The Tobacco Free Pharmacies Action Guide was developed by CounterTobacco.Org in collaboration with stakeholders across the country who are engaged in tobacco use prevention and control.

This guide provides recommendations to help tobacco control advocates build support for and enact a policy to prohibit the sale of tobacco products in pharmacies. However, it is no substitute for actual legal advice. As the tobacco industry has a long history of engaging in legal battles over policies that restrict tobacco sales and advertising, it is advisable to seek legal counsel on proposed policy language.

Finally, it is also important to consider tobacco free pharmacies as one part of a broader point-of-sale and tobacco control policy effort in your state or community. Strategic planning for a comprehensive retail tobacco control effort will help you determine whether prohibiting tobacco sales in pharmacies is an appropriate approach for your community.

Since 2011, CounterTobacco.Org has served as the leading comprehensive warehouse of tools and information for local, state, and federal organizations working to counteract tobacco product sales and marketing at the point of sale (POS). CounterTobacco.Org offers evidence about the problem of retail tobacco availability, detailed policy solutions, advocacy tools, news updates and a media gallery exposing tobacco industry tactics at the point of sale. Visit CounterTobacco.Org for additional resources to support your point-of-sale tobacco control efforts.
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Tobacco is the leading cause of preventable illness and death worldwide. In the U.S., tobacco use and secondhand smoke exposure account for approximately 480,000 premature deaths each year. Despite the known health risks of tobacco, pharmacies represent nearly 5% of cigarette sales, and while cigarette sales declined nationally by 17% between 2005-2009, cigarette sales in pharmacies increased by 23% during this time. However, research shows that pharmacists and the overall public overwhelmingly support removing this deadly product from pharmacies. Numerous professional and health voluntary organizations have issued their support for policies that prohibit the sale of tobacco in pharmacies, including the American Medical Association, the American Pharmacists Association, the American Heart Association, the American Academy of Pediatrics, and the American Cancer Society. The following are the primary reasons for supporting policy change to ban the sale of tobacco in pharmacies:

**Selling tobacco in pharmacies sends a mixed message to consumers about the dangers of tobacco products.** Pharmacists are trusted healthcare providers who are uniquely positioned to provide medical advice because of their accessibility to the public. Selling tobacco products compromises this trust and sends mixed messages about the dangers of and social norms about tobacco use. Youth are particularly vulnerable to these messages.

**The presence of tobacco in pharmacies makes it harder for smokers to quit.** In pharmacies, tobacco products are often sold directly beside cessation products. Exposure to tobacco products elicits craving and prompts impulse purchases, making it harder for smokers to quit.

**Selling tobacco is a conflict of interest for pharmacists.** The sale of tobacco products in pharmacies is at odds with the code of ethics for pharmacists that commits pharmacists to “help individuals achieve optimum benefit from their medications, to be committed to their welfare,” and to avoid, “actions that compromise dedication to the best interests of the patient.” Further, it is a conflict of interest for pharmacists, who sell tobacco products as well as smoking cessation products and the medications used to treat many conditions caused by tobacco use (e.g., asthma, emphysema, heart disease, cancer). A survey of over 1,000 pharmacists showed that more than 80% believe that pharmacists should be more active in preventing tobacco use and promoting cessation—beliefs that are incompatible with the sale of tobacco.

In 2008, San Francisco became the first municipality in the United States to ban the sale of tobacco products in pharmacies. Boston followed suit in 2009. As of 2014, 80 municipalities in Massachusetts have passed bans, effectively eliminating tobacco from the shelves of 505 retailers. Several communities in New York and other states are considering similar policies. Additionally, in February 2014, CVS Caremark announced that it would stop selling tobacco products effective October 1, 2014, which will impact over 7,600 retailers. Banning the sale of tobacco products in pharmacies has quickly caught on as a relatively uncontroversial tobacco control approach to reducing the type and number of retailers selling and promoting tobacco products. Retail availability of tobacco products builds brand recognition, encourages youth initiation and hinders quit attempts by prompting impulse purchases. Banning the sale of tobacco in pharmacies is just one part of a comprehensive approach to reducing retail availability of tobacco.
As with most public health policies, there is no exact recipe for mobilizing the support needed to pass a policy to prohibit the sale of tobacco in pharmacies. However, following the steps in this guide and reviewing the associated resources will help prepare your community to pass a policy.

