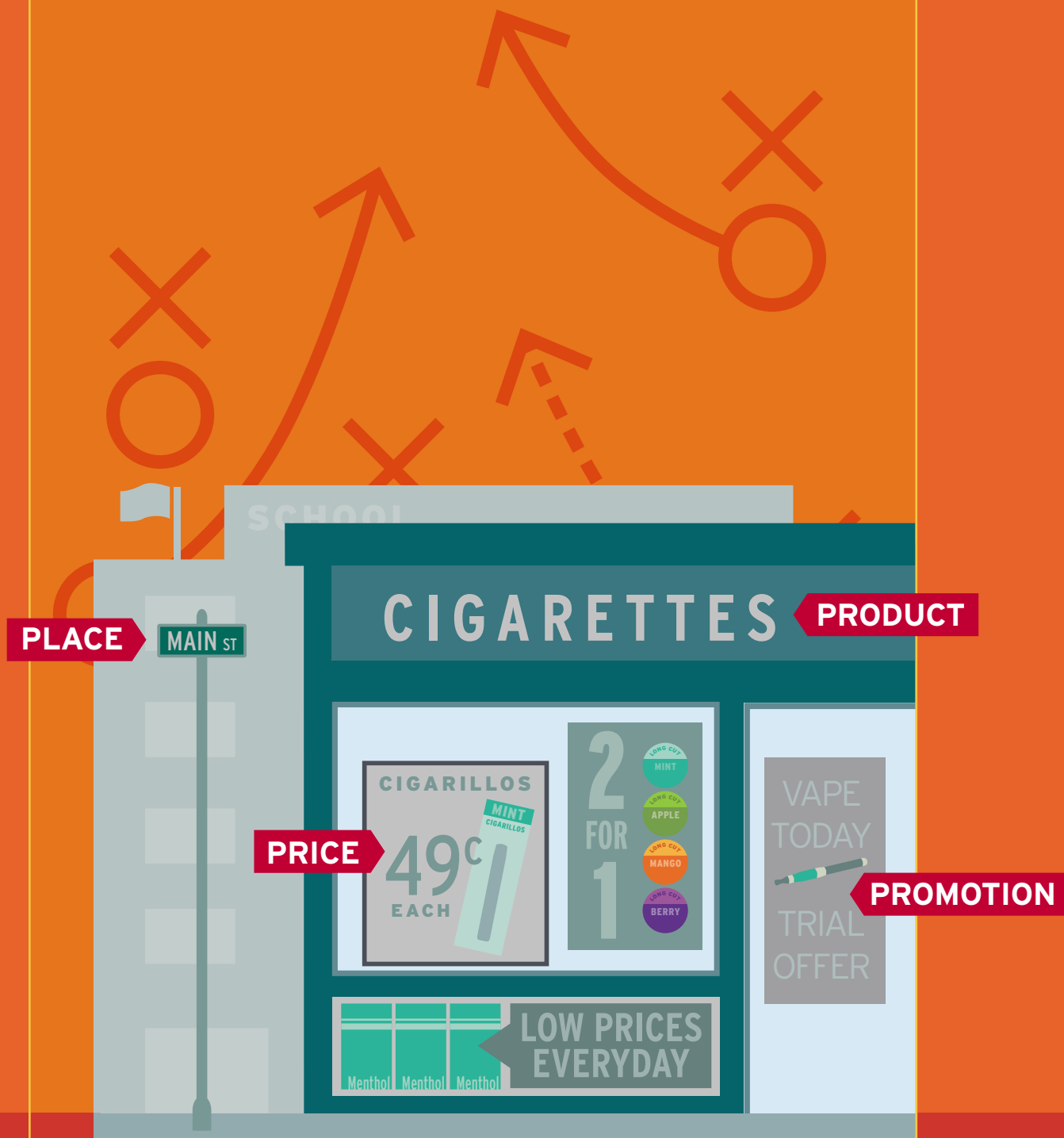


POINT OF SALE PLAYBOOK



ChangeLab Solutions
Law & policy innovation for the common good.

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INTRODUCTION

Every year, the tobacco industry spends billions encouraging people who smoke to continue and persuading nonsmokers, particularly youth, to start smoking. Tobacco companies use most of their marketing budget – nearly \$1 million every hour¹ – at the point of sale (POS), making it the primary venue for tobacco product marketing.

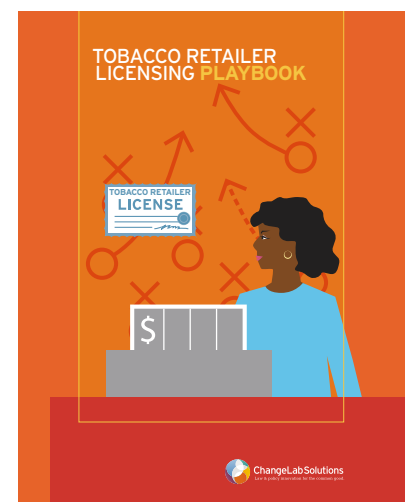
The POS refers to the approximately 375,000 retail outlets² that sell tobacco products in the United States. The tobacco industry uses a variety of POS promotions to push their products in stores, including price discounts, strategic product placement, incentives for retailers to increase in-store marketing, as well as exterior and interior advertisements. Eager to counteract the effects of these practices, communities are considering strategies to regulate how and where tobacco products are marketed and sold.

