry has spent billions of dollars to influence the price of tobacco products and counteract the impact of increased excise taxes.<sup>11,12,16</sup> States and many communities can respond to these efforts by passing policies that restrict price discounting. Following the passage of the FSPTCA, states have begun to consider new options to address the tobacco industry's price-discounting strategies. The FSPTCA explicitly states that states and municipalities have the authority to pass more stringent laws regulating the sale of tobacco products.<sup>5</sup> A ban on price discounts would cripple the industry's ability to target price promotions for specific populations and geographic areas where excise taxes have recently increased.<sup>17</sup> Such laws also have the potential to alleviate some of the disparities that exist in tobacco industry price-related marketing.

## Legal Considerations

While the FSPTCA clarifies the authority states and communities have, they may still encounter legal challenges when attempting to adopt a price-



Source: Federal Trade Commission Cigarette Report for 2011<sup>11</sup>

discounting policy. One potential challenge to consider is *preemption*. Preemption is a legal term that indicates a hierarchy of law.<sup>18</sup> If preemption exists at the federal level, that means a federal law on a certain topic overrules or takes the place of a state or local law on that same topic. Additionally, states have the authority to pass laws that preempt local laws. If preemption is in place at the state level, local laws cannot go beyond the state law on that issue. Often, the tobacco industry will argue that a federal law preempts a state or local tobacco control law, or that a state law preempts a local tobacco control law.

The second potential challenge to successful passage and implementation of POS policies relates to the *freedom of speech* guaranteed by the First Amendment. Commercial speech enjoys some First Amendment protections. For example, advertisements are considered speech under the First Amendment.<sup>19</sup> However, despite the tobacco industry's arguments to the contrary, not all POS policies implicate the First Amendment. To best defend a price discounting regulation from a challenge on these grounds, the regulation should target actual reductions in price and not any advertising messages.<sup>20</sup> For instance, tobacco control attorneys recommend banning coupon *redemption* rather than the *distribution* of coupons themselves.<sup>21</sup>

# Community in Action: Providence

In January 2013, Providence, Rhode Island implemented an innovative policy to address price-discounting strategies. The policy was the product of a timely grant, expert legal assistance, and strong political and public support. The following pages outline development of the policy, challenges encountered, and lessons learned along the way.

## BACKGROUND

Rhode Island is the smallest, yet one of the most densely populated states, second only to New Jersey.<sup>22</sup> In 1966, motivated by geographic and economic constraints, Rhode Island combined all local health services under a single state health department.<sup>23,24</sup> All health initiatives, including tobacco control efforts, are spearheaded by the Rhode Island Department of Health, located in Providence, the state's capital city.<sup>23</sup>

Characterized by rich ethnic and racial diversity, Providence is the most populous city in Rhode Island with nearly 180,000 residents.<sup>25</sup> Approximately one third of Providence's population is foreign born,<sup>26</sup> and 38% of the city's residents identify as Hispanic or Latino.<sup>25</sup> Sixteen percent of Providence's population is African American, compared to 6% of Rhode Island's total population.<sup>25</sup>

Covering roughly 2% of Rhode Island's total land area, the population density of Providence is 9,676 residents per square mile.<sup>25</sup> Due to the city's small geographic size and high population density, tobacco advertising and price discounting can impact a large number of residents within a small geographic consumer market.

## Tobacco Control Success

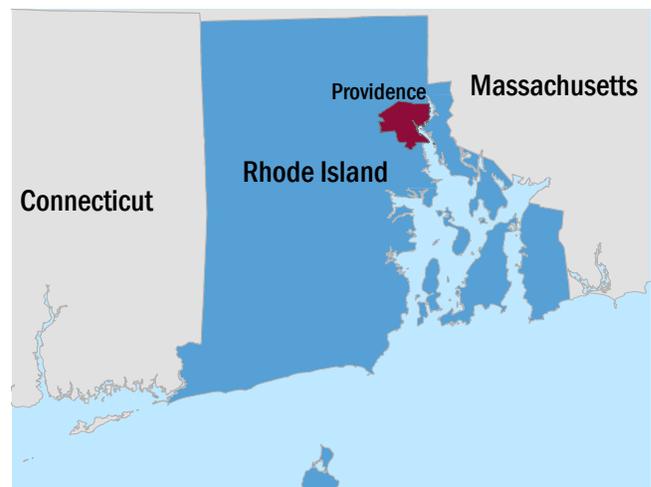
Rhode Island has had much success in the area of tobacco control. The state's \$3.50 cigarette excise tax<sup>27</sup> is second highest in the nation and is \$2 greater than the national average.<sup>28</sup> Rhode

Island boasts an adult smoking rate of 17%,<sup>29</sup> and a youth smoking rate that has decreased from 35% to 11% over the last decade.<sup>30,31</sup> In 2004, a statewide smoke-free policy was adopted,<sup>30</sup> protecting the public from secondhand smoke exposure in workplaces and public areas. In spite of these successes, Rhode Island and the city of Providence face many tobacco control challenges, which are complicated by economic and social factors.

## Economic Constraints and Vulnerable Population

The smoking-related costs to Rhode Island are estimated to be approximately \$870 million per year.<sup>32</sup> Rhode Island generates over \$185 million in tobacco revenue each year, however, the state only funds its tobacco control program at 2.5% of the CDC-recommended level.<sup>28</sup> Despite upward trends in tobacco tax revenue,<sup>17</sup> in Fiscal Year 2012, Rhode Island cut its state funding for the tobacco control program by nearly half, allocating just \$372,665 for prevention and cessation.<sup>28</sup>

Providence's population is particularly vulnerable to price-discounting strategies targeted at youth and poor adults. Approximately 44% of Providence's population is under the age of twenty-five,<sup>25</sup> and 36% of children live in



families with incomes below the federal poverty threshold.<sup>33</sup> Providence's unemployment rate is also consistently above the national average.<sup>34</sup>

This challenging environment made Providence an ideal setting in which to consider and pass an innovative price discounting policy.

## POLICY DEVELOPMENT

### Securing Funding

In late 2009, the Providence Mayor's Substance Abuse Prevention Council (MSAPC) partnered with the Rhode Island Department of Health to apply for a two year CDC grant. The grant was part of the Communities Putting Prevention to Work (CPPW) initiative and required communities to develop or implement evidence-based interventions focusing on tobacco or obesity. MSAPC and the health department proposed the creation of Tobacco-Free Providence (TFP), a state and city partnership that would focus on reducing smoking prevalence and secondhand smoke exposure in Providence.

