



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, is 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 contracts with sales outlets to ensure tobacco products are overstocked, prominently displayed, affordable, and heavily marketed. In short, through extravagant spending, 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 youth and those living in communities with low socioeconomic status.**⁴ While there are many factors that contribute to initiation of tobacco use, [tobacco product 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 that are locally enforced and/or imposing stricter standards than the minimums imposed at the federal or state level. Federal and state laws preempt (prohibit) some types of local regulation, yet allow for a range of impactful tobacco controls. Carefully crafted, well-supported sales regulations remain 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
Minimum legal sales age	21 U.S.C. §387a-1; 21 CFR §1140.14(a)	Prohibits retail sales of cigarettes or smokeless tobacco to persons under age 21
Flavored cigarettes	21 U.S.C. §387g	Prohibits sale of cigarettes with characterizing flavors, except menthol flavor
Health warnings - tobacco packaging	15 U.S.C. §§1333, 1338-1339.	Requires product packaging to bear health warnings
Health warnings - tobacco advertisements	15 U.S.C. 1333(4)(b); 15 U.S.C. 4402(b)(1)	Requires product advertising to bear health warnings
Authority for state and local regulation of sales, distribution, possession exposure to, access to, advertising and promotion of, or use of tobacco products	21 U.S.C. §387p	Recognizes right of state and local governments to regulate tobacco product sales and promotion in addition to, or more stringent than, federal law

Table 2: New York State Point of Sale Controls

Control Type	Source	Brief Description
Retailer registration	N.Y. TAX LAW §§ 480-a (tobacco products) and 1180 (vapor products)	Requires (separate) registrations with the Department of Taxation and Finance to sell tobacco products or vapor products
Fire-preventative cigarettes	N.Y. COMP. CODES R. & REGS. TIT. 19, §§ 429.1, 429.8	Requires cigarettes for sale to be certified and marked as compliant with state reduced ignition propensity standards
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 and discounting restrictions	N.Y. PUB. HEALTH LAW § 1399-bb	Restricts distribution of free tobacco products and vapor products; prohibits discounts/promotions that reduce consumer price below shelf price
Product sales restrictions	N.Y. PUB. HEALTH LAW §§ 1399-mm, 1399-mm-1 1399-ll	Restricts sale of gutka and bidis to “tobacco businesses”; restricts sale of flavored nicotine vapor products to those with FDA authorization
Pharmacy sales restrictions	N.Y. PUB. HEALTH LAW §§ 1399-mm-2	Prohibits the sale of tobacco products and nicotine vapor products by retail pharmacies
Cigarette minimum price	N.Y. TAX LAW §§ 483-489	Requires minimum price markup per pack at each step in the state distribution process
Tobacco product excise taxes	N.Y. TAX LAW § 471; N.Y. TAX LAW § 471-b	Imposes tax of \$4.35 on each pack of cigarette; imposes tax on non-cigarette tobacco products (amount varies by product)
Vapor product tax	N.Y. TAX LAW § 1180	Imposes tax of 20 percent on retail price of all vapor products
Self-service restrictions	N.Y. PUB. HEALTH LAW §§ 1399-cc, 1399-dd	Restricts vending machines and other self-service displays to bars, clubs and similar facilities that are age 21+
Minimum legal sales age	N.Y. PUB. HEALTH LAW §§ 1399-cc, 1399-mm; 1399-ll	Prohibits retail sale of tobacco products and e-cigarettes to persons under age 21
Retail signage	N.Y. PUB. HEALTH LAW § 1399-cc	Requires tobacco retailers to display sign stating no sales of tobacco products or e-cigarettes to persons under 21 years
Exterior and storefront advertising restriction	N.Y. PUB. HEALTH LAW § 1399-cc and GEN. BUS. LAW § 396-aaa	Prohibits display of tobacco products, nicotine vapor products, smoking paraphernalia, and ads for these products when visible outside of a store located 1,500 ft from a school (500 ft in NYC)
Liquid nicotine packaging	N.Y. GEN. BUS. LAW § 399-gg	Requires liquid nicotine be sold in child-resistant packaging
Authority for adopting local laws	N.Y. CONST., ART. IX § 2(c); various N.Y. State statutes authorizing formation of local governments	Grants authority and procedures for municipal home rule adopting laws and regulations to protect and promote the health, safety, morals and general welfare of their residents

