

Reducing Cheap Tobacco & Youth Access: New York City INNOVATIVE POINT-OF-SALE POLICIES: CASE STUDY #3



JUNE
2015

Acknowledgements

This case study was produced by the Center for Public Health Systems Science at the Brown School at Washington University in St. Louis. *The following individuals were primary contributors:*

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We would like to thank the people interviewed for this case study for their time and assistance, including: Kevin Schroth, Elizabeth Kilgore, Victoria Grimshaw, Michael Johns (formerly), and Shannon Farley from the New York City Department of Health & Mental Hygiene's Bureau of Chronic Disease Prevention and Tobacco Control; Deidre M. Sully and Sheelah Feinberg (formerly) from NYC Smoke-Free at Public Health Solutions; Erin McCarron from the Lesbian, Gay, Bisexual & Transgender Community Center in New York City; and Douglas Nam Le (formerly) from Asian Americans for Equality.

Photos courtesy of: <http://newyork.pics> (left cover); CounterTobacco.Org (center and right cover, pp. 1, 10, 12 left, 20); <http://www.tobaccofreekids.org> (p. 3); NYC DOHMH (pp. 9, 19, 21); American Lung Association (p. 12 right); LGBT Center in NYC (p. 13); Spencer T. Tucker/ Mayoral Photography Office (p. 14); NYC Smoke-Free (p. 17 left); and saveourstoresnyc.com (p. 17 right).

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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, product placement, and price.

Tobacco companies use the retail environment to attract and maintain customers by promoting their brands and establishing the presence of tobacco products as commonplace. Exposure to tobacco products and price promotions at the POS encourages initiation and discourages cessation.¹⁻³

Solving the POS problem is recognized as the 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 counter-marketing campaigns.⁴ Since the 2009 passage of the Family Smoking Prevention and Tobacco Control Act (FSPTCA) many states and communities are more actively considering policies that affect the retail environment.⁵

This report is the third 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 key stakeholders. In addition, we reviewed relevant public health, legal, and news articles.

This case study highlights landmark efforts in New York City (NYC) to eliminate access to cheap tobacco and reduce youth tobacco use through regulation at the POS. In 2013, NYC



Tobacco products and marketing at the POS

became the first major metropolitan city in the U.S. to pass legislation increasing the minimum legal sales age (MLSA) for tobacco to 21. City officials also passed a multi-component bill that included a discount redemption ban, minimum packaging requirements for cigars, a minimum price law, and increased penalties and enforcement for the sale of illegal or untaxed tobacco. This report also provides a brief background of policies like those adopted in NYC, popular tobacco industry tactics, and legal considerations. States and communities considering similar policies can learn from NYC's experience and take away practical next steps for restricting youth access and countering tobacco company strategies that keep prices low.

Policy Background

ACCESS TO TOBACCO

Cheap & Everywhere

Tobacco is widely available in convenience stores, supermarkets, gas stations, pharmacies, and other retailers. The exact number of tobacco retailers nationwide is impossible to obtain since only 36 states, the District of Columbia, and a number of municipalities require licensing, leaving large swaths of the country without licenses. A previous study estimated that 375,000 businesses sell tobacco in the contiguous U.S., the equivalent of 27 tobacco retailers for every McDonald's.⁶ The pervasiveness of tobacco products and conspicuously advertised price discounts not only makes purchases easier, but also attracts new and younger users, encourages continued use, and lessens chances of successful quit attempts.^{7,8}

Tobacco products are everywhere. They are also cheap in many jurisdictions, which increases accessibility especially for youth and other price-sensitive consumers. Heavy smokers along with members of vulnerable populations like African-Americans, youth, and women are more likely to take advantage of price discounts.⁹ While prices for a cigarette pack range from around \$4.71 to \$10.44, single and two-packs of cigars may be less than fifty cents or a dollar.^{10,11}

Tobacco control partners know that a proven way to decrease access to cheap tobacco is to raise excise taxes.¹²⁻¹⁵ While traditional strategies like increasing taxes and promoting smoke-free spaces should remain a priority, political and economic environments are not always conducive to raising taxes. Also, some cities and states that have achieved relatively high tobacco tax rates are positioned to implement new approaches. Cities that lack taxing authority could still work on POS pricing policies. Point-of-sale policies can work in addition to or in lieu of high tax rates to help reduce access and use.

Tobacco Industry Practices

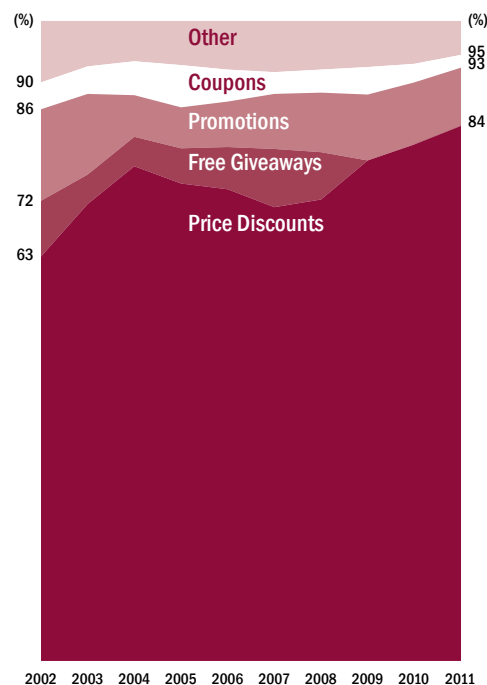
Price discounting

The most common tobacco industry practices to keep products cheap and accessible include price discounting and retailer promotions. These practices help tobacco companies block the intended impacts of increased excise taxes with smaller overall prices paid at the POS.

In 2009, the FSPTCA banned tobacco companies from giving away free products and samples of cigarettes and in most cases smokeless tobacco.⁵ The industry simply reallocated this portion of its budget to price discounting, which now comprises 84% of advertising and promotional expenditures (\$8.4 billion in 2011).¹⁶

In addition, 9% of this budget (\$750 million in 2011) goes to retailer and wholesaler promotional allowances to ensure prime retail visibility for

Cigarette Advertising & Promotional Spending



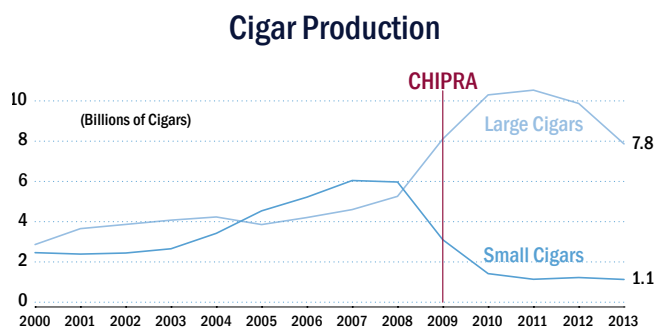
Source: Federal Trade Commission Cigarette Report for 2011¹⁶

tobacco products.¹⁶ The industry once again avoids higher prices with buy downs and incentives like trade programs that benefit retailers and pass lower prices on to customers.¹⁶ Along with expenditures for coupons, retailer promotions and price discounts account for 95% of the money tobacco companies spend to attract newer and younger customers, maintain current use rates, and lure former smokers.

Adapting to policy changes

Tobacco companies also adjust strategies like packaging and production practices to work around new policies and keep prices low. For example, the FSPTCA requires that cigarettes be sold in packs of 20 but does not set a minimum for other tobacco products. In addition, the FSPTCA bans flavored cigarettes, but not other flavored tobacco products. Single and two- or three-pack cigars and cigarillos are sold cheaply, are often flavored, and frequently serve as an introduction to tobacco for teens.^{17,18}

For years, to avoid the higher tax rates of cigarettes, tobacco companies produced increasing quantities of little cigars. Simply by adding a small component of tobacco leaf to cigarette-sized wrappers, the products are legally reclassified as cigars.¹⁹⁻²¹ Through the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA), federal excise tax rates changed and little cigars began to be taxed as cigarettes. The industry adapted by making little cigars slightly heavier, so they still look and feel like little cigars, but are classified as large cigars, which are taxed at much lower rates at



Inexpensive and colorful tobacco product packaging

both the state and federal level.^{21,22} To take full advantage of the tax discrepancy, production of little cigars was more than cut in half, and production of large cigars doubled.^{21,22}

The industry is also reallocating more advertising and promotional dollars away from cigarettes to cigars and other tobacco products. Meanwhile almost twice as many high school students smoke cigars (13%) than adults (7%).²⁴⁻²⁶ Not only can all types of cigars circumvent the FSPTCA flavor ban on cigarettes and the minimum cigarette pack size requirement, but also the minimum price laws enacted in many states.

Policy Options

There are many non-tax policy options available for tobacco control partners to increase tobacco prices and decrease access (See Table 1 for some examples). Each strategy can work well as a stand-alone policy. However, each option on its own can be vulnerable to loopholes and shifting industry practices. Therefore, POS strategies that increase the price of tobacco products through comprehensive non-tax approaches should be adopted along with tax increases when possible.