Between 2000 and 2015, many jurisdictions enacted pioneering POS strategies – including increasing tobacco prices, restricting retailer density and location, and regulating emerging tobacco products – through retailer licensing programs. Minimizing the industry’s influence at the POS has emerged as the fifth core strategy of tobacco control programming, along with: raising cigarette excise taxes; establishing smokefree air policies; encouraging cessation; and launching counter-marketing campaigns.² Additionally, POS policies have been included among the so-called **endgame** strategies to eliminate the toll of tobacco.

This playbook outlines the policy options that jurisdictions may incorporate into and implement through a tobacco retailer licensing program. It provides an overview of the various policy options to guide discussion and decisions about which strategies are appropriate for different communities.

This resource is designed to be used in conjunction with ChangeLab Solutions’ *Tobacco Retailer Licensing Playbook*, which describes the ten basic steps necessary for developing, implementing, and enforcing a comprehensive tobacco retailer licensing policy. Once a jurisdiction has adopted and implemented a strong tobacco retailer licensing law, it can add several POS policy “plug-ins” and enforce those policies as part of the licensing program. In addition to summarizing several of these policy options, this playbook includes examples of their implementation at the local level.

The tobacco industry spends nearly \$1 million every hour marketing tobacco products at retail outlets across the United States.

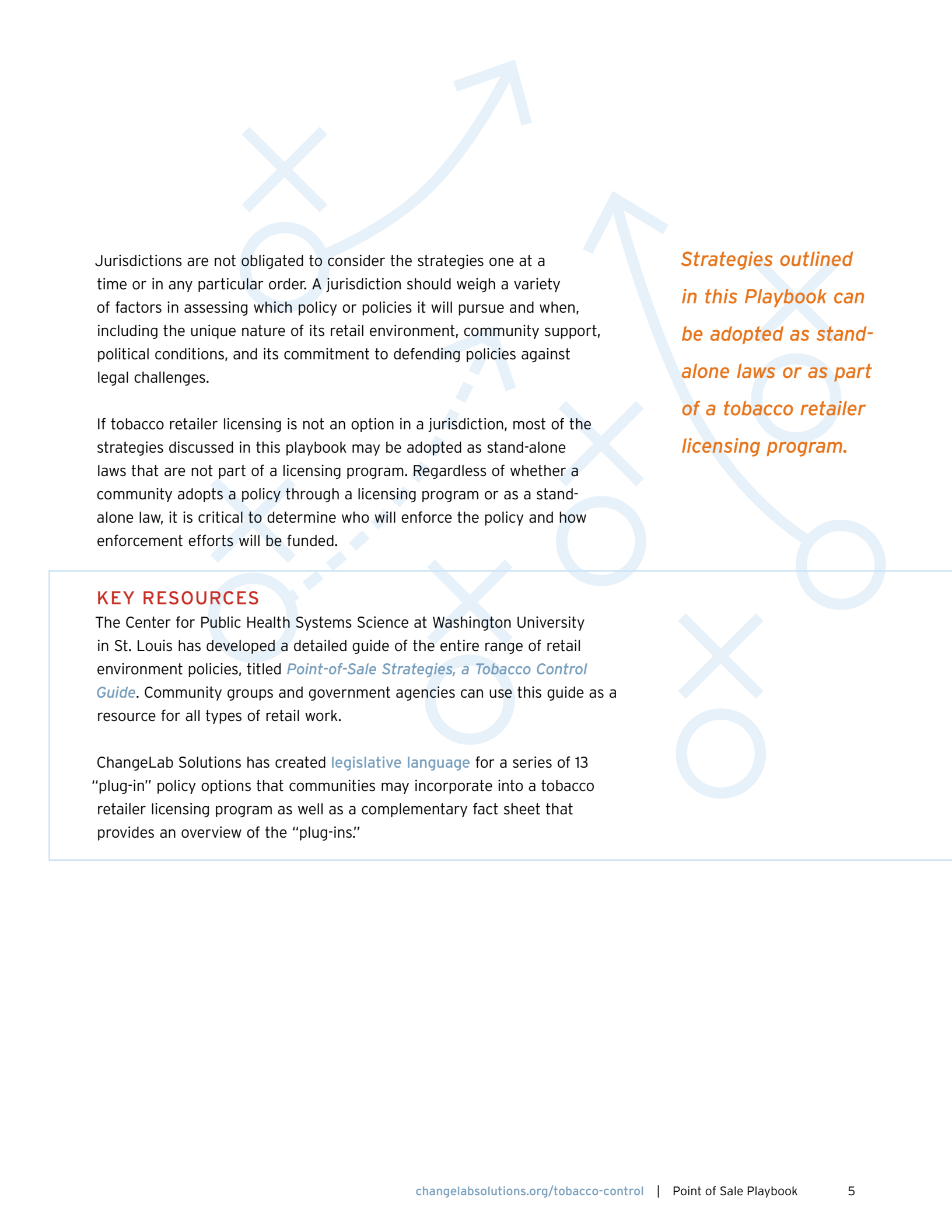


GETTING STARTED: THE FOUR PS OF TOBACCO MARKETING

To achieve “demarketing” of tobacco and disrupt industry tactics, jurisdictions can choose to address one or more of the “four Ps”: place, price, product, and promotion.^{3,4}

The four Ps provide the basic structure for this playbook, which categorizes the POS policy options based on the tobacco marketing element – place, price, product, or promotion – each policy addresses. To prepare communities for policy development, this resource sets forth the foundational steps for creating a regulatory framework to support POS work. It also provides additional strategies for communities ready to develop more holistic retail policies and evaluate the policies they have implemented.





Jurisdictions are not obligated to consider the strategies one at a time or in any particular order. A jurisdiction should weigh a variety of factors in assessing which policy or policies it will pursue and when, including the unique nature of its retail environment, community support, political conditions, and its commitment to defending policies against legal challenges.