The CDC awarded a \$3.3 million grant to Providence, with funding provided from March 2010 through March 2012.<sup>35</sup> Following the grant award, the TFP team began a lengthy, multi-month process of identifying specific evidence-based tobacco interventions. Among them was an intervention that would raise the cost of tobacco products by eliminating tobacco industry price discounting (e.g., redemption of coupons and buy-one-get-one-free offers). Staff reasoned that this intervention would protect youth and other vulnerable populations and effectively strengthen the impact of Rhode Island's high tobacco taxes. The intervention would also address loopholes in the state's minimum price law.<sup>36,37</sup>

### Early Efforts Lay Groundwork

The first six months of the grant were spent planning the administrative and operational components of the project. As part of this

process, TFP outlined strategies, hired staff and consultants, partnered with community-based organizations (CBOs), and clarified partners' roles and responsibilities.

TFP staff also spent a significant amount of their time and early efforts on developing effective media strategies. The first media campaign began in December 2010 and was designed to educate youth about the dangers of tobacco and secondhand smoke.<sup>35</sup> The campaign ran for several months and featured television and radio advertisements branded with TFP's logo. The campaign was effective in building community awareness around TFP's efforts and encouraging both youth and adults to get involved in the city's tobacco control efforts.

Another one of TFP's initial priorities was the creation of a city retailer licensing ordinance. In April 2011, Providence passed a local licensing ordinance requiring city tobacco retailers to apply annually for a license and pay a \$100 annual fee.<sup>38</sup> The licensing ordinance proved essential for later efforts, as it provided a funding stream for police to conduct compliance checks and gave the city's Board of Licenses authority to issue penalties for violations. Staff recognized that the policy was important from a legal and policy perspective because future policies could build upon the ordinance's penalty and revocation structure.

### Assessing the Retail Environment

After the city's passage of a local retailer licensing law, TFP staff and community partners turned their attention to the pricing strategy and began identifying data needed to inform these efforts. In April 2011, three CBOs visited 69 city retailers and conducted store assessments to evaluate the prevalence of tobacco advertising and discounting practices in Providence stores.<sup>39</sup> The full assessment (Appendix A) looked at many factors, including the amount of interior and exterior tobacco advertising, the frequency of price discounting advertisements, and the presence of emerging tobacco products within stores (e.g., snus and orbs).

Questions that directly related to the advertising of price discounting included:

- Are special offers such as special price or multi-pack discount advertised on the *exterior of the store*?
- Are special offers such as special price or multi-pack discount advertised *near the cash register*?
- Are special offers such as special price or multi-pack discount advertised *away from the cash register*?

Results from the store assessments showed that over half (51%) of sampled stores advertised special offers.<sup>39</sup> Nearly 35% of stores displayed special price or multi-pack discount advertisements outside the store and 39% displayed these types of offers within the store.<sup>39</sup> TFP staff believed that these findings were instrumental in raising awareness about the prevalence of pricing schemes in the city. The findings also prompted residents and decision makers to take action.

## Policy Research and Development

Responding to the store assessment results, city lawyers and partners began conducting legal and policy research around developing a price-discounting policy. To ensure development of a legally sound pricing ordinance, TFP partners enlisted the help of the Tobacco Control Legal Consortium, a national legal network that assists communities with tobacco control policy. The Legal Consortium not only provided initial guidance in developing the policy, but also supplied basic model policy language. The model language was then reviewed and refined by state and city lawyers. TFP staff noted that the process of refining the policy language took several months and required a lot of “back and forth” between all partners involved. The strong support of Providence’s City Solicitor, his legal team, and state partners was particularly important throughout the policy development process. “We had to have willing participants in our lawyers and our leadership in the staff with the state. So it was a whole lot of stars that ended up aligning for us to be able to do it.”<sup>40</sup>

---

“We had to have willing participants in our lawyers and our leadership in the staff with the state.”

## Educating the Public and Assessing Community Attitudes

In October 2011, TFP staff and partners launched the *Sweet Deceit* campaign to educate Providence residents about how the tobacco industry targets youth with attractive pricing strategies and flavored, non-cigarette tobacco products.<sup>35</sup> Along with television, radio, and outdoor advertisements, the campaign included an interactive website ([www.sweetdeceitpvd.com](http://www.sweetdeceitpvd.com)), Facebook page, and Twitter account. As with the 2010 media campaign, messaging focused on “protecting the city’s youth.”

The *Sweet Deceit* campaign also featured a survey assessing the awareness, knowledge, and attitudes about tobacco industry pricing strategies. The survey was completed by over 1,200 Providence residents between October and December 2011.<sup>41</sup>

To conduct the survey, youth and adult volunteers from local CBOs were first trained on basic data collection strategies and how to approach potential respondents in various city locations. Residents who agreed to participate were given a short survey (Appendix B) printed on two sides of 5x7 card stock paper.

The front side of the survey included six questions assessing general purchasing habits, including how likely the respondent would be to purchase a new product if a special price promotion was offered or a manufacturer’s coupon was available. The back side included questions to assess citizens’ knowledge and opinions about tobacco industry’s pricing strategies, including:



*Tobacco-Free Providence advertisement*

- Do you know that tobacco companies promote tobacco products with discounts and other pricing strategies?
- Do you think tobacco discounts encourage youth to try tobacco products?
- Do you think fewer youth would try smoking if tobacco discounts were prohibited?
- Do you think tobacco discounts affect how much tobacco is consumed by tobacco users?
- Do you think tobacco discounts should be prohibited?

After completing the survey, volunteers discussed the tobacco industry's pricing strategies with respondents and answered questions. This approach was a useful opportunity for volunteers to provide education and raise public awareness about this topic.

Although most tobacco users (61%) knew that tobacco companies promote tobacco products with discounts and other pricing strategies, less than half of non-smokers (37%) were aware of these practices.<sup>38</sup> Nearly two-thirds (63%) of all survey respondents believed that tobacco discounts encourage youth to try tobacco products and more than half (52%) thought that fewer youth would try smoking if tobacco discounts were prohibited.<sup>41</sup>

Survey results also showed overwhelming support for a policy to address price-discounting strategies. Among citywide respondents, 63% thought that tobacco discounts should be prohibited.<sup>41</sup> Support for prohibiting discounts was even stronger (70%) among respondents with household incomes less than \$30,000.<sup>41</sup> Many CBO volunteers reported that this finding was not surprising, as many residents in poorer neighborhoods "understood the danger of pricing discounts and supported passage of some kind of policy that would stop the practice."<sup>40</sup>

Overall, the *Sweet Deceit* campaign was considered a success. The interactive website registered over 2,000 hits and hundreds of people became campaign Facebook fans and Twitter followers.<sup>42</sup> TFP staff said that the campaign not only raised awareness about the price-discounting problem among the general public and local policymakers, but also helped strengthen anti-tobacco norms in the city.



