



Ways & Means

Point of Sale Policy:
New York Communities
Taking Action

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POINT OF SALE POLICY: NEW YORK COMMUNITIES TAKING ACTION

As awareness of the depth of Big Tobacco's reach into the retail environment spreads, there is increasing support across New York communities for tackling the problem. Community leaders are increasingly looking to their neighbors for feasible, effective approaches to reduce the impact of retail tobacco marketing. Momentum for policy solutions is growing: New York communities have begun implementing effective tobacco control policies.

This guide identifies tobacco control point of sale policies implemented in New York at the federal, state and local levels. The compilation of locally-implemented policies (Table 3) reveals the varied ways New York communities have adapted model policies to suit particular local needs and highlights especially well-drafted policies. Beyond cataloguing retail policies in effect in New York, this guide summarizes the rationale for the most promising state and local point of sale policies and links to resources which provide in-depth discussion and model language to maximize policy success.

The [Public Health and Tobacco Policy Center](#) is available to directly support New York communities' tobacco control policy initiatives.

Why the Retail Environment?

Tobacco use remains the leading cause of preventable death. In fact, nearly half a million annual deaths in the U.S.¹ (over 28,000 in New York²) are attributable to smoking. Regulating tobacco products, including their marketing, sales and use, can be an effective way to reduce tobacco use and benefit public health.

Consumer demand does not drive the considerable retail space devoted to tobacco products and tobacco advertising. Rather, tobacco companies spend [massive amounts of money to flood the retail environment](#) with tobacco products and images. Big Tobacco lavishly spends to get their products sold through as many stores as possible, and contract with retailers to ensure tobacco products are overstocked, prominently displayed, heavily marketed, and available at discounted prices. In short, through big money, Big Tobacco uses stores to position tobacco products as highly accessible, visible, acceptable and, overall, *normal*.

The consequences of consumers' exposure to this pervasive marketing is a win for tobacco companies and a loss for public health -- exposure to marketing leads to increased youth initiation and failed cessation attempts.³ **Moreover, this retail marketing disproportionately affects specific subpopulations, such as youth and those living in low socioeconomic status communities.**⁴ While there are several factors that contribute to smoking, [tobacco advertising and promotion at retail stores \(also referred to as the "point of sale"\) undoubtedly is one of the most significant](#).

What Are the Current Federal and New York State Point of Sale Tobacco Controls?

Local New York governments have broad authority to regulate tobacco use and sales; that includes regulation of retail environments within their jurisdiction. Federal and state tobacco controls also affect the retail environment and local New York governments may generally build on these controls, for example, by implementing parallel policies locally enforced and/or imposing stricter standards than the minimums imposed at the federal or state level. Of course some federal and state controls preempt (prohibit) local regulation; however carefully crafted, well-supported sales regulations are a permissible, critical tool for local governments seeking to reduce tobacco use and improve public health.

This guide briefly summarizes the legal environment within which local New York communities may impose their own point of sale regulations. State and federal tobacco controls affecting the retail environment are more comprehensively detailed in [A Citizen's Guide to New York Tobacco Controls](#).

Table 1: Federal Point of Sale Controls

Control Type	Source	Brief Description
Excise tax	26 U.S.C. §5701	Varies by product (e.g., cigarettes weighing not more than 3lbs. per 1000: \$50.33 per thousand)
Minimum package size	21 U.S.C. §§387a-1, 387f(d); 21 C.F.R. §§1140.14(d), 1140.16(b)	Requires cigarettes to be sold in packs of at least 20 and roll-your-own tobacco packaged with minimum of 0.6 ozs of tobacco
Sampling restrictions	21 C.F.R. §1140.6(d)(1)	Prohibits free samples of cigarettes and restricts free samples of smokeless tobacco products
Self-Service sale restriction	21 U.S.C. §387a-1; 21 CFR §1140.14(c), 1140.16(c)	Restricts vending and self-service displays to adult-only facilities
Tobacco 18	21 U.S.C. §387a-1; 21 CFR §1140.14(a)	Prohibits retail sales of cigarettes or smokeless tobacco to persons under age 18
Flavored cigarettes	21 U.S.C. §387g	Prohibits sale of cigarettes with characterizing flavors, excepting menthol
Tobacco packaging-warnings	15 U.S.C. §§1333, 1338-1339.	Requires rotating health warnings be printed on product packaging
Tobacco Advertising-warnings	15 U.S.C. 1333(4)(b); 15 U.S.C. 4402(b)(1)	Requires rotating health warnings be printed on product advertising
Authority for state and local regulation	21 U.S.C. §387p	Recognizes right of state and local governments to regulate tobacco products in more stringent manner than federal law

