



public health  
law & policy

# Eight Essential Elements for Strong Public Health Policy

Ian McLaughlin, JD  
Senior Staff Attorney

Catherine Mongeon, JD  
Staff Attorney

January 2012

# Public Health Law & Policy

**We partner with state and local leaders to improve health in all communities, especially the underserved.**

**We do this by researching legal and policy questions, drafting policy language, and training community leaders to put these ideas to work.**



# Presenters



**Ian McLaughlin**

*Senior Staff Attorney*

*Public Health Law & Policy*



**Catherine Mongeon**

*Staff Attorney*

*Public Health Law & Policy*

# Agenda

1. Defining the problem
2. Finding policy solutions that work
3. Locating resources to help

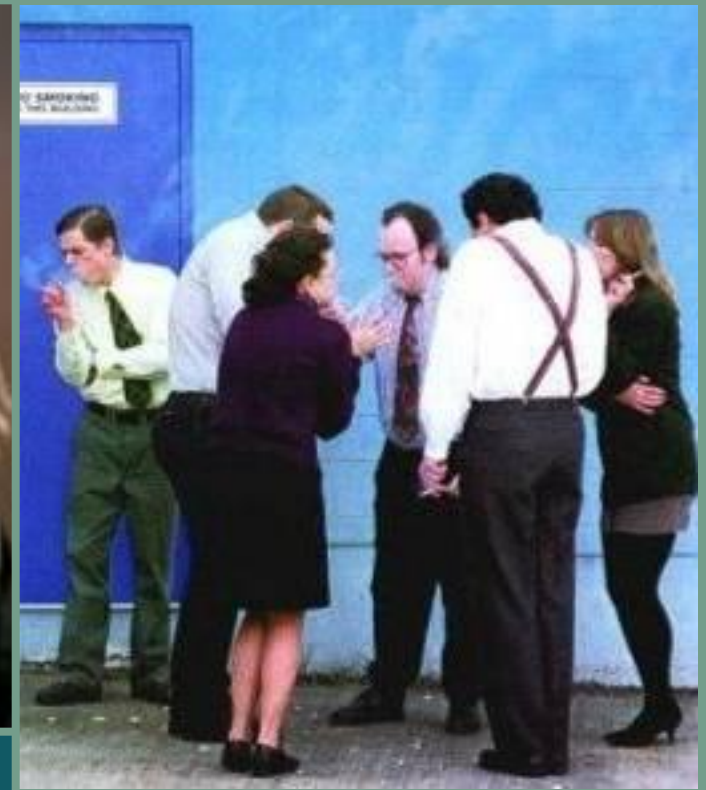




# The Problem

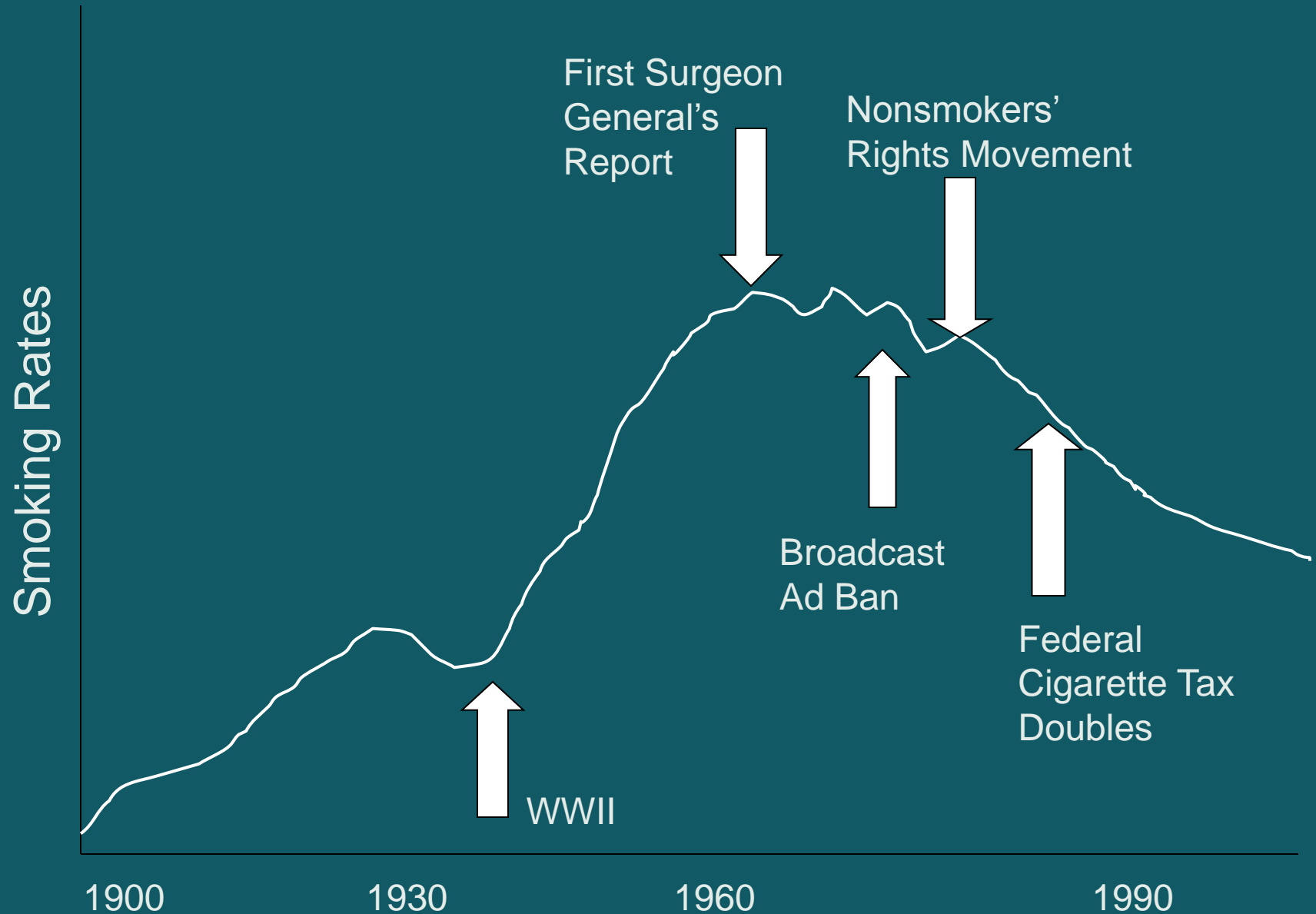


# Social Norm Change



EDUCATION

POLICY CHANGE





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MONEY ORDER  
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**Nagi's Market**

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Envios de Dinero  
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¡A tu servicio aquí y allá!