If tobacco retailer licensing is not an option in a jurisdiction, most of the strategies discussed in this playbook may be adopted as stand-alone laws that are not part of a licensing program. Regardless of whether a community adopts a policy through a licensing program or as a stand-alone law, it is critical to determine who will enforce the policy and how enforcement efforts will be funded.

Strategies outlined in this Playbook can be adopted as stand-alone laws or as part of a tobacco retailer licensing program.

KEY RESOURCES

The Center for Public Health Systems Science at Washington University in St. Louis has developed a detailed guide of the entire range of retail environment policies, titled *Point-of-Sale Strategies, a Tobacco Control Guide*. Community groups and government agencies can use this guide as a resource for all types of retail work.

ChangeLab Solutions has created [legislative language](#) for a series of 13 “plug-in” policy options that communities may incorporate into a tobacco retailer licensing program as well as a complementary fact sheet that provides an overview of the “plug-ins.”

USING POS POLICIES TO ADDRESS HEALTH INEQUITIES

Efforts to transform the retail environment are a critical component of addressing tobacco-related health inequities within a community. The tobacco industry has long used the point of sale to target consumers based on their race, ethnicity, income, mental health status, gender, and sexual orientation.³ Prices of tobacco products tend to be lower in African-American neighborhoods and low-socioeconomic status neighborhoods.^{5,6} To compound matters, tobacco retailer density tends to be higher in these neighborhoods,⁷ creating more incentives for residents to start and continue using tobacco. These inequities in the retail environment may contribute to disparities in tobacco use.³

Communities can use many of the strategies addressed throughout this playbook to help counter industry efforts to use place, price, product, and promotion to target specific populations. Jurisdictions should consider equity throughout the policy development process, including while conducting a retail assessment, engaging diverse partners, and identifying which policies to prioritize.

Conducting a retail assessment may help jurisdictions identify inequities in how tobacco is sold and marketed, and develop a policy strategy for addressing these inequities. For example, **Vermont's Store Audit Report** revealed that low-income

neighborhoods had nearly twice as many tobacco retailers per 1,000 residents as higher-income neighborhoods. The audit also found that twice as many tobacco retailers were located near a school or park in the state's lowest-income neighborhoods as in its highest-income neighborhoods. A **retail assessment in Multnomah County, Oregon**, revealed that there were more tobacco retailers per capita in areas of the county with higher percentages of populations of color. **California's Healthy Stores for Healthy Communities** campaign audited more than 7,300 tobacco retailers in California, and the findings revealed that almost half were located in low-income areas.

Local data on inequities at the point of sale can be invaluable in supporting policies to change the retail environment. Before prohibiting sales of all flavored tobacco products near schools, the City of Chicago released a **report** citing disproportionate use of menthol-flavored cigarettes by young people, women, racial minorities, the LGBT community, and people of low-socioeconomic status. The report noted that regulation of these products was not only a critical public health problem, but also a social justice issue.

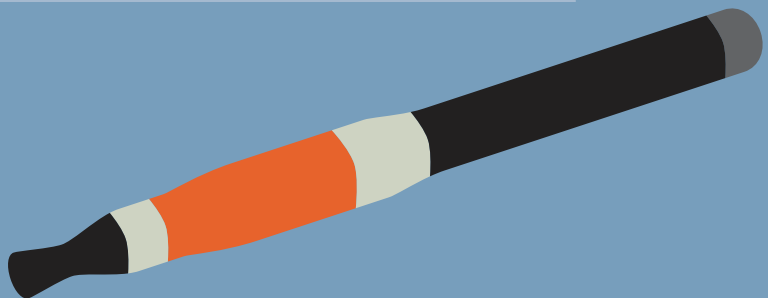
WHAT ABOUT ELECTRONIC SMOKING DEVICES?

Communities nationwide are concerned about the growing popularity of electronic smoking devices. To regulate the sales and marketing of these products, many jurisdictions have amended their existing tobacco retailer licensing laws so that the definition of “tobacco product” encompasses electronic smoking devices, including e-cigarettes, e-hookah, personal vaporizers, e-liquids, and their associated paraphernalia. A wide array of POS policy options — such as requiring licenses, prohibiting self-service displays, restricting where tobacco products are sold, and prohibiting redemption of coupons and discounts — may be applied to these products. One strategy for ensuring laws cover the sales of both traditional tobacco products and electronic smoking devices is to develop POS policies that define “tobacco product” in a way that captures all of the products the community wants to regulate.

A comprehensive retail assessment may provide a jurisdiction with useful information regarding which products it should include in the definition of “tobacco product” and how it should regulate those products. To ensure POS laws address the full range of public health concerns present in the retail environment, jurisdictions can examine the types of emerging products available in the community, where they are being sold, and how they are being marketed.

KEY RESOURCES

For more information regarding the policy impact of tobacco product definitions, see ***The Importance of Product Definitions in U.S. E-cigarette Laws and Regulations***. For sample language of a comprehensive definition of “tobacco product” that includes e-cigarettes, see ChangeLab Solutions’ ***Tobacco Retailer Licensing Model Ordinance***.



TOOLS TO GET YOU STARTED

*These key resources
are for communities
that are ready to start
working on point-of-
sale strategies.*

The National Cancer Institute's State & Community Tobacco Control Initiative in collaboration with the Centers for Disease Control and Prevention, five state tobacco control programs, and multiple advocacy organizations developed the [Standardized Tobacco Assessment for Retail Settings \(STARS\)](#), a ten-minute assessment form with supporting materials is designed to characterize the availability, placement, promotion, and price of tobacco products.