Table 2: New York State Law

Control Type	Source	Brief Description
Retailer Registration	N.Y. Tax Law § 480-a	Requires all tobacco retailers to register with the Department of Tax and Finance
Fire-safe cigarettes	N.Y. Comp. Codes R. & Regs. Tit. 19, §§429.1, 429.8	Requires all cigarettes to be certified as reduced ignition propensity
Minimum package size	N.Y. Pub. Health Law §1399-gg	Establishes minimum package size for cigarettes, roll-your-own tobacco, wrapping papers, wrapping leaves, tubes
Sampling restrictions	N.Y. Pub. Health Law §1399-bb	Restricts distribution without charge of tobacco products and herbal cigarettes; <i>preempts further local restriction</i>
Product restrictions	N.Y. Pub. Health Law §§1399-mm, 1399-ll	Restricts sale of gutka and bidis to “tobacco businesses”
Cigarette minimum price	N.Y. Tax Law §§483-489	Requires minimum markup of cigarette pack sales price at each step in the state distribution process
Cigarette excise tax	N.Y. Tax Law §471	Establishes tax of \$4.35 on each pack of cigarettes
Other tobacco product excise tax	N.Y. Tax Law §471-b	Imposes tax on non-cigarette tobacco products (amount varies by product); does not include ENDS ¹
Self Service restriction (incl. vending)	N.Y. Pub. Health Law §§1399-cc, 1399-dd	Restricts vending and self-service displays to “adult-only facilities”
Tobacco 18	N.Y. Pub. Health Law §§1399-cc, 1399-mm; 1399-ll	Prohibits retail sales of tobacco, including ENDS, or shisha to persons under age 18
Retail signage	N.Y. Pub. Health Law §1399-cc	Requires retailers to display sign explaining no sales to minors of tobacco products, including ENDS, or shisha
Liquid nicotine packaging	N.Y. Gen. Bus. Law §399-gg	Requires liquid nicotine be sold in child-resistant packaging
Grants broad authority for further regulation at local level	N.Y. Const., art. IX §2(c) and several N.Y. State statutes authorizing formation of local governments	Grants local governments authority to adopt laws and regulations to protect and promote the health, safety, morals and general welfare of their residents

¹ Electronic Nicotine Delivery Systems (e.g., electronic cigarettes).

What Are the New York State and Local Policies Most Likely to Be Effective?

Effective point of sale policy

Reducing the prominence of retail tobacco marketing is an effective way to reduce youth initiation and support tobacco users who want to quit (which is the majority of users). New York State and its local communities can achieve this reduction through product sales restrictions—namely, restricting where, how and through whom tobacco companies can sell their products.

Restrict sales by limiting the number of outlets through which tobacco products may be sold

Reducing the density of retail outlets reduces the prevalence of and New Yorker's exposure to tobacco marketing, thereby de-normalizing—and really, making more realistic—the presence and use of tobacco products. Big Tobacco wants its products sold and advertised in every store, despite the fact that most people do not use them. However, because of their addictive and deadly nature, tobacco products should not be treated as just another consumer product that is readily available at every corner.⁵ Moreover, tobacco use decreases, particularly among youth,⁶ when customers need to make a greater effort to find and obtain tobacco products.

There are many approaches to limiting the number of retailers, including tying the number of outlets to the population or land area, or setting a maximum number of (capping) retailers within a jurisdiction. Licensing is an expedient (although not required) implementation method. For more information about the effectiveness of restricting sales by the number of tobacco outlets, and for our model policy, see [Tobacco Retail Licensing: Local Regulation of the Number, Location and Type of Tobacco Retail Establishments in New York](#).

Restrict sales by limiting *where* sales are permitted

Reducing the prevalence of tobacco sales near youth-centered places reduces youth exposure to pro-tobacco marketing and other environmental smoking cues and may have a significant impact on youth smoking initiation.⁷ Although retailers are legally prohibited from selling tobacco products to minors, the ubiquity of tobacco retail outlets and associated tobacco industry marketing serves as a powerful cue, particularly to youth, to experiment or progress to more regular smoking.⁸ Limiting tobacco sales at or near schools not only reduces environmental cues to smoke, but also limits opportunity for youth purchases, including underage students enlisting older students or other adults to purchase tobacco products for them (which likely will continue to occur even in the face of strict enforcement of minimum age laws).⁹ A restriction on tobacco sales near youth-centered places will also benefit the community as a whole, reducing tobacco retail density in the neighborhood surrounding the school.¹⁰

For more information about the effectiveness of restricting sales by location, and our model policy, see [Tobacco Retail Licensing: Local Regulation of the Number, Location and Type of Tobacco Retail Establishments in New York](#).