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

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

Limit the *number of outlets at which tobacco products may be sold*

Reducing the density of retail outlets reduces New Yorkers' exposure to tobacco marketing, in turn de-normalizing tobacco use. Tobacco product and vapor product companies push their products and advertisements into as many stores as possible, aggressively overstocking these stores with far more products than the community would buy. As a result, tobacco products are among the most widely available consumer goods, yet tragically, one of the most lethal. 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 Capping the number of retailers authorized to sell tobacco products allows communities to reenvision a healthier retail environment, and these combat the influence of this insidious marketing. Moreover, tobacco use decreases, particularly among youth,⁶ when the perceived availability and accessibility of tobacco products is reduced.

There are many approaches to limiting the number of sales outlets, such as setting a maximum number of (capping) outlets within a jurisdiction. Licensing is an expedient implementation method for capping and reducing the number of outlets. For more information about the effectiveness of restricting sales by the number of tobacco outlets, and for our model policy, see [Tobacco Retail Licensing: Promoting Health Through Local Sales Regulations](#).

Limit the *locations where tobacco 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 outlets 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.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

Likewise, restricting new tobacco outlets from locating within a certain distance of an existing tobacco outlet will reduce clustering, and thereby, the overall density of tobacco retailers. For more information about the effectiveness of restricting sales by location, and our model policy, see [Tobacco Retail Licensing: Promoting Health Through Local Sales Regulations](#).

Limit the *type of outlets at which tobacco products may be sold*

Local governments may specify which types of businesses may or may not 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,¹¹ but will also send a clearer message about tobacco's health risks. For instance, prior to a statewide law that removed tobacco sales from pharmacies, several New York counties enacted local tobacco-free pharmacy laws, eliminating the incongruent message these sales convey while also reducing tobacco outlet density.¹² Similarly, tobacco sales by other types of outlets may pose exaggerated risk and merit consideration by regulators.

Prohibit the sale of *flavored tobacco products*

Tobacco companies use flavors to increase the appeal of tobacco products.¹³ Flavors make tobacco products easier to use, because they mask the harshness of tobacco and chemical additives.¹⁴ Consumers tend to use flavored products with greater frequency, inhale more deeply, are less likely to successfully quit using them.¹⁵ Thus flavors increase the harms posed by tobacco products and place their users at greater risk of preventable disease and death.

Tobacco companies also use flavors as a vehicle for targeted marketing tobacco to their "focus" audiences: youth and those with lower incomes and less educational attainment.¹⁶ Flavored tobacco products are packaged and marketed in ways that appeal to youth—in brightly colored packaging, emphasizing their sweet, youth-friendly flavors.¹⁷ The tobacco industry also has a well-documented history of targeting disadvantaged groups with aggressive marketing for flavored products, such as menthol cigarettes.¹⁸ For instance, evidence indicates 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.¹⁹ Policies restricting the sale of flavored tobacco products have proven effective in reducing tobacco use by people of all ages.²⁰

For more information about the effectiveness of prohibiting flavored tobacco sales, see our technical report, [Local Regulation of Flavored Tobacco Products](#), and our model policy included in [Tobacco Retail Licensing: Promoting Health Through Local Sales Regulations](#).

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 additional conditions on the sale of tobacco, such as prohibiting the sale of flavored tobacco products. 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.

What Policies Have New York Local Communities Implemented?