Price-discounting restrictions

Policies that restrict price discounting can counter the industry's massive promotional efforts and directly impact prices at the POS. Some states like California and Hawai'i have banned the free

Table 1: Sample POS Policies to Address Pricing & Accessibility with Selected Examples

Policy Type	Options/Components	Selected Examples	Details
Price Discounting Restrictions	<ul style="list-style-type: none"> Ban all discount redemption Ban multipack deals Ban coupon distribution 	Providence, RI CA, HI	Redemption bans have withstood legal challenges
Minimum Price Laws	<ul style="list-style-type: none"> Minimum markup Price floor Hybrid 	24 states & D.C.	Price floors/hybrids may be more effective than markups
Minimum Packaging Requirements	<ul style="list-style-type: none"> Minimum # per package Exempt expensive cigars Minimum price for singles 	Boston, MA	Boston focused on youth, min. cigars per pack = 4; min. individual price = \$2.50
Increased Tax Enforcement	<ul style="list-style-type: none"> License suspension Revocation/closure Increased inspections/fees 	Chicago, IL	Industry will overstate illegal markets as anti-tax tactic
Minimum Legal Sales Age	<ul style="list-style-type: none"> Raise age to 19 or 21 Raise minimum clerk age 	Many cities in MA HI Cities in CA, IL, MO, NJ	MLSA of 21 better addresses “social sources” for youth younger than 18

distribution of coupons (i.e., allowing coupon distribution only with purchase). Alternatively, price discount restrictions that target the redemption of coupons at the POS have a more direct impact on prices and purchases.²⁷ Price-discounting policies should also address non-coupon value-added discounts (e.g., buy-one-get-one free and other multi-pack discounts). In 2012, Providence, Rhode Island successfully passed a discount redemption ban for tobacco products, expressly forbidding value-added discounts and coupon redemption.²⁸

Minimum price laws

Minimum price laws can also restrict access to cheap tobacco or eliminate cheap products altogether. Though 24 states and the District of Columbia have had minimum price laws in place for decades, many of these are unnecessarily complicated, vulnerable to industry and retailer manipulation, and ineffective at increasing prices at the POS.²⁹ Most are based on minimum markups, meaning that the state requires retailers and/or wholesalers to add a certain percentage of their cost to the final price at the POS.^{29,30} With this type of minimum price law, tobacco companies can adjust base prices to keep them low. A different option is to establish a flat minimum rate (also called a price floor) for specific products. These minimum price laws can limit industry influence on price more directly.³⁰

Minimum packaging requirements

Setting the minimum number of products per package can reinforce the effectiveness of both price discount restrictions and minimum price laws. Although the FSPTCA requires cigarettes to be sold in packs of 20, federal laws for minimum package sizes of other tobacco products do not exist. Policy options to combat sources of cheap cigars and other tobacco products generally include prohibiting the sale of products that don't meet certain requirements (e.g., prohibiting cigarillos in packs of less than three) and can exempt products over a certain price point (e.g., expensive cigars) or certain types of retailers.¹⁸ In 2011, Boston, Massachusetts passed a minimum packaging requirement for cigars. The ordinance stipulates that cigars and cigarillos priced under \$2.50 at retail must be sold in packs of at least four.³¹

Increased tax enforcement

Retailers who do not comply with tax regulations and other illegal cigarette dealers are another source of cheap tobacco. Cities and states with much higher tobacco excise taxes than neighboring states are particularly vulnerable to illegal cigarette markets, in which non- or improperly stamped cigarettes are smuggled in and sold for much less than retail price.³² In

areas where tax-noncompliant retailers and other illegal points of sale are prevalent, increased and improved enforcement of tax laws can limit sources of cheap tobacco.

For example, Chicago, NYC, Massachusetts, and Rhode Island have some of the highest excise taxes in the U.S., and all face extensive illegal cigarette markets.³² County officials in Chicago recently stepped up efforts to combat illegal sources of tobacco by tripling business inspections and targeting big-box stores in addition to smaller corner stores and gas stations.³³

Minimum legal sales age (MLSA)

Other POS policies that do not directly target price can also reduce access to tobacco. For example, higher MLSAs limit opportunities for young people to buy tobacco. Currently, the FSPTCA sets a minimum age of 18 for cigarettes and smokeless tobacco.

While the FSPTCA expressly prohibits the federal government from increasing the MLSA higher than 18, it also clarifies that states maintain the authority they have always had to legislate higher MLSAs. Four states (Alaska, Alabama, Utah, and New Jersey) have MLSAs set at 19.³⁴

An MLSA of 21 can be more effective. Ninety-five percent of adult daily smokers are younger than 21 when they have their first cigarette and 90% of

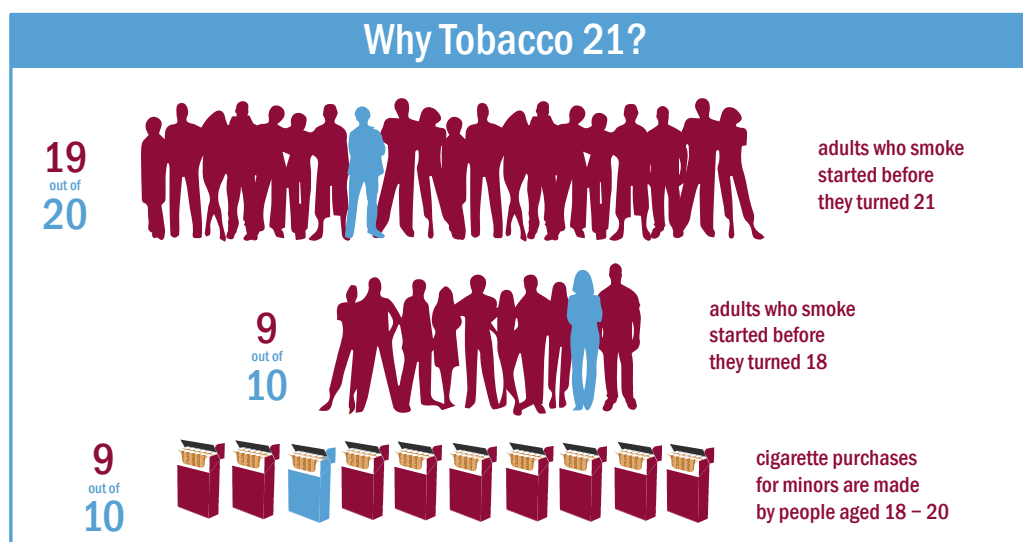
cigarettes bought for minors come from people aged 18 to 20 years.^{15,34-36} By also addressing the “social sources” of tobacco, an MLSA of 21 directly restricts access for teens older and younger than 18.^{37,38} In 2005, Needham, Massachusetts became the first city in the U.S. to raise its MLSA to 21.³⁹ Since then, cities in Massachusetts, California, Illinois, Missouri, and New Jersey, and counties in New York, and the state of Hawai‘i have followed suit.⁴⁰ Recently, the Institute of Medicine released additional compelling evidence supporting tobacco 21 laws.⁴¹

Legal Considerations

State and local governments may encounter legal challenges when trying to adopt laws regulating tobacco pricing and youth access. Most likely, these arguments will be based on constitutional claims or preemption.

First Amendment challenges

Laws that affect a tobacco company’s marketing strategies are frequently challenged under the First Amendment’s commercial speech doctrine. A recent example included a local ordinance that banned the redemption of discounts for tobacco products and banned the sale of flavored tobacco products in Providence, Rhode Island. In 2012, the industry challenged Providence’s ban on discounts and the redemption of coupons in retail



Sources: U.S. Dept. of Health & Human Services, Hammond, DiFranza & Coleman^{15,35,36}

stores. A central argument claimed that the ban violated tobacco companies' free speech in that it prevented companies from communicating price-related information, namely discounts, to adult customers.²⁸ The court ultimately decided that the restriction on discounting did not violate the First Amendment and the ordinance was upheld.^{28,42}

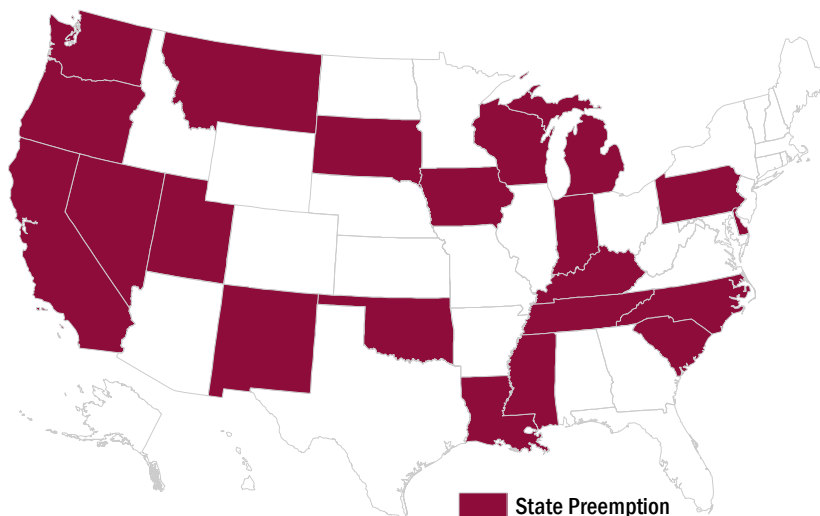
Preemption

In the Providence case, the industry also unsuccessfully argued that the city ordinance was preempted by state and federal statutes. In legal terms, preemption means that there is a hierarchy of laws under which laws passed at a "higher" level can trump laws at a "lower" level under certain circumstances. For example, a federal law can trump state or local laws, and a state law can trump local laws. Preemption can be express or implied. Express preemption occurs when a law at the higher level explicitly confirms an intention to preempt activity on that topic at a lower level. Implied preemption can be found where there is a conflict between a law at a higher level and a lower level or when the law at the higher level addresses a subject so comprehensively that it shows that the legislative body intended to regulate an entire field without interference from a lower level.^{43,44}

Preemptive language varies from state to state. Tobacco control partners should consult legal experts on the actual extent of specific preemptions (See Legal Assistance in Additional Resources). Currently, 22 states have a preemption concerning youth access which could prevent local governments from raising the MLSA (See map below).⁴⁵

Minimum packaging requirements have also faced legal challenges based on preemption and more general issues known as "home rule authority." For example, Baltimore City and Prince George's, County Maryland both passed local laws requiring cigars to be subject to minimum package requirements.²⁴ Both laws were challenged in court. In Prince George's County, the tobacco industry sued claiming that the packaging requirement was not local because it would affect people beyond Prince George's County and, therefore, was beyond the jurisdiction of the County. They also argued that the state set tobacco packaging laws and preempted any local legislation. Although both laws survived at lower courts, Maryland's highest court held in 2013 that state law occupies the field of regulating the packaging and sale of tobacco products, including cigars and, therefore, impliedly preempts local jurisdictions from passing laws on those topics.⁴⁶

State Preemption of Local Youth Access Laws, 2014



Source: Centers for Disease Control and Prevention ⁴⁵

Advancing Tobacco Control in NYC

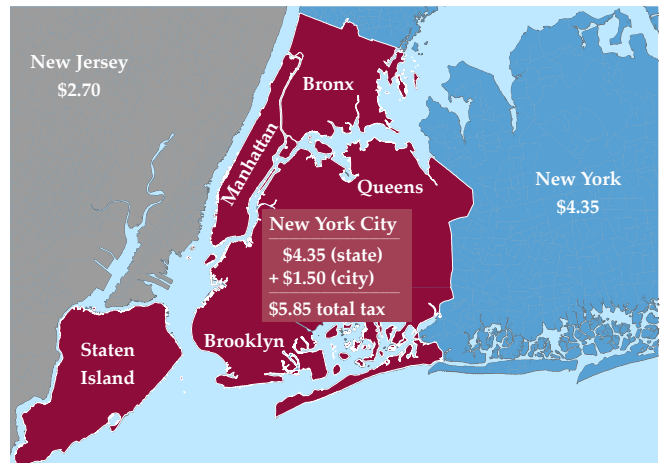
In 2014, NYC implemented two of the most progressive POS policies in the nation. The first policy, Tobacco 21, raised the minimum age to purchase tobacco, including e-cigarettes, from 18 to 21. The second policy, Sensible Tobacco Enforcement (STE), a comprehensive set of price-related policies, restricted price discounts, set minimum price and packaging requirements, and increased penalties for tax evasion. The city's ambitious goal of reducing the amount of cheap and accessible tobacco was not easy to achieve. It faced challenges common to cities working on POS policies but overcame them with the help of strong partnerships, convincing local data, and support from elected officials.