The Center for Public Health Systems Science at Washington University in St. Louis created [Assessing Retail Environments with STARS](#), a case study report on how states have used STARS in practice.

The University of North Carolina Gillings School of Global Public Health has helped develop two important resources dedicated to tobacco policy development in the retail environment:

- [CounterTobacco.Org](#) is a clearinghouse website that serves as a comprehensive resource for organizations working to counteract tobacco product sales and marketing in the retail environment. CounterTobacco.Org is funded by the Centers for Disease Control and Prevention's Office on Smoking and Health.
- [Counter Tools](#) is a 501(c)(3) national nonprofit organization that provides technical assistance to public health agencies and advocates working on retail policies. Counter Tools has developed a comprehensive data collection and management tool called the [Store Audit Center](#) that helps tobacco control practitioners collect evidence of tobacco industry marketing and promotions at the point of sale.

LAYING THE FOUNDATION FOR POLICY DEVELOPMENT

There are three foundational steps a community should consider taking before pursuing advanced policies for regulating the tobacco retail environment:

1. Develop and implement a strong and effective tobacco retailer licensing policy
2. Conduct a comprehensive retail assessment
3. Build relationships among diverse partners

These steps will provide a community with a regulatory framework to implement and enforce POS policies. They will also help define the retail landscape, identify issues to be addressed, and build a campaign to work toward policy solutions.

1. Implement an Effective Tobacco Retailer Licensing Policy

For detailed information regarding the strategies necessary for developing a strong licensing policy, see the [Tobacco Retailer Licensing Playbook](#).



2. Conduct a Comprehensive Retail Assessment

To get support from the public and policymakers for progressive tobacco retailing policies, public health professionals must provide evidence of the problems. As discussed in the *Tobacco Retailer Licensing Playbook*, a jurisdiction must first conduct a basic environmental assessment to locate and create a list of local tobacco retailers. Mapping all the retailers provides compelling evidence of where tobacco is being sold in the community, including outlets near schools and youth-populated areas, and highlights the neighborhoods with a high density of outlets.⁸

The next step is to assess the availability of tobacco products and the prevalence of marketing in a sample of tobacco retailers, using a simple audit instrument such as the [Standardized Tobacco Assessment for Retail Settings \(STARS\)](#), which is discussed earlier. A comprehensive store audit can help localities identify trends that are detrimental to public health and



A comprehensive store assessment can help localities identify trends that are detrimental to public health. Communities can use that information to create successful point-of-sale strategies.

determine the best policies for addressing the issues that are present in the retail environment. The assessment can look at many components, including the types of products retailers carry (such as menthol cigarettes, flavored tobacco products, single cigars and cigarillos, and electronic smoking devices); prices of various tobacco products; multipack discounts and other price promotions; placement of tobacco products; and number, size, and type of interior and exterior signs and displays.

Examples

Public health departments in Oregon are using STARS to better understand characteristics of tobacco retailers and inform policy options.⁹ Public health professionals are using data from the store audits to analyze the availability and marketing of tobacco in rural areas, urban communities, and tribal lands. They have presented the results to policymakers and released [reports](#) summarizing the data, including types of tobacco sold, availability of price discounts, and placement of advertising.

In 2013, all 61 local health departments in California surveyed more than 7,300 licensed tobacco retailers to assess a range of products as well as marketing practices for tobacco, alcohol, and food and beverage items. As a result of the surveys, local tobacco control programs have access to [county-level data](#) about numerous aspects of the retail environment, such as the percentage of stores that have unhealthy exterior advertising, carry candy-flavored tobacco products, sell cigars for under \$1, and stock tobacco products near candy at the check-out area. The data has been used to help educate community members and guide efforts to improve the retail environment.

KEY RESOURCE

Localities can use STARS, discussed above, to conduct a comprehensive retail assessment that analyzes different components of the retail environment.

3. Engage Partners

Local tobacco retailer licensing offers several options for making stores healthier places to shop, giving tobacco control and public health professionals the opportunity to engage many partners. They can collaborate with different community groups interested in promoting health in the retail space, such as youth, nutrition professionals, alcohol abuse prevention coalitions, economic development experts, environmental advocates, and crime prevention programs. A diverse group of stakeholders can help inform retail policies, educate policymakers, build community buy-in, keep tobacco retail issues before the public, and counter industry opposition.¹⁰

Example

Retailer compliance checks in Watsonville, California, revealed that in addition to selling tobacco products to minors, retailers were selling illegal drug paraphernalia and, sometimes, illegal weapons.¹¹ Community safety advocates, drug and alcohol abuse prevention programs, and tobacco control professionals came together to mobilize the community around a tobacco retailer licensing ordinance. Proponents noted that the ordinance would provide funding for police to conduct tobacco retailer compliance checks, thereby supporting an increased police presence in the community. The City adopted the ordinance and included a provision requiring retailers to certify that they would comply with state laws regarding sales of drug paraphernalia.¹² The many partners in this effort were able to use licensing to address local needs beyond regulating tobacco sales.



KEY RESOURCES

The Center for Public Health Systems Science at Washington University in St. Louis has developed a guide to assist tobacco control partners in advancing evidence-based policy strategies, titled *Policy Strategies, a Tobacco Control Guide*.

The Los Angeles County Tobacco Control and Prevention Program partnered with the Center for Tobacco Policy and Organizing to develop the *Policy Adoption and Implementation Model*. Several communities have used the model's five components – community assessment, policy campaign strategy, coalition building, policy campaign implementation and adoption, and policy implementation and enforcement – to successfully adopt laws regulating the retail environment.