**STEP 1: CONDUCT A COMMUNITY ASSESSMENT**

The first step in any tobacco control policy process should be conducting a community assessment. This process includes learning about the local policymaking process and the local climate on tobacco control policies, as well as surveying the local tobacco retail environment.

**LEARN ABOUT THE LOCAL POLICYMAKING PROCESS & LOCAL TOBACCO CONTROL POLICIES**

Before you craft a policy, learn as much as possible about your community’s policymaking process and jurisdiction. Identify the priority issues and review the voting records of local politicians. Understanding the policymaking process can help you determine the most appropriate policy approach. The American Lung Association in California, Center for Tobacco Policy and Organizing suggests researching the following:

- How are policymakers elected? How long are terms?
- When is the next local election?
- How has the community voted on state and national issues?
- What council committees have responsibility for health issues?
- How does a proposal become an ordinance?
- Do city or county officials handle law enforcement?

Be sure to research your community’s history of success in passing tobacco control policies, such as taxes, smoke-free policies and licensing laws. This may be a good first indication of your likelihood of success in passing a policy to ban tobacco sales in pharmacies. This research might also help you identify potential partners and opposition.

**RESOURCES:**

- Directors of Health Promotion and Education. Shaping Policy for Health: Introduction to the Policy Change Process. dhpe.org/?Programs_SPHIntro
CONDUCT PUBLIC OPINION POLLS TO ASSESS COMMUNITY SUPPORT

A 2011 survey of a random sample of 2,993 US adults found that 55.3% support either removing tobacco products from pharmacies or keeping them out of view of consumers, with higher support among nonsmokers. However, it is even more powerful to have direct evidence of this support from your own community. Assessing community support will give you an idea about the work you will need to do to educate the public and build support.

“\textit{We started our work by surveying the community. We wanted to know if there was neighborhood support for the policy. Many people initially said, “Hmm, I don’t know.” But after a few moments, many said, “I really hadn’t thought about this, that these are pharmacies and yet they’re selling cigarettes.” A majority of the people we talked to came to the conclusion that pharmacies ought not to be selling tobacco.”} 

—Bob Gordon, California LGBT Tobacco Education Partnership

Conducting public opinion polls can help you demonstrate to policymakers that your proposed policy reflects the will of the community. They can also help you determine how to frame your messaging when educating the community and advocating for the policy. You might consider conducting public opinion polls later on in the process as well, after you have conducted dedicated education efforts to evaluate the impact of your campaign. Consider which surveys your state already participates in (e.g., Youth Tobacco Survey, Adult Tobacco Survey) and whether you have the resources to incorporate questions into existing surveys. Another approach is to conduct public opinion polls on the broader topic of support for retail tobacco control so that data can be used for other policy efforts as well. This survey could include specific questions about pharmacies, such as the following questions used by the New York Capital District Tobacco-Free Coalition and researchers in California:

1. I am in favor of tobacco products being sold in pharmacies
   - strongly agree
   - agree
   - disagree
   - strongly disagree

2. Do you think the following types of stores (include pharmacy in this list) should or should not sell tobacco products?

3. What is your opinion on a regulation that would ban the sale of all tobacco products in pharmacies?
   - strongly in favor
   - somewhat in favor
   - neither in favor or against
   - somewhat against
   - strongly against

4. If you had the choice to shop at a pharmacy that carried tobacco products or one that did not, would you:
   a) choose the one that carried tobacco products
   b) choose the one that did not carry tobacco products
   c) it would not affect your choice

You can ask more specific questions to smokers, such as:

- Where do you usually buy your cigarettes? (include pharmacy in list of stores).
- How often do you buy tobacco products at pharmacies?
   - always
   - sometimes
   - rarely
   - never