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2 for \$3.00  
SPECIAL  
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COSTILLOS DE PORK  
DIESMID  
1 lb 89¢



SONOMA  
\$ X  
7



SKOIN

NICK'S  
LIQUOR

LIQUOR

LIQUOR

DELICATELY SERVED

Y  
ARM  
11











*What's the goal?*  
**Change the environment**



# The Solution

# Eight elements

of a STRONG public health policy



1. It is a policy, not a program.
2. It is legally feasible.
3. It is data and context driven.
4. Its implementation is clear and accountable.
5. It accounts for disparities.
6. It is financially sustainable.
7. It changes the conversation.
8. It is part of a bigger plan.



## Element #1

✓ It is a policy, not a program

# What do we mean by policy?

A policy is:

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**A policy is:**

- a statement in writing
- binding
- setting out a general approach to be applied broadly

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# What do we mean by policy?

## A policy is:

- a statement in writing
- binding
- setting out a general approach to be applied broadly

## Some examples:

- Federal laws and regulations
- State laws
- Local ordinances
- Resolutions
- Zoning language
- Contracts
- School board policies

*Policy allows for accountability  
& enforcement.*



*Policy reaches more people.*



**To Do:**

1. ~~Steam~~ Clean carpet (replace)
2. ~~Scrub walls~~ repaint everything!! (Sealing)
3. Clean airducts
4. ~~Clean~~ Replace blinds
5. Clean windows


**Go smoke-free.**


Implementing a no-smoking policy could simplify your turnover process and save you thousands on repairs. More than 85% of Washington renters prefer smoke-free housing, so make the change today. Learn how at [www.SmokeFreeKingCounty.com](http://www.SmokeFreeKingCounty.com)

Public Health  
Seattle & King County

*Policy institutionalizes good ideas.*

**NO SMOKING**  
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of Illinois - Greater Chicago

To file a complaint:  
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**866-973-4646**  
TTY 800-547-0466 (hearing impaired only)