BACKGROUND

With more than 8.4 million residents, NYC has the largest population of any city in the U.S., twice the population of Los Angeles, the second largest city.⁴⁷ New York City's population is young and multicultural, with 1.8 million residents under the age of 18 and 3.1 million foreign-born residents.^{47,48} Half of all NYC residents speak a language other than English at home.⁴⁷

The city is led by the Mayor and the City Council. The Council is the legislative body charged with making and passing laws such as the landmark Smoke-Free Air Act of 2002 that made nearly all workplaces smoke-free.^{19,49} Its 51 elected members each represent a single council district located in one of the five boroughs (The Bronx, Brooklyn, Queens, Manhattan, and Staten Island).⁴⁹ Active citizens are engaged in local government through 59 community boards.⁵⁰

The city's Department of Health & Mental Hygiene (DOHMH) leads and implements health initiatives, and works with the City Board of Health, a regulatory body composed



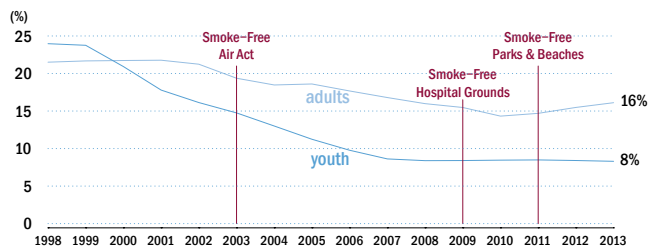
Cigarette excise tax rates in the five boroughs of NYC, New York State, and neighboring New Jersey.

of health experts appointed for six-year terms by the Mayor with the consent of City Council.⁵¹ The DOHMH administers the annual NYC Community Health Survey providing data on the health of residents from all five boroughs.⁵²

A Leader in Tobacco Control

Over the last decade, NYC has made significant progress in the core strategic areas of tobacco control, including raising tobacco taxes, establishing smoke-free air laws, offering barrier-free cessation services to smokers, and using mass media to educate consumers about the health consequences of tobacco use.⁵³ New York City now has the second highest per-pack combined state (\$4.35) and local (\$1.50) tax rate in the nation, making the average price for a pack of cigarettes eleven dollars.^{54,55} The city has continually strengthened its 2002 Smoke-Free Air Act by including hospitals, parks, and beaches to protect additional public spaces and by extending the law to include e-cigarettes.⁵⁶ These policies, along with other tobacco control efforts, have protected the lives of many NYC residents. Despite these efforts, NYC's youth smoking rates have plateaued from 2007 until the present.

NYC adult and youth smoking rates



Sources: New York City Dept. of Health & Mental Hygiene, New York City Coalition for a Smoke-Free City⁵⁶⁻⁵⁹

Complementing the city's high tobacco tax and strong smoke-free air laws is its requirement that all cigarette retailers be licensed.⁶⁰ The license costs \$110 and is valid for two years.⁶⁰ License holders must adhere to state and local tobacco control laws or risk suspension or revocation of the license and thus the ability to sell tobacco.⁶⁰

New York City and tobacco control partners also prioritize POS policies. Recent policy action such as the city's law restricting the sale of flavored, non-cigarette tobacco products has been successful.⁵⁶ However, because NYC has been at the forefront of implementing POS policies, it has faced legal challenges brought by the tobacco industry.

Claiming First Amendment and preemption, the tobacco industry challenged two of the city's POS policies in 2009: a flavor ban and a health warning requirement.⁶¹ The City Council's ban on the sale of flavored other tobacco products was upheld by the U.S. Court of Appeals for the Second Circuit, while the Board of Health's graphic health warning display requirement was struck down by the same appellate court.⁶¹⁻⁶³

A strong network of partners has aided the city's progress in tobacco control. National partners include the Campaign for Tobacco-Free Kids, the American Cancer Society's Cancer Action Network, the American Lung Association and the American Heart Association. Locally, the nonprofit, NYC Smoke-Free at Public Health Solutions (NYC Smoke-Free) is a longstanding health advocacy group that supports the city's tobacco control efforts.⁶⁴

NYC Smoke-Free (formerly the NYC Coalition for a Smoke-Free City) began in the 1990s as a small group of organizations that were "concerned about the health of New Yorkers."⁶⁵ The group grew quickly, became more organized, and was officially founded in 2001 as a staffed nonprofit community-based organization (CBO). By 2010, it had offices in all five boroughs, and was creating and strengthening partnerships with neighborhood organizations throughout the city.⁶⁶ It is funded by New York State's Bureau of Tobacco Control to implement youth action and community engagement strategies to decrease tobacco use.⁶⁵

While NYC Smoke-Free has many national and local partners, two in particular, Asian Americans for Equality (AAFE), and The Lesbian, Gay, Bisexual, and Transgender Community Center (the Center), have been integral to recent tobacco control efforts. Though tobacco control is not the central mission of AAFE or the Center, the populations they serve and communities they work in are disproportionately affected by tobacco.^{67,68} Like many other CBOs, both are longtime stakeholders in advancing tobacco control efforts in NYC.

POLICY DEVELOPMENT

This next section presents the process by which the two NYC policies, STE and Tobacco 21, were developed. It also highlights the important steps that helped make the case for the policies and ultimately resulted in policy adoption.

Addressing Sources of Cheap Tobacco: Sensible Tobacco Enforcement

Sensible Tobacco Enforcement began in 2011 with efforts to address the prevalence of price discounting. This research soon exposed other price- and tax-avoidant practices.

NYC's high-tax environment and the availability of illegal (untaxed) cigarettes made raising taxes politically challenging.⁵⁵ As a consequence,

tobacco control leaders began to investigate non-tax options to keep the price of tobacco products high. Informed by emerging research in the tobacco control community, they considered restricting price discounts, creating package requirements, and addressing illegal markets.

Gathering local data

One of the first steps was to understand the scope and prevalence of cheap and discounted tobacco in the city. The DOHMH gathered coupons and bought tobacco products in bodegas around the city and made a poster board to organize and demonstrate the variety and amount of discounts. The DOHMH took a straightforward approach to educate stakeholders and policymakers by sharing the poster board with them. Stakeholders were consistently surprised at the low prices and extent of discounting practices.⁶⁹



Examples of price-discounting practices

Health department researchers took advantage of local and statewide data such as the DOHMH's annual Community Health Survey (CHS), and the biennial Youth Risk Behavior Survey (YRBS) to better understand the problem of access to cheap tobacco in NYC.^{57,59,70,71}

After learning that lower tobacco prices were often the result of coupon use and multipack discounts, health officials were able to add questions to the CHS about the frequency and size of discounts. Michael Johns, DOHMH's Acting Director of Research in the Bureau of Chronic Disease Prevention and Tobacco Control at the time, said, "We introduced a question explicitly to ask people if they'd used a discount on their last pack and how much of a discount they got. We also asked about the use of little cigars and cigarillos."⁷² Results found that price discounts were widely used, reaffirming the need for price-discounting restrictions. Youth Risk Behavior Survey data also showed that youth use of cigarillos and little cigars, inexpensive and widely available alternatives to cigarettes, tripled from 2001 to 2009.^{19,59}

Learning from experts

As the DOHMH developed its discount ban, Providence, Rhode Island passed the nation's first discount ban in 2013. Because Providence's law was passed first, leading to the first lawsuit, DOHMH had the opportunity to collaborate with officials from Providence and anticipate legal challenges. (Providence's price-discount ban survived a challenge in the trial and appeals courts.)^{28,42} The DOHMH also worked with the same legal experts at the Tobacco Control Legal Consortium that helped Providence. The Consortium is a national legal network that supports communities with tobacco control policy. It provided NYC with technical assistance on legal and policy issues.

NYC health staff also worked with Boston to learn more about the benefits of complementing a discount ban with a minimum price law. Victoria Grimshaw, Senior Policy Analyst with the DOHMH's Bureau of Chronic Disease Prevention and Tobacco Control, explained that "Boston had a type of coupon ban but no minimum price floor, which made it difficult for enforcement



Example of a buy-some-get-some free deal

officers to know the right price for cigarettes and this made enforcement a challenge.”⁶⁹

New York State already had a minimum price markup type law; however, it was not comprehensive and it was easily subverted by the industry through POS discounts.⁵⁷ The original intent of the law was not to be a public health measure, but to protect cigarette retailers from anticompetitive practices. Because it requires minimum markups at various stages in the chain of distribution, there is not one minimum price. Each pack’s minimum price depends on the base price and the channel of distribution. In addition, practitioners say that it is confusing and hard to enforce in the field.⁵⁷ “The enforcement officer had to perform complex math when they walked into a bodega,” said Kevin Schroth, Senior Legal Counsel with the DOHMH’s Bureau of Chronic Disease Prevention and Tobacco Control.⁵⁵ Learning from the difficulties with the state’s minimum price law, city health officials saw an opportunity to develop a law that would keep prices high and simplify enforcement.