The following table identifies evidence-based restrictions on the sale of tobacco products enacted by New York local communities. The table includes the Policy Center's model policy as a benchmark for comprehensive intervention. The table then highlights local policies, detailing aspects most pertinent to understanding how communities are addressing the problems of proliferation of tobacco outlets and exposure to tobacco marketing. Specifically, the table identifies how each community implements its policy, the policy scope, and the enforcing entity.

As discussed throughout this resource, effective, permissible tobacco controls address the *sale* of tobacco products. By restricting tobacco product sales, a community will reduce the influence of tobacco companies in shaping the retail environment, along with residents' access to products and exposure to misleading tobacco industry marketing associated with those sales.

Effective sales restrictions implemented by New York communities are indicated by the blue headers in Table 3. These include interventions that limit the:

- **number** of tobacco outlets
- **locations** of tobacco outlets
- **types** of outlets authorized to sell tobacco products
- availability of **flavored** tobacco products

These sales restrictions may be implemented through a local license required to sell tobacco products.

Table 3: New York Local Laws Affecting the Retail Environment

Jurisdiction	Implementation Type	Local License	Restricts Tobacco Sales By:			Product Categories Covered	Enforcement Authority	Notes
			Number	Location	Flavor			
Model Policy Restricting the Sale of Tobacco Products	License	<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP ¹ <input checked="" type="checkbox"/> E-cigarettes	[TBD by Implementing Jurisdiction]	<ul style="list-style-type: none"> Requires license for sales of any tobacco product Restricts tobacco sales to a limited number of outlets Restricts tobacco sales to limited locations of outlets Prohibits sales of flavored tobacco products 				
Town of Bethlehem BETHLEHEM, N.Y., LOCAL LAW 3 OF 2020	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	*	<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Bethlehem Department of Planning and Economic Development	<ul style="list-style-type: none"> Requires license for sales of any tobacco product Winnows the number of outlets by issuing one new license for every two not renewed Caps the number of future licenses issued *Restricts vapor product sales to outlets located more than 1,000 feet from a school
City of Binghamton BINGHAMTON, N.Y., ORDINANCE § 410-24 (P)	Zoning			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Binghamton Office of Building Construction, Zoning and Code Enforcement	<ul style="list-style-type: none"> Restricts location of tobacco outlets by prohibiting land within 500 feet of a school from being newly used for tobacco retail sales
Cayuga County CAYUGA CTY, N.Y., LOCAL LAW 5 of 2013	License	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Cayuga County Department of Health and Human Services	<ul style="list-style-type: none"> Requires license for sales of any tobacco product Prohibits issuing new licenses to outlets located within 100 feet of a school Allows license transfer to new store owner remaining at location
Village of Dolgeville DOLGEVILLE, N.Y., LOCAL LAW 2 OF 2019	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Dolgeville Police Department	<ul style="list-style-type: none"> Requires license for sale of any tobacco product Caps the number of initial licenses issued Winnows the number of future outlets by issuing only renewed, not new, licenses Prohibits the sale of tobacco products by outlets within 1,000 feet of any youth-centered area

¹ Other tobacco products (OTP) include cigars, pipe tobacco, roll-your-own tobacco, smokeless tobacco, hookah/shisha tobacco, dissolvable tobacco, and other products that contain tobacco or nicotine.