Restrict sales by limiting the type of outlet through which products may be sold

Certain types of businesses should not be permitted to sell tobacco products. Identifying the types of outlets through which tobacco products may be sold will not only reduce New Yorkers' exposure to retail marketing, but will also send a clearer message about tobacco's health risks. Specifically, ending tobacco sales by pharmacies will not only reduce outlet density,¹¹ but will also eliminate the incongruent message these sales convey.¹² Pharmacies are increasing their role as direct healthcare providers, dramatically expanding the number and scope of their retail clinics.¹³ Selling a product that is inherently dangerous and deadly conflicts with this role and harms public health.¹⁴ Moreover, customers visit pharmacies to purchase medicines to treat their tobacco-related diseases and obtain assistance with tobacco product cessation; it is especially incongruous and problematic for pharmacies to simultaneously profit from products that cause and treat the same diseases.¹⁵

Pharmacy tobacco sales are further incongruous and problematic

For more information about the effectiveness of restricting sales by outlet type, and our model policy, see [Tobacco Retail Licensing: Local Regulation of the Number, Location and Type of Tobacco Retail Establishments in New York](#).

Restrict sales by limiting price promotions

The price of tobacco products is strongly correlated with tobacco use. Research shows that tobacco consumption decreases in response to product price increases.¹⁶ Tobacco companies, keenly aware that tobacco product prices influence tobacco use, manipulate product sale prices in a manner that drives use. These efforts are an integral part of tobacco companies' retail marketing strategy.

Tobacco companies routinely use price discounting to undermine high sale prices resulting from federal, state and local tobacco excise taxes.¹⁷ In recent years, the tobacco industry has expanded the breadth and depth of their discounting tactics. Big Tobacco's marketing budget reveals its heavy reliance on saturating the marketing with discounted tobacco products: tobacco companies designate over 86% (\$8.29 billion) of their impressive marketing budget to lowering the sales price of tobacco products.¹⁸ Price promotions include not only an actual reduced price, but also special marketing associated with discounts, "special" pricing and "value-added" sales (e.g., multipack discounts).¹⁹

Price promotions impact certain populations more than others. Research shows that there is a higher prevalence of and steeper discounts on multipacks of best-selling cigarette brands in retailers in zip codes with a higher percentage of people under 18.²⁰ Additionally, tobacco

product prices are lower in low-socioeconomic (SES) communities,²¹ and tobacco companies design product promotions to especially appeal to subpopulations of low-SES tobacco consumers.²² These subpopulations include women,²³ the less educated,²⁴ youth,²⁵ African Americans²⁶ and Hispanics.²⁷ Evidence suggests further targeting, with more price promotions for premium menthol cigarettes in neighborhoods with more black youth, the demographic most likely to use premium menthol cigarettes. Additionally, menthol cigarettes are cheaper near schools with more black students.²⁸ Unsurprisingly, price sensitive populations such as women and heavy smokers are more likely to report receiving and redeeming coupons.²⁹

Local New York governments can thwart the tobacco industry's price manipulation by restricting their use of price promotions. For more information about the effectiveness of restricting price promotions, and our model policy, see [Tobacco Price Promotion: Local Regulation of Discount Coupons and Certain Value-Added Sales](#).

Effective implementation type

All of the policies discussed in this guide can be implemented through a comprehensive retail license, which provides a strong base for tobacco control policies. A license grants permission to engage in an activity that would otherwise be unlawful. Local governments can use a retail licensing system to protect the health and welfare of their communities by imposing restrictions on the sale of tobacco—thereby reducing consumers' exposure to tobacco industry marketing associated with product sales. License eligibility restrictions can be based on sales location, the number of places selling tobacco products in a jurisdiction, or the type of business permitted to sell the products, among other criteria. A license can also impose on the licensee additional conditions on the sale of tobacco, such as prohibiting discounted sales or restricting sales to persons age 21 or older. Additionally, a license is itself an enforcement mechanism not only for the conditions tied to the license, but also for existing tobacco control laws. For example, a violation can incur penalties such as fines or license suspensions. In sum, while a comprehensive license will provide the most effective mechanism to reduce the impact of the retail environment on tobacco use, even a simple license will grant a community more control over the sale of tobacco products and the influence of Big Tobacco.