Determining minimum price

To help determine the price floor, health staff studied cigarette prices across the city. They were already conducting retail audits of drink options, and took advantage of the opportunity to also gather data on the range of cigarette prices.^{55,73} Based on price data for premium and low-priced cigarette brands, they determined that a price floor of \$10.50 would raise prices at

the lower end of the range without affecting a significant portion of the market.

The price floor and price-discounting ban would work well together to keep prices high and make enforcement easier.⁵⁵ Knowing that discounts could not bring the price lower than a \$10.50 price floor would make enforcing the law much clearer. Schroth explained, “If enforcement officers walk into a store and see something selling for \$10.25, they know it’s a violation.”⁵⁵

Health officials proposed addressing the availability of cheap tobacco by establishing minimum package requirements for cigars as part of the STE policy. If an individual cigar costs \$3.00 or less, it would have to be sold in packs of at least four. Little cigars would be sold like cigarettes, in packs of no fewer than 20 and with the same pack price floor of \$10.50.¹⁹ The discount redemption ban, price floor, and minimum packaging law would all work together to eliminate sources of cheap tobacco, and together they formed a single policy, STE.

Health officials looked to other cities to identify new penalties to reinforce tobacco control laws and prevent trafficking. For instance, Chicago banned the concealment of untaxed cigarettes, and NYC created a similar prohibition.⁵⁵ As a



A self-service display of little cigars and cigarillos that would be more expensive under the newly developed minimum packaging and price rules

result of the additional penalties, licensed tobacco retailers could face higher fines, the loss of their tobacco license, and potentially having their store padlocked for repeated violations.⁷⁴ Retailers operating without a tobacco license would be subjected to the highest penalties: a \$5,000 fine for a first-time offense, \$10,000 for a second offense, followed by a sealing of the premises after two violations within three years (See Appendix A).⁷⁴ All of the increased penalties were added as an additional component of the STE policy.

City agencies work together

Coordination between city agencies began early. Health officials knew that involving other departments that would have a stake in the new policies was essential. New York City's Department of Finance, through its Sheriff's Office, enforces laws on cigarette excise taxes and the Department of Consumer Affairs (DCA) issues the City's cigarette retailer license and inspects stores for related sales violations. "They were invited very early, in fact, we worked in concert with both [departments] to develop these laws and then also with our city law department, to write the actual law."⁶⁹

The Sheriff of New York City is a law enforcement officer who runs a branch of the Department of Finance. One of the Sheriff's core roles is to enforce cigarette tax laws. DOHMH formed a productive partnership with Sheriff Edgar Domenech based on the idea that cheap tobacco from illegal sources "wasn't just a finance issue but... a health issue," said Schroth. "And we both knew that by working together, we'd be able to sell our ideas more effectively than either of us could separately."⁵⁵ Sheriff Domenech had years of experience as a federal law enforcement officer

"...we both knew that by working together, we'd be able to sell our ideas more effectively than either of us could separately."

investigating cigarette trafficking. Domenech and Schroth worked together closely to craft the new anti-trafficking approaches contained in STE.⁵⁵

Further Decreasing Youth Access: Tobacco 21

Learning from neighboring communities

While youth are a price-sensitive population and pricing strategies like those in STE help decrease use, policies specifically targeted at youth can more directly impact youth access. Raising the MLSA had long been a tobacco control goal in NYC. In 2005, council member James Gennaro proposed raising the age to 19, but there was little political support for the idea at the time. Neighboring New Jersey and Suffolk County, NY, for example, implemented a MLSA of 19 in 2006 but did not have data to support the efficacy of changing the age to just 19.⁶⁹ A possible shortcoming of raising the age to 19 is that it doesn't address the common practice of older teens buying tobacco for underage teens.

Compelling evidence showing the effectiveness of raising the MLSA to 21 came from Needham, Massachusetts, the first U.S. town with a Tobacco 21 law.⁷⁵ After passing the law in 2005, Needham saw youth smoking rates drop from 12.9% in 2006 to 5.5% in 2012.⁷⁵ Almost a decade after the proposal to raise the MLSA to 19, the new evidence and growing political support led the Council to propose raising the MLSA to 21 for tobacco and e-cigarettes with the policy known as Tobacco 21.^{55,76}

Gathering local data

Health officials also researched the pervasiveness of tobacco product displays and their impact on youth. One study of NYC youth found that the odds of experimenting with smoking were 40% higher among youth exposed to tobacco retailers two or more times per week compared to those exposed less often.¹⁹ Surveys of New York City and County elected leaders and public health officials conducted in 2011 found that 59%

supported a ban and a 2013 poll of the public found that 68% of New Yorkers backed restricting product displays.^{64,77,78}



A self-service product display of cigarillos next to candy

Price Chopper, a New York State-based supermarket chain voluntarily restricted tobacco displays in 2008. It places tobacco products behind an opaque covering and has not seen an impact on revenue. Company spokesperson Mona Golub said, "The store chose to do this on principle and to know that we were not enticing the next generation of smokers with colorful marketing and advertising."⁷⁹ In light of the evidence and public support, and in addition to Tobacco 21 and STE, the DOHMH developed a plan to restrict tobacco product displays in all stores except tobacconists.^{19,80}

PARTNERSHIPS

Engaging Youth and Policymakers

The DOHMH's longstanding relationship with a number of national and local tobacco control advocates formed a bridge between the government and the community. National organizations included American Cancer Society's Cancer Action Network, American Heart Association, American Lung Association, and the Campaign for Tobacco-Free Kids. The local organization playing a prominent role was NYC Smoke-Free. NYC Smoke-Free played an important role in coordinating community education efforts and communication between

partners, the public, and policymakers in garnering support for the policies. NYC Smoke-Free's efforts raised awareness about the pervasiveness of tobacco marketing seen by youth and allowed them to build rapport with policymakers and the community.

NYC Smoke-Free's 2011 initiative, "Take a Walk in Our Shoes," invited city council members, community board leaders, and local media to accompany schoolchildren on their daily route from school to the subway station. Along the way, the kids pointed out the overwhelming number of tobacco ads they regularly encountered.⁶⁴ Using footage from the tours, they created a video and shared the experience with elected officials and community-based organizations.⁶⁵



Brooklyn youth participating in "Take a Walk in Our Shoes"

Then NYC Smoke-Free executive director Sheelah Feinberg said, "Having elected officials join us on those walking tours was very impactful, because they got to see tobacco marketing's impact on youth firsthand." One elected official said, "Whoa, okay, you have a 10-year-old in this video telling me that he knows what packs of Marlboro look like, that's problematic."⁶⁴

Known simply as "the Center," the LGBT Community Center in Manhattan has long worked with NYC Smoke-Free on tobacco control issues like cessation, smoke-free air, and youth overexposure to tobacco marketing.^{64,65,67} Through its internship program, the Center

“Having elected officials join us on those walking tours was very impactful, because they got to see tobacco marketing’s impact on youth firsthand.”

recruits six to eight young people every year to educate elected officials, community organizations, and other young people about “how big tobacco affects them.”⁶⁷

Part of the long-running internship includes meeting with city officials. Erin McCarron, the Center’s Smoke-Free Project Coordinator, travels with interns and other NYC Smoke-Free partners to city council members’ offices. During the visits, young people tell officials about tobacco’s impact on their lives, “and...the politicians are way more interested in hearing from them than they ever are from me,” she says.⁶⁷

In weekly brainstorming sessions, the Center’s interns devised a campaign called Flat Phil, featuring a cutout caricature of a familiar tobacco tycoon, to raise awareness among other young people about tobacco’s impacts on their lives. They take pictures of Phil next to aggressive marketing and post them on social media. Flat Phil has become popular on Facebook, Twitter, Tumblr, Instagram, and Vine. This creates opportunities for New York’s LGBT Center to connect with other youth tobacco prevention programs around the country⁶⁷ (See Appendix B).

Flat Phil quickly became a talking point during meetings between the Center’s interns and members of City Council. In the summer of 2013, council members asked the kids about Phil. As part of the ongoing dialogue, council members also asked about Tobacco 21 and the young people got the chance to voice their opinions.⁶⁷



Flat Phil next to discounted menthols

Gaining Widespread Support

One longtime member of NYC Smoke-Free is Asian Americans for Equality (AAFE), a nonprofit community development organization that assists members with a host of social, civic, and financial services.⁶⁸ The group played an important role in coordinating other immigrant groups to get involved with Tobacco 21 and STE. Douglas Nam Le, formerly from AAFE, said the organization was “happy to play a convening role...there were a lot of organizations...most of the groups which we reached out to were pretty motivated and really interested in coming together around this.”⁶⁸

During policy development and the summer of 2013, representatives from AAFE joined other CBOs and spoke at community board meetings in support of STE and Tobacco 21. They also engaged their own members with the city council. Though AAFE is not primarily a health organization and represents diverse interests, including a large number of small businesses, the organization did not see the proposed policies as anti-business.⁶⁸

“We want to protect the next generation of youth from tobacco use and addiction.”

“We want to protect the next generation of youth from tobacco use and addiction.”⁶⁴ For NYC Smoke-Free, all of its member CBOs, and many national advocacy organizations, this was a common thread of city council office visits, community board appeals, rallies, and all neighborhood engagement opportunities. Partners also often referred to key data sound bites, like how youth smoking rates had stalled and not decreased since 2007.⁶⁵

Having a handful of “basic messages around a policy issue or around a health promotion issue” can be a very helpful tool to unite partners and simplify goals.⁶⁸ As coordinator and facilitator, NYC Smoke-Free maintained a clear overarching strategy: “you have to have things relate back to a larger mission,” said Feinberg.⁶⁴

NYC Smoke-Free asked partners, “if they felt comfortable doing so, to contribute letters of support for the policies [STE and Tobacco 21] in their local publications, local newspapers, community newspapers.”⁶⁴ Feinberg and others also organized rallies, and importantly, accompanied youth and constituents on visits to city council member offices.^{64,65} Showing community support is important “because that’s ultimately who the legislator is accountable to – their constituents.”⁶⁵

“It’s always great when you can have a meeting with an elected official and they have a constituent sitting in front of them with a story on how this work affects them and what would make it better for their community.”