**Policy allows for  
consistent  
implementation.**

**Policy establishes  
relationships &  
responsibilities.**







*Farms...but no farmers markets?*





*Amend code to define farmers' markets*

## Element #2

✓ It is legally feasible

# Legal Issues

## Legal Authority

- Police power
- Preemption

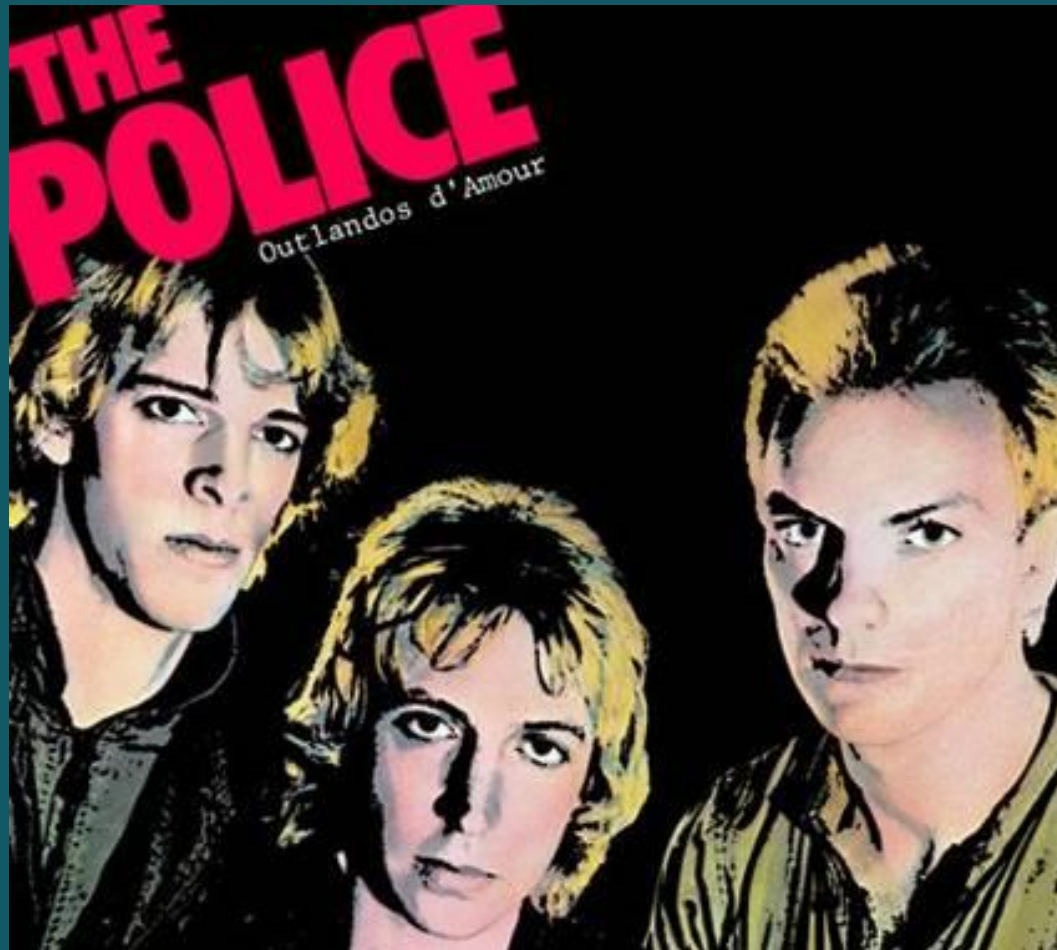
## Constitutional Restrictions

- Free Speech
- Due Process
- Equal Protection
- Takings



# Legal Authority: Police Power

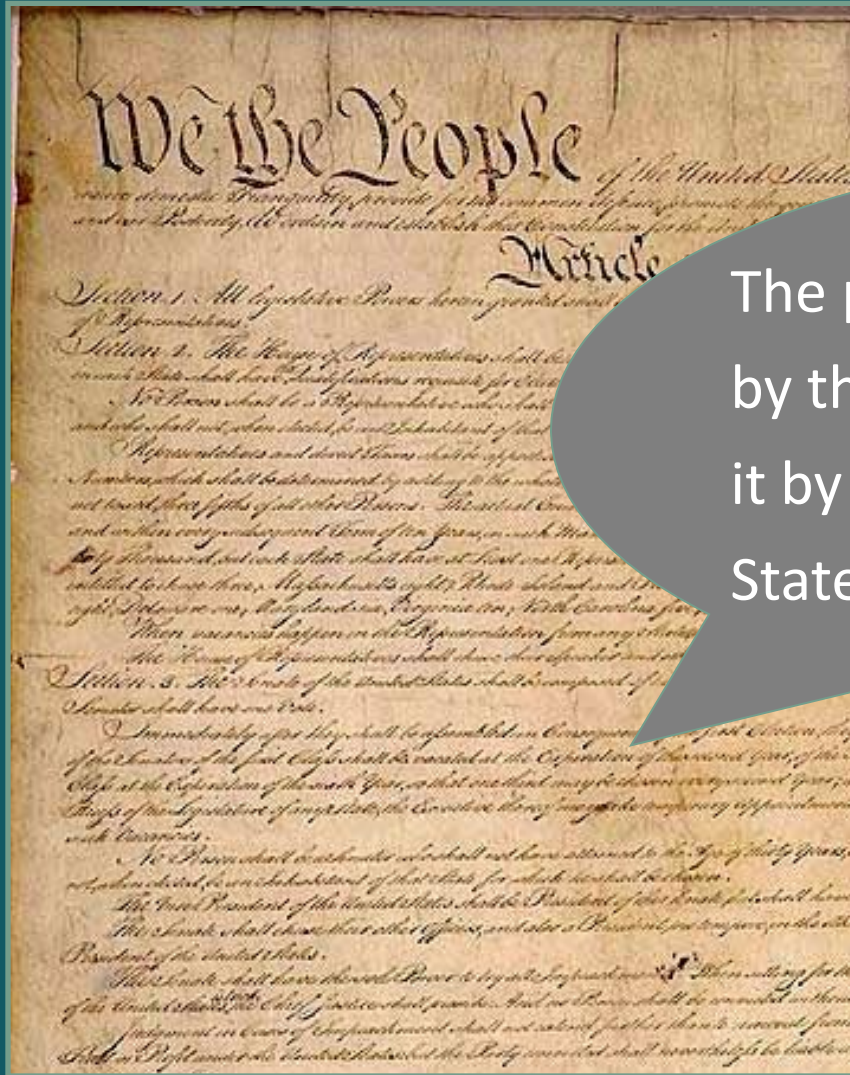
# Legal Authority: Police Power



# Legal Authority: Police Power

The power to **enact and enforce laws** to promote the public **health, safety, and general welfare.**

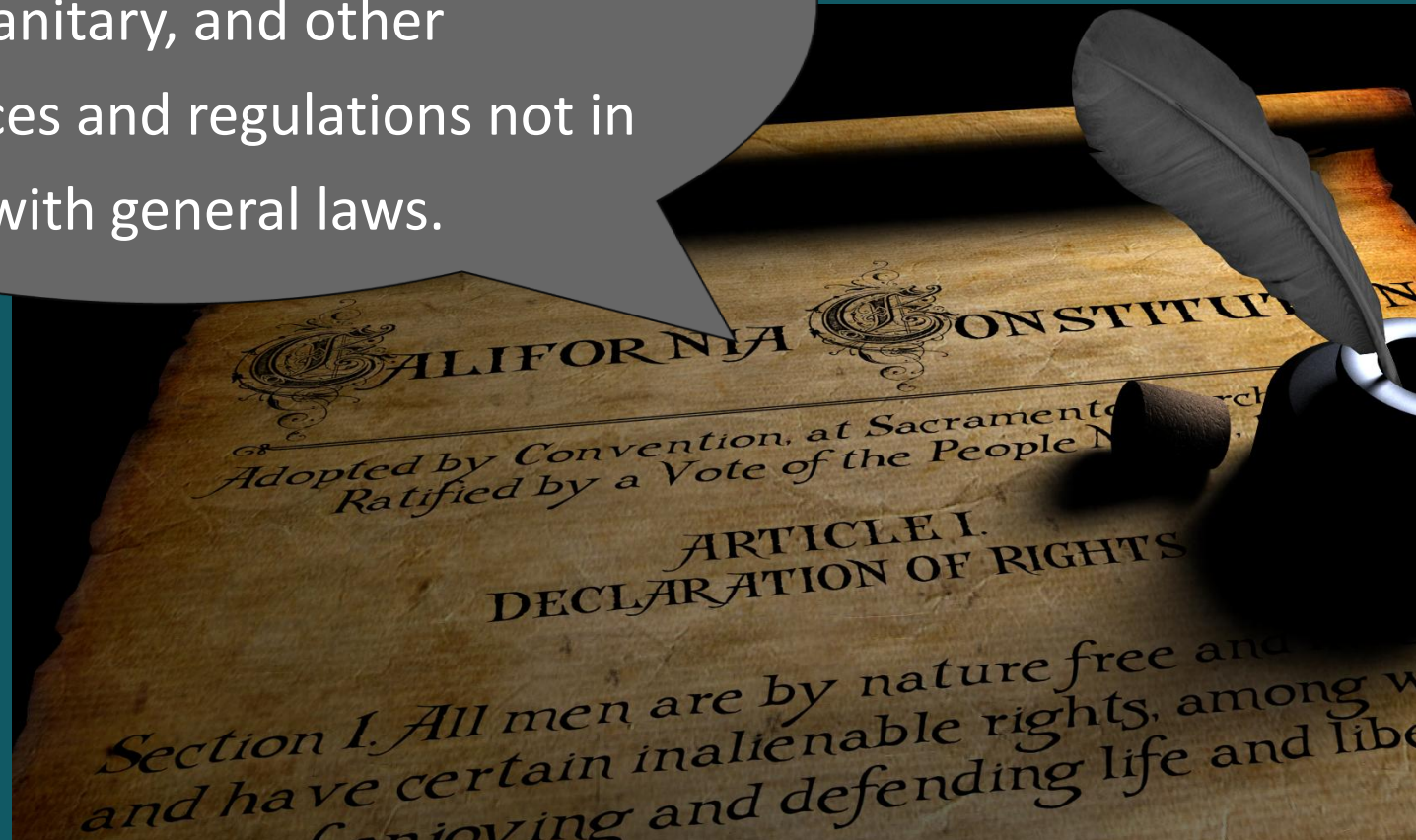
# Legal Authority: Police Power



The powers not delegated to the US by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.

# Legal Authority: Police Power

A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.



# Basic Requirements of Police Power

- Cannot be **arbitrary or oppressive**;
- Must **be rationally related** to **public health, safety, or general welfare**; and
- Must be **reasonably designed** to fix a problem affecting the public good.



# Examples

- Food handling laws

All employees must wash hands after using the toilet and before handling food.

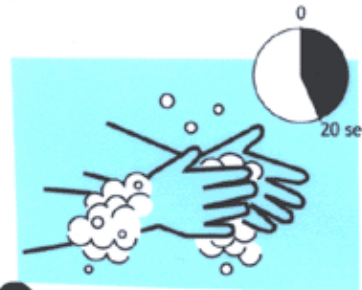
Proper handwashing:



1 Use warm water.



2 Moisten hands/apply soap.



3 Rub hands together for 20 seconds.



4 Rinse thoroughly.



5 Dry hands.



Vermont Department  
of Health

DIVISION OF HEALTH PROTECTION  
FOOD AND LODGING PROGRAM  
863-7221  
800-439-8550

# Examples

- Food handling laws
- Speed limits





# Examples

- Food handling laws
- Speed limits
- Ban cigarette sales near schools



# Legal Authority: Preemption

## What Is Preemption?

# PREEMPTION

...is the invalidation of local law by state law.