*Sweet Deceit campaign logo*

## Policy Development Challenges

While the *Sweet Deceit* campaign was instrumental in raising awareness and gaining public and political support for action, policymakers encountered some opposition. Retailers expressed concern that their customers would travel to neighboring towns to make purchases and some decision makers worried that the policy would negatively impact small business owners. Tobacco control partners responded to these concerns by sharing the compelling data gathered in the store assessments and reiterating the importance of protecting youth from discounting schemes. A tobacco retail education consultant also educated retailers about the importance of the policy. This helped to gain retailer support and eliminate strong backlash.

The possibility of the policy being challenged in court by the tobacco industry was also a concern during the policy development stage. TFP staff noted that this did not deter Providence’s political leaders from moving forward with the policy. “Our mayor was 100% behind this and so was our city council.”<sup>40</sup>

“Our mayor was 100% behind this and so was our city council.”

## Policy Adopted and Challenge Posed by Industry

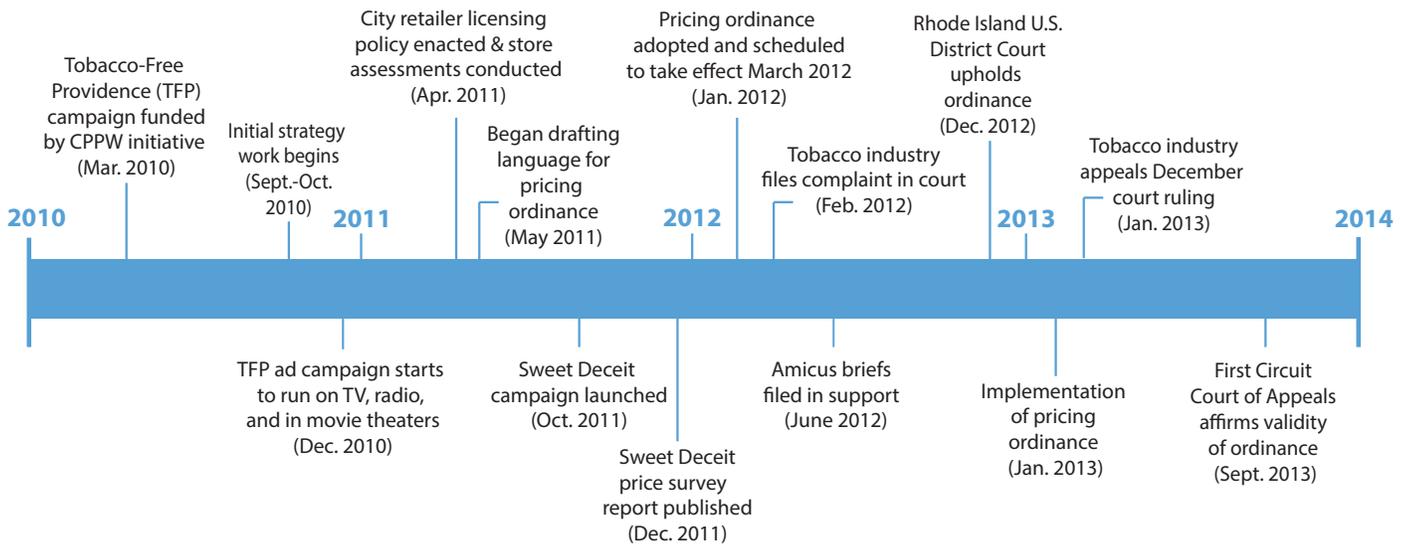
In January 2012, the Providence City Council adopted the proposed tobacco pricing policy and mayor Angel Taveras signed the ordinance into law.<sup>43</sup> The newly adopted policy prohibited city tobacco retailers from selling tobacco products at a discount, through either a multi-pack or buy-some-get-some-free deals. In addition, the policy banned city retailers from redeeming coupons that provide tobacco products for free or at a reduced price.

Originally slated to take effect on March 1, 2012, the policy was quickly challenged in the courts by the tobacco industry. In mid February, the National Association of Tobacco



Mayor Taveras signs city ordinance as city councilors, state health officials, and local youth advocates look on

## Timeline of Events



Outlets and the Cigar Association of America, Inc., along with seven tobacco manufacturers and distributors (Lorillard Tobacco Company, R.J. Reynolds Tobacco Company, American Snuff Company, Phillip Morris USA Inc, U.S. Smokeless Tobacco Manufacturing Company LLC, U.S. Smokeless Tobacco Brands Inc., and John Middleton Company) filed a federal lawsuit to overturn the pricing ordinance.<sup>44</sup> The groups argued that the price-discounting ordinance violated the tobacco industry’s First Amendment rights to communicate tobacco prices to adult customers. They also asserted that the city’s price discounting regulation was an advertising regulation that was preempted by existing state and federal laws.

The city agreed to delay enforcement of the ordinance’s provisions until after the Court ruled on the case.

## Partners Respond to Legal Challenges

While both sides prepared their arguments, numerous public health and nonprofit agencies rallied in support of the ordinance. In mid-June, three separate *amicus curiae* (“friend of the court”) briefs were filed in response to the tobacco

industry’s challenge. These briefs provided additional facts and arguments for the court to consider before making a decision.

The first brief was filed by the Legal Consortium and addressed the industry’s challenge that the law would be an assault on its First Amendment rights.<sup>45</sup> The Consortium reasoned that the law simply regulates the way tobacco products are priced. “Far from representing a government assault on free expression, the ordinance simply helps to prevent retailers from providing cigarettes and other tobacco products at prices likely to attract and addict youth,” the brief stated.