POLICY PROPOSAL

Officials Unite to Announce Policies

Officials and partners stood united when the time came to go public with the policy proposals. On March 18, 2013 at Queens Hospital Center, Mayor Bloomberg announced the proposed display restrictions and STE. Joining him were the City Commissioners of Health, Finance, and Consumer Affairs, and Council Members Gennaro and Levin.⁸¹ Also on hand to offer support were various partners, including representatives from the American Heart Association, American Lung Association, American Cancer Society’s Cancer Action Network, the Campaign for Tobacco-Free Kids, and NYC Smoke-Free.

A month later on April 22, Council Speaker Quinn and Health Commissioner Farley, announced Tobacco 21. Council Member Gennaro, the bill’s sponsor, was also on-hand. “When it comes to smoking, the science is clear: the earlier you start, the harder it is for you to quit. This proposal would take cigarettes and other tobacco products out of the equation for high school and younger college students” he said.⁸²



Mayor Bloomberg, city officials, and national and community partners announce the proposed display restrictions and STE

Source: Spencer T. Tucker, Mayoral Photography Office

Partners Converge at Public Hearing

The City Council’s Committee on Health, then chaired by Maria Carmen del Arroyo, held a public hearing on May 2, 2013 to invite testimony

regarding the three pieces of legislation. Including the two NYC Commissioners who spoke – Thomas Farley (Health) and David Frankel (Finance) – 52 individuals were called up to offer testimony during the four-and-a-half hour hearing.⁸³ The Committee also accepted written statements from dozens of experts from academic institutions and from national and international organizations. All of the written statements and testimony became part of a legislative record, which proved to be valuable during the subsequent lawsuit.

In all, 24 speakers including the two commissioners supported all the bills, and 10 were clearly opposed. A panelist from New York Public Interest Research Group, the college student-led non-profit that worked with other partners to gather data and build support for STE and the display restrictions spoke in favor of those two policies, but against Tobacco 21.^{65,67,84} The remaining 17 speakers, some who owned vape shops, spoke about e-cigarettes. Though Council member Gennaro and Commissioner Farley made clear early in the hearing that none of the bills were intended to address e-cigarettes, the e-cigarette advocates feared the policies would ban e-cigarette flavors.⁸³ No one in this group mentioned Tobacco 21, the bill that was raising the age to purchase e-cigarettes. Most asked the Council to amend STE and the display restriction bills to exclude e-cigarettes, or to create a definition for the products that would differentiate them from tobacco.⁸³

Opponent testimony predicts economic doom, potential legal challenges

All 10 of the speakers in clear opposition to the policies represented business associations (local, state, and national) and some were also NYC retailers.⁸³ As a whole, the group spent most of its time expressing concern that passing the proposed laws would devastate businesses and seriously harm the city's economy. Two claimed the policies were a direct assault on the American dream.⁸⁵⁻⁸⁸ These were the same arguments NYC tobacco control partners heard over a decade ago when smoke-free laws were being proposed

and implemented. One proponent responded to these claims in her own testimony, “It sounds just like what they said in 2002 that the smoking ban would destroy bars and restaurants.”⁸⁹ Despite what opponents at the time claimed, restaurants and bars have survived those policies.⁶⁴ Now it was retailers instead of restaurant owners who felt under attack.

Opponents also claimed that Tobacco 21, STE, and restricting product displays would increase untaxed cigarette sales in the city.^{85,87,90,91} The industry and retail representatives made no mention of the numerous increased enforcement components of STE that would directly address illegal sales. Instead they argued that the policies would “drive the biggest black market in the history of the city of New York, rivaling the drug market” and like previous tobacco policies, “benefit only criminals and terrorists.”^{88,91}

Some of the arguments from the opposition were based on legal challenges. Attorneys for the business associations took issue with potential First Amendment violations from the proposed display restrictions. They cited *Lorillard Tobacco Co. v. Reilly* (2001) in which the U.S. Supreme Court ruled that tobacco product packages are a form of advertising and therefore a legal expression of commercial speech.^{85,92} Concerning the discount ban component of STE, they raised federal preemption issues by claiming that the Federal Cigarette Labeling & Advertising Act (FCLAA) prohibits states and localities from regulating discounting and couponing practices.^{92,93} One opponent also referred to the ongoing federal lawsuit brought against

“It sounds just like what they said in 2002 that the smoking ban would destroy bars and restaurants.... Evidence, the cornerstone of smart policy, showed that this did not happen.”

Providence, Rhode Island for its discount redemption ban. He asked that the Council postpone voting on STE until that case was decided (which ultimately upheld the ban).^{92,94}

Proponent testimony provides evidence, offers personal stories

Tobacco control partners who spoke at the hearing came from all walks of life. They represented national agencies like the American Cancer Society and the American Heart Association, local CBOs like the Queens Tobacco Control Coalition and the Citizens Committee for Children, and international organizations like the World Lung Foundation and the University of Waterloo. Public health experts, a tobacco marketing manager-turned-activist, an ex-smoker, and area youth also testified in support of the measures.⁸³

Though they testified individually, proponents were united in their explanations of cheap tobacco's negative impacts, especially on youth. Many used data and evidence from the city and elsewhere to support their claims about problems the policies could address and the benefits of implementation. Young people and adults shared stories about tobacco's consequences in their own lives, lending a voice and personal touch to the need for the policies.

Proponents cited examples of the city's past as a leader in tobacco control and pointed out that despite its many successes, about one million New Yorkers still smoke.¹⁹ They spoke to the many non-taxed sources of cheap cigarettes in the city, many that are sold through legitimate retailers and not "on the streets" as is commonly believed.⁹⁵ Experts presented evidence that tobacco is cheaper in poor neighborhoods and African-American communities, and that young smokers are more likely to use coupons than adults.^{19,96}

Other tobacco control partners made arguments with evidence from places that had already implemented similar policies.⁹⁷ Commissioner Farley presented evidence from Needham, Massachusetts about the effectiveness of Tobacco 21 in reducing youth use rates there.¹⁹

Personal stories made the proponents' case more impactful. Countering a number of business owners and organizations, a deli owner and tobacco retailer from the Bronx told the Council how most other retailers in his neighborhood sold non-taxed cigarettes and made it impossible for his small business to compete. He continued to disagree with other retailers when he said, "I do not believe that changing the age requirements or taking the ability to display cigarettes will affect our business in any way. Our business is not made on cigarettes."⁹⁸

"I do not believe that changing the age requirements or taking the ability to display cigarettes will affect our business in any way. Our business is not made on cigarettes."

Perhaps the most effective personal accounts were those from the young people who testified about their families and neighborhoods. One told stories of walking to the corner store at 12 years old and being overwhelmed by the walls of tobacco and the large signs advertising discounts right next to the candy and gum.⁹⁹ Another boy talked about going into a pharmacy with his little brother. "My seven year old brother, his favorite candy is Reese's. Last week we went into a CVS and right next to the Reese's was the power wall. Later on in the car he was talking about smoking cigarettes."¹⁰⁰ (CVS voluntarily stopped selling all tobacco products in 2014.) Committee Chair Arroyo, along with the other council members, were very receptive to the kids' testimonies, even joking that they should get a free pass on their homework for the evening.⁸³



Youth speak at NYC Smoke-Free rally outside hearing

NYC Smoke-Free rallies outside hearing

While the line for entry into the hearing wrapped around the outside of the building, NYC Smoke-Free held a rally across the street on the steps of City Hall.⁶⁵ Grass-roots activists, representatives of health organizations, families, and citizens attended to show their support for the Council’s bold initiatives to combat cheap tobacco and its impact on youth.^{65,101} Many of those who spoke in favor of the policies at the hearing also spoke at the rally, including the young people who gave compelling testimonies inside. “We have our champions...our youth champions,” says Deidre Sully, speaking of Dante Natoli, a high

school freshman who frequently works with NYC Smoke-Free, “it really works to get the youth voice there.”⁶⁵

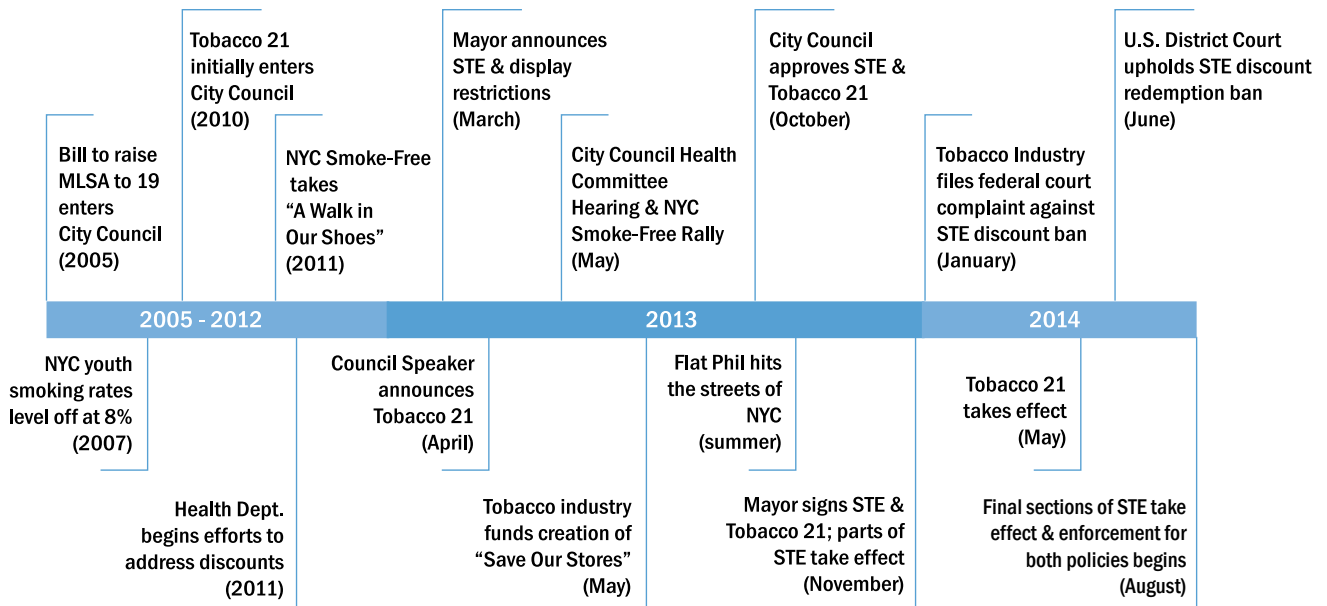
Economic & Political Challenges

In reaction to the policies, the tobacco industry financed its own coalition, Save Our Stores. Set up as a nonprofit in the city in May 2013, the organization recruited members of retailer groups like the Bodega Association and the Newsstand Operators Association.¹⁰² Its main argument was that the policies would decrease foot traffic and force retailers to close. The group solicited retailers to display stickers on their doors that read, “Save my store: Bans are not the answer.”^{64,103}