ADDRESSING THE FOUR Ps: PLACE, PRICE, PRODUCT, & PROMOTION

In addition to the foundational work of adopting and implementing a strong tobacco retailer licensing policy, a community should consider additional policy options to address tobacco sales and marketing in the retail environment. A comprehensive retail assessment and community engagement can help inform the different policy options for addressing the four Ps of tobacco marketing: place, price, product, and promotion.

PLACE



PRICE



PRODUCT



PROMOTION



PLACE

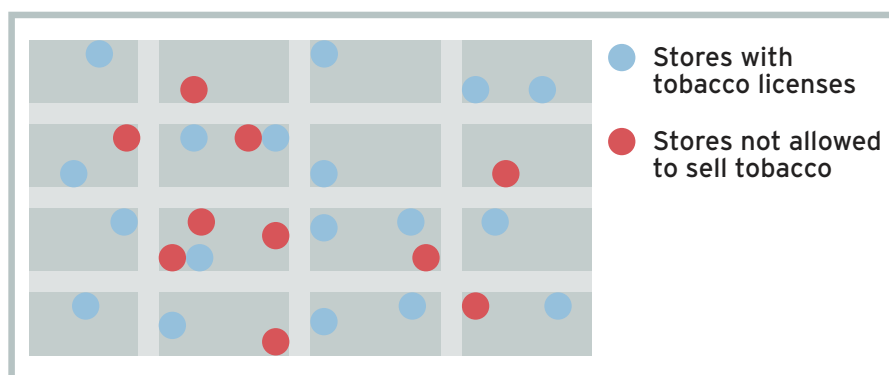
Restrict How Many Retailers Sell Tobacco, What Types of Retailers Sell It, & Where They May Sell It

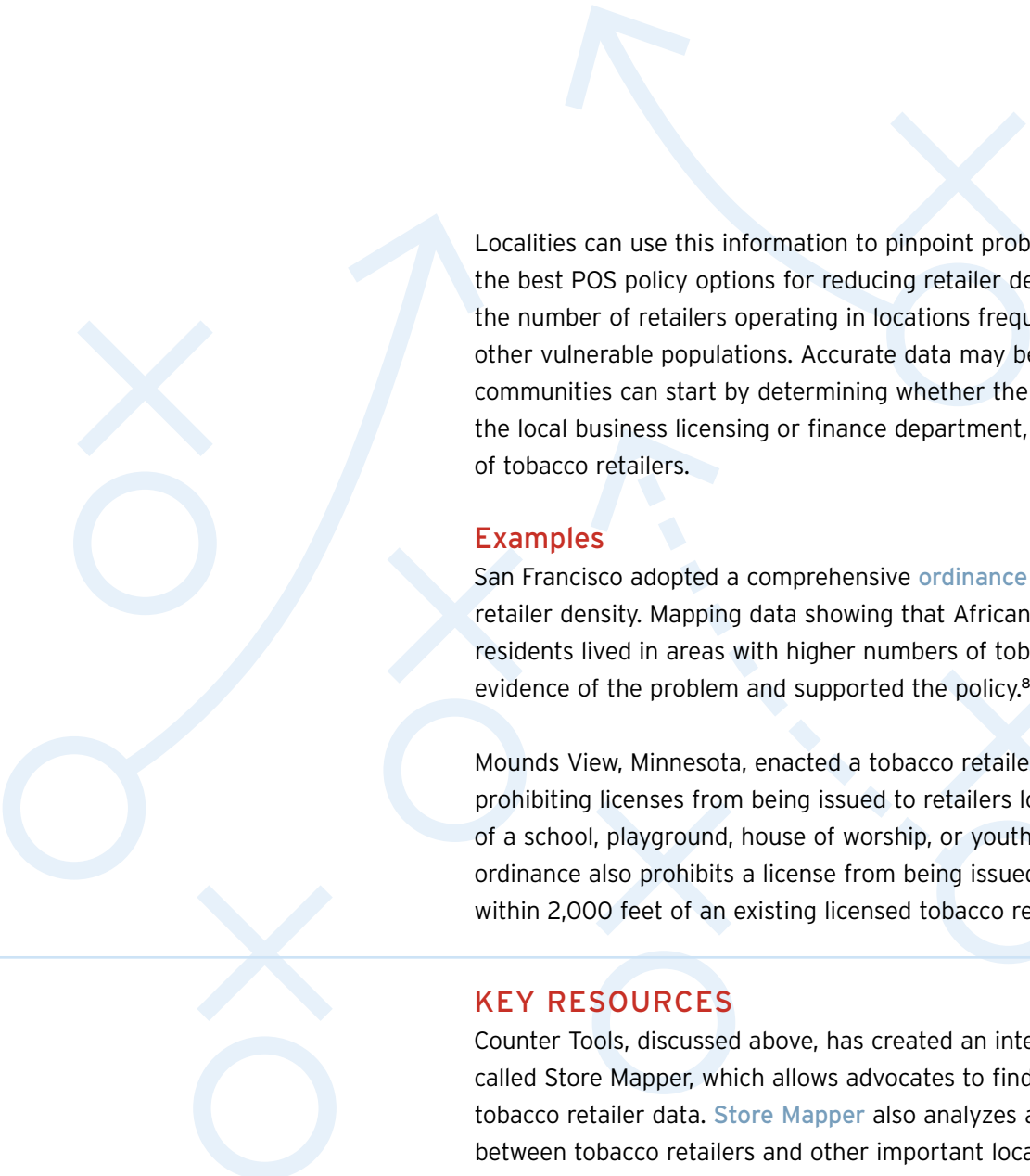
Jurisdictions can customize tobacco retailer licensing to limit the number of tobacco retailers, control who may sell tobacco products, and determine where they're allowed to sell them in the community. Place-based policy options include limiting the total number of retailers based on city or county population (or some other basis); restricting certain types of retailers' eligibility to sell tobacco (such as pharmacies); restricting retailers from selling near schools and other places where youth gather; and prohibiting new retailers from setting up shop near existing retailers.