A second brief was filed by a coalition of 26 local, state, and national public health and advocacy organizations, including the National Association of County and City Health Officials (NACCHO), the American Lung Association, and the Campaign for Tobacco-Free Kids. They responded to the issue of state and federal preemption,<sup>46</sup> stating that the 2009 FSPTCA clearly provides states and communities with the authority to regulate tobacco sales. Even if the law were considered not a sales restriction but instead a restriction on the advertising and promotion of cigarettes, the brief said the FSPTCA allows for



*Tobacco-Free Providence downtown rally*

the regulation of the time, place, and manner of that promotional activity. The brief also noted that the Rhode Island General Assembly has never intended to preempt the local regulation of tobacco product sales.

Finally, a brief from the Rhode Island Department of Health and the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) described the tobacco industry's use of price-discounting strategies and the harmful consequences of these practices on public health.<sup>47</sup> The document concluded that the invalidation of the price-discounting policy "would set back the achievement of public health goals at the state and local level."<sup>47</sup>

All briefs provided the court with additional public health and legal information to consider. TFP felt that this strong show of support and knowledge had a significant impact on the policies' defense.

## Community Members Rally

Tobacco-free partners also demonstrated their commitment to the policy outside of the legal arena. In early August, TFP held a rally to show support for the policy and the city's efforts to protect youth from tobacco products. The event was held in a downtown park and attended by more than 150 community members. Attendees wore TFP t-shirts, waved signs, and cheered as Mayor Taveras, City Council leaders and State Health Director Michael Fine took turns addressing the crowd.<sup>48</sup>

Danny McGoldrick, vice president of research at the Campaign for Tobacco-Free Kids, traveled to Providence for the event. He praised the city for being "a national leader" and taking "proactive steps to address the biggest public health issues that our nation faces."<sup>49</sup>

## Victory in Federal District Court

On December 10, 2012, Chief U.S. District Court Judge Mary Lisi ruled in favor of the City of Providence and upheld the price-discounting ordinance.<sup>50</sup> In her written decision, Lisi said the plaintiffs had failed to "establish that the practice of reducing the price of cigarettes and tobacco products through coupons and multi-pack discounts is subject to constitutional protection."<sup>50</sup> The ruling was a decisive victory for public health and tobacco control advocates.

In a press statement following the ruling, Mayor Taveras praised the efforts of those involved in passing and defending the policy. "Because of the hard work that Council President Michael Solomon, Majority Leader Seth Yurdin, the entire City Council, and many others across our city have put in over the past two years, we won a clear and decisive victory in the effort to keep children from using and becoming addicted to tobacco," he said. "This is an important step toward a healthier city. I hope today's ruling inspires other communities to follow our lead and take a stand against Big Tobacco."<sup>51</sup>

“I hope today’s ruling inspires other communities to follow our lead and take a stand against Big Tobacco.”

## Policy Implementation and Enforcement

The pricing ordinance went into effect on January 3, 2013.<sup>52</sup> To help ensure compliance, city staff visited retailers prior to implementation and provided a short flyer (Appendix C) about the policy provisions and the penalties for noncompliance. Under the policy, retailers found in violation of the law are subject to a fine of \$250 for a first offense, \$350 for a second offense, and \$500 for a third offense within a 35-month period.<sup>52</sup> Retailers with three or more offenses face suspension or revocation of their tobacco licenses.

In the short-term, local retailer licensing fees and a small grant from BHDDH are being used to support compliance checks.<sup>48</sup> Staff noted that certain aspects of the pricing law are more challenging to enforce than others. While advertisements for unlawful discounts can be observed as part of a standard store assessment, or by store patrons, ensuring that retailers are not redeeming coupons requires investing in an undercover enforcement unit. Fortunately, Providence’s license enforcement unit previously conducted undercover compliance checks related to underage and loose cigarette sales and were able to apply this prior experience to enforcing the new policy.

Staff are now trying to determine the best way to utilize other state and local resources so that enforcement is sustained in the future. One proposal is to monitor future compliance as part of already-scheduled SYNAR and FDA inspections, though other options are still being identified and considered.

## Court Upholds Policy

Providence encountered additional legal challenges following the policy’s implementation. On January 10, 2013, the tobacco industry appealed the December District Court ruling to the U.S. Court of Appeals for the First Circuit.<sup>53</sup> The industry argued again that the ordinance violated its First Amendment rights and was preempted by federal and state law. On September 30, 2013, the appeals court rejected the industry’s arguments and unanimously upheld the December ruling.<sup>54</sup> The court agreed with Judge Lisi’s previous decision that the ordinance was not preempted by federal or state law.<sup>54</sup> The court also concluded that “price regulations designed to discourage consumption do not violate the First Amendment.”<sup>54</sup> Following the ruling, Mayor Taveras reiterated the city’s commitment to the policy and his hope that Providence’s success would inspire other communities “to take a stand against Big Tobacco.”<sup>55</sup>



Mayor Taveras addresses tobacco control advocates

# Lessons for Future Efforts

## What can other states and communities learn from Providence's experience?

### Legal expertise critical at all stages of policy development

Until price discounting regulations are more widely adopted, innovative policies like the Providence law will face legal challenges. To understand these potential challenges and the policy options available to your state or community, consult with an attorney or a tobacco law center. Legal experts can help states and communities design, enact, and ultimately implement legally-sound, effective, and evidence-based laws.<sup>56</sup> It is critically important to have strong legal support in all stages of policy development. In the preliminary stages of policy development, legal experts can provide cross-community examples of implemented policies and share options for taking on unprecedented policy work within each state's legal framework. In the final stages of policy development, legal experts can provide timely insight that may prevent unforeseen challenges and may help defend a policy, such as knowledge about challenges to similar policies in other communities. This information may be used by the court in its ruling. Experts can also assist state or municipal attorneys with research and analysis or by writing amicus briefs when facing tobacco control legal challenges. TFP staff noted the importance of the Legal Consortium's help in providing model language to draft and refine the ordinance and later by supporting the policy when confronted by industry challenges.