Save Our Stores sticker on door of a tobacco retailer opposed to the policies

Timeline of Events



“We call them Astroturf because they’re not really grassroots organizations that serve the community. They tend to be a few storeowners (that receive tobacco money through advertising) and they are against a new policy that they think will hurt their bottom line. We know that’s just a front for big tobacco,” said Feinberg, “It’s not as expansive as one would be led to believe.”⁶⁴

Criticism from the public centered on Tobacco 21. A common complaint was that if people 18 to 20 can drive, vote, and fight in wars, they should be able to decide whether to smoke. This argument appears in most places Tobacco 21 is introduced.^{64,104}

Partners and officials routinely answered these types of challenges with the evidence that not only do almost all adult smokers start before they reach 21, but that 18 to 20 year-olds make most tobacco purchases for younger teens.^{19,64} They also pointed out that pairing Tobacco 21 with STE and its crackdown on illegal sources of cigarettes in a city like New York only bettered the chances of real impacts on youth use rates.^{55,69}

POLICY IMPLEMENTATION

In October 2013, the New York City Council voted on STE and Tobacco 21, passing both with large majorities. In November, the mayor signed the policies into law (Table 2).

Uncertainty surrounded the product display restrictions.⁶⁹ Questions loomed about how the restrictions would address e-cigarettes and of additional concern was the potential for legal challenges citing *Lorillard v. Reilly*.^{85,92,105} The City Council therefore decided not to vote on product display restrictions and to instead focus on Tobacco 21 and STE.

Policies Roll Out & Face Legal Challenge

The components of STE that increased fines and penalties for illegal activity such as tax evasion, took effect immediately.

Table 2: Components of the Tobacco 21 and STE laws

Tobacco 21 (Local law 94)
<ul style="list-style-type: none"> Prohibits sales of tobacco products and electronic cigarettes to persons under 21 Defines “electronic cigarettes”
Sensible Tobacco Enforcement (Local law 97)
<ul style="list-style-type: none"> Prohibits retailers from redeeming coupons and any other price reductions below listed price on tobacco products Establishes minimum price for packs of cigarettes and little cigars of \$10.50 (later modifiable) Requires small cigars to be sold in packs of 20 (like cigarettes) Redefines “tobacco retailer” to include anyone in possession of more than 400 cigarettes Increases fines for selling cigarettes without a license, untaxed/unstamped cigarettes, and flavored tobacco Increases penalties for violations of tobacco laws, including padlocking stores and retail dealer license revocation Enlarges authority to seize untaxed/unstamped cigarettes and flavored tobacco products
Both laws also require retailers to post new signage

PROHIBITED for SALE to PERSONS UNDER 21: Cigarettes, cigars, chewing tobacco, powdered tobacco, other tobacco products or electronic cigarettes and PROHIBITED for SALE to PERSONS UNDER 18: Non-tobacco shisha, herbal cigarettes, pipes, rolling papers or smoking paraphernalia

NYC Department of Health and Mental Hygiene | Department of Consumer Affairs

New York City Local Law 94 of 2013; New York State Public Health Law, Article 13F



The remaining components of STE and all of Tobacco 21 were planned to go into effect six months later in order to provide a reasonable and fair amount of time for retailers to make the required changes and sell off non-compliant inventory like individually wrapped cigars and tobacco products bearing on-pack discounts.^{55,69} Setting August 1, 2014 as the date when enforcement would begin also provided time to educate retailers and the public, and to distribute the appropriate signs to retailers.⁵⁵

In January 2014, as had been anticipated, the tobacco industry along with three tobacco retailer trade groups filed suit in federal court against the discount redemption component of STE. They claimed the legislation violated their rights to communicate with their customers (First Amendment commercial speech) and that the laws were preempted by existing state and federal laws.^{106,107}

With the lawsuit underway, DOHMH and its partner agencies (DCA and DOF) moved forward implementing the rest of STE and Tobacco 21. They designed a robust communication strategy to increase retailers' understanding and compliance with the laws. The DCA held nine public information sessions across the five boroughs and invited every licensed tobacco retailer in the city.⁵⁵ The DCA worked with local retail associations to help get the word out, and the sessions were well-attended.^{55,69} In addition to holding public information sessions, they mailed retailers the two signs required by the law. One sign described Tobacco 21, and the other highlighted the required tax stamps (Table 2). They also sent several fact sheets describing the new laws and made everything available on the DOHMH's website in five languages (See Appendix A).⁵⁵

The Tobacco 21 law was easier for retailers to understand because, "they already card in a similar way for alcohol," Elizabeth Kilgore, Director of Communications within the DOHMH's Bureau of Chronic Disease Prevention and Tobacco Control, said. New York State funded the city's efforts to educate retailers on Tobacco 21.¹⁰⁸ Known as "detailers," these



Like most states, New York explicitly indicates ages of those under 21

contractors ensured that retailers received the materials mailed earlier, explained compliance with the laws, and answered questions.¹⁰⁸ Feedback from retailers indicated that the materials were well-received and helpful.⁵⁵ "So we really just did our best to reach out to as many [retailers] as possible and to give them opportunities to get the message if they missed it the first time," Schroth said.

Though enforcement for Tobacco 21 and various components of STE was scheduled to begin in May 2014, the lawsuit complicated matters. To simplify things, agencies postponed enforcement for both policies until August 1, 2014, after the discount redemption ban was upheld by a federal court in June. In its opinion, the court relied heavily on the decision in the Providence, Rhode Island case, concluding that banning coupon redemption does not violate tobacco companies' free speech rights to communicate with consumers under the First Amendment and that the NYC law was not preempted.^{106,109} In the case against NYC, the tobacco industry did not appeal the decision. Upon winning the price-discounting lawsuit, the departments mailed retailers another fact sheet with information pertaining to the recently upheld law.⁵⁵

Three Agencies Enforce Laws

The responsibility of enforcing the new laws was split between three agencies: DCA, DOF, and DOHMH. Because the agencies have different missions, resources, and capacity, early planning

was necessary. The DOHMH met with partner agencies during policy development to ensure each agency was on board with a role that was a realistic fit given their existing resources.

Coordination was critical because three different agencies, through multiple inspection teams, can issue violations that add up to a license suspension or revocation.⁵⁵ These departments are developing a system to better share information so that each department can see the total violation count for each store.⁵⁵ This coordinated intelligence helps shut down repeat offenders.⁵⁵

The DOHMH inspects food establishments, such as delis, some of which sell tobacco. Food establishments selling tobacco make up approximately 10% of licensed tobacco retailers. These businesses are inspected by both the DOHMH and the DCA.⁵⁵

The DCA has two inspection teams. One team inspects any store that carries a license issued by DCA, which includes the cigarette retailer license among many other licenses. Those inspectors look for flavored tobacco products, illegal discounts, unpackaged cigarettes and cigars, and appropriate signage which now includes two new signs required by STE and Tobacco 21.⁵⁵

A separate DCA inspection team (with two units) focuses on enforcing minimum age laws. New York State provides funding to inspect every tobacco retailer once a year. The unit that receives funding from New York State focuses exclusively on preventing sales to youth under the age of 18, which is consistent with State law. This unit employs youth younger than 18. City law, however, prohibits the sale of tobacco to persons younger than 21. To enforce the new sales age, DCA created a new unit with young adults between 18 and 21.⁵⁵ Inspections can be optimized to detect not only violations of Tobacco 21, but violations of STE.⁵⁵ For instance, a retailer selling a minor a two-pack of cigars for under \$3 would be in violation of the cigar minimum packaging rule in addition to selling to a minor.⁵⁵

Overall, the DOHMH believes that the efforts to engage retailers are paying off, but more time will be needed to evaluate the laws and compliance.



Tobacco retailer storefront in NYC

“There haven’t been a ton of violations, and there has been reasonably good compliance, even with the new laws.”

Researchers Lay Groundwork for Evaluation

The DOHMH researchers will evaluate the policies by comparing data collected before implementation to data collected after to see if there were changes. They will use data from the Community Health Survey and the New York State Adult and Youth Tobacco Surveys, which in addition to the state sample, contain a sample from the city.⁷¹ “We can track the trends, let’s say, in smoking initiation among adolescents in NYC before and after, and then compare that to the rest of the state, which provides a nice way of assessing whether or not those changes are attributable to Tobacco 21 and so forth,” Shannon Farley of the DOHMH said. “So we really want to know, are we getting the effects that we hope and expect,” Johns said. The evaluation of Tobacco 21 will center on changes in the age of initiation, social sources of tobacco, requests for proof of age, and smoking prevalence for youth and adults.⁷⁶

Staff introduced questions into the CHS survey during the research and planning phases of STE, giving them baseline data around behaviors now addressed by the policy, such as the use of price discounts, little cigars, and cigarillos.⁷² The evaluation will also look at changes in the price of cigarettes to assess the impact of the minimum price floor. They expect to see a decrease in the number of loose cigarettes and cigars because of the increased fines put in place with STE.⁷² To study the prevalence of untaxed cigarettes, they are planning to study littered cigarette packs.⁷²

Staff understand the impact of tobacco control policies on health disparities and how the culture of selling single cigarettes or “loosies” and single cigars is concentrated in high-risk neighborhoods. They see the evaluation as a good opportunity to better understand STE’s impact on health disparities at the community level.⁷²