Supplemental point of sale policies

Supplementing priority point of sale policies (described above) with policies addressing other drivers of tobacco use can strengthen a community's tobacco control program. As noted by the Surgeon General, a comprehensive tobacco control program is most effective at reducing tobacco use, and jurisdictions can improve comprehensiveness by addressing a variety of factors associated with use. In particular, increasing the minimum consumer age for the sale of tobacco products to 21 and restricting the sale of certain types of products (flavored tobacco products, for example) can serve as effective complements when incorporated into a more comprehensive program or policy.

What Policies Have New York Local Communities Implemented?

The following table identifies local priority point of sale policies adopted and in place at the time of publication. They are organized by implementation type; in other words, the mechanism through which retail tobacco controls are enforced. While the table does not contain every detail of the policies, it highlights information answering common questions from communities and contractors about the progress of New York municipalities in addressing point of sale tobacco marketing. Additionally, while we recommend our models as the most effective policy examples, we have highlighted existing New York local policies similar to our models and effective examples of supplemental policies.

As explained in the previous section, the following policies are, by and large, sales restrictions. By restricting tobacco product sales, communities consequently reduce residents' exposure to tobacco industry marketing associated with those sales. Such sales restrictions generally lie within local regulatory authority and thus are feasibly implemented in New York.

Table 3: Current New York Local Law Affecting the Retail Environment

Jurisdiction	Implementation Type	Restrict Sales to Licensed or Registered Tobacco Retailer	Restrict Sales by Limiting Sales Location	Restrict Sales by Limiting Outlet Number	Restrict Sales by Limiting Business Type	Restrict Sales by Limiting Cheap Products	Product Sales Affected	Enforcement Authority	Notes
Binghamton BINGHAMTON, N.Y. ORD. §410-24 (P)	Zoning		<input checked="" type="checkbox"/>				Cigarettes, OTP ²	Binghamton Office of Building Construction, Zoning and Code Enforcement	<ul style="list-style-type: none"> Restricts land use for tobacco retail sales to locations at least 500 feet from schools Applies to future land uses only; exempts existing retail use
Cayuga County CAYUGA COUNTY, NY LOCAL LAW 5 of 2013	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				Cigarettes, OTP, ENDS	Cayuga County Department of Health and Human Services	<ul style="list-style-type: none"> Broad product category; No fee, so no dedicated financial support for administration of license; No transfer of licenses permitted per se, but subsequent purchasers of a tobacco retail location may continue selling tobacco if otherwise eligible; such a provision delays indefinitely the desired retailer density reduction near schools; Restricts new retailers from locating within 100 feet of schools, but distance not meaningful.

² Under “Product Sales Affected”, non-cigarette tobacco products will be identified as other tobacco products or “OTP.” OTP will be used when the law affects the sale of a broad range of tobacco products, including cigars, pipe tobacco, roll-your-own, smokeless, shisha, dissolvable and other tobacco products excepting electronic nicotine delivery systems (e.g., e-cigarettes and similar products), which will be identified as ENDS. If a law affects only one or two non-cigarette products, those products will be identified individually. While aerosol devices are generally considered an “other tobacco product,” given that regulation of the product is relatively recent, ENDS products will be separately identified when included in a particular local law. Any OTP exempted from a particular law will be so noted.

Jurisdiction	Implementation Type	Restrict Sales to Licensed or Registered Tobacco Retailer	Restrict Sales by Limiting Sales Location	Restrict Sales by Limiting Outlet Number	Restrict Sales by Limiting Business Type	Restrict Sales by Limiting Cheap Products	Products Affected	Enforcement Authority	Notes
Dutchess County DUTCHESS CNTY, N.Y., SANITARY CODE art. 25 § 25.3	Registration	<input checked="" type="checkbox"/>					Cigarettes, OTP, ENDS	Dutchess County Board of Health	<ul style="list-style-type: none"> Board of Health authority to use enhanced controls such as limiting retailer location or number more limited than that of legislative body
New York City NEW YORK CITY, NY ADMIN. CODE §11-1302, §17-176.1, §17-513.3, §17-704, and §20-202,	Registration and stand-alone excise tax and price promotion/discount sales restrictions	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	Cigarettes, OTP, ENDS	Departments of Health and Mental Hygiene, Consumer Affairs, and Finance	<ul style="list-style-type: none"> Registration distinct for tobacco and ENDS retailers; More effective/easier to enforce if similarly treat retailers of any tobacco products and ENDS; Reduces product access for price-sensitive consumers; Raises revenue for city; NYC is the only New York municipality authorized to impose tobacco product excise taxes; Reduces ability of tobacco industry to reduce product prices; Reduces marketing associated with promotions