Visit countertobacco.org/public-opinion-surveys for more information about assessing policy support.
IDENTIFY POTENTIAL ALLIES & ENGAGE STAKEHOLDERS

Establishing a coalition will formalize your support base. If your community has passed other tobacco control policies in the past, such as smoke-free laws, you may be able to build off existing partnerships. Consider what skills, resources and support you already have and those that you will need to seek from other partners. Establishing a unified goal for your coalition and specific responsibilities for each stakeholder is important. The CDC’s *Best Practices for Comprehensive Tobacco Control Programs User Guide: Coalitions* provides an abundance of tips and steps for building a tobacco control coalition. Some important tips for building a coalition include:

- Involving diverse segments of the community
- Considering appointing a coordinator to oversee efforts
- Scheduling regular meetings;
- Establishing subcommittees if necessary;
- Setting agreed upon goals; and
- Holding regular coalition meetings to share updates.

Engaging stakeholders and building a coalition is an ongoing process. The following table can help you identify potential stakeholders and help you establish a coalition. Your support base can also help you focus your campaign message. For example, if your primary support base is youth, you may want to focus on the message of protecting youth from initiating tobacco use, whereas if your primary support base consists of local pharmacists, you could focus on the conflict of interest argument.

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“*Once youth are aware of these issues and with how they are being targeted, they are very energized and they really want to do something about it. They have a lot of energy and enthusiasm to do this type of work. To have them as partners, it is going to really strengthen [efforts] as we move on with any of these policies... because youth are one of the main targets of the industry, they are able to deliver authentic and compelling testimony about personal experiences with tobacco in their neighborhoods.*”

—Hye Won, Program Associate with The 84 (Youth Organization in Massachusetts)
CVS PLEDGES TO STOP SELLING TOBACCO PRODUCTS

On February 5, 2014, CVS Caremark announced its commitment to stop selling tobacco products as of October 1, 2014, which will remove tobacco from the shelves of over 7,600 stores. CVS is the largest drugstore chain in overall sales and second largest in number of stores (Walgreens is the largest). CVS Caremark President and CEO Larry Merlo announced that:

“Ending the sale of cigarettes and tobacco products at CVS/pharmacy is simply the right thing to do for the good of our customers and our company. The sale of tobacco products is inconsistent with our purpose – helping people on their path to better health. As the delivery of health care evolves with an emphasis on better health outcomes, reducing chronic disease and controlling costs, CVS Caremark is playing an expanded role through our 26,000 pharmacists and nurse practitioners. By removing tobacco products from our retail shelves, we will better serve our patients, clients and health care providers while positioning CVS Caremark for future growth as a health care company. Cigarettes and tobacco products have no place in a setting where health care is delivered. This is the right thing to do.”

Tobacco control advocates can use this tremendous public health victory to help persuade similar retailers to stop selling tobacco products and engage pharmacists as policy supporters.