OR

...is the invalidation of state and local law by federal law.

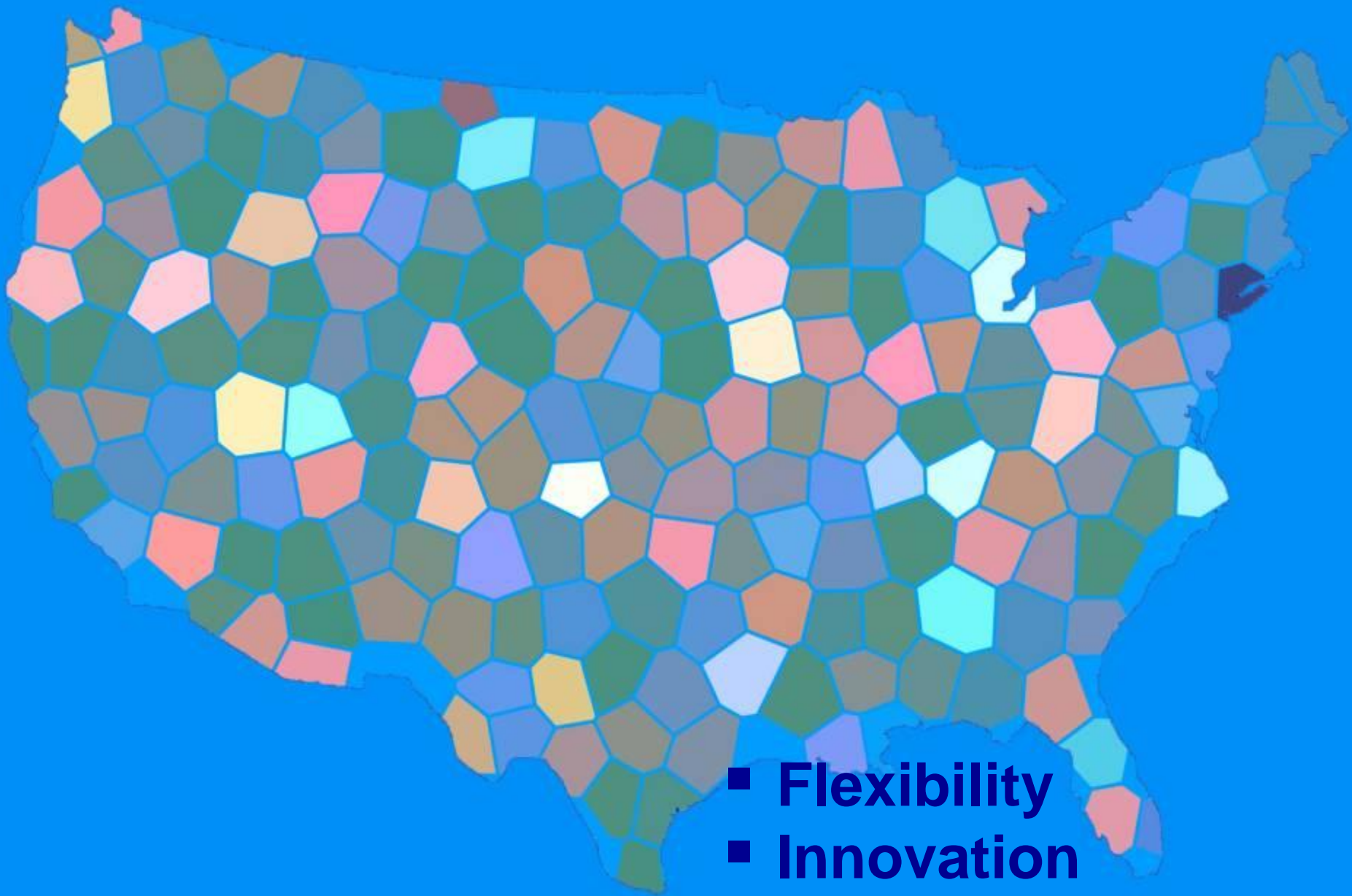
# Types of Preemption



- Ceiling  
preemption
- Floor  
preemption

Ceiling preemption provides...

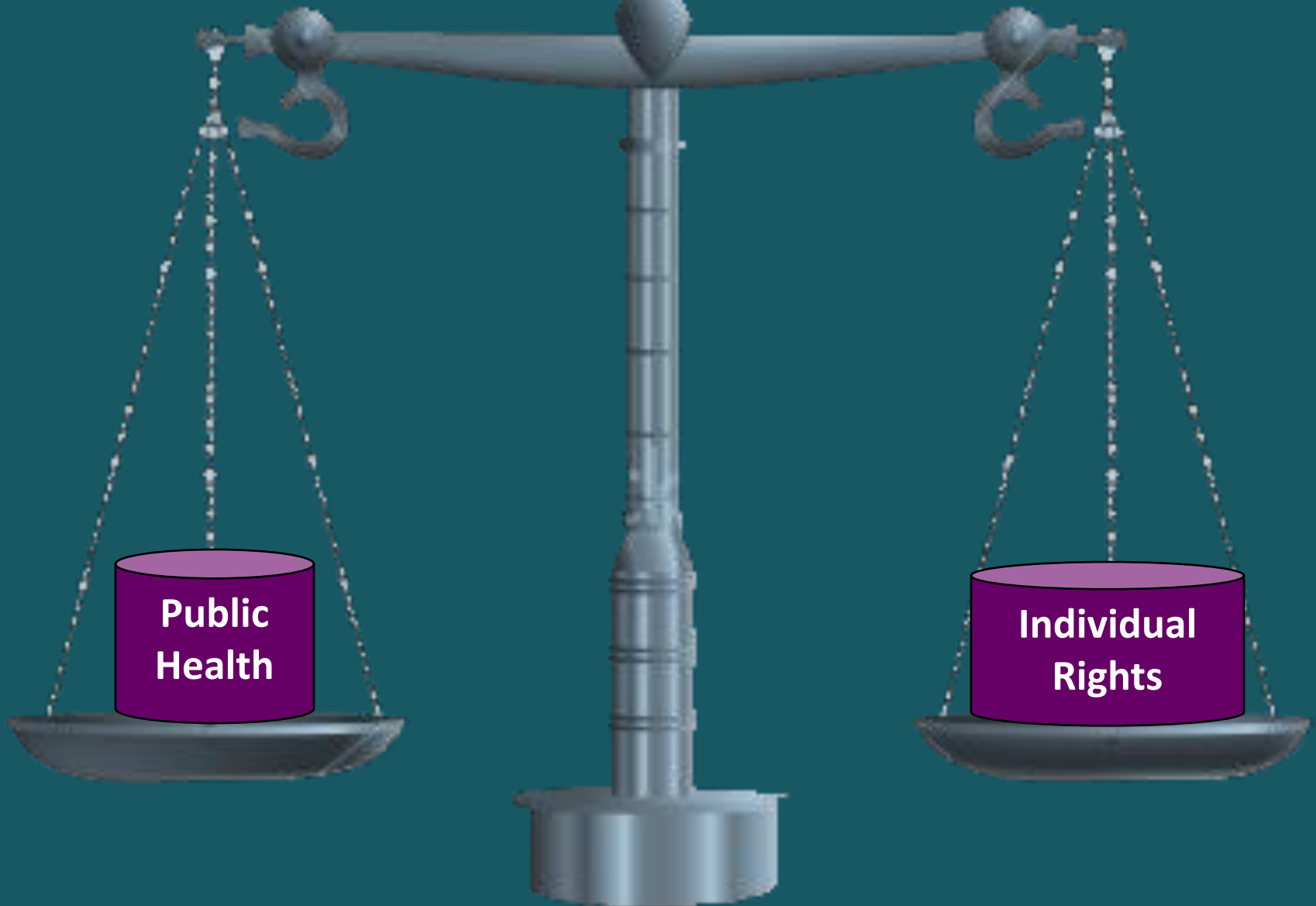
- **Uniform Standards**
- **Efficiency**
- **Equal Treatment**