Data regarding the location of current retailers and information about the unique features of a community are essential to setting and achieving policy goals for place-based strategies. Examples of relevant data include the following:

- The total number of retailers within a community
- Location of retailers in relation to youth-populated areas
- Location of retailers in relation to other retailers
- Concentration of retailers in certain neighborhoods, especially low-socioeconomic status areas and communities of color
- Location of retailers that have previously sold to youth

Data about location and types of current retailers are essential to setting and achieving policy goals for place-based strategies.





Localities can use this information to pinpoint problem areas and identify the best POS policy options for reducing retailer density or decreasing the number of retailers operating in locations frequented by youth and other vulnerable populations. Accurate data may be difficult to obtain, but communities can start by determining whether the state tax department, or the local business licensing or finance department, maintains a general list of tobacco retailers.

Examples

San Francisco adopted a comprehensive [ordinance](#) to reduce tobacco retailer density. Mapping data showing that African-American and Latino residents lived in areas with higher numbers of tobacco retailers provided evidence of the problem and supported the policy.⁸

Mounds View, Minnesota, enacted a tobacco retailer licensing [ordinance](#) prohibiting licenses from being issued to retailers located within 1,000 feet of a school, playground, house of worship, or youth-oriented facility. The ordinance also prohibits a license from being issued to any retailer located within 2,000 feet of an existing licensed tobacco retailer.

KEY RESOURCES

Counter Tools, discussed above, has created an interactive mapping website called [Store Mapper](#), which allows advocates to find and display local tobacco retailer data. [Store Mapper](#) also analyzes and displays relationships between tobacco retailers and other important locations, such as youth venues (schools, parks, community centers), as well as relationships between different neighborhood variables, such as tobacco retailer density and level of household poverty.

CounterTobacco.Org, has developed the [Tobacco Free Pharmacies Action Guide](#), which provides recommendations to help tobacco control advocates build support for and enact a policy to prohibit sales of tobacco products in pharmacies.

ChangeLab Solutions has created [legislative language](#) for several “plug-in” policy options that jurisdictions can incorporate into their tobacco retailer licensing programs. The “plug-ins” are specific to restricting certain retailers’ eligibility to sell tobacco products.

PRICE

Counter Industry Efforts to Sell Cheap Tobacco

Increasing the price of tobacco products is one of the most effective tobacco control strategies. There are several options for regulating price either as part of a tobacco retailer licensing program or as a stand-alone policy. Several jurisdictions prohibit retailers from redeeming tobacco coupons and discounts, including multipack promotions that allow consumers to receive free or reduced-price tobacco products if they buy a certain number of packages (“buy two, get one free”). Another option is to set a minimum price for cigarettes and little cigars.

Retailers frequently sell **cigars, little cigars, and cigarillos** as singles or in multi-packs for less than \$1, and some evidence suggests that prices are cheaper in neighborhoods with more African-American residents.⁵ To remedy this, jurisdictions can establish minimum package size and price requirements for these products (setting both minimum pack size and minimum price requirements forecloses a potential loophole if a retailer were to sell a pack of several little cigars very cheaply). Requiring inexpensive cigars to be sold in larger pack sizes and at a higher price makes these products less attractive to youth.

Increasing the price of tobacco products is one of the most effective tobacco control strategies.





A comprehensive retail assessment can help public health professionals assess discounting strategies in their communities, and identify POS policies to reduce the availability of inexpensive tobacco products.

A comprehensive retail assessment can help public health professionals assess pricing and packaging of various tobacco products and identify the discounting strategies that tobacco companies are using in local stores. With this information, professionals can assess which pricing strategies are most prevalent in their communities, and which POS policies are most likely to address the availability of inexpensive tobacco products.

Examples

In 2013, New York City amended its tobacco retailer licensing [ordinance](#) to include several provisions restricting the availability of cheap tobacco products. One provision sets a minimum price floor for cigarettes and little cigars, mandating that they be sold for no less than \$10.50 a pack. Another provision, intended to address youth and young adults' shift from cigarettes to cheaper cigars, requires retailers to sell inexpensive cigars in packages of at least four. A third provision, modeled after a similar ordinance enacted in [Providence, Rhode Island](#), prohibits retailers from redeeming coupons and multipack discounts that reduce the price of tobacco products. New York City adopted these three pricing policies all at once. Tobacco retailers challenged the laws on First Amendment grounds in both Providence and New York City, and in both cases^{13,14} the court upheld the laws.

In 2014, Lane County, Oregon, became the first locality in the state to prohibit retailers from redeeming coupons and multipack discounts as part of a tobacco retailer licensing ordinance.¹⁵ The County adopted the ordinance after developing a community health improvement plan and conducting a tobacco retailer assessment.

KEY RESOURCES

ChangeLab Solutions has created [legislative language](#) for a series of three “plug-in” policy options that jurisdictions can incorporate into their tobacco retailer licensing programs. The “plug-ins” are specific to tobacco product pricing, and include a prohibition on redemption of tobacco discounts and coupons, establishment of a minimum package size for little cigars and cigars, and establishment of a minimum price for cigarettes and little cigars.

