

A group of diverse young children, including a girl in a pink and white patterned hijab, are sitting together and talking. The image is overlaid with a large, semi-transparent red shape that contains the title text.

COMMERCIAL TOBACCO CONTROL POLICY OPTIONS



**PUBLIC HEALTH
LAW CENTER**
at Mitchell Hamline School of Law







THE PUBLIC HEALTH LAW CENTER



COMMERCIAL TOBACCO CONTROL TEAM



LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

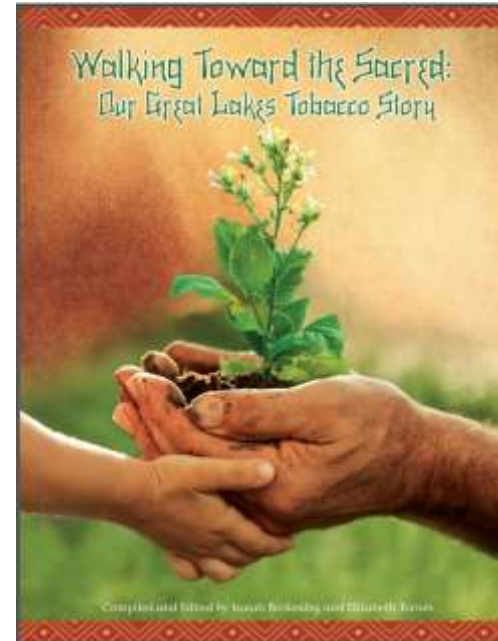
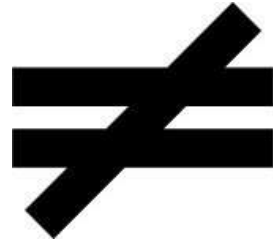


based on work for First Nations Health Authority at Gathering Wisdom VI

Drawing
change

Photo credit: Sam Bradd <https://drawingchange.com/gathering-wisdom-visuals-for-a-healthy-future/>

COMMERCIAL VS. TRADITIONAL



Source:

[http://www.glitc.org/
forms/Tabacco/
tabacco-booklet-web-.pdf](http://www.glitc.org/forms/Tabacco/tabacco-booklet-web-.pdf)

TOBACCO CONTROL ACT OF 2009

STATE AND LOCAL AUTHORITY



Preservation of State/Local Authority

Nothing in the Act limits state/local authority to enact a law “prohibiting the sale . . . of tobacco products.”

Preemption of State/Local Laws

No state/locality may establish “any requirement which is different from . . . any requirement under [the Act] relating to tobacco product standards.”

Saving Clause

The preemption restriction above “does not apply to [state or local] requirements relating to the sale” of tobacco products.

The Act: State and Local Authority

The FDA

- YES: Product standards
 - Nicotine yields
 - Ingredients, constituents
 - How constructed
 - Internet sales
- NO:
 - Smoke-free
 - Tax
 - Ban a class of products (e.g., all cigars)



States/Locals

- NO: Product standards
- YES:
 - Smoke-free
 - Youth access
 - Taxes and pricing
 - Sales & distribution

ELEMENTS OF A STRONG POLICY

- Strong findings section
- Clear, consistent, comprehensive definitions
- Implementation/Enforcement provisions
- Cessation support
- Anti-preemption language for state laws
- Evaluation is essential



EXEMPTIONS ARE THEY WORTH IT?

- Will inevitably increase disparities.
- No public health benefit.
- Increased likelihood of litigation.



TOBACCO RETAILER LICENSING ESTABLISHING THE FRAMEWORK

- Sets the rules for applying and renewing, including fees
- Helps assure compliance
 - Provides funding for compliance checks
 - Induces owners to train staff
- Streamlines enforcement
 - Suspending or revoking a license in addition to any fines
 - Do not need to go to court to stop sales



WHO CAN BUY?

MINIMUM LEGAL SALES AGE



“If a man has never smoked by age 18, the odds are three-to-one he never will. By age 21 the odds are twenty-to-one.”

-Marketing Report for R.J. Reynolds, 1982



WHO CAN SELL? MINIMUM LEGAL AGE FOR CLERKS



For high school age smokers, teenage store clerks are a major source.

Source: Joseph DiFranza & Mardia Coleman, Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws, 10 TOBACCO CONTROL 323, 327 (Dec. 2001).

WHERE CAN TOBACCO BE SOLD

- In pharmacies?
- Over the internet?
- Mobile “stores”?
- Only in adult-only stores?