Industry Responds

When facing new tobacco control policies, tobacco manufacturers try to block implementation with legal challenges, or look for ways around the laws. Even the innovative and comprehensive policy strategies outlined in STE have been vulnerable to industry tactics. Immediately after implementation, the industry responded to the discount redemption ban by encouraging consumers to redeem coupons outside the city.⁶⁹

Another component of STE requires that cheap cigars be sold in packs of four, and that cigars in smaller packages (of one, two, or three) must cost at least \$3.00 each.¹¹⁰ A three-pack of cigars, then, must cost at least \$9.00. However, while the intent of the law was to eliminate the cheapest cigars, there is no stated minimum price for four-packs in the law. To keep tobacco cheap and accessible, tobacco companies have started selling four and five-packs of cigars for 99 cents.^{69,108}



Coupons not redeemable in NYC

States & Neighbors Take Notice

Since the introduction and passage of Tobacco 21 in NYC, nearby cities, counties, and states have followed suit. Many neighbors in the metropolitan area have adopted Tobacco 21. In April 2014, the legislature and county executive of Suffolk County – which includes most of neighboring Long Island – raised its MLSA from 19 to 21.¹¹¹ Just across the Hudson in New Jersey, three cities – Englewood, Sayreville, Princeton and Teaneck – then also raised the MLSA to 21.⁴⁰

Less than a month after NYC officials announced plans for Tobacco 21, state legislators in New York and New Jersey introduced similar bills. City Council Speaker Quinn joined the state legislators for their announcements, and praised their actions. “I am grateful that New Jersey is taking our proposal a step further to protect youth from the harmful health effects of smoking...preventing our youth from smoking has now truly become a regional effort.”¹¹² In New York State, the bill awaits approval in both houses. New Jersey’s bill passed in the senate in June 2014 and now is awaiting approval in the assembly.^{40,112}

“Preventing our youth from smoking has now truly become a regional effort.”

Lessons for Future Efforts

What can other states and communities learn from NYC's experience?

Directly engage policymakers with their constituents

For elected officials and even appointed neighborhood representatives, constituent voices – especially those from youth – can be the loudest. Much of the work partners do consists of education efforts for both policymakers and the public. After they learn about the extent of tobacco's impacts on their community, many members of the public are motivated to action. Importantly, partners can facilitate meetings between energized community members and policymakers for productive conversations.

NYC Smoke-Free repeatedly sees progress when policymakers sit at the table with their own constituents. "While STE and Tobacco 21 were going on, the coalition was very instrumental in providing community level education as well as meeting with legislators."⁶⁵ Partners accompany individual citizens and groups like ASAP (Archdiocese Substance Abuse Prevention) and Global Kids to meetings with community boards, council members, and the council health committee. "We pound the pavement. We schedule it with their scheduler, whoever we can, and we go into a ton of different elected officials' [offices] across NYC in all the boroughs."⁶⁵ NYC Smoke-Free plays the role of educator in meetings, highlighting local, state, and national data on retailers and advertising. For example, NYC Smoke-Free takes kids to Albany for state legislative day for meetings with legislators. Everyday citizens and youth express their views and concerns regarding proposed policies.

Partners' educational efforts are not confined to government offices and meeting rooms. Representatives of NYC Smoke-Free, the Center, and other partners coordinate neighborhood walking tours with youth, citizens, policymakers,

and the media. This can be an effective strategy, as officials learn about the pervasiveness of tobacco at the same time that youth and other concerned citizens express critical support for tobacco control.⁶⁴

Engage supportive retailers

Through its proxy associations like Save Our Stores, the tobacco industry will always promote the argument that new policies will hurt retailers. Point-of-sale policies don't have to be anti-business. Partners in NYC were able to align with some business owners. Heading the coalition of partners, NYC Smoke-Free engaged with business associations on the ground. Its representatives meet with Business Improvement District organizations all over the city and have been successful in establishing partnerships.⁶⁵

Through education efforts with members of the community, partners are asked serious and relevant questions about the potential impacts of tobacco control measures. "Will that put people out of business? How much money does a bodega actually make with tobacco sales?"⁶⁷ Staff of the Center always "encourage folks to go out and talk to their local bodega owners and say, 'If you stop selling cigarettes how much money do you actually think you'll lose? Or, if you stop taking money from Phillip Morris and putting up all these aggressive tobacco marketing posters on the outside of your shop how much money would you lose?' ...some bodega owners were on board in changing the way things are being run because they didn't want to see youth affected by aggressive tactics."⁶⁷

A tobacco retailer from the Bronx testified in support of the policies at the only public hearing on the policies.⁹⁸ Small (and large) business owners are people, many have been personally impacted by tobacco, and many are supportive

of tobacco control strategies. Like the Center and AAFE, partners in other communities likely have business owners as members.⁶⁸ These connections can be a great foundation for finding support in the business community.

Assess existing policies, incorporate existing efforts

New York City already had some of the country's highest excise taxes and most comprehensive smoke-free air laws, and a host of other tobacco control laws. Staff of city agencies carefully evaluated existing policies for effectiveness and found shortcomings that allowed the industry to offer cheap tobacco. High excise taxes had given way to a large illegal cigarette market. Like many others, New York State's minimum price law does not achieve the goal of keeping prices high. Coupons and other discounts also work against this goal. Previous tobacco control measures helped achieve decreases in youth use rates, but they had stalled. In the end, STE and Tobacco 21 laws were crafted with an "all holes-in-the-dam" approach to close loopholes and reinforce one another toward the goals of eliminating access to cheap tobacco and decreasing youth rates of use.

Point-of-sale policy efforts shouldn't reinvent the wheel. Just as the policies were built upon existing ones, efforts to educate and raise awareness about STE and Tobacco 21 were incorporated into ongoing youth programs and other activities of NYC Smoke-Free, the Center, and other partners. "It wasn't like STE was proposed and then we created Flat Phil. It was really just an idea that young people had so [we thought] let's piggyback off of that."⁶⁷ The Center and NYC Smoke-Free had also already been engaging youth, citizens, and CBOs with policymakers, so it was easy to use these shared experiences to illustrate the problems the new policies would address.

Have a handful of common, simple messages ready

All the NYC partners stressed the idea of having a handful of data points, simple goals, and problem definitions ready at all times. This is a go-to strategy for many different situations. Partners will have to answer tough questions from the media and from opponents in public or they may only have a few minutes to educate busy policymakers about the extent of a problem. Maintaining open dialogue between partners to make sure everyone is delivering similar messages adds power and momentum to campaigns. Below are some examples that can be useful beyond the NYC efforts:

- We want to protect the next generation of youth from tobacco use and addiction;
- With the issue of smoke-free air, they said it would harm business. Over a decade later, there's no evidence that businesses were hurt. Now they're saying the same thing;
- We know that most people start smoking before the age of 18, and people between 18 and 20 are the source of 90% of tobacco products for younger people;
- Youth tobacco rates [in NYC] have gone down a lot since 2002, but have stalled since 2007; and
- These policies actually help people quit.

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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 POS. The organization provides policy solutions, advocacy materials, news updates, and an image gallery exposing tobacco industry tactics at the POS. <http://countertobacco.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 point-of-sale policies. <http://publichealthlawcenter.org>

ASSESSMENT TOOLS

The Standardized Tobacco Assessment for Retail Settings (STARS)

This assessment tool was produced by SCTC researchers with stakeholders from five state health departments, the CDC, and the Tobacco Control Legal Consortium. It 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://sctcresearch.org/product/download/749>

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>

POINT-OF-SALE RESOURCES

Point-of-Sale Strategies: A Tobacco Control Guide

This guide from the Center for Public Health Systems Science helps state and local tobacco control staff build effective and sustainable tobacco control programs. <http://bit.ly/SRq7K1>

Pricing Policy: A Tobacco Control Guide

This report from the Center for Public Health Systems Science focuses on the role pricing policies can play as part of a comprehensive tobacco control program. <http://bit.ly/NwwgsB>

Price-Discounting Restrictions

This legal report from the Tobacco Control Legal Consortium covers policies that restrict tobacco product coupons and value-added promotions. It highlights states and localities with price-discounting restrictions. <http://bit.ly/1FXM54b>

Minimum Price Laws

This legal report from the Tobacco Control Legal Consortium covers policies that set minimum prices in order to counteract price-discounting practices. <http://bit.ly/1BVCr0i>

Minimum Packaging Laws

This legal report from the Tobacco Control Legal Consortium covers policies that establish minimum packaging requirements and highlights state and local examples. <http://bit.ly/1qiODzK>

Tobacco 21

This website from the Preventing Tobacco Addiction Foundation provides a summary of each state's key contacts and current efforts to raise the tobacco age to 21. It also offers a toolkit with responses to common arguments against raising the age. <http://tobacco21.org/>

Minimum Legal Sales Age

This legal report from the Tobacco Control Legal Consortium describes the benefits and considerations to increasing the tobacco sales age. <http://bit.ly/1LEdB4W>

Institute of Medicine: MLSA

This legal report from the Institute of Medicine describes the public health impact of increasing the tobacco sales age. <http://bit.ly/1CZ2F3e>

Appendix A: NYC POLICY FACT SHEETS

Tobacco 21

<http://www.nyc.gov/html/doh/downloads/pdf/smoke/tobacco-21-faq.pdf>

New Law Prohibiting Sale of Cigarettes, Tobacco Products and Electronic Cigarettes to People Under Age 21 in New York City **What You Need to Know**

What is the new law?
This law prohibits retailers from selling cigarettes, cigars, chewing tobacco, powdered tobacco, other tobacco products or electronic cigarettes to customers under age 21.

Why did New York City pass this law?
In New York City, 80% of smokers start smoking before age 21. Among young people who try tobacco, the transition from experimental to regular smoking occurs around age 20. By increasing the minimum legal sales age, more New Yorkers will reach adulthood without experimenting with or becoming addicted to nicotine.

What products does this law apply to?
This law prohibits retailers from selling cigarettes, other tobacco products (such as cigars, cigarillos, smokeless tobacco, snuff and tobacco-containing shisha), as well as electronic cigarettes and their component parts (including refills and cartridges) to people under 21.