Jurisdiction	Implementation Type	Local License	Restricts Tobacco Sales By:			Product Categories Covered	Enforcement Authority	Notes
			Number	Location	Flavor			
Dutchess County DUTCHESS CTY, N.Y., SANITARY CODE art. 25 § 25.3	Registration	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Dutchess County Board of Health	<ul style="list-style-type: none"> Requires registration with the Board of Health to sell any tobacco product
Village of Endicott ENDICOTT, N.Y., LOCAL LAW 14 OF 2020	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Police Department and Code Enforcement Officer	<ul style="list-style-type: none"> Requires license for sales of any tobacco product Reduces the number of outlets by issuing only one new license for every two non-renewed or revoked Prohibits issuing new licenses to outlets located within 1,000 feet of a school
New York City NEW YORK CITY, N.Y., ADMIN CODE §§ 11-1302, 17-176.1, 17-513.3, 17-702, 17-703, 17-704, 17-706, 17-715, 17-717 AND 20-202	License; stand-alone price promotion/discount sales restrictions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Departments of Health and Mental Hygiene, Consumer Affairs, and Finance	<ul style="list-style-type: none"> Requires license for sales of any tobacco product; requires separate license for sales of e-cigarettes Caps the number of licenses issued in each community district *Restricts the sale of flavored OTP (exempts tobacco, mint, menthol, wintergreen flavors); restricts the sale of flavored e-cigarettes (exempts tobacco flavor) Sets minimum consumer prices on tobacco products; prohibits consumer-facing discounts, such as coupons
City of Newburgh NEWBURGH, N.Y., CODE §276-1 through 276-10	License	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Eligibility determined by City Clerk; violations enforced by Police Department; Fire Department permitted to inspect	<ul style="list-style-type: none"> Requires license for sales of any tobacco product Prohibits issuing new licenses to outlets located within 1,000 feet of a school Reduces overall number of outlets by issuing only one new license for every two non-renewed or revoked

Jurisdiction	Implementation Type	Local License	Restricts Tobacco Sales By:			Product Categories Covered	Enforcement Authority	Notes
			Number	Location	Flavor			
Town of Niskayuna NISKAYUNA, N.Y., LOCAL LAW 1 OF 2017	Zoning			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Niskayuna Planning Department	<ul style="list-style-type: none"> Restricts location of tobacco outlets by prohibiting land within 1,000 feet of a school from being newly used for tobacco retail sales
Sullivan County SULLIVAN CTY, N.Y., LOCAL LAW 2 of 2017	Stand-alone			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	County Public Health Services	<ul style="list-style-type: none"> Prohibits issuing new licenses to outlets located within 1,000 feet of a school
Village of Tannersville TANNERSVILLE, N.Y., LOCAL LAW 1 OF 2017	Stand-alone			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Village Administration	<ul style="list-style-type: none"> Prohibits issuing new licenses to outlets located within 1,000 feet of a school
Ulster County ULSTER CTY, N.Y., LOCAL LAW 6 OF 2015, §4	License	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> OTP <input checked="" type="checkbox"/> E-cigarettes	Ulster County Department of Health	<ul style="list-style-type: none"> Requires license for sales of any tobacco product Prohibits issuing new licenses to outlets located within 1,000 feet of a school Allows license transfer to new eligible store owner

Jurisdiction	Prohibits sales of tobacco products by retail pharmacies. Enacted prior to state tobacco-free pharmacy law, N.Y. PUB. HEALTH LAW § 1399-mm-2, effective May 18, 2020.	Product Categories Covered	Enforcement Authority	Notes
Albany County ALBANY COUNTY, LOCAL LAW A, (JUNE 13, 2018)	☑	☑ Cigarettes ☑ OTP ☑ E-cigarettes	Albany County Commissioner of Health	These local laws prohibit the sale of tobacco products by pharmacies, immediately reducing number of sales outlets
Erie County ERIE CTY, N.Y., LOCAL LAW 6 OF 2018	☑	☑ Cigarettes ☑ OTP ☑ E-cigarettes	Erie County Department of Health	
Rockland County ROCKLAND CTY, N.Y., LOCAL LAW 1 OF 2017	☑	☑ Cigarettes ☑ OTP ☑ E-cigarettes	Rockland County Department of Health	
Suffolk County SUFFOLK CTY, N.Y., RES. 267 (2019)	☑	☑ Cigarettes ☑ OTP ☑ E-cigarettes	Suffolk County Department of Health Services	
New York City NEW YORK CITY, N.Y., ADMIN CODE § 20-201	☑	☑ Cigarettes ☑ OTP ☑ E-cigarettes	Departments of Health and Mental Hygiene, Consumer Affairs, and Finance	

For the most recent information on local NY policies, see our story map, "[Local Tobacco Control in the New York Retail Environment](#)."