For an overview of a comprehensive minimum price law that also prohibits discounts, see [Reducing Tobacco Use and Access Through Strengthened Minimum Price Laws](#).¹⁶

PRODUCT

Regulate ALL Tobacco Products

By using a comprehensive definition of “tobacco product” in their licensing laws, jurisdictions can ensure POS policies apply to e-cigarettes and other emerging products in addition to traditional tobacco products. There are also several policy options targeted toward the specific public health concerns associated with e-cigarettes and e-liquids. Examples of these policies include requiring retailers to follow certain standards regarding childproof packaging, health warnings, labeling of nicotine levels, and safe handling and disposal of liquid nicotine.¹⁷

At the time of this publication, the federal [Family Smoking Prevention and Tobacco Control Act](#) primarily covers cigarettes; smokeless tobacco and other tobacco products, such as cigars, cigarillos, hookah, and e-cigarettes, are not subject to the same federal sales restrictions as cigarettes.¹⁸ A licensing law could close these loopholes and establish performance standards and sales restrictions similar to those contained in the Tobacco Control Act, for all tobacco products.

A broad definition of “tobacco product” is key to ensuring that POS policies include traditional and emerging tobacco products, such as e-cigarettes and e-liquids.





Example

Chicago expanded the definition of “tobacco product” in its tobacco retailer ordinance to cover e-cigarettes.¹⁹ As a result of this change, all the city’s existing tobacco sales restrictions were extended to e-cigarettes, including provisions that prohibit sales of tobacco products near schools and day care facilities and requirements that tobacco products be stored in a manner that is not accessible to the general public. The City also amended its tobacco retailer ordinance to prohibit sales of flavored tobacco products, including flavored e-cigarettes, within 500 feet of schools.²⁰ Thus far, Chicago has successfully defended against tobacco industry claims that the flavored tobacco provision, which covers menthol cigarettes, is preempted by federal law.²¹

KEY RESOURCES

The [Tobacco Control Legal Consortium](#) has published a 50-state review of laws addressing electronic smoking devices.²² For more information on policy options for regulating sales of electronic nicotine delivery systems through tobacco retailer licensing laws, see ChangeLab Solutions’ fact sheets, [Regulating Toxic Vapor: A Policy Guide to Electronic Smoking Devices](#) and [Local Strategies to Regulate Vape Shops & Lounges](#).

ChangeLab Solutions has created [legislative language](#) for a flavored tobacco restriction that jurisdictions can incorporate into their tobacco retailer licensing programs.

PROMOTION

Consider Policies Affecting Advertising and Displays

Given the influence of retail marketing on youth smoking,²³ jurisdictions may be interested in using licensing to enact innovative policies addressing tobacco product displays and advertising as well as price, which is a form of promotion discussed above. Examples of emerging policies include laws that restrict where, when, and how tobacco can be advertised; regulate the placement and display of tobacco products in stores; and require tobacco retailers to post health warnings at the point of sale.



Jurisdictions may use retailer licensing to address tobacco product promotion — especially promotional activities that influence youth smoking.

Regulating tobacco promotion poses unique legal challenges, and jurisdictions considering these advanced policies should keep this in mind. Courts have invalidated laws that attempted to restrict the use of color and imagery in tobacco²⁴ and require retailers to display graphic health warnings next to tobacco product displays.²⁵ While it is certainly possible to adopt a law addressing marketing and promotion, it is important to understand the legal landscape and work to craft a law that will survive a legal challenge. Accordingly, jurisdictions should work closely with attorneys to assess the feasibility of these policies.

Example

A content-neutral signage law — one that applies equally to all ads and does not target tobacco ads specifically — is a viable policy to reduce the amount of advertising in retail outlets. St. Paul, Minnesota, amended its municipal code to prohibit signs of any kind, including outward-facing interior signs, from covering more than 30 percent of a business' window area.²⁶ The amended ordinance, which a diverse coalition supported, had several benefits, including promoting safety, improving the appearance of neighborhood storefronts, and reducing advertising for unhealthy products.

KEY RESOURCES

[ChangeLab Solutions](#) and [The Tobacco Control Legal Consortium](#) are legal organizations funded to provide technical assistance on tobacco control retail issues nationwide. These organizations have general legal analyses available on their websites, and can provide state-specific analyses as well. In addition, several states are served by a legal technical assistance provider funded to work within those specific states. Collaboration with local city or county attorneys will also be necessary.

ChangeLab Solutions has also developed a [Model California Ordinance for Reducing Storefront Window Signage](#) that can be adapted for use in any jurisdiction.

LOOKING FORWARD

In the retail policy context, evaluation and planning next steps are key to sustained success. Tobacco control advocates should determine how they will measure the effectiveness of the policies their communities have implemented. And in many jurisdictions, proponents of POS strategies may consider moving beyond regulating tobacco to tackle the wide array of public health concerns in the retail space.

Develop Holistic Retail Policies

Tobacco sales and marketing practices are often only a subset of the many public health issues that exist in the retail environment. Community members may also want to address the lack of nutritious foods in stores, alcohol sales, pervasive advertising of unhealthy products on storefronts, and blight and criminal activity in and around corner stores. A licensing program can extend beyond tobacco sales restrictions by taking a more comprehensive approach to making local stores healthier places to shop. Two examples of holistic retail policies include content-neutral sign laws and healthy retailer licensing programs.



Beyond tobacco control, advocates can address other public health issues in the retail environment, including the lack of nutritious foods, alcohol sales, pervasive advertising of unhealthy products, and blight in and around stores.

KEY RESOURCES

For more information on content-neutral advertising restrictions, see [Point-of-Sale Strategies, a Tobacco Control Guide](#).

ChangeLab Solutions developed [Health on the Shelf](#), a toolkit which describes how to create a strong healthy small food retailer certification program.