### Local licensing can provide authority for enforcement, penalties, and revocation

Providence first implemented a licensing law, providing an enforcement mechanism for the city. All states have the authority to require retail licensing, which protects and promotes

health by enabling the government to allow retailers to sell specific products (e.g., tobacco, alcohol, or firearms) under certain conditions.<sup>57</sup> Currently, most states require retailers to obtain a license or register before selling tobacco products, though these laws vary in strength and are largely utilized solely to collect tobacco taxes.<sup>58</sup> Local governments also may have the authority to license tobacco retailers. Their ability to do so depends on the level of power that the state grants to local governments.<sup>58</sup> Many U.S. communities have implemented retailer licensing laws, in addition to or independent of state law.<sup>57</sup> Communities can strengthen current licensing laws to include provisions that address the tobacco retail environment. Implementing a licensing law is a reasonable first strategy for cities that currently don't have such a law and have the power to do so. The Providence city licensing law served as a foundation for the later policy that banned price discounting and the redemption of coupons. The licensing law provided an enforcement and penalty structure that was easily applied to the price-discounting policy. The Providence law requires retailers to pay an annual registration fee and fines for noncompliance, which generates funds that are used to implement and enforce the law.<sup>57</sup>

### Retail marketing and promotional surveillance helps build policy support

Convincing decision makers of a need for policy change first requires proof of a problem.<sup>59</sup> Assessing the presence, quantity and/or nature of tobacco products, price promotions, and advertisements in stores is a common-sense start to policy work, as the gathered information can show advocates which types of policies will have the greatest impact. Begin by gathering a list of retailers that sell tobacco products in your target

area. If your community requires tobacco licenses, contact the bureau that administers the licenses to obtain a list of retailers that sell tobacco products. Next, have staff, partners, or youth volunteers visit the retailers (or a manageable sample of retailers) and systematically collect information. Store assessments can measure any point-of-sale concern, such as the availability of flavored products, price discounts, or the quantity and placement of tobacco advertising.<sup>60</sup> (A new store assessment tool is being developed by a working group of the National Cancer Institute's State and Community Tobacco Control initiative and will be available on [Countertobacco.org](http://Countertobacco.org).<sup>60</sup> Using a standard tool will allow advocates across the country to collaborate, pool data, and compare results.) After completing your store assessments, analyze the data to understand the prevalence of price-discounting practices in your area and determine next steps. The TFP store-based assessments provided evidence of the pervasiveness of price-promotion in Providence. Collecting and sharing this data with the public was instrumental in building community support and investment in the policy.

## Public opinion surveys can gauge public support for policies

Evidence of strong public support may guide future policy-change efforts and encourage new partners to get involved.<sup>4</sup> Conduct a public opinion survey to assess support for policies that address price-discounting practices. Surveys can be administered by telephone or in-person and usually include a sample of local adults, both smokers and non-smokers. Along with asking about support for various POS policies, surveys may also include questions about smoking status, demographic information (e.g., age, gender, and housing location), and awareness of tobacco industry discounting practices. In Providence, a public opinion survey measuring awareness, knowledge, and attitudes about price-discounting practices was conducted as part of the *Sweet Deceit* campaign (See Appendix B for survey). The survey found that the majority of city respondents believed price-discounting should be prohibited.<sup>41</sup>

## Messages about protecting youth can be effective

Successful campaigns rely on the effective communication of messages. Messages must be clear, accessible, and relatable to the audience. Campaigns will motivate people to act by using relevant subjects in their lives to acquaint them with causes that are perhaps unfamiliar.<sup>61</sup> TFP media campaigns, public affairs strategies, and talking points consistently addressed the importance of protecting youth in the community. This message resonated well with parents, teachers, members of local youth-based organizations and youth themselves; many of whom were bothered by youth tobacco use and youth-targeted marketing tactics.<sup>51,62</sup>

The public opinion survey conducted in Providence as part of the *Sweet Deceit* campaign also functioned as an education tool, raising community awareness of the issue and helping to gain support from parents and youth. Information gathered from the retail assessments was used to show the extent of the local price-discounting problem. Media campaigns can be used to promote community engagement and to explain how the tobacco industry uses price-discounting to reach price-sensitive populations.

By sharing relevant data and research findings via audio, video, and print ads, you can raise awareness of the problem and get community members involved in addressing the problem.

# References

1. Paynter J, Edwards R. The impact of tobacco promotion at the point of sale: A systematic review. *Nicotine & Tobacco Research*. 2009;11(1):25-35.
2. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Arch Pediat Adol Med*. May 2007;161(5):440-445.
3. Wakefield M, Germain D, Henriksen L. The effect of retail cigarette pack displays on impulse purchase. *Addiction*. 2008;103(2):322-328.
4. Counter Tobacco. Public Opinion Surveys. n.d.; <http://countertobacco.org/public-opinion-surveys>. Accessed May 23, 2013.
5. The Family Smoking Prevention and Tobacco Control Act of 2009. § 203, Section 5. Vol 15 U.S.C. 13342009.
6. Ribisl KM, Luke DA, Sorg AA. Reducing tobacco related disparities through point-of-sale regulation: Differential impact of regulating tobacco advertising and sales near schools. Annual Meeting and Convention of the American Public Health Association. Washington, D.C., 2011.
7. Tauras J, Peck R, Chaloupka F. The role of retail prices and promotions in determining cigarette brand market shares. *Review of Industrial Organization*. 2006;28(3):253-284.
8. Tobacco Control Legal Consortium. *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments*. Saint Paul, MN. 2010.
9. Pierce JP, Gilpin E, Burns DM, et al. Does tobacco advertising target young people to start smoking? *J Am Med Assoc*. December 11, 1991;266(22):3154-3158.
10. Siahpush M, Wakefield MA, Spittal MJ, Durkin SJ, Scollo MM. Taxation reduces social disparities in adult smoking prevalence. *Am J Prev Med*. 2009;36:285-291.
11. Federal Trade Commission. *Federal Trade Commission Cigarette Report for 2011*. Washington, D.C.; 2013.
12. Federal Trade Commission. *Federal Trade Commission Smokeless Report for 2011*. Washington, D.C.; 2013.
13. White VM, White MM, Freeman K, Gilpin EA, Pierce JP. Cigarette promotional offers: who takes advantage? *Am J Prev Med*. Mar 2006;30(3):225-231.
14. U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, G.A.: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2012.
15. Henriksen L. Comprehensive tobacco marketing restrictions: promotion, packaging, price and place. *Tob Control*. Mar 2012;21(2):147-153.
16. Public Health Law Center, Ramsey Tobacco Coalition. *Prohibiting Tobacco Product Coupon Redemption: Sample Language to Amend Existing Minnesota Tobacco Licensing Ordinances; 2011*; <http://countertobacco.org/sites/default/files/lz/Restricting%20Coupon%20Redemption%20in%20Minnesota%20Final.pdf>. Accessed May 24, 2013.
17. Tax Policy Center. *State and Local Tobacco Tax Revenue, Selected Years 1977-2010*. Urban Institute and Brookings Institution.
18. Bantthin C. *Tobacco Control Legal Consortium, Regulating Tobacco Retailers: Options for State and Local Governments; 2010*.
19. *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 1980;447 U.S. 557, 561.
20. Center for Public Health and Tobacco Policy. *Tobacco Price Promotion: Policy Responses to Industry Price Manipulation*. 2011; <http://www.tobaccopolicycenter.org/documents/Tobacco%20Price%20Promotion%20Complete%20Report.pdf>. Accessed May 24, 2013.
21. Tobacco Control Legal Consortium. *Tobacco Coupon Regulations and Sampling Restrictions*. Saint Paul, MN. 2011.
22. U.S. Census Bureau. *Statistical Abstract of the United States; 2012*.
23. State of Rhode Island Department of Health. *About Us*. 2012; <http://www.health.ri.gov/aboutus/>. Accessed May 23, 2013.
24. State of Rhode Island Department of Health. *Changing Conceptions of Public Health: A Centennial History of the Rhode Island Department of Health. 1878-1978*. Providence, R.I.; 1978.