Read more about CVS Caremark’s announcement at info.cvscaremark.com/cvs-insights/cvs-quits.
<table>
<thead>
<tr>
<th>STAKEHOLDER</th>
<th>MAIN INTERESTS</th>
<th>ROLE IN THE POLICY PROCESS &amp; EXAMPLES FROM THE FIELD</th>
</tr>
</thead>
<tbody>
<tr>
<td>YOUTH</td>
<td>• Safe and health-promoting environments</td>
<td>• BOLD-Teens in Boston wrote letters to the editor, held protests in front of pharmacies and met with Boston Public Health Commission members(^2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The Middleboro Youth Advocates made presentations to town selectmen(^8)</td>
</tr>
<tr>
<td>PHARMACISTS</td>
<td>• Health and well-being of community</td>
<td>• Professional associations, including the American Pharmacists Association have endorsed this policy(^9)</td>
</tr>
<tr>
<td></td>
<td>• Treatment of illness</td>
<td>• In Albany County, NY, local pharmacy students have mobilized around the proposed policy and written letters to the editor and to legislators</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Many independent pharmacists have voluntarily stopped selling tobacco</td>
</tr>
<tr>
<td>HOSPITALS &amp; MEDICAL SOCIETIES</td>
<td>• Health and well-being of community</td>
<td>• As fellow healthcare organizations, hospital representatives can testify about the process of passing similar policies in hospitals</td>
</tr>
<tr>
<td></td>
<td>• Link between policy, public health and medicine</td>
<td>• The American Medical Association endorses this policy(^9)</td>
</tr>
<tr>
<td>LOCAL PHYSICIANS</td>
<td>• Health and well-being of community</td>
<td>• In Walpole, MA, a local physician brought the issue to the attention of the town’s Board of Health(^29)</td>
</tr>
<tr>
<td></td>
<td>• Link between policy, public health and medicine</td>
<td>• Testify about the harmful effects of smoking</td>
</tr>
<tr>
<td>OTHER ADVOCACY GROUPS</td>
<td>• Equity issues</td>
<td>• The California LGBT Tobacco Education Partnership played a critical role in building support for San Francisco’s ordinance(^30)</td>
</tr>
<tr>
<td></td>
<td>• Health and well-being of select populations</td>
<td></td>
</tr>
<tr>
<td>LOCAL POLITICIANS</td>
<td>• Level of community support for policy</td>
<td>• Sponsor bills and provide votes in favor of policy</td>
</tr>
<tr>
<td></td>
<td>• Impact of policy in other communities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Impact of policy on business</td>
<td></td>
</tr>
<tr>
<td>VOLUNTARY HEALTH GROUPS</td>
<td>• Health and well-being of community</td>
<td>• The American Heart Association,(^9) American Lung Association,(^3) American Cancer Society,(^9) and Americans for Nonsmokers’ Rights(^32) all support this policy and may be willing to issue statements of support, write letters to policymakers, and send email blasts to members to increase support at events</td>
</tr>
<tr>
<td></td>
<td>• Recognition of the role of policy change in supporting health</td>
<td></td>
</tr>
<tr>
<td>STATE &amp; LOCAL HEALTH DEPARTMENTS</td>
<td>• Improved public health</td>
<td>• Provide resources and leadership</td>
</tr>
<tr>
<td></td>
<td>• Community health and well-being</td>
<td>• Provide scientific evidence in support of policy</td>
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<tr>
<td></td>
<td></td>
<td>• Provide local data on tobacco use to support need for policy</td>
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<td></td>
<td></td>
<td>• Implementation and enforcement support</td>
</tr>
<tr>
<td>GOVERNMENT ADMINISTRATORS &amp; ENFORCEMENT AGENCIES</td>
<td>• Promoting policy compliance</td>
<td>• Provide resources and support for enforcement</td>
</tr>
</tbody>
</table>

Adapted from the Partnership for Prevention\(^{26}\)
SURVEY THE LOCAL TOBACCO RETAIL ENVIRONMENT

Prohibiting tobacco sales in pharmacies is part of a comprehensive approach to reducing the presence of tobacco in the retail environment. When advocating for your policy, it will be helpful to provide detailed information about your local retail environment. For example, consider conducting store assessments and mapping tobacco retailers in your community.

Conducting Store Assessments

Store assessments or “audits” can be used to assess the amount and type of tobacco products, marketing and promotional offers in pharmacies. This information can help make the case that tobacco products are abundant and visible in your local pharmacies. Many communities have worked with youth and volunteers to help in these efforts. You can use CounterTobacco.Org’s “Walking Tobacco Audit” activity with volunteers in your community, available at countertobacco.org/youth-engagement-activity-center or the SCTC Standardized Tobacco Assessment for Retail Settings (STARS), available at: countertobacco.org/store-assessment-tools. You may also want to take photographs in stores to provide more evidence for the need for your policy, particularly if you see tobacco products displayed near the pharmacy counter or next to cessation products. Share your images through CounterTobacco.Org’s image gallery at countertobacco.org/gallery.