What are electronic cigarettes?
Electronic cigarettes and battery-operated devices that contain nicotine and deliver vapor for inhalation. They may be sold as "e-cigs," "e-cigarettes," "e-hookahs" or under other names. Common brands include the NJOY and Logic, although there are many others. Electronic cigarettes, as defined in the law, include refills, cartridges and other component parts. Refills are sometimes called "liquid" or "e-juice."

Are there any products not subject to the new legal sales age of 21?
Non-tobacco inhalers, herbal cigarettes, pipes, rolling papers or smoking paraphernalia can be sold to people under age 21, but sales of these products are still prohibited to those under 18 years old.

Will new signage be required for New York City stores?
Yes. All retailers that sell cigarettes, other tobacco products, electronic cigarettes, herbal cigarettes, shisha, pipes, rolling papers or smoking paraphernalia are required to post—in a place highly visible to customers—a sign that complies with New York City law on informing customers of the minimum sales age for these items. Signs will be sent in the coming weeks and will be available online. To access them, visit nyc.gov and search "tobacco law," or call 311.

How will the new legal sales age affect age verification?
Retailers must verify that customers who ask for cigarettes, other tobacco products or electronic cigarettes are at least 21 years old. If a customer looks like he/she is under 30 years old, retailers must ask for proof of age. Any of these documents constitutes acceptable proof of age:
• A valid photo driver's license or non-driver ID card issued by a state or other U.S. or Canadian government agency.
• New York State driver's licenses have a new vertical format only for those under 21, clearly stating "Under 21" at the top, making it easier for retailers to identify customer who are younger than 21.
• A valid passport.
• A photo ID issued by the armed forces of the United States.
ID cards issued by employers, schools or colleges are not acceptable forms of ID.

What are the penalties for a violation?
Failure to post required signage can result in fines of up to \$500. Sales of cigarettes, other tobacco products or electronic cigarettes to people under age 21 can result in New York City fines of up to \$1,000 for the first violation and any other violation found that same day, and up to \$2,000 for the second violation and any subsequent violation within three years. A second violation may result in revocation of the cigarette retail dealer license. New York State may impose additional fines and penalties for sales of these products to people under age 18. For more information, see New York State Public Health Law, Article 13-F, §1399-a et seq., also known as Adolescent Tobacco Use Prevention Act of 2014.

When does this law go into effect?
This law takes effect on May 18, 2014.

How will this law be enforced?
It will be enforced by the New York City Department of Consumer Affairs.

How can I read this fact sheet in other languages or see the actual law?
Visit nyc.gov and search "tobacco law," or call 311 and ask for information about Tobacco 21.

What if I have questions or need more information?
Call 311 and ask for information about Tobacco 21.



Sensible Tobacco Enforcement: Minimum Packaging

<http://www.nyc.gov/html/doh/downloads/pdf/smoke/cigar-sales-faq.pdf>

New Laws Governing Cigar Sales in New York City Tobacco Retail Stores **What You Need to Know**

What is the new law regarding cigar packaging and pricing?
A cigar sold for \$3 or less must be sold in a package of at least four cigars. The individual cigar sold for more than \$3 is not covered by this law.

Can I sell a package of two or three cigars?
Yes, but only if each cigar within the pack is sold for more than \$3.

Can I sell products for the manufacturer's suggested retail price if that price does not comply with the law's requirements?
No. A retailer cannot sell cigars that do not comply with this law, regardless of what the package says.

What is the penalty for a violation of the law governing cigar and little cigar packaging?
Any person found to be in violation is liable for a civil penalty of up to \$1,000 for their first violation, and \$2,000 for a second violation within three years. Additional fines may apply for second or subsequent violations, depending on the circumstances. Multiple violations may result in the suspension or revocation of the cigarette retail dealer license or other penalties.

What is the penalty for a violation of the law governing little cigar pricing?
Any person found to be in violation is liable for a civil penalty of \$1,000 for their first violation, and \$2,000 for a second violation, within five years. A violation of this law also serves as a basis for suspension or revocation of the cigarette retail dealer license.

What is the new law regarding little cigars?
Little cigars must be sold in packs of at least 20 for at least \$10.50 per pack.

What are little cigars?
Little cigars are cigars that weigh less than 4 lbs per 1,000 cigars, or cigars that have an integrated filter (regardless of weight). Little cigars look like cigarettes, but the wrapper is typically brown and contains tobacco. They may be labeled as "little cigars," "cigars" or "large cigars."

How can I tell if a product is a little cigar?
All cigar products that have an integrated filter are little cigars. Little cigars that are unfiltered have the same New York State excise tax as cigarettes. If you are unsure, ask your wholesaler supplier.

Does this law apply to retail tobacco stores?
Yes. This law applies to all stores in New York City that sell tobacco products.

When does this law go into effect?
This law took effect on March 19, 2014.

How will this law be enforced?
It will be enforced by the New York City Department of Consumer Affairs.

How can I read this fact sheet in other languages or see the actual law?
Visit nyc.gov and search "tobacco law," or call 311 and ask for information about cigar sales.

What if I have questions or need more information?
Call 311 and ask for information about cigar sales.



Sensible Tobacco Enforcement: Overview

<http://www.nyc.gov/html/doh/downloads/pdf/smoke/ts-faq.pdf>

New Law Regulating Tobacco Sales in New York City Tobacco Retail Stores **What You Need to Know**

What is the new law regarding sales of tobacco products?
This law prohibits retailers from redeeming coupons, multi-pack deals, buy one get one deals or any other price-reduction promotions. Retailers are also prohibited from giving away or discounting other items, such as lighters, in connection with the sale of tobacco products or cigarettes. In addition, all cigarette and little cigar packs must be sold at at least \$10.50.

Why was this law passed?
High prices are one of the most effective methods of reducing tobacco use, particularly among young people. Price-reduction promotions such as coupons and buy one get one deals lower the price of tobacco products, thus making them more accessible to young smokers.

What products are covered by this law?
This law applies to cigarettes and all other types of tobacco products, including cigars and smokeless products. This law does not apply to electronic cigarettes.

What types of discounts are restricted in the retail setting?
Retailers may not give honor coupons, buy one get one deals or any other type of price reduction promotion.

What is the listed price?
The listed price is the price marked on the packages of cigarettes or other tobacco products or on any related chalking, posting, advertising or display where the cigarettes or tobacco products are available for sale. The listed price must specify both the price without the sales tax and the amount of the sales tax.

Can I sell cigarettes or little cigars for less than \$10.50?
No. All cigarettes and little cigars must be sold for \$10.50 or more per package, including sales tax, or \$9.65 including sales tax.

Do the New York State laws regarding cigarette pricing still apply?
Yes. Retailers must also continue to comply with New York State's Cigarette Marketing Standards Act (CMSA), which sets a required minimum markup on cigarettes for each stage of the distribution process. For more information, visit the New York State Department of Taxation and Finance website at tax.ny.gov.

What if a wholesaler delivers cigarettes or other tobacco products with price discounts on the packaging?
New York City retailers cannot sell these products to customers for less than the listed price, regardless of manufacturer packaging.

Does this law apply to retail tobacco stores?
Yes. This law applies to all stores in New York City that sell tobacco products.

What is the penalty for a violation?
The penalty for a first violation is \$1,000, for a second violation, it is \$2,000 and for a third violation, it is \$5,000. Multiple violations can result in the suspension or revocation of the store's cigarette retail dealer license.

When did this law take effect?
This law took effect on March 19, 2014, and enforcement begins on August 1, 2014.

How will this law be enforced?
It will be enforced by the New York City Department of Consumer Affairs as part of its regular inspections.

How can I read this fact sheet in other languages or see the actual law?
Visit nyc.gov and search "tobacco law," or call 311 and ask for information about tobacco sales.

What if I have questions or need more information?
Call 311 and ask for information about tobacco sales.



Sensible Tobacco Enforcement: Increased Enforcement

<http://www.nyc.gov/html/doh/downloads/pdf/smoke/st-enforcement-faq.pdf>

New Laws and Penalties for Cigarette and Other Tobacco Product Violations in New York City **What You Need to Know**

What does Local Law 97, "Sensible Tobacco Enforcement," mean for enforcement of cigarette tax laws and other tobacco laws?
This law creates new requirements and restrictions for cigarette retail dealers. The law also increases fines and creates new penalties for cigarette retail dealers engaged in illegal activity, including operating without a license or selling untaxed cigarettes.

New Requirements

Signage Requirements
What signs are required?
The law requires retailers who sell cigarettes, other tobacco products, electronic cigarettes, shisha, pipes, rolling papers or smoking paraphernalia to post two signs in highly visible places:

- Age Restriction Sign:** A revised age restriction sign, stating that some products cannot be sold to people younger than 21 years old and other products cannot be sold to people younger than 18 years old. (Note: This sign must replace the current age restriction sign.)
- Tax Stamp Sign:** A new sign stating that all cigarettes sold in New York City must be in packages bearing a valid New York City and State tax stamp.

What is the penalty for failing to post these signs?
Retailers who fail to post the required signs will be subject to a fine of up to \$500 for each violation.

When does this law take effect?
1. The age restriction sign requirement takes effect on May 18, 2014.
2. The tax stamp sign requirement took effect on March 19, 2014.

Retail Dealer Definition
What is the new law?
This law changes the definition of "retail dealer." The new definition of retail dealer is any person who possesses or transports more than 400 cigarettes. A retail dealer is subject to various requirements, including having a valid New York City cigarette retail dealer license and a valid New York State Certificate of Registration to sell cigarettes or tobacco and paying required taxes on cigarettes in his or her possession.

Appendix B: FLAT PHIL CAMPAIGN



The Flat Phil Project

- Participants can modify Phil however they like in a way that represents any specific community or individual. For example, a rainbow flame highlights how Flat Phil and Big Tobacco target LGBT youth.
 - Pictures are collected through email and shared via social media through Facebook, Twitter, Tumblr, Instagram and Vine.
 - Go to www.nycsmokefree.org/flatphil for more information, printable Flat Phil templates, facts about tobacco and cigarettes, and links to his social media pages.
- Go to www.nycsmokefree.org/flatphil for more information, printable Flat Phil templates, facts about tobacco and cigarettes, and links to his social media pages.
 - More materials available at: http://www.nycsmokefree.org/sites/default/files/wysiwyg/images/flat_phil_slides.pdf