Jurisdiction	Implementation Type	Restrict Sales to Licensed or Registered Tobacco Retailer	Restrict Sales by Limiting Sales Location	Restrict Sales by Limiting Outlet Number	Restrict Sales by Limiting Business Type	Restrict Sales by Limiting Cheap Products	Products Affected	Enforcement Authority	Notes
City of Newburgh Newburgh, NY Code §276-1 through 276-10	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Cigarettes, OTP, ENDS, Smoking paraphernalia	Eligibility determined by City Clerk; violations enforced by Police Department; Fire Department permitted to inspect for compliance with relevant laws	<ul style="list-style-type: none"> • Broad product category; • Imposes application fee of \$10 and annual license fee of \$50 to support administration and enforcement; • License can be used to enforce other business/building codes; • Prohibits new retailers from locating within 1,000 feet of schools, limiting product access, particularly in locations frequented by youth; • Caps and gradually reduces retailers located near schools by rendering subsequent purchasers of existing retail locations ineligible for licenses; • Reduces overall number of retailers by issuing only one new license for every two non-renewed or revoked; • Imposes fee to support administration and enforcement.

Jurisdiction	Implementation Type	Restrict Sales to Licensed or Registered Tobacco Retailer	Restrict Sales by Limiting Sales Location	Restrict Sales by Limiting Outlet Number	Restrict Sales by Limiting Business Type	Restrict Sales by Limiting Cheap Products	Products Affected	Enforcement Authority	Notes
Niskayuna NISKAYUNA, NY LOCAL LAW 1 OF 2017	Zoning		<input checked="" type="checkbox"/>					Niskayuna Planning Department	<ul style="list-style-type: none"> Restricts land use for tobacco retail sales to locations at least 500 feet from schools; Applies to future land uses only; exempts existing retail use.
Rockland County ROCKLAND COUNTY, NY LOCAL LAW 1 OF 2017	Stand-alone				<input checked="" type="checkbox"/>		Cigarettes, OTP, ENDS, Smoking Paraphernalia, Shisha and Herbal Cigarettes	Rockland County Department of Health	<ul style="list-style-type: none"> Prohibits the sale of tobacco and related products by pharmacies, immediately reducing number of sales outlets; Broad product category; Administered by county health department so can coordinate ATUPA and license inspections.
Sullivan County SULLIVAN CTY, NY, LOCAL LAW 2 of 2017	Stand-alone		<input checked="" type="checkbox"/>					County Public Health Services	<ul style="list-style-type: none"> Prohibits the sale of tobacco products by new retailers within 1,000 feet of any school, limiting product access, particularly in locations frequented by youth.
Tannersville TANNERSVILLE, NY LOCAL LAW 1 OF 2017	Stand-alone		<input checked="" type="checkbox"/>				Cigarettes, OTP, ENDS, Smoking Paraphernalia	Village administration	<ul style="list-style-type: none"> Prohibits the sale of tobacco products by new retailers within 1,000 feet of any school, limiting product access, particularly in locations frequented by youth.

Jurisdiction	Implementation Type	Restrict Sales to Licensed or Registered Tobacco Retailer	Restrict Sales by Limiting Sales Location	Restrict Sales by Limiting Outlet Number	Restrict Sales by Limiting Business Type	Restrict Sales by Limiting Cheap Products	Products Affected	Enforcement Authority	Notes
Ulster County ULSTER COUNTY, NY LOCAL LAW 6 OF 2015, §4	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				Cigarettes, OTP, ENDS	Ulster County Department of Health	<ul style="list-style-type: none"> • Broad product category; Administered by county health department so can coordinate ATUPA and license inspections; • No fee, so no dedicated financial support for administration of license; • Prohibits the sale of tobacco products by new retailers within 1,000 feet from schools, limiting product access, particularly in locations frequented by youth; • No transfer of licenses permitted per se, but subsequent purchasers of a tobacco retail location may continue selling tobacco if otherwise eligible; such a provision indefinitely delays the desired retailer density reduction near schools.

Jurisdiction	Implementation Type	Restrict Sales to Licensed or Registered Tobacco Retailer	Restrict Sales by Limiting Sales Location	Restrict Sales by Limiting Outlet Number	Restrict Sales by Limiting Business Type	Restrict Sales by Limiting Cheap Products	Products Affected	Enforcement Authority	Notes
New York Model Retail Licensing Ordinance	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Cigarettes, OTP, ENDS	N/A	<ul style="list-style-type: none"> • Broad product category; • Limits product access, particularly in places frequented by youth; • Number of retailers not only capped but gradually reduced over time. • Reduces product access by restricting type of retailer permitted to sell tobacco
New York Model Price Promotion Restriction Ordinance	Stand-Alone					<input checked="" type="checkbox"/>	Cigarettes, OTP, ENDS	N/A	<ul style="list-style-type: none"> • Reduces product access for price sensitive consumers • Reduces ability of tobacco industry to reduce product prices; • Reduces marketing associated with promotions

Table updated May 2017

For the most recent information on local policies and requirements in New York, please see our story map, “Local Tobacco Control in the New York Retail Environment,” available online at <http://tobaccopolicycenter.org/tobacco-control/>.