ChangeLab Solutions also offers a [Model Licensing Ordinance for Healthy Food Retailers](#) with its accompanying guide that explain how localities can use licensing to require food stores to carry a minimum selection of nutritious foods.

Localities can require retailers to comply with content-neutral sign laws, which limit the total amount of storefront signage regardless of the content of the signs, as a condition of maintaining a tobacco retailer license. For example, a local government could prohibit licensed retailers from covering more than 15 percent of their windows with signs of any type.²⁷ Content-neutral sign laws have the effect of reducing advertising for products of all types, including alcohol, junk food, and soda, and may improve public safety by ensuring visibility inside stores. Because these laws do not target tobacco products specifically, they are less likely to be subject to First Amendment challenges. And as a result of their broad scope, content-neutral advertising laws present opportunities for collaboration among many players, such as nutrition, community safety, and alcohol abuse prevention professionals.

Under a healthy retailer licensing program, businesses selling food and grocery items must obtain a license from the local government to continue to operate. The jurisdiction can incorporate various performance standards into the license. For example, licensed stores must stock a minimum selection of healthy foods and meet other basic operating standards, including compliance with signage laws and tobacco sales laws. By requiring all eligible stores to carry a minimum amount of staple foods and produce to receive a license, local governments can have a significant impact on the food supply in underserved neighborhoods.

Examples

In Vermont, local health department staff, community coalitions, and youth coalitions partnered to conduct [comprehensive store audits](#) of retailers throughout the state. To gain a complete picture of the local retail environment, the coalitions had the option of combining food and alcohol audits with the Standardized Tobacco Assessment for Retail Settings, a tool discussed above. The food and alcohol audits examined the availability of nutritious foods as well as product placement and advertising of alcohol. Organizers believe that combining the assessments made retailers more willing to participate in the audits.⁹


Minneapolis passed a staple foods licensing ordinance that requires licensed grocery stores (which is very broadly defined) to stock a minimum amount of staple foods.²⁸ The ordinance is primarily intended to improve public safety, as small convenience and corner stores that sell mostly alcohol, tobacco, and junk food can inadvertently exacerbate neighborhood crime and blight.

Collect Data & Evaluate the Policy

Evaluating tobacco retail policies is essential to determining whether the policies are addressing the problems identified in a jurisdiction's comprehensive retail assessment. The data collected during the initial assessment can serve as a baseline, and many of the tools used during the assessment process can be used again to measure progress. Jurisdictions should collect data directly related to the purpose of the policy. If the concern was the amount of storefront advertising retailers displayed, the community can determine whether there has been a reduction in the percentage of window space covered by signs or advertisements. If residents were concerned about the number of stores carrying fruit- and candy-flavored cigars, the locality can assess whether fewer stores are selling those products and selling fewer of them.

Jurisdictions should collect data directly related to the purpose of the policy in order to track progress and monitor effectiveness.





If the prevalence of tobacco coupons and multipack discounts was a problem, tobacco control advocates can determine whether retailers still promote and honor these coupons and discounts. To ensure there is a baseline that can be used to measure progress, public health professionals should identify key questions and collect accurate data prior to implementing the policy.

Example

In 2010, Santa Clara County, California, adopted a tobacco retailer licensing ordinance that prohibited licenses from being issued to any new retailer applying to operate within 1,000 feet of a school or within 500 feet of another tobacco retailer.²⁹ The county public health department evaluated the impact of the ordinance on the number and location of tobacco retailers pre- and post-implementation.³⁰ The department determined that 11 of the 36 existing retailers that were selling tobacco prior to the ordinance's implementation stopped selling tobacco after the policy took effect. Of these 11 retailers, one was within 500 feet of another retailer, and three were within 1,000 feet of a school. The results were unexpected, given that the density restrictions applied only to new and not existing retailers. They are an example of the type of valuable information that can be gleaned from an evaluation of tobacco retail policies.

KEY RESOURCES

There are few resources that are designed specifically for evaluation of tobacco retail policies. The [Centers for Disease Control and Prevention's Office on Smoking and Health](#) maintains several resources that generally address surveillance and evaluation approaches for tobacco control programs.

ENDNOTES

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17. The federal Food and Drug Administration has issued notices indicating that it intends to regulate labeling and packaging of e-cigarettes and e-liquids. It is unclear when such regulations will be issued or how they will affect local and state regulation. See Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products, 80 Fed. Reg. 37555 (July 1, 2015); Request for Comments Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 79 Fed. Reg. 23142 (Apr. 25, 2014) (to be codified at 21 C.F.R. pts. 1100, 1140, 1143).
18. In 2014, the federal Food and Drug Administration released its proposed "deeming rule," which would extend the agency's regulatory authority over a variety of tobacco products, including e-cigarettes, cigars, and hookah tobacco. In October 2015, the federal Food and Drug Administration submitted to the White House Office of Management & Budget the final proposal. However, it is unclear when the final deeming rule will be issued. However, the rule makes clear that state and local governments can continue to adopt and enforce laws relating to tobacco product sales, use, and distribution. See Request for Comments Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 79 Fed. Reg. 23142 (Apr. 25, 2014) (to be codified at 21 C.F.R. pts. 1100, 1140, 1143).
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26. St. Paul, Minn. Code § 64.503.
27. Many communities have existing laws that regulate the placement and posting of signs. In localities that already have content-neutral sign laws on the books as part of zoning ordinances, local governments could mandate compliance with these laws as a condition of keeping a tobacco retailer license.
28. Minneapolis, Minn. Code, ch. 203, §§ 203.10-203.30.
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