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CounterTobacco.Org Walking Tobacco Audit Youth Engagement Activity

Photo Credit: Capital District Tobacco Free Coalition

Tobacco and cessation products sold directly below a pharmacy counter in Carrboro, NC

Photo Credit: Capital District Tobacco Free Coalition
Map Tobacco Retailers in Your Community

Geographic Information Systems (GIS) and free mapping services such as Google Maps Engine ([mapsengine.google.com/map](http://mapsengine.google.com/map)) can be used to map where tobacco retailers are in your community. By demonstrating the prevalence and density of tobacco retailers, you can bolster support for your policy. Mapping the location of pharmacies (and stores containing pharmacies) that sell tobacco products can demonstrate how the number and location of tobacco retailers would change if tobacco sales were prohibited in pharmacies.

You can also map where schools, parks and other youth-oriented locations are in your community in relation to tobacco retailers. Studies show that high school smoking prevalence is associated with tobacco retail density near schools and that stores near schools have greater exterior tobacco advertising. If local pharmacies are near schools and parks, this data can strengthen your argument that the policy is a way to protect youth. In fact, 90% of Americans live within 5 miles of a pharmacy. Most pharmacies are licensed by the state (e.g., state health department, state board of pharmacy), so you may be able to access online databases of the location of licensed pharmacies.

GIS Map of Tobacco Retailers in Durham County, NC
PREPARE A DRAFT ORDINANCE

The first step in this process is to decide the mechanism through which your community will implement a pharmacy tobacco ban. The sale of tobacco products in pharmacies can be prohibited through several legal mechanisms, including licensing, zoning, and stand-alone ordinances.

Licensing

Licenses grant businesses the authority to sell certain products under certain conditions. As of 2010, 37 states and numerous local governments required tobacco retail licenses for both over-the-counter and vending machine sales.36 Whereas state licensing is often used to ensure compliance with tax laws, local licensing is more often used to enforce public health measures, such as further restrictions on the conditions under which businesses are allowed to sell tobacco. If your state or community already requires tobacco retail licensing, a pharmacy ban can be added to strengthen the licensing requirement. If your state or community does not license tobacco retailers, consider how licensing might fit into your larger retail tobacco control plan. ChangeLab Solutions provides a model licensing policy37 as well as pharmacy “plug-in” language.38

“No license may be issued to authorize Tobacco Retailing in a Pharmacy. For the purposes of this subsection, “Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.”

Strong licensing laws include penalties and mechanisms for enforcement. Because of this, a ban on the sale of tobacco products in pharmacies might be easier to enforce through a licensing law. A licensing law is also an efficient way to incorporate other restrictions on tobacco retailers. Business licenses can also be structured so as to not create a property right, which facilitates prompt implementation (as compared to a land use or zoning law).

RESOURCES:

- CounterTobacco.Org. Licensing and Zoning. countertobacco.org/licensing-zoning-and-retailer-density
- McLaughlin I. License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool. 2010; publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf

Zoning

Most local governments use zoning for land use planning. By dividing areas into zones, local jurisdictions can control the types of businesses that are allowed to operate in certain zones. While zoning codes are often used to specify what types of land uses are allowed in certain zones, zoning codes can also restrict, prohibit, or set conditions on how specific types of businesses can operate. Implementing a pharmacy ban through zoning would look very similar to a restriction imposed through licensing or direct regulation, but would be implemented and enforced through existing enforcement mechanisms. Additionally, most communities are already familiar with land use policies and have dedicated government staff working on land use issues. However, zoning

STEP 2: DEPEND POLICY & STRATEGIZE
presents the challenge of how to deal with existing retailers. While not necessarily required, historically most new zoning regulations have grandfathered in existing retailers and allowed them to continue to operate even if they do not comply with the new regulations. As such, the immediate impact is negligible and reduction in retailers will primarily occur by attrition. There are a few options to address existing retailers when a new law is adopted:

- **Legal nonconforming use:** Businesses that technically violate the new zoning code, but were in existence prior to the new regulation, are granted legal nonconforming use and allowed to continue to operate. However, if they expand or change their business they would no longer be able to sell tobacco.¹

- **Amortization:** Communities can either terminate use of property immediately through compensation or after a certain period of time (“amortization”), which is usually determined on a case-by-case basis. However, amortization often faces legal challenges.