- Flexibility
- Innovation
- Progress

Floor preemption allows for...

# Constitutional Restrictions









## Element #3

- ✓ It is data and context driven



## Tobacco Retailer Licensing Is Effective

March 2011

More than 80 communities in California have adopted strong local tobacco retailer licensing ordinances in an effort to reduce illegal sales of tobacco products to minors. These ordinances require tobacco retailers to obtain a license to sell tobacco, include an annual licensing fee high enough to fund strong enforcement programs and include financial deterrents for violators through fines and penalties that include the suspension and revocation of the license.

The table below lists illegal sales rates to minors before and after a strong licensing law was enacted in 31 communities where data is available and enough time (usually at least a year) has passed after the ordinance was enacted to determine results. These sales rates were determined by youth tobacco purchase surveys administered by local agencies. It is important to note that results from the youth tobacco purchase surveys are somewhat dependent on certain factors that differ in each community, such as the age of the youth and the number of stores surveyed.

The results overwhelmingly demonstrate that local tobacco retailer licensing ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, often significantly, in all 31 municipalities with a strong tobacco retailer licensing ordinance where there is before and after youth sales rate data available. However, a licensing ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws are always needed.

For more resources on these ordinances, including the Matrix of Strong Local Tobacco Retailer Licensing Ordinances with policy and enforcement details for every strong ordinance in the state, visit [www.Center4TobaccoPolicy.org/localpolicies-licensing](http://www.Center4TobaccoPolicy.org/localpolicies-licensing). For model tobacco retailer licensing ordinance language, visit the Technical Assistance Legal Center at [www.phpnet.org](http://www.phpnet.org).

**TABLE OF YOUTH SALES RATES BEFORE AND AFTER THE ADOPTION  
OF A STRONG TOBACCO RETAILER LICENSING ORDINANCE**

City/County	Date Passed	Annual Fee	Youth Sales Rate Before Ordinance	Most Recent Youth Sales Rate
Banning	August 2006	\$350	77%	21%
Beaumont	December 2006	\$350	63%	20%
Berkeley	December 2002	\$427*	38%	4.2%
Burbank	February 2007	\$235	26.7%	4%
Calabasas	June 2009	\$0*	30.8%	7%
Coachella	July 2007	\$350	69%	11%
Contra Costa County	January 2003	\$160*	37%	7%
Corona	October 2005	\$350	50%	17%
Davis	August 2007	\$344	30.5%	3.8%
Delano	June 2008	\$165	23%	16%
Desert Hot Springs	August 2007	\$350	48%	4%
El Cajon	June 2004	\$698	40%	4.2%
Elk Grove	September 2004	\$270	17%	0%
Grover Beach	September 2005	\$224	46%	2.9%

*continued on the next page*



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*Local policymakers want LOCAL data*

## Element #4

- ✓ Its implementation is clear and accountable







# Policy Language

“The City shall seek to facilitate and encourage the use of public rights of way by pedestrians and bicyclists and shall strive to reduce traffic and improve public health and safety.”

# Policy Language

“The City shall seek to facilitate and encourage the use of public rights of way by pedestrians and bicyclists and shall strive to reduce traffic and improve public health and safety.”

*or*

“The City shall **establish** a steering committee to **develop** a complete streets policy, **implement** a sustainable complete streets program, and **propose** complete streets legislation.”

# Licensing for tobacco



## LICENSING INFORMATIONAL GUIDE

For Tobacco Retailers



Revised 4/08

# Policy Language

“Compliance shall be monitored by the City. The City anticipates that compliance checks will be conducted periodically.”



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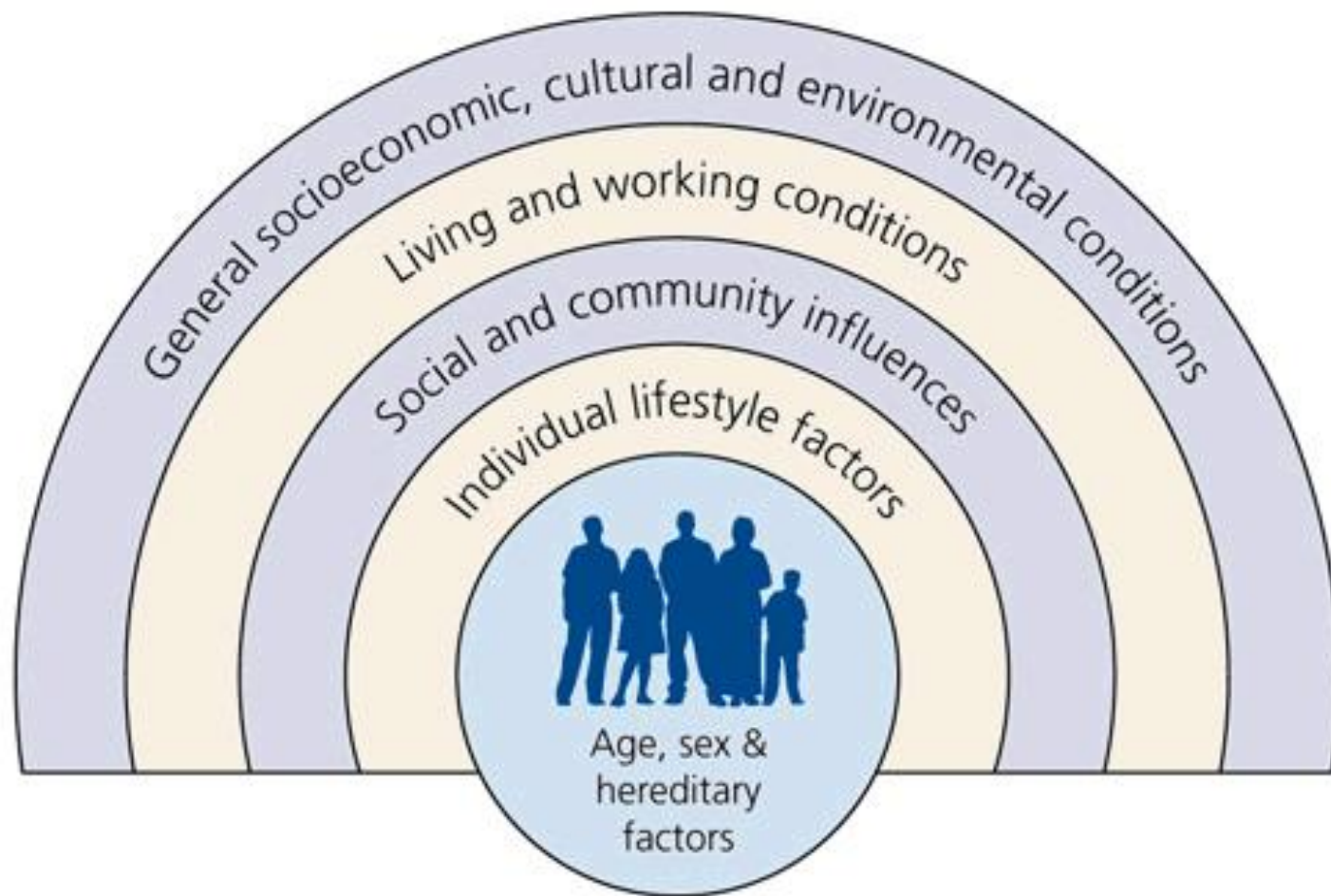
*or*