25. U.S. Census Bureau. State and County QuickFacts. Providence (city), Rhode Island; 2010.
26. U.S. Census Bureau. American Community Survey. Providence (city), Rhode Island; 2011.
27. Campaign for Tobacco Free Kids. State Cigarette Excise Tax Rates & Rankings. 2013. <http://www.tobaccofreekids.org/research/factsheets/pdf/0097.pdf>. Accessed June 6, 2013.
28. Campaign for Tobacco Free Kids. U.S. State and Local Issues, Spending on Tobacco Prevention: Rhode Island. 2012; [http://www.tobaccofreekids.org/what\\_we\\_do/state\\_local/tobacco\\_settlement/rhode\\_island](http://www.tobaccofreekids.org/what_we_do/state_local/tobacco_settlement/rhode_island). Accessed March 7, 2013.
29. State of Rhode Island Department of Health. Behavioral Risk Factor Surveillance System BRFSS; 2012.
30. State of Rhode Island Department of Health. Tobacco Control Program. 2012; <http://www.health.ri.gov/programs/tobaccocontrol/index.php>. Accessed May 14, 2013.
31. U.S. Department of Health and Human Services. Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance – United States, 2011. MMWR Surveillance Summary. 2012; 61(4);1-162.
32. Campaign for Tobacco Free Kids. The Toll of Tobacco in the United States. The Toll of Tobacco in Rhode Island. 2012; [http://www.tobaccofreekids.org/facts\\_issues/toll\\_us/rhode\\_island](http://www.tobaccofreekids.org/facts_issues/toll_us/rhode_island). Accessed March 7, 2013.
33. Rhode Island KIDS COUNT. Factbook: Indicators of Child Well-being, Profile of Providence, Rhode Island. 2012; [http://www.rikidscount.org/matriarch/documents/Providence\\_2012.pdf](http://www.rikidscount.org/matriarch/documents/Providence_2012.pdf). Accessed May 24, 2013.
34. U.S. Bureau of Labor Statistics. Economy at a Glance: Rhode Island. <http://www.bls.gov/eag/eag.ri.htm>. Accessed February 4, 2013.
35. Rhode Island Department of Health & The City of Providence Mayor's Substance Abuse Prevention Task Force. Tobacco-Free Providence: Phase I Evaluation Report; March 2012.
36. Ribisl KM, Patrick R, Eidson S, Tynan M, Francis J. State Cigarette Minimum Price Laws-United States, 2009. Morbidity and Mortality Weekly Report. 2010;59(13):389-392.
37. Feighery EC, Ribisl KM, Schleicher NC, Zellers L, Wellington N. How do minimum cigarette price laws affect cigarette prices at the retail level? Tobacco control. Apr 2005;14(2):80-85.
38. City of Providence. Ordinance Amending Chapter 14 of the Code of Ordinances of the City of Providence, Entitled Licenses by Adding thereto Article XV, Entitled Tobacco Dealers.In: Providence Co, ed. 2242011.
39. Roberts C. Interview Rhode Island Department of Health. March 11, 2013.
40. Healthy Communities Office and Rhode Island Department of Health. Interview Providence, Rhode Island. 2012.
41. Rescue SCG &The Mayor's Substance Abuse Prevention Council (MSAPC). Sweet Deceit Campaign: A Tobacco-free Providence Campaign. Price Survey Report. Providence, R.I.; 2011.
42. Asen P. Local Policy Change in a Small City. National Smokeless and Spit Tobacco Conference; Missoula, MT. August 2013.
43. Tobacco Free Providence. Mayor Taveras signs city council ordinances to protect youth, community members from harmful effects of tobacco, deceit of tobacco industry. Providence, R.I.; 2012.
44. United States District Court. District of Rhode Island. Stipulation Regarding Stay of Enforcement. Vol C.A. No. 12-96 ML. Providence, R.I.; 2012.
45. Brief for the Tobacco Control Legal Consortium as Amicus Curiae, National Association of Tobacco Outlets, Inc. v. City of Providence, p. 5 (Civil Action No. 12-96 ML 2012).
46. Brief for non-profit public health organizations as Amici Curiae, National Association of Tobacco Outlets, Inc. v. City of Providence, p. 5 (Civil Action No. 12-96 ML 2012).
47. Brief for the Rhode Island Department of Health as Amicus Curiae, National Association of Tobacco Outlets, Inc. v. City of Providence, p. 5 (Civil Action No. 12-96 ML 2012).
48. Asen P. Interview Healthy Communities Office, City of Providence. June 4, 2013.
49. City of Providence Mayor's Substance Abuse Prevention Council. National Advocate Joins City and State Leaders at Tobacco Free Providence Rally. n.d.; <http://msapc.org/tobacco-free-providence-rally>. Accessed June 14, 2013.
50. National Association of Tobacco Outlets, Inc., et al. v. City of Providence, et al., (United States District Court for the District of Rhode Island 2012).