PROXIMITY

- Proximity to:
 - Residential areas
 - Schools
 - Playgrounds, parks and other places where kids gather
- Mostly through licensing, occasionally zoning

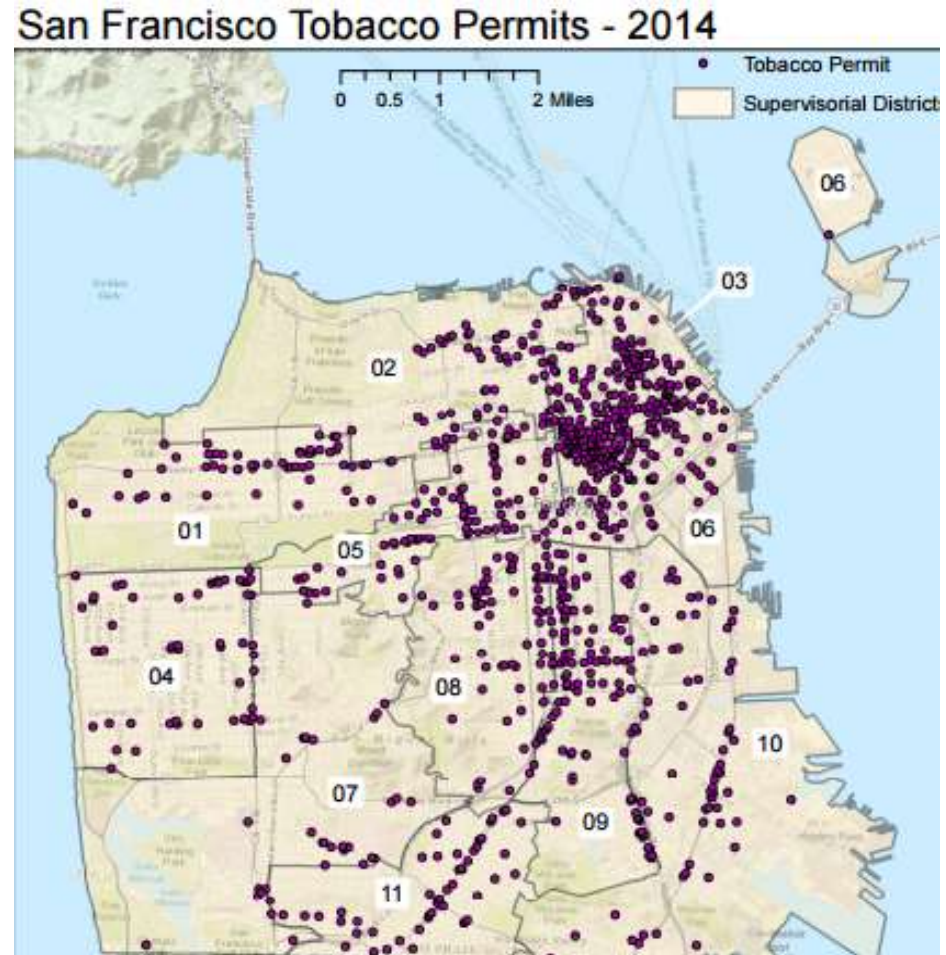


NUMBER AND CONCENTRATION OF RETAILERS

- Density
 - Distance from existing retailers
 - By zone/distance
 - By population
- Number of retailers
 - Cap licenses
 - Cap and reduce



WHERE: NUMBER AND CONCENTRATION OF RETAILERS



WHICH PRODUCTS CAN BE SOLD? CAPTURING THE KIDS WITH FLAVORS

81% of youth initiate tobacco use with flavored products.

- Source: Truth Initiative

Menthol increases initiation, decreases cessation, exacerbates disparities.

- Source: Campaign for Tobacco Free Kids

YOU SHOULD BE FURIOUS!

The City Council is getting ready to **BAN** the sale of menthol cigarettes and mint and wintergreen smokeless tobacco products **in this store**.

Please call City Council today! Help protect my store and other neighborhood retailers.

Ward	Council Member	Phone	Ward	Council Member	Phone
1	Dai Thao	651-266-8610	5	Amy Brendtman	651-266-8650
2	Rebecca Hoacker	651-266-8620	6	Dan Blotstrom	651-266-8660
3	Chris Tolbert	651-266-8630	7	Jane Prince	651-266-8670
4	Russ Stark	651-266-8640			

CITIZENS FOR RIGHTS

Campaign for Tobacco Rights is operated on behalf of Philip Morris USA, U.S. Smokers, Tobacco Co., John Middleton, R&B Sherman LLC, and Nu Mark, LLC.