How Can New York Local Jurisdictions Prioritize Effective Policies Moving Forward?

The most effective policies are those that comprehensively reduce New Yorkers' exposure to tobacco marketing and access to tobacco products. These include policies that reduce the density of tobacco outlets by restricting the number of sales outlets, sales location and type of business permitted to sell tobacco, as well as those restricting tobacco industry use of product price promotions. To best protect public health, these policies must be effectively implemented, meaning they must include clear and meaningful enforcement mechanisms.

As discussed above, the most effective implementation mechanism for the policies discussed in this guide is comprehensive tobacco retail licensing. Licensing provides a built-in enforcement mechanism for existing tobacco controls. Licensing also is malleable and can serve as a vehicle for additional local tobacco controls. Finally, licensing systems pay for themselves--licensing fees permit a jurisdiction to recover the cost of setting up, administering and enforcing licenses.

However, licensing systems are not equally effective at reducing exposure to retail tobacco marketing: *implementation matters!* The value of a retail licensing system can be undermined by indefinitely exempting existing retailers from a sales restriction, identifying trivial sales restrictions (e.g., insubstantial buffer zones), neglecting licensing fees that support the program or imposing insufficient penalties or enforcement mechanisms to deter license and tobacco control law violations. Thus, a licensing system should be carefully crafted to effect real change to the particular retail environment in the community implementing it.

The bottom line is that tobacco control policies should be comprehensive and permit as few opportunities for Big Tobacco to circumvent tobacco controls as possible. For more information and assistance in identifying evidence-based policies suitable for your community, contact the [Public Health and Tobacco Policy Center](#) and review our model policies.

¹ U.S. DEP'T. OF HEALTH & HUMAN SERVS. , PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS, A REPORT OF THE SURGEON GENERAL 165 (2012) [hereinafter 2012 SURGEON GENERAL'S REPORT]

² N.Y. STATE DEP'T OF HEALTH TOBACCO CONTROL PROGRAM, SMOKING AND TOBACCO USE-CIGARETTES AND OTHER TOBACCO PRODUCTS, available at https://www.health.ny.gov/prevention/tobacco_control/ (last visited March 8, 2016).

³ PUBLIC HEALTH AND TOBACCO POLICY CENTER, TOBACCO RETAIL LICENSING, LOCAL REGULATION OF THE NUMBER, LOCATION AND TYPE OF TOBACCO RETAIL ESTABLISHMENTS IN NEW YORK, 2 (2013), available at <http://www.tobaccopolicycenter.org/documents/Tobacco%20Retail%20Licensing%20FINAL.pdf> (last visited March 8, 2016).

⁴ See 2012 SURGEON GENERAL'S REPORT, *supra* note 1 at 542-543.

⁵ See Monica L. Adams et al., *Exploration of the Link Between Tobacco Retailers in School Neighborhoods and Smoking*, 83 J. SCH. HEALTH 112, 116 (2013) ("A high density of tobacco retailers in areas frequented by youth may implicitly increase their perception of access. Students who perceive that tobacco is easy to obtain by youth may also believe that it is condoned or sanctioned by their community and peers... advertising and tobacco promotions influence youth normative beliefs about the acceptability of tobacco. A high density of tobacco retailers in the school neighborhood likely exposes youth to more tobacco advertising (e.g., while purchasing snacks during an open-campus lunch hour, while congregating with peers in front of corner markets or convenience stores after school), and may negatively shape their normative beliefs."); Andrew Hyland et al., *Tobacco Outlet Density and Demographics in Erie County NY*, 93 AM. J. PUB. HEALTH 1075, 1075 (2003); N. Andrew Peterson et al., *Tobacco Outlet Density, Cigarette Smoking Prevalence, and Demographics at the County Level of Analysis*, 40 SUBSTANCE USE & MISUSE 1627, 1630 (2005).

