

Model New York Ordinance Prohibiting the Redemption of Discount Coupons and Value-Added Sales for Cigarettes and Other Tobacco Products

Section 1. Findings

The [Common Council] of [City] hereby finds and declares that:

Tobacco use is the foremost preventable cause of premature death in the United States, causing over 400,000 deaths in the United States each year;¹

More than XXX high school age youth and XXX adults in [City] currently smoke and smoking kills approximately XXX adults in [City] each year;

The availability of inexpensive tobacco products leads to an increase in the number of smokers, particularly among younger populations;²

Higher tobacco prices lead to a reduction in tobacco use, even when accounting for the addictive properties of nicotine;³

A ten percent increase in the price of cigarettes causes a three to five percent decrease in purchases, on average;⁴

Consider who will adopt the law and tailor the findings to support adoption of the law in that jurisdiction.

Communities can add more **localized facts** into the findings and can add other findings compelling to the community. It is also important to introduce supporting materials into the record during common council hearings. Those materials can be referenced in the findings.

¹Ctrs. for Disease Control & Prevention, *Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004*, 57 MORBIDITY AND MORTALITY WKLY REP. 1226,1226–28 (2008), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5745.pdf>.

² See Michelle Leverett et al., *Tobacco Use: The Impact of Prices*, 30 J.L. MED. & ETHICS 88, 89 (2002); FRANK CHALOUKKA, TOBACCO CONTROL LESSONS LEARNED: THE IMPACT OF STATE AND LOCAL POLICIES 14(2010), available at http://www.impactteen.org/generalarea_PDFs/ITResearch38_Chaloupka.pdf [hereinafter CHALOUKKA, LESSONS LEARNED]; see also Frank J. Chaloupka, *Macro-social Influences: The Effects of Prices and Tobacco-Control Policies on the Demand for Tobacco Products*, 1 NICOTINE. & TOBACCO RES. s105, s106 (Supp. 1 1999) [hereinafter Chaloupka, *Macro-social Influences*].

³ CHALOUKKA, LESSONS LEARNED, *supra* note 2, at 11.

⁴ See U.S. DEP'T OF HEALTH & HUMAN SERVS., REDUCING TOBACCO USE: A REPORT OF THE SURGEON GENERAL 331 (2000) [hereinafter SURGEON GENERAL'S REPORT]; see also *id.* at 323; F.J. Chaloupka et al., *Tax, Price and Cigarette Smoking: Evidence from the Tobacco Documents and Implications for Tobacco Company Marketing Strategies*, 11 TOBACCO CONTROL i62, i64 (Supp. 1 2002) (estimating a 2.5-5 percent decrease).

Higher tobacco prices lead to reduced smoking initiation among youth, reduced consumption among current smokers, and an increase in cessation with fewer relapses among former smokers;⁵

Price increases have a greater effect on youth, with one study concluding that smoking rates among teens were three times more responsive to price increases in comparison to adult smoking rates;⁶

A ten percent price increase reduces smoking prevalence among youth by nearly seven percent, reduces average cigarette consumption among young smokers by over six percent, cuts the probability of starting to smoke by about three percent, reduces initiating daily smoking by nearly nine percent, and reduces heavy daily smoking by over ten percent;⁷

In response to increasing tobacco product prices, generally resulting from the imposition of excise taxes on tobacco products, tobacco companies often employ aggressive price discounting strategies at the point-of-sale to undermine the effect of higher prices on consumers, especially youth and other price sensitive consumers;⁸

While New York State law presently restricts the distribution of free tobacco products and coupons for tobacco products, it does not restrict the redemption of coupons or the discounted sale of tobacco products;⁹

The **[Common Council]** seeks to reduce adolescent tobacco use and the public health consequences of tobacco use without prohibiting the sale of tobacco products to adult consumers; and

The purpose of this ordinance is to further the strong governmental interest in protecting the health of its citizens by prohibiting discount coupon redemption and the use of other price promotions that discount the purchase price of tobacco products.

New York State law prohibits local laws regulating the distribution of free tobacco products and coupons; however, it does not regulate the redemption of coupons, and state law permits local governments broad authority to regulate in the interest of public health within their jurisdiction.

⁵ See SURGEON GENERAL'S REPORT, *supra* note 4, at 326-33, 337; F.J. Chaloupka et al., *supra* note 4, at i64.

⁶ Leverett et al., *supra* note 2, at 89; CHALOUPKA, LESSONS LEARNED, *supra* note 2, at 13-14; see SURGEON GENERAL'S REPORT, *supra* note 4, at 329, 334, 337, 359; see also Chaloupka. *Macro-social Influences*, *supra* note 2, at s106; cf. Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776, 1778 (2009) (findings recognize that children tend to be more price sensitive than adults).

⁷ Frank Chaloupka, *Why is Tobacco Price Manipulation a Problem?* in CAL. DEP'T PUB. HEALTH, TOBACCO RETAIL PRICE MANIPULATION POLICY: STRATEGY SUMMIT PROCEEDINGS 3-4 (2008), available at <http://www.cdph.ca.gov/programs/tobacco/documents/ctcppricestrategysummit2009.pdf>.