MENTHOL A SORDID HISTORY

Industry targeting African-American communities:

- Increase in use from 5% in 1950's to about 85% today.
- 45% of African-American smokers would try to quit if menthol weren't available.
- 75% of African-American smokers in favor of banning menthol cigarettes.

Source: Truth Initiative



7/27/2023

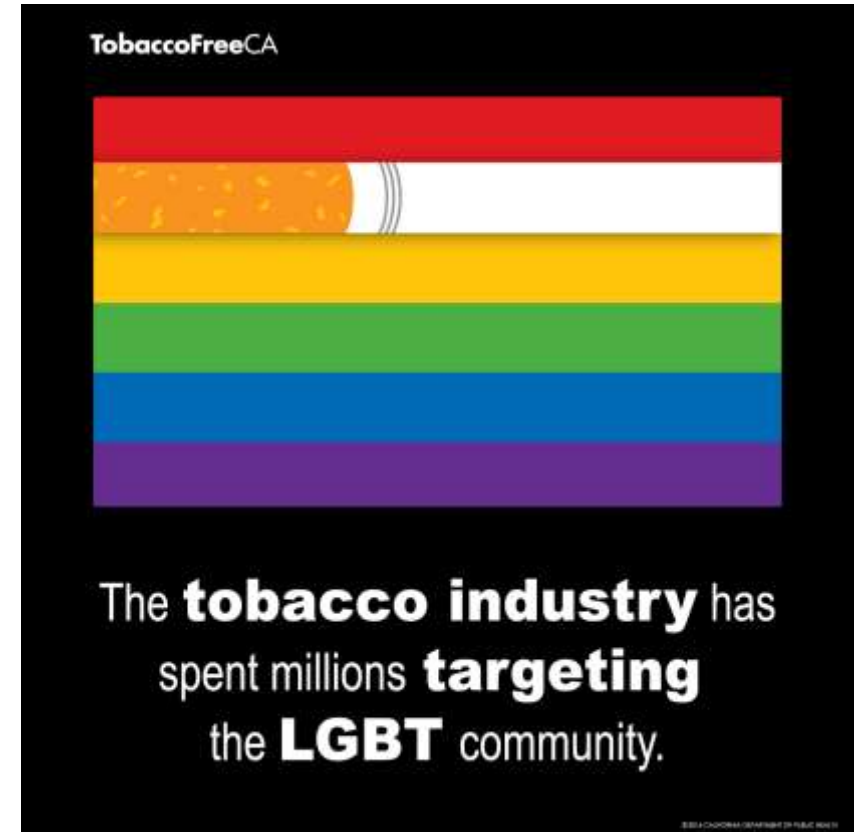
TARGETING THE LGBTQ+ COMMUNITY

20.6% of LGBTQ+ adults and 35.5% of transgender adults smoke cigarettes compared to 14.9%.

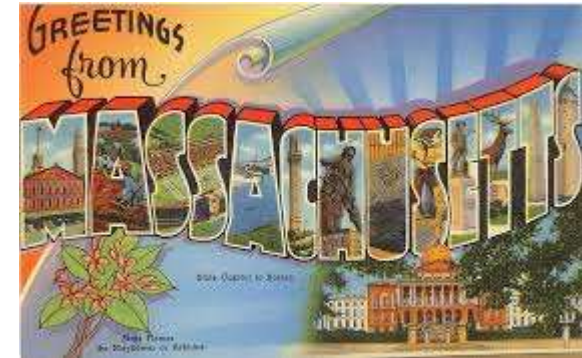
- Source: Truth Initiative

LGBTQ+ menthol cigarette use is also significantly higher (36% of smokers).

- Source: Fallin A, Goodin AJ, King BA, Am. J. Prev. Med.



FLAVORED TOBACCO RESTRICTIONS THE EVOLUTION



NEXT PHASE NEW PRODUCTS

- “Non-menthol” products – cooling sensations.
- Important to review definitions and focus on user experience.
- These appear to be flavored products and are marketed to indicate that they’re flavored.



SYNTHETIC NICOTINE PRODUCTS

Our Mission

We believe that innovation is the key to creating unforgettable experiences. And innovation is at the heart of what we do. PuffBar provides adult vapers with premium products to elevate life's greatest moments. For us, offering consumers the best choice on the market isn't just a mission — it's a requirement. As America's leading innovator in vape devices, we pride ourselves in setting the bar. And we're committed to raising that bar, one puff at a time.