“Compliance shall be monitored by **Municipal Law Enforcement**. Municipal Law Enforcement **shall check compliance** of each tobacco retailer **at least three times per twelve-month period**. Compliance checks **shall determine, at a minimum**, if the tobacco retailer is complying with **tobacco laws regulating youth access**.”

## Element #5

- ✓ It accounts for disparities

**Figure 1.1 A Model of the Determinants of Health**



**Source:** Dahlgren, G. and Whitehead, M. (1991). Policies and Strategies to Promote Social Equity in Health. Stockholm: Institute for Futures Studies.







## Retail Food Environment

- INCREASE STRATEGIES OUTREACH EFFORTS
- LIMIT BARRIERS TO ACCESS
- STREAMLINE APPLICATION PROCESS AND HARNESS WIC/EBT SPENDING TO INCREASE DIVERSITY OF HEALTHY FOOD OPTIONS
- FAST FOOD ZONING AND HEALTHY OPTION INCENTIVES
- INCENTIVES FOR INNOVATIVE AND SUSTAINABLE (EDUCATION, MARKETING, ETC)
- MENU LABELING
- NEXT STEPS

*Community action delivers results*



*Stakeholder input guides planning process and builds community support*



# Little Cigars



# Little Cigars





# Little Cigars

Illegal



Legal



## Element #6

✓ It is financially sustainable

# What is financial sustainability?

- Low or no cost
- Uses existing funding
- Saves money
- Generates revenue



# What is financial sustainability?

- Low or no cost
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# What is financial sustainability?

- Low or no cost
- Uses existing funding
- Saves money
- Generates revenue





*Oklahoma – home to one of the highest rates of adult obesity in the US*





*OK leveraged existing funding,  
expanding it to create greater access  
to healthy choices*



# What is financial sustainability

- Low or no cost
- Uses existing funding
- **Saves money**
- Generates revenue



# Tobacco Policy Results in California 1989-2004

- ✓ \$86 billion were saved in **health care costs**
- ✓ 3.6 billion **fewer packs of cigarettes** sold
- ✓ 25% **fewer tobacco related diseases**  
compared to the rest of the nation



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662 429 9092

*The city of  
Hernando*



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[Community Resources](#)



## Fiscal, physical health tied, Hernando mayor reports

By Henry Bailey

Thursday, October 6, 2011

Back at Hernando City Hall today after a heaping plate of health concerns at the 16-state, three-day Southern Obesity Summit in New Orleans, Mayor Chip Johnson says Mississippi has to get a grip soon on the billion-dollar crisis or risk going broke.

"A healthy community is not just a feel-good thing -- it impacts economic development and fiscal health," said the mayor, who gave an address at the three-day parley on Hernando's initiatives.

In Hernando, reduced health premiums due to city employee participation in Blue Cross Blue Shield's Healthy Workplace program allowed for a 2 percent pay increase for workers.

"We shaved 15 percent off our insurance costs, for a savings to taxpayers of about \$130,000," Johnson said.

Other actions in Hernando include winning a "Healthiest Hometown" designation from Blue Cross & Blue Shield and a \$50,000 grant with it, the award-winning Farmers Market linking local producers and healthy eating, a smoking ban and promoting



# What is financial sustainability?

- Low or no cost
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- Generates revenue





## *Taxes, Fees and Licensing*

# Taxes





# Impact and Regulatory Fees





# Licensing for tobacco



## LICENSING INFORMATIONAL GUIDE

For Tobacco Retailers



Revised 4/08

# Licensing for healthy food



## Moove to 1% Milk

**Your Heart and Your Waistline  
Will Thank You**

### 1% Milk Tastes Good

- In taste tests, 9 out of 10 people like 1% milk.
- Most people cannot tell the difference from whole milk.

### 1% Milk is Better for You

- 1% milk has all the nutrition of whole milk — without the extra fat and calories.
- After age 2, 1% or less is best.



**NYC**  
Health

The New York City Department of Health and Mental Hygiene

To order, call 311. Keyword: postcard



HPD1X289 11-3-08

## Element #7

- ✓ It changes the conversation



# SMOKE FREE MULTI-UNIT HOUSING

A GUIDE FOR OWNERS, TENANTS, AGENTS,  
AUTHORITIES AND GOVERNMENTS





# Smoking Ban Hits Home. Truly.

By JESSE McKINLEY

Published: January 26, 2009

BELMONT, Calif. — During her 50 years of [smoking](#), Edith Frederickson says, she has lit up in restaurants and bars, airplanes and trains, and indoors and out, all as part of a two-pack-a-day habit that she regrets not a bit. But as of two weeks ago, Ms. Frederickson can no longer smoke in the one place she loves the most: her home.