Table updated June 2020

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 along with access to tobacco products. These include policies that reduce 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 the sale of flavored tobacco products. 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 outlets 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 community's unique retail environment.

The bottom line is that tobacco companies are persistent in recruiting new users while maintaining their grasp on addicted users, who are overrepresented by disadvantaged groups. To ensure policies reach these groups, tobacco control policies should be comprehensive and prevent the tobacco industry from circumventing local tobacco controls. 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 policy.

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 Apr 26, 2019).

³ PUBLIC HEALTH & TOBACCO POLICY CENTER, TOBACCO RETAIL LICENSING: PROMOTING HEALTH THROUGH LOCAL SALES REGULATIONS, (2017), *available at* <http://www.tobaccopolicycenter.org/documents/TobaccoRetailLicensing.pdf> (last visited Apr 26, 2019).

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

⁵ 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); 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) (concluding high tobacco retailer density, and separately, tobacco ads and promotions, influence youth perception of access to tobacco products, which in turn, influences perception of community acceptability).

⁶ 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 2012 SURGEON GENERAL'S REPORT, *supra* note 1 at 523 & 528; 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*] (finding high outlet density may promote youth smoking by providing easy access to tobacco because of reduced travel distance—a factor for youth who often have limited transportation options—and because “[w]ith more outlets to choose from, youth may find it easier to locate one that will sell to them illegally.”).

⁷ 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; Brett Loomis et al., *New York Youth*, *supra* note 6 at 468, 468 (2012); 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).

⁸ 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); see McCarthy et al., *supra* note 7 at 2011-2012 (finding zoning restrictions can help reduce tobacco use initiation by secondary school students); 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, 212-213 (2008) (finding correlation between tobacco outlet density and youth tobacco initiation).

⁹ See Novak, *supra* note 7 at 670 (“[B]etter law enforcement of youth purchasing bans . . . 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 *But see id.* at 674 (“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 . . . 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. PUB. HEALTH e1 (February 18, 2016).

¹² 2012 SURGEON GENERAL'S REPORT, *supra* note 1 at 545; K. Mitchell and H. Katz, *Banning Tobacco Sales in Pharmacies: The Right Prescription*, 300 J. AM. MED. ASS. 1451, 1451 (2008) [hereinafter *Banning Tobacco Sales*]; K. Suchanek Hudmon et al., *Tobacco Sales in Pharmacies: Time to Quit*, 15 TOB. CONTROL 35, 37 (2006).

¹³ U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 535–539 (2012) (concluding flavored tobacco products appeal to youth); Li-Ling Huang et al., *Impact of non-menthol flavours in tobacco products on perceptions and use*

among youth, young adults and adults: a systematic review, 26 *TOB. CONTROL* 709–719 (2017) (“Flavours in tobacco products seem to have a universal and rather strong appeal to youth and young adults...”); Samir S. Soneji, Kristin E. Knutzen & Andrea C. Villanti, *Use of Flavored E-Cigarettes Among Adolescents, Young Adults, and Older Adults: Findings From the Population Assessment for Tobacco and Health Study*, *PUBLIC HEALTH REP.* 0033354919830967 (2019).

¹⁴ TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations* 23 (2011), <https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf> (finding menthol in cigarettes masks the harshness of tobacco smoke); Joel Nitzkin, Farsalinos Konstantinos & Siegel Michael, *More on Hidden Formaldehyde in E-Cigarette Aerosols*, 372 *N. ENGL. J. MED.* 1575–1577 (2015) (finding flavors in e-cigarette liquids mask the bad taste of formaldehyde); Ganna Kostygina & Pamela M. Ling, *Tobacco industry use of flavourings to promote smokeless tobacco products*, 25 *TOB. CONTROL* ii40–ii49 (2016) (finding flavors in smokeless tobacco products mute the harsh taste of tobacco and alter the product pH); Andrew J. Oliver et al., *Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects*, 15 *NICOTINE TOB. RES.* 88–92 (2013) (finding flavors make smokeless tobacco more palatable).