51. Tobacco Free Providence. Mayor Taveras Press Conference. 2012; <http://www.tobaccofreeprovidence.org/2012-02-03-video-mayor-taveras-press-conference/> Accessed May 24, 2013.
52. City of Providence. New City of Providence Tobacco Sales Laws - Go Into Effect January 3, 2013. 2012; [www.providenceri.com/license/new-city-of-providence-tobacco-sales-laws-0](http://www.providenceri.com/license/new-city-of-providence-tobacco-sales-laws-0). Accessed May 24, 2013.
53. Tobacco Control Legal Consortium. Family Smoking Prevention and Tobacco Control Act Litigation Update. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2013.
54. National Association of Tobacco Outlets, Inc., et al. v. City of Providence, et al., (United States Court of Appeals for the First Circuit 2013).
55. City of Providence. City of Providence Wins Major Victory Over Big Tobacco in the First Circuit Court of Appeals. 2013; <http://www.providenceri.com/mayor/city-of-providence-wins-major-victory-over-big>. Accessed October 1, 2013.
56. Tobacco Control Legal Consortium. Tobacco Control Legal Consortium. 2010; <http://publichealthlawcenter.org/programs/tobacco-control-legal-consortium>. Accessed May 24, 2013.
57. Tobacco Control Legal Consortium. Using Licensing and Zoning to Regulate Retailers: Tips and Tools. St. Paul, MN: Public Health Law Center, Tobacco Control Legal Consortium; 2011.
58. McLaughlin I. License to kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool. Tobacco Control Legal Consortium; April 2010.
59. Counter Tools. Counter Tools: About. n.d.; <http://countertools.org/about/>. Accessed February 25, 2013.
60. Counter Tobacco. Counter Tobacco Highlights 5 POS Trends to Watch for in 2013. 2013; <http://countertobacco.org/counter-tobacco-highlights-5-pos-trends-watch-2013>. Accessed February 25, 2013.
61. The Community Tool Box. Promoting Awareness and Interest Through Communication. Work Group for Community Health and Development at the University of Kansas; 2012.
62. Tobacco Free Providence. Do people really care? 2011; <http://www.tobaccofreeprovidence.org/2011-06-01-do-people-really-care/>. Accessed February 26, 2013.

# Additional Resources

## GENERAL POINT-OF-SALE ASSISTANCE

### CounterTobacco.Org

CounterTobacco.Org is a comprehensive resource for local, state, and federal organizations working to counteract tobacco product sales and marketing at the point of sale. The website provides policy solutions, advocacy materials, news updates, and an image gallery exposing tobacco industry tactics at the point of sale. For more information: <http://www.countertobacco.org>

### Counter Tools

Counter Tools is a nonprofit organization with a mission to disseminate store audit and mapping tools for tobacco control and prevention. Counter Tools was established and is managed by the co-founders of CounterTobacco.Org. For more information: <http://countertools.org/>

## LEGAL ASSISTANCE

### Tobacco Control Legal Consortium (TCLC)

The TCLC is a national legal network for tobacco control policy. Drawing on experts in its eight affiliated legal centers, the Consortium works to assist communities with tobacco law-related issues, including point of sale policies. Its team of legal and policy specialists provides legislative drafting and policy assistance to community leaders and public health organizations. For more information, visit TCLC's website: <http://www.tclconline.org>

### ChangeLab Solutions

ChangeLab Solutions, the California TCLC affiliate, has worked on tobacco control policy for more than 15 years. Its website contains model policies, how-to guides, fact sheets, and general information about tobacco-related legal issues. For more information, visit their website: <http://changelabsolutions.org/tobacco-control>

## REPORTS

### The Federal Trade Commission Cigarette and Smokeless Reports for 2011

Using data gathered from the five major tobacco companies, The Federal Trade Commission prepares detailed reports on sales, advertising and promotions of cigarettes and smokeless tobacco. These reports provide tobacco control advocates with detailed information about where tobacco companies spend their money.

Cigarette report available at: <http://www.ftc.gov/os/2013/05/130521cigarettereport.pdf>

Smokeless tobacco report available at: <http://www.ftc.gov/os/2013/05/130521smokelesstobaccoreport.pdf>

### Regulating Tobacco Marketing: A “Commercial Speech” Factsheet for State and Local Governments

This TCLC factsheet discusses key considerations for regulating tobacco marketing and provides some tips for drafting legally defensible policies.

Available at: <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-speech-2010.pdf>

### Tobacco Price Promotion: Policy Responses to Industry Price Manipulation

This report by the Center for Public Health and Tobacco Policy describes the relationship between product price and tobacco, methods used by the tobacco industry to manipulate price, and policy options to maintain higher prices on tobacco products.

Available at: <http://www.tobaccopolicycenter.org/documents/Tobacco Price Promotion Complete Report.pdf>

# Appendix A: Store Assessment

## TFP Retail Environment Survey 2011

### A. STORE INFORMATION

1.) Store Name and Address: \_\_\_\_\_

2.) Are any schools visible from this store?

If Yes, provide name of school: \_\_\_\_\_

3.) Organization + Completer's initials: \_\_\_\_\_

4.) Store Type: (please circle one)

- a. Supermarket    b. Small Market    c. Convenience Store (no gas)    d. Convenience Store with gas  
 e. Gas Only    f. Drug Store    g. Liquor Store    h. Other (specify):

5.) Date and time of visit: \_\_\_\_\_

6.) Disposition of the visit: (please circle one)

- a. Completed    b. Partially completed    c. Denied / No data    d. Store not found  
 e. Store closed    f. Store not visited    g. Ineligible    h. Other (specify):

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### B. EXTERIOR ADVERTISEMENT

1. Check the percentage closest to matching the total tobacco ad coverage of doors and windows in this store.

0%	<input type="checkbox"/>	Up to 25%	<input type="checkbox"/>	Up to 50%	<input type="checkbox"/>	Up to 75%	<input type="checkbox"/>	Up to 100%	<input type="checkbox"/>
----	--------------------------	-----------	--------------------------	-----------	--------------------------	-----------	--------------------------	------------	--------------------------

2.) Are special offers such as special price, multi-pack discount, or free gifts advertised **on the exterior of the store**? Circle **Y** for "Yes" or **N** for "No".

- Special price                     Y     N  
 Multi-pack discount         Y     N  
 Free gifts                         Y     N

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### C. INTERIOR ADVERTISEMENT

1) The store interior overall: (please circle letter)

- a. Is free from any tobacco advertising  
 b. Has some tobacco advertising but only in section where tobacco is displayed/sold  
 c. Has tobacco advertising in other areas of store as well as where tobacco is displayed/sold  
 d. Has tobacco advertising covering almost all available space

2) The area near the counter: (please circle letter)

- a. Has no tobacco advertising  
 b. Has discrete tobacco advertising  
 c. Has moderate tobacco advertising  
 d. Has "In Your Face" tobacco advertising

3.) Are special offers such as special price, multi-pack discount, or free gifts advertised **near the cash register**?  
 Circle **Y** for "Yes" or **N** for "No".