Tobacco Free

Better Flavor, Better Experience

As a demonstrated pledge to premium quality, Puffs nicotine-based products are created with tobacco-free nicotine. Our nicotine-based products are crafted from a patented manufacturing process, not from tobacco. The result? A virtually tasteless, odorless nicotine without the residual impurities of tobacco-derived nicotine. This dramatically improves flavor while still maintaining the same satisfaction smokers are seeking from their nicotine.

...rience

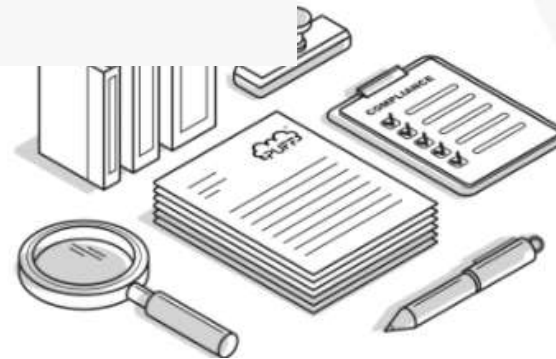
...s nicotine-based products are used products are crafted from a . The result? A virtually tasteless, tobacco-derived nicotine. This the same satisfaction smokers are



Fully Licensed & Compliant

The Puff Difference

Puff Bar is fully licensed and compliant with current tobacco regulations in the United States. Puff Bar is proud to be working directly with state and federal policy makers to create fair rules & regulation as well as assisting in stopping counterfeits from entering the US market.



TAX AND PRICING FUNDAMENTALS

LISTENING TO THE INDUSTRY

“Of all the concerns, there is one— taxation—that alarms us the most.”

Philip Morris Marketing Report, 1985

“Young people are very price sensitive.”

R. J. Reynolds Marketing Report, 1982



MENTHOL AND TAXATION

SIMILAR SOCIAL JUSTICE ARGUMENTS

- Will disproportionately burden the most vulnerable.
- Will add to disparities.



TAX POLICY

WHAT ABOUT EQUITY?



- Regressivity argument – disproportionate burden.
 - Looking at tax payment is too narrow.
 - Tobacco use exacerbates poverty and health disparities.
 - Out of pocket health costs decrease.
 - Less time missed from work.
- World Bank, WHO, and IMF support increased tobacco taxes.



WHY TAX AND PRICING POLICIES? WHO BENEFITS?

- 10% increase in cigarette tax results in a 3-5% decrease in use.
- Youth are 2-3 times more sensitive to price increases.
- Increased quit attempts – especially among lower income users.



Sources: Truth Initiative and
Tobacconomics.org

BASELINE INFORMATION

CURRENT TAX LANDSCAPE

- All states tax cigarettes with rate ranging from 17 cents/pack (MO) to \$4.50 (D.C.).
 - Federal tax of \$1.0066/pack.
 - Many local governments levy additional taxes.
- Variation among states taxing other tobacco products:
 - % of price (ad valorem) (from 5% (SC) to 95% (MN)).
 - By weight (smokeless – 1.5c/oz (AL) to \$2.02/oz (ME)).
 - Per unit (e.g., cigars - .1 cent (TX) to \$4 (VT)).



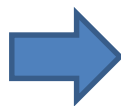
CURRENT TAX

- Current tax is \$2/pack (17th nationally)
- Other tobacco products - 25% of value
- Cigars – 50 cents/cigar
- E-liquid – 12.5% of value
- Closed systems – 50 cents/cartridge



EVOLUTION OF E-CIGARETTES

ENSURING THAT TAX POLICY KEEPS UP



Source: Campaign for Tobacco-Free Kids

WHAT SHOULD BE TAXED? AND AT WHAT LEVEL?

- Only nicotine? Devices too?
- On parity with combustible cigarettes?
- Same as other tobacco products?
- Approved cessation products? Modified risk?



HOW SHOULD E-CIGARETTE TAX BE STRUCTURED?

- Ad valorem?
- By volume?
 - 5 cents/milliliter = 3.5 cents per JUUL pod.
- Bifurcated approach – open v. closed system?
- By concentration?
- Where is it collected?
 - Distributor or retailer?



TAX POLICY BEST PRACTICES

- Clear, comprehensive definitions.
- Increasing tax rate on all products.
- Ad valorem tax on OTPs.
- Parity among products.
- Administrative feasibility.
- Dedicated funds.
- Exempt approved cessation products.