¹⁵ Kostygina and Ling, *supra* note 16; CAMPAIGN FOR TOBACCO-FREE KIDS, *DESIGNED FOR ADDICTION: HOW THE TOBACCO INDUSTRY HAS MADE CIGARETTES MORE ADDICTIVE, MORE ATTRACTIVE TO KIDS, AND EVEN MORE DEADLY*, 7 (2014), https://www.tobaccofreekids.org/global-resource/designed_for_addiction1 (last visited Feb 6, 2019) (reporting added flavors mask the harshness of smoke; added sugars make tobacco smoke easier to inhale and form acetaldehyde, which enhances nicotine’s addictive effects); see also Regulation of Flavors in Tobacco Products, 81 *Federal Register* 12296 (2018) <https://www.federalregister.gov/d/2018-05655/p-26> (reporting flavors can trigger reward pathways in the brain and additionally enhance the rewards of nicotine, facilitating dependence).

¹⁶ M. Jane Lewis & Olivia Wackowski, *Dealing With an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands*, 96 *AM. J. PUBLIC HEALTH* 244–251 (2006); 2012 SURGEON GENERAL’S REPORT, *supra* note 1 at 537-539.

¹⁷ Carrie M. Carpenter et al., *New Cigarette Brands With Flavors That Appeal To Youth: Tobacco Marketing Strategies*, 24 *HEALTH AFF. (MILLWOOD)* 1601–1610 (2005); CAMPAIGN FOR TOBACCO-FREE KIDS, et al., *THE FLAVOR TRAP: HOW TOBACCO COMPANIES ARE LURING KIDS WITH CANDY-FLAVORED E-CIGARETTES AND CIGARS* (citing Marketing Innovations, “Youth Cigarette - New Concepts,” Memo to Brown & Williamson, September 1972, Bates No. 170042014.; R.M. Manko Associates report for Lorillard, Summary Report: New Flavors Focus Group Sessions, August, 1978, Bates No. 85093450-3480); Joseph G. L. Lee et al., *Is the cigarette pack just a wrapper or a characteristic of the product itself? A qualitative study of adult smokers to inform U.S. regulations*, 15 *J. CANCER POLICY* 45–49 (2018) (finding pack design and changes to pack design are seen as particularly relevant to new and young smokers).

¹⁸ Tess Boley Cruz, La Tanisha Wright & George Crawford, *The Menthol Marketing Mix: Targeted Promotions For Focus Communities in the United States*, 12 *NICOTINE TOB. RES.* S147–S153 (2010); Youn Ok Lee & Stanton A Glantz, *Menthol: putting the pieces together*, 20 *TOB. CONTROL* ii1–ii7 (2011).

¹⁹ Lisa Henriksen et al., *Targeted Advertising, Promotion, and Price For Menthol Cigarettes in California High School Neighborhoods*, 14 *NICOTINE & TOB. RESEARCH* 116, 116 & 118 (2012).

²⁰ E.g. Michael Chaiton et al., *Association of Ontario’s Ban on Menthol Cigarettes With Smoking Behavior 1 Month After Implementation*, 178 *JAMA INTERN. MED.* 710–711 (2018) (finding Ontario’s ban on menthol cigarettes was effective in reducing smoking and increasing quit attempts); e.g. Shannon M. Farley & Michael Johns, *New York City flavoured tobacco product sales ban evaluation*, 26 *TOB. CONTROL* 78–84 (2017) (finding New York City’s restriction on flavored tobacco sales decreased youth tobacco use).