Special price             Y     N  
 Multi-pack discount     Y     N  
 Free gifts                 Y     N

4.) Are special offers such as special price, multi-pack discount, or free gifts advertised **away from the cash register**? Circle **Y** for "Yes" or **N** for "No".

Special price             Y     N  
 Multi-pack discount     Y     N  
 Free gifts                 Y     N

### D. EMERGING TOBACCO PRODUCTS

1.) Are any of the following emerging products placed **on the counter at the cash register**? (circle **Y** for "Yes" or **N** for "No", and **NA** for "Not Applicable")

Snus	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA
Orbs	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA
Loose tobacco/dip/chew	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA
Cigarillos	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA

2) Are any of the following emerging products placed **behind the counter at the cash register** and visible from customer's side of the cash register: (**Y** for "Yes" or **N** for "No", and **NA** for "Not Applicable")

Snus	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA
Orbs	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA
Loose tobacco/dip/chew	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA
Cigarillos	<input type="checkbox"/> Y	<input type="checkbox"/> N	Flavored	<input type="checkbox"/> Y	<input type="checkbox"/> N	<input type="checkbox"/> NA

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Appendix B: Price Survey

## PRICE SURVEY FRONT



We are collecting information about people's purchasing habits, especially when they are trying a new product. We are **NOT** using this information to sell you any products, nor will we share your information with any retailer. The information we collect will **ONLY** be used to improve the health of Providence residents.

**Imagine there is a new product at the grocery store, like soap or a candy bar. How likely are you to purchase this new product if...**

**There is a buy-one-get-one free promotion?**

- NOT LIKELY    LIKELY    VERY LIKELY    I AM NOT AFFECTED BY THIS PROMOTION

**There is a 50% off promotion?**

- NOT LIKELY    LIKELY    VERY LIKELY    I AM NOT AFFECTED BY THIS PROMOTION

**There is a manufacturer's coupon you can use, which lowers the price of the product?**

- NOT LIKELY    LIKELY    VERY LIKELY    I AM NOT AFFECTED BY THIS PROMOTION

**If you liked the new product, how likely are you to purchase it again in the following situations?**

**There is a buy-one-get-one free promotion?**

- NOT LIKELY    LIKELY    VERY LIKELY    I AM NOT AFFECTED BY THIS PROMOTION

**There is a 50% off promotion?**

- NOT LIKELY    LIKELY    VERY LIKELY    I AM NOT AFFECTED BY THIS PROMOTION

**There is a manufacturer's coupon you can use, which lowers the price of the product?**

- NOT LIKELY    LIKELY    VERY LIKELY    I AM NOT AFFECTED BY THIS PROMOTION

## PRICE SURVEY BACK

Did you know that tobacco companies promote tobacco products with discounts and other pricing strategies?

- YES    NO

Do you think tobacco discounts encourage youth to try tobacco products?

- YES    NO    I DON'T KNOW

Do you think fewer youth would try smoking if tobacco discounts were prohibited?

- YES    NO    I DON'T KNOW

Do you think tobacco discounts affect how much tobacco is consumed by tobacco users?

- YES    NO    I DON'T KNOW

Do you think tobacco discounts should be prohibited?

- YES    NO    I DON'T KNOW

What is the income level of your household?

- LESS THAN \$30,000    \$30,000 - \$49,999  
 \$50,000 - \$69,999    ABOVE \$70,000    I DON'T KNOW

In the last 30 days, have you used any tobacco products?

- YES    NO

In the last 30 days, have you smoked more than 1 cigarette?

- YES    NO

AGE:  UNDER 18    18-34    35-50    51-65    OVER 65

CITY:

NEIGHBORHOOD:

SEX:  MALE    FEMALE

Are you a parent or guardian of a minor(s) (under age 18)?  YES    NO

To join the Sweet Decell campaign and receive updates on our work, please fill in your email address below. Your contact information will not be shared with any third party.

EMAIL ADDRESS:

# Appendix C: Retailer Flyer

Please note new effective date\*



## Revised City of Providence Tobacco Sales Laws

### Effective February 1, 2012

- **New Registration law.** All Vendors selling tobacco in the City of Providence must be registered by the Board of Licenses and the license must be **visibly posted** in the store
- **Ban on Sale of Single Cigarettes or “Loosies”.** All tobacco vendors are prohibited from selling single cigarettes or “loosies”

### Effective January 3, 2013

- **Ban on Non-Cigarette Flavored Tobacco Products.** All tobacco vendors in the City of Providence are prohibited from selling flavored tobacco products (except menthol, mint or wintergreen tobacco)
- **Flavored tobacco include but are not limited to:** all fruit flavors, chocolate, vanilla, honey, candy, cocoa, herb, spice, dessert, alcoholic beverage or spicy, artic, ice, cool, mellow, fresh and breeze. Tobacco products include any product containing tobacco or nicotine including but not limited to: cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus and dissolvable tobacco
- Smoking and Hookah bars are exempt, as defined by Sec. 23-20.10-2(15).
- **Ban on Coupon and Price Discounts.** All vendors selling tobacco in the City of Providence are prohibited from: accepting or redeeming any coupon that provides any tobacco products or cigarettes for free or for less than the listed retail price. Tobacco vendors are also prohibited from selling tobacco products or cigarettes at a multi pack discount or buy down (example buy two get one free or purchase tobacco or cigarette product in exchange for another free or discounted tobacco product)

### Penalties and Fines

Penalties and fines related to these new laws are consistent with other violations such as underage or single cigarette tobacco sales

- **\$250.00** for the first offense
- **\$350.00** for the second offense
- **\$500.00** for any subsequent offense
- **Vendors with more than three offenses may be subject to license revocation**

**Please note: Businesses without a current city of Providence Tobacco License are in violation of the law and could be subject to a citation. Tobacco Retailers in Providence require BOTH a state and city license.**

Tobacco vendors are encouraged to review the full language of the laws which may be found at the Board of Licenses website: <http://www.providenceri.com/license/>. You can also fill out and download a tobacco license application at that site by clicking the link on that page for “Applications.” The Tobacco License is listed under “Miscellaneous.” If you have any questions or need additional resources, please contact the Tobacco Free Providence Vendor Outreach and Education consultant, Chalonda James at (401) 484-0503.