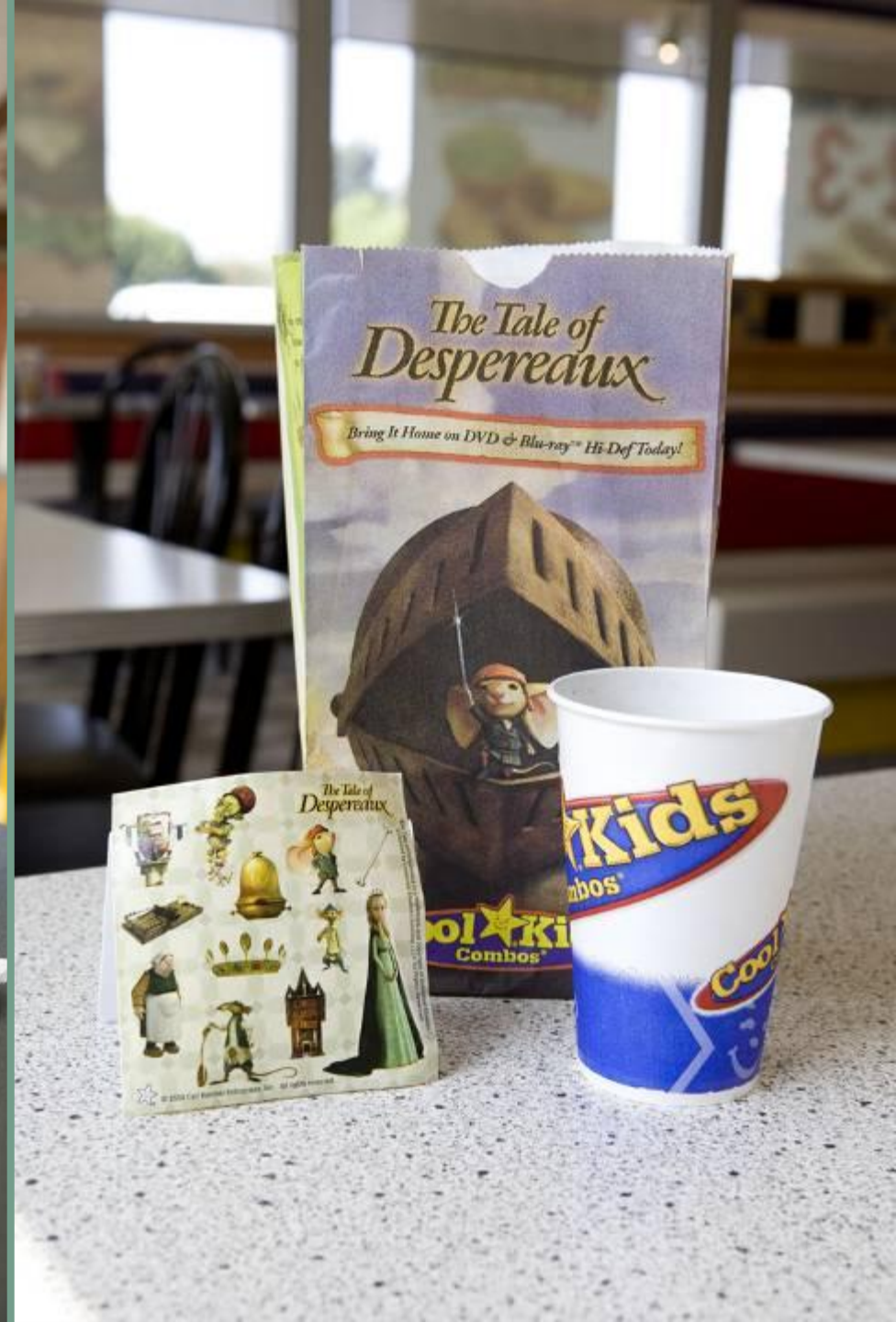
[Enlarge This Image](#)





*Restaurants market junk food with toys*





## Andrew M Brown

Andrew M Brown is a writer who specialises in mental health and in the influence of addiction and substance abuse on culture.

# Why is it politicians' business whether McDonald's gives away toys with Happy Meals?

By Andrew M Brown | [Health and lifestyle](#) | Last updated:

[39 Comments](#) | [Comment on this article](#)



## Wellness

A healthy balance of the mind, body and

« PREVIOUS

Brazilian health minister recommends having more sex

NIH say

## California county bans toys in Happy Meals

Posted by TIFFANY O'CALLAGHAN Thursday, April 29, 2010 at 8:00 am

[Submit a Comment](#) • Related Topics: [obesity](#) [fast food](#) [happy meal](#) [kids meals](#)

Our **Competitive Assessment** addresses strategic strengths and weaknesses.

## Citing Obesity of Children, County Bans Fast-Food Toys

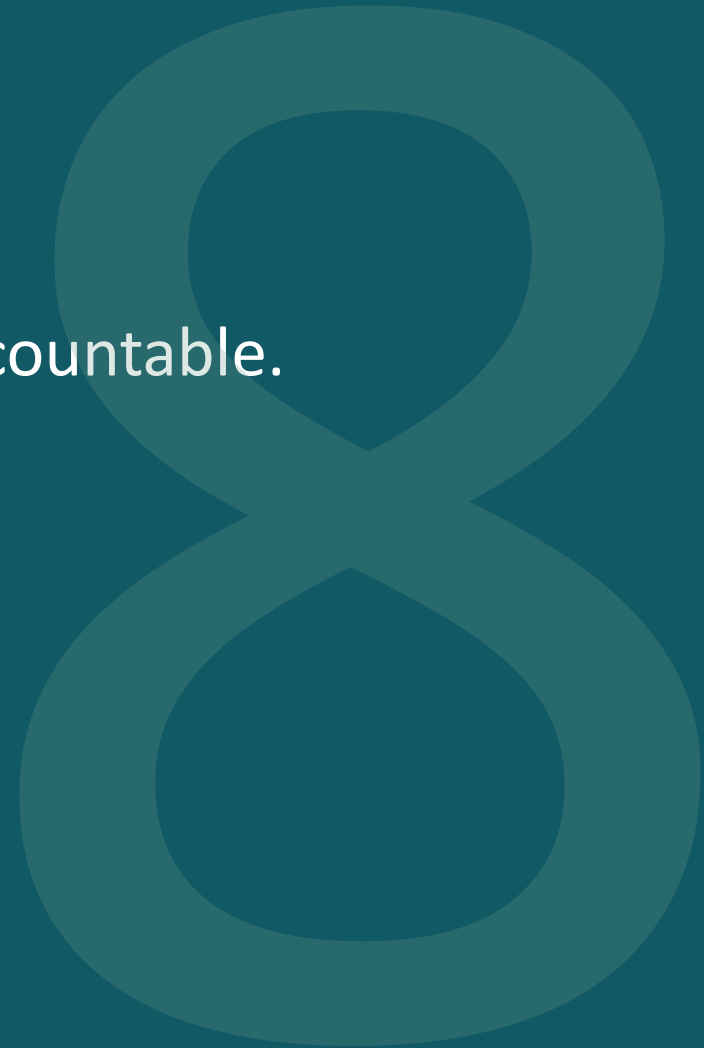


**Last but not least...element #8**

✓ **It is part of a bigger plan**



1. It is a policy, not a program.
2. It is legally feasible.
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5. It accounts for disparities.
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8. It is part of a bigger plan.