⁸ See F.J. Chaloupka et al., *supra* note 4, at i63.

⁹ See N.Y. PUB. HEALTH LAW §1399-bb (McKinney 2013).



Section 2. Definitions

CIGARETTE means (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (1).

COUPON means any card, paper, note, form, statement, ticket, voucher, image or other article, whether in paper, digital or any other format, distributed for commercial purposes to be later surrendered, displayed, or scanned by the bearer so as to receive an item without charge or at a discount.

DEPARTMENT means the **[Department of XXXX]**.

LISTED OR NON-DISCOUNTED PRICE means the higher of the price listed for Cigarettes or a Tobacco Product on its package or the price listed on any related shelving, posting, advertising or display at the place where the Cigarettes or Tobacco Products are sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or Coupons.

RETAIL PRICE means the price actually paid by the consumer for Cigarettes or a Tobacco Product.

TOBACCO PRODUCT means any manufactured product made or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including but not limited to cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and electronic cigarette cartridges, whether packaged or not. This term also applies to any component, or part of a tobacco product. However, "Tobacco Product" does not include (1) Cigarettes as defined in this section or (2) any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for that approved purpose.

TOBACCO RETAILER means any business that sells or offers for sale any Tobacco Product or Cigarette to individuals for personal consumption.

The **Department** will be the entity responsible for implementing and enforcing the law. Depending on the locality, this could be the Health Department, the Department of Code Enforcement or another similar department. We recommend it be a health-oriented department, if possible, since this is a public health ordinance.



Section 3. Sales Restrictions

No Tobacco Retailer, or any employee or agent of same, shall:

(A) Accept or redeem, or cause or hire any person to accept or redeem, any Coupon that reduces the Retail Price of Cigarettes below the Listed or Non-Discounted Price;

(B) Accept or redeem, or cause or hire any person to accept or redeem, any Coupon that reduces the Retail Price for any Tobacco Product below the Listed or Non-Discounted Price;

(C) Accept or redeem, or cause or hire any person to accept or redeem, any Coupon that permits the sale of Cigarettes to consumers through multi-pack discounts (e.g., the sale of three packages for less than the combined price of each package), or otherwise allow, or cause or hire any person to allow, consumers to purchase any Cigarette or combination of Cigarettes and other Tobacco Products for less than sum of the Listed or Non-Discounted Price for each product; or

(D) Accept or redeem, or cause or hire any person to accept or redeem, any Coupon that permits the sale of any Tobacco Product to consumers through any multi-pack discounts (e.g., the sale of three packages for less than the combined price of each package), or otherwise allow, or cause or hire any person to allow, consumers to purchase any Tobacco Product or any combination of Tobacco Products for less than the sum of the Listed or Non-Discounted Price for each product.

Subsection (C) applies to discounted sales of Cigarettes or cross-promotions involving the sale of Cigarettes and another Tobacco Product.

Subsection (D) applies to discounted sales of Tobacco Products only (i.e., sales that do not involve Cigarettes).

Section 4. Enforcement

(A) The Department or its authorized designee(s) shall enforce the provisions of this Chapter. The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Chapter.

(B) In addition to the remedies provided by the provisions of this Chapter, the Department or any other person aggrieved by the failure of a Tobacco Retailer to comply with the provisions of this Chapter, including but not limited to any other Tobacco Retailer located in **[City]**, may seek injunctive relief against the violator to enforce the provisions of this Chapter and prevent future violations.

(C) In any action brought pursuant to this Chapter, the Department or other person who initiates such an action shall, if the prevailing party, be entitled to recover reasonable attorneys' fees and costs involved in bringing the action, plus interest.

Enforcement of this ordinance may be further specified through rules or other regulations devised by the Department after adoption of this ordinance.

Enforcement may be carried out by persons in the community who are harmed by the violation (e.g., a customer or other retailer). Such a person may seek injunctive relief in court and, if the person is successful, may obtain reimbursement for legal costs associated with the case.



Section 5. Penalties

(A) Any Tobacco Retailer found to be in violation of this Chapter shall be liable for a civil penalty of not more than \$250 for the first violation, not more than \$500 for the second violation within a two-year period, and not more than \$1000 for the third and each subsequent violation within a two-year period. Each sale in violation of this Chapter shall be considered a separate and distinct violation.

(B) In addition to the fines established by this Section, violation of this Chapter by a Tobacco Retailer may result in the suspension or revocation of any **[City]** permit or license issued to the Tobacco Retailer.

(C) All civil penalties and fines recovered by under this Chapter shall be paid to the Department for use in enforcing this Chapter and other city laws relating to Cigarettes and Tobacco Products.

Penalties may be tailored to reflect penalties for violations of other similar local laws.

Section 6. Severability

The provisions of this Chapter are declared to be severable, and if any section of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

Section 7. Effective Date

The effective date of this ordinance shall be ninety days from the date of its adoption.

The **Effective Date** should be set at a time that gives the Department and retailers enough time to prepare for the new law. The time period between enactment of the law and the effective date should, however, be no longer than necessary.



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