⁶ See 2012 SURGEON GENERAL'S REPORT, *supra* note 1 at 523 & 528; Hyland, *supra* note 5 at 1075; Robert L. Rabin, *Tobacco Control Strategies: Past Efficacy and Future Promise*, 41 LOY. L.A. L. REV. 1721, 1762-3 (2008). See also Brett Loomis et al., *The Density of Tobacco Retailers and its Association with Attitudes Toward Smoking, Exposure to Point-of-Sale Tobacco Advertising, Cigarette Purchasing, and Smoking among New York Youth*, 55 PREV. MED. 468, 468 (2012) [hereinafter *New York Youth*] ("High outlet density may promote youth smoking by providing easy access to tobacco, because students, who often have limited transportation options, do not have to travel as far to reach a store that sells tobacco. With more outlets to choose from, youth may find it easier to locate one that will sell to them illegally.").

⁷ See Scott P. Novak et al., *Retail Tobacco Outlet Density and Youth Cigarette Smoking: A Propensity-Modeling Approach*, 96 AM. J. PUB. HEALTH 670, 670 & 673 (2006) (high retail density increases exposure to point of sale marketing and opportunities for purchase (legally or through adults) and is correlated with increased smoking rates); see also William J. McCarthy et al., *Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students*, 99 AM. J. PUB. HEALTH 2006, 2011-12 (2009); Brett Loomis et al., *The Density of Tobacco Retailers and its Association with Attitudes Toward Smoking, Exposure to Point-of-Sale Tobacco Advertising, Cigarette Purchasing, and Smoking among New York Youth*, 55(5) PREV. MED. 468, 468 (2012) [hereinafter *New York Youth*]; and Monica L. Adams et al., *Exploration of the Link Between Tobacco Retailers in School Neighborhoods and Smoking*, 83 J. SCH. HEALTH 112, 116 (2013); 2012 SURGEON GENERAL'S REPORT, *supra* note 1 at 600-601.

⁸ See William J. McCarthy et al., *Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students*, 99 AM. J. PUB. HEALTH 2006, 2011-2012 ("Our results confirm the plausibility of the notion that zoning restrictions can help reduce tobacco use initiation by students attending secondary schools."); see also Lisa Henriksen et al., *Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?*, 47 PREV. MED. 210, 213 (2008). This correlation was related to density, as the same study did not observe a similar connection if there was just one outlet within walking distance of a school. *Id.* at 212. Novak, *supra* note 7, at 673-4. Scott T. Leatherdale & Jocelyn M. Strath, *Tobacco Retailer Density Surrounding Schools and Cigarette Access Behaviors Among Underage Smoking Students*, 33 ANNALS OF BEHAV. MED. 105, 106 (2007).

⁹ *Cf.* Novak, *supra* note 7, at 670 ("[B]etter law enforcement of youth purchasing bans . . . , although potentially important, is not completely effective, because when legal age limits are strictly enforced, minors may seek out adult smokers to procure cigarettes in local stores.").

¹⁰ *Cf. id.* at 674 ("A final contribution of this study is that previous research focused primarily on the link between retail tobacco access and underage smoking, but retail outlets also provide a source of cigarettes to those legally permitted to purchase tobacco. Past studies have suggested that retail access becomes a more important determinant of smoking behavior as youths grow older. We found no difference in the effect of retail tobacco outlet density and rates of smoking between minors and those legally permitted to purchase cigarettes.").

¹¹ Jin et al., *Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts*, AM. J. PUBLIC HEALTH e1 (February 18, 2016).

¹² 2012 SURGEON GENERAL'S REPORT, *supra* note 1 at 545; Katz, *Banning Tobacco Sales*, *supra* note 15 at 1451; see also Hudmon, *supra* note 15 at 37.

¹³ See DELOITTE, RETAIL MEDICAL CLINICS: UPDATE AND IMPLICATIONS (2009), available at http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_chs_RetailClinics_111209.pdf; GBI Research, Retail Clinics - 2012 Yearbook, http://www.gbiresearch.com/Report.aspx?ID=Retail-Clinics-2012-Yearbook&Title=Pharmaceuticals_and_Healthcare&ReportType=Industry_Report (reporting a dramatic rise in the number of national pharmacy retail clinics, from 202 in 2006 to 1,355 in 2011 and forecast as 2,854 by 2018, as well as expansion in scope services offered).

¹⁴ K Mitchell H. Katz, *Banning Tobacco Sales in Pharmacies: The Right Prescription*, 300 J. AM. MED. ASS. 1451, 1451 (2008) [hereinafter *Banning Tobacco Sales*]; see 2012 SURGEON GENERAL'S REPORT, *supra* note 1, at 545.

¹⁵ See *id.*; K. Suchanek Hudmon et al., *Tobacco Sales in Pharmacies: Time to Quit*, 15 TOBACCO CONTROL 35, 37 (2006).