# The Resources

# Eight Elements Worksheet

Crafting Sustainable Public Health Policies

January 2012

<i>What is your specific policy goal?</i>		
<i>Elements of a Strong Policy</i>	<i>Key Questions</i>	<i>Discussion Highlights</i>
<b><i>Is this a policy rather than a program?</i></b>	Is there clear enforcement? Will new programs be allowed to flourish as a result of this policy? Give an example.	
<b><i>Is this policy legally feasible?</i></b>	Does it meet constitutional standards? How do you know? How might you find out?	
<b><i>Is there data or evidence to support the policy?</i></b>	Is there a connection between the policy and the problem? What data or research makes the case? Can you create local data, too?	
<b><i>Is the implementation clear and feasible?</i></b>	What are barriers to implementation? Is the implementation process clear? Are there stakeholders who could help?	



healthy  
planning

tobacco  
control

childhood  
obesity

climate  
change

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Create an account Recover Password

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## Welcome to PHLP

### In the Spotlight: Tools and Strategies for Healthier Communities

New publications from PHLP are now available for download! Our influential report, "[Digital Food Marketing to Children and Adolescents](#)" details new digital marketing tactics currently being used by food and beverage companies to target children and adolescents. Research for this report supplemented a complaint against PepsiCo [filed with the FTC](#) by advocacy groups.

We've also released "[Seeding the City: Land Use Policies to Promote Urban Agriculture](#)," a toolkit to help local policymakers promote healthier eating by encouraging local agriculture. And for communities looking at updating general plans, we have "[A Roadmap for Healthier General Plans](#)," which identifies opportunities for getting health-promoting policies into local development efforts.

Two upcoming webinars are now open for registration. On November 8, TALC presents "[Going Beyond TRL: Emerging Tobacco Retailer Policies](#)" in cooperation with the Center for Tobacco Policy & Organizing. On November 10, NPLAN presents "[The Healthy, Hunger-Free Kids Act: What You Need to Know](#)" with a panel of experts from around the country. Archives of our [past webinars](#) are also available.

## PROGRAM NEWS

### Local Communities Identified as Food Deserts: PHLP Responds

Sep 22, 2011

When local news outlets were developing stories about Bay Area communities identified as 'food deserts' by the USDA, they came to PHLP for the full scoop. Hannah Burton Laurison spoke with the [San Jose Mercury News](#) and [CBS San Francisco](#) about the unique challenges of bringing [full service grocery stores](#) to rural communities, and how the USDA report overlooked the role that smaller grocers can play in balancing the needs of a neighborhood.

### Going Beyond TRL: Emerging Tobacco Retailer Policies

Oct 26, 2011

Ready to take your local tobacco retailer licensing ordinance to the next level? Join TALC and the Center for Tobacco Policy & Organizing (the Center) for a webinar on **Tuesday, November 8, 2011 from 10:30 am –**

## What's New

[Improving Health and Building Wealth: PHLP on Fiscal Policies for Obesity Prevention](#)

[Proposal on Food Marketing to Kids Doesn't Violate the First Amendment, Legal Scholars Say](#)



# Resources from PHLP

## Tobacco Retailer Licensing

A local licensing ordinance can be used to encourage tobacco retailers to comply with all laws that apply to tobacco sales.

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

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

TALC's Model California Ordinance Requiring a Tobacco Retailer License and its accompanying "playbook" provisions provide a range of options to consider when designing a local licensing ordinance. The ordinance language you select should be part of a larger strategy to have the ordinance adopted in your community.

To guide your planning, the Center for Tobacco Policy and Organizing has developed the five-phase model below.

### CAUTION! Trail START

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

### Investigation & Assessment

Identify local issues and resources to build on. Understand what might influence decision makers. Determine your team, a location (city or county), and a goal.

### Strategy & Planning

Assess the political environment and develop a strategy. Develop a preliminary strategy and establish a rough timeline.

This phase includes the development of the ordinance - this is the time to call on TALC.

phlp public health law & policy technical assistance legal center

The Technical Assistance Legal Center (TALC) helps communities, city and county attorneys, and public health advocates by providing and supporting ordinance analysis, research and writing, and consulting on legal issues, and providing training and consulting on legal strategies for tobacco control.

Technical Assistance Legal Center  
(916) 444-2523  
www.phlp.org

Made possible with funds received from the California Department of Public Health, under contract #04-35336, in support of Public Health Law Policy and the Public Health Center.

## Licensing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. The options below are included in TALC's Model California Ordinance Requiring a Tobacco Retailer License and accompanying "playbook." All of which are available at [www.phlp.org/tobacco-control](http://www.phlp.org/tobacco-control). The provisions that TALC and The Center consider essential are clearly marked with a check mark. Contact TALC for help drafting an ordinance based on your community's desires.

### POLICY OPTIONS IN MODEL ORDINANCE

#### WHO MUST OBTAIN LICENSE

- ☒ All tobacco product retailers must obtain a license to sell tobacco.
- ☒ Define "tobacco product" to include all tobacco and tobacco products (e.g., cigarettes, cigars, pipe, etc.)
- ☒ Exclude all "retailer" (e.g., vending machine, etc.)
- ☒ Exclude all "retailer" (e.g., vending machine, etc.)
- ☒ Exclude all "retailer" (e.g., vending machine, etc.)

#### ENFORCEMENT OF LICENSE REQUIREMENTS

- ☒ Licensing program will be administered by (e.g., who issues the license?)
- ☒ Licensing program will be administered by (e.g., who issues the license?)
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#### CONSEQUENCES OF LICENSE VIOLATION

- ☒ Each violation results in a monetary penalty (e.g., \$100 per day for a first violation, \$200 per day for a second violation, \$500 per day for a third violation, \$1,000 per day for a fourth violation, \$2,000 per day for a fifth violation, \$5,000 per day for a sixth violation, \$10,000 per day for a seventh violation, \$20,000 per day for an eighth violation, \$50,000 per day for a ninth violation, \$100,000 per day for a tenth violation, \$200,000 per day for an eleventh violation, \$500,000 per day for a twelfth violation, \$1,000,000 per day for a thirteenth violation, \$2,000,000 per day for a fourteenth violation, \$5,000,000 per day for a fifteenth violation, \$10,000,000 per day for a sixteenth violation, \$20,000,000 per day for a seventeenth violation, \$50,000,000 per day for an eighteenth violation, \$100,000,000 per day for a nineteenth violation, \$200,000,000 per day for a twentieth violation, \$500,000,000 per day for a twenty-first violation, \$1,000,000,000 per 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# The Fine Print

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