(SORT OF) HIDDEN SPENDING

- More than 88.5% of all advertising and promotional spending by the industry is focused on reducing the price of tobacco products at the point-of-sale.
- Price discounts - \$6.8 billion on cigarettes in 2020.
- Total advertising - \$9 billion per year – almost \$1million per hour.
- Coca Cola spends about \$4 billion annually on advertising.



Source: Federal Trade Commission Cigarette Report for 2020 and Truth Initiative.

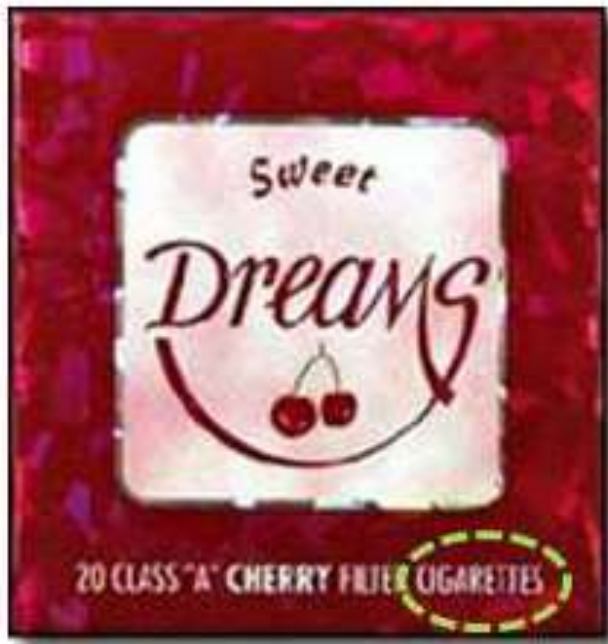
PRICING

WHAT KIND OF POLICIES?

- Research shows that tobacco is often the cheapest in lowest income communities.
- Restricting redemption of coupons.
 - No “sale” prices.
- Price floors – often combined with minimum pack size.
- Upheld in litigation.



HOW PRODUCTS ARE SOLD & MARKETED: MINIMUM PACK SIZE/PRICE FLOOR



Before



After



SMOKE-FREE POLICIES



SMOKE-FREE HOUSING

November 2020



SMOKE-FREE MULTI-UNIT HOUSING

Equitable Enforcement Strategies



There is no safe level of secondhand smoke exposure, whether that exposure happens at work, in public spaces, or within the home.¹ The health problems associated with secondhand smoke exposure in multi-unit housing have been well documented for decades.²

Nonetheless, it is only recently that comprehensive public policy measures to address secondhand smoke exposure in multi-unit housing have been adopted through government policies. These policies include the smoke-free rule³ for public housing adopted by the U.S. Department of Housing and Urban Development (HUD) and a growing number of local jurisdictions that have adopted similar protections for residents of multi-unit housing.⁴



STATE AND LOCAL OPTIONS SALES RESTRICTIONS



STATE AND LOCAL OPTIONS

NEW YORK BILL EXAMPLE

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "tobacco product waste reduction act".
2

26 § 1399-mm-4. Prohibition on cigarettes utilizing single-use filters and single-use electronic cigarettes. 1. As used in this section:

27 (a) "cigarette" means a cigarette as defined in section four hundred
28 seventy of the tax law;

29 (b) "filter" means a porous article, mass, or device through which
30 tobacco smoke or other related tobacco by-products pass for the purpose
31 of removing or appearing to remove tar, nicotine, or other toxins;

32 (c) "single-use" means designed or generally recognized by the public
33 as being designed for one-time use;
34

EQUITABLE PENALTIES

YOUTH USE HASN'T INCREASED BY ACCIDENT

- Industry documents show targeting of kids since 1950s for “replacement smokers.”
- Tobacco industry “education programs” in 1980s and 1990’s led to similar efforts by JUUL.
- 90% of youth report exposure to cigarette ads, 80% to e-cigarette ads.
- JUUL litigation – New Mexico received \$17 million.



Policy solutions?



PREEMPTION

A FUNDAMENTAL HEALTH EQUITY ISSUE

- Locally tailored policies are the best policies for addressing health disparities.
- Preemption locks in the status quo and inhibits policy innovation.
- Community involvement helps to develop more thoughtful policies.



PREEMPTION

N.M.S.A. 61-37-24

“When a municipality or county, including a home rule municipality or an urban county, adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.”



grassrootschange.net

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