¹⁶ U.S. DEP'T OF HEALTH & HUMAN SERVS., SURGEON GENERAL'S REPORT: REDUCING TOBACCO USE, 322-37 (2000) [hereinafter 2000 SURGEON GENERAL'S REPORT]; see also, Frank 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, i63-i64 (2002)[hereinafter Chaloupka, *Tax, Price and Smoking*]; Frank J. Chaloupka et al., *Effectiveness of Tax and Price Policies in Tobacco Control*, 20 TOBACCO CONTROL 235, 235-36 tbl. 1 (2010) [hereinafter Chaloupka, *Effectiveness of Tax and Price Policies*]. For more information about the relationship between price and tobacco consumption, see PUBLIC HEALTH & TOBACCO POLICY CENTER, TOBACCO PRICE PROMOTION: POLICY RESPONSES TO INDUSTRY PRICE MANIPULATION 2-7, available at <http://www.tobaccopolicycenter.org/documents/Price%20Promotion%20Overview%20FINAL.pdf>.

¹⁷ The Tobacco Industry spent \$8.29 billion on retail price discounts; FED. TRADE COMM'N, CIGARETTE REPORT FOR 2012 (2015); FED. TRADE COMM'N, SMOKELESS TOBACCO REPORT FOR 2012 (2015). Tobacco Industry consists of the five largest cigarette manufacturers and five major smokeless tobacco companies. Cigarette manufacturers' price discounting expenditures are comprised of "Price Discounts," "Coupons," and "Retail-value-added – Bonus Cigarette" as defined in the report. Smokeless tobacco manufacturers' price discounting expenditures are comprised of "Price Discounts," "Coupons," and "Retail-value-added – Bonus Smokeless Tobacco Product" as defined in the report.

¹⁸ FED. TRADE COMM'N, CIGARETTE REPORT FOR 2012 (2015); FED. TRADE COMM'N, SMOKELESS TOBACCO REPORT FOR 2012 (2015). Tobacco Industry consists of the 5 largest cigarette manufacturers and five major smokeless tobacco companies. Cigarette manufacturers' price promotion expenditures comprise "Price Discounts," "Coupons," and "Retail-value-added – Bonus Cigarette" as defined in the report. Smokeless tobacco manufacturers' price promotion expenditures comprise "Price Discounts," "Coupons," and "Retail-value-added – Bonus Smokeless Tobacco Product" as defined in the report.

¹⁹ Expenditures on "Price discounts" include "price discounts paid to cigarette retailers or wholesalers in order to reduce the price of cigarettes to consumers, including off-invoice discounts, buy-downs, voluntary price reductions, and trade programs..."

²⁰ Suzan Burton et al., *Marketing Cigarettes when all else is Unavailable: Evidence of Discounting in Price-Sensitive Neighbourhoods*, TOBACCO CONTROL 1, 4 (2013).

²¹ *Id.*; and M. McCarthy, et al., *Price Discounting of Cigarettes in Milk Bars Near Secondary Schools Occurs More Frequently in Areas with Greater Socioeconomic Disadvantage*, 35 AUST N.Z. J. PUB HEALTH 71 (2011) (finding increased price discounting at Australian corner stores near secondary schools in low SES areas as compared to mid and high SES areas.).

²² See, e.g., Cati G. Brown-Johnson et al., *Tobacco Industry Marketing to Low Socioeconomic Status Women in the USA*, TOBACCO CONTROL ONLINE FIRST (Jan. 21, 2014), <http://tobaccocontrol.bmj.com/content/23/e2/e139>.

²³ *Id.*

²⁴ Hiscock, et al., *Socioeconomic status and smoking: a review*. ANNALS OF THE NEW YORK ACADEMY OF SCIENCES (2012); and see Lisbeth Iglesias-Rios & Mark Parascandola, *A Historical Review of R. J. Reynolds' Strategies for Marketing Tobacco to Hispanics in the United States*, 103 AM. J. OF PUB. HEALTH e15, e15 (2013).

²⁵ See, e.g., *id.*

²⁶ See Sarah Moreland-Russell et al., *Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies*, 10 INT. J. ENVIRON. RES. PUBLIC HEALTH 4571, 4572 (2013).

²⁷ See Iglesias-Rios & Parascandola, *supra* note 24.

²⁸ Lisa Henrikson et al., *Targeted Advertising, Promotion, and Price For Menthol Cigarettes in California High School Neighborhoods*, 14 NICOTINE & TOBACCO RESEARCH 116, 116 & 118 (2012), 118.

²⁹ Kelvin Choi et al., *Receipt and Redemption of Cigarette Coupons, Perceptions of Cigarette Companies and Smoking Cessation*, 22 TOBACCO CONTROL 418, 420 (2013).