For a comparison of licensing vs. zoning, visit the following sites:

- countertobacco.org/licensing-zoning-and-retailer-density

### RESOURCES:


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¹ In some states, such as California, businesses may also be granted “Deemed Approved” status. Similar to legal nonconforming use, existing businesses that would otherwise be categorized as unlawful, are granted deemed approved status and allowed to continue operating provided that they comply with specific provisions.

### Stand-Alone Ordinance

Your community’s legislative body (e.g., City Council, Board of Supervisors) can also pass a stand-alone ordinance or regulation. A drawback to this approach is that you will need to craft original enforcement language (or incorporate enforcement mechanisms from another law) and identify an enforcement agency, whereas licensing and zoning laws usually have established enforcement mechanisms. For example, most of the communities in Massachusetts that have passed a pharmacy tobacco ban did so through their local boards of health. While not all boards of health have this authority, it may be an option for your community.

### RESOURCES:

- For more information on the differences between various types of laws, regulations and policies, review the following resources:
CASE STUDY: MASSACHUSETTES

“While San Francisco was the first community to require tobacco free pharmacies, to date, the state of Massachusetts is unrivaled in its success in passing such policies. Beginning in the early 2000s, a youth group called Breath of Life Dorchester (BOLD- Teens) began to meet with Boston’s Public Health Commission about the prospect of banning the sale of tobacco in pharmacies. BOLD-Teens gathered support from state and local organizations and met with Boston’s Public Health Commission (the Board of Health overseeing Boston’s Health Department) and Tobacco Control Program staff to draw attention to the need for tobacco free pharmacies. Legal counsel drafted a regulation and in 2008, Boston’s Public Health Commission passed the policy. Contrary to San Francisco’s, Boston’s policy faced no legal challenges or formal opposition. After Boston passed its policy, local elected officials and youth groups across the state began to propose similar policies to their respective local boards of health and city councils, engaging a wide variety of partners in the process. The Massachusetts Municipal Association (MMA), a statewide nonprofit representing mayors, city councils and other local officials, has played a critical role in connecting local officials with policy development resources and technical assistance.

Through a Department of Public Health grant, MMA runs the Municipal Tobacco Control Technical Assistance Program, which provides advocacy, training, and technical assistance to city officials developing tobacco control policies. The Massachusetts Association of Health Boards also provided critical technical assistance. Additionally, the Massachusetts Medical Society has encouraged members and partners to testify at local hearings across the state. Finally, the Massachusetts Department of Public Health facilitated statewide efforts by developing educational materials. Little by little, momentum spread across the state and as of 2014, 80 communities had passed pharmacy tobacco bans, almost entirely through local board of health regulations. While some communities have seen opposition from retailer associations and chain retailers, there was very little opposition from the tobacco industry. The success of pharmacy tobacco bans across the state has led Tobacco-Free Mass (the statewide coalition), MMA, and the Massachusetts Public Health Council to begin the process of passing a statewide law. While not all states and communities have the authority to enact these policies through their boards of health, Massachusetts provides an example for how local policy can catapult into a statewide movement.
Regardless of which option you pursue, it is important to use clear and specific language. The terms of the policy should state explicitly who is covered by the restriction, which products are included in the restriction, and the date the policy will take effect (e.g., specify a date when tobacco retail licenses will expire for pharmacies). Also, be sure to identify explicit enforcement mechanisms and penalties. Licensing and zoning policies may already include enforcement mechanisms.

**Definition of Pharmacy**

Some communities have included pharmacy bans as part of more comprehensive restrictions on the sale of tobacco products in all healthcare facilities and have included pharmacies in this group because of the medical services and medical advice that pharmacists provide. For example, Boston’s ban includes all health care institutions, defined as:

“an individual… [or] corporation … that provides health care services or employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health. Health care institutions include hospitals, clinics, health centers, pharmacies, drug stores and doctor and dentist offices.”

San Francisco’s ordinance focused just on pharmacies. Their ordinance states:

“Pharmacy retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.”

**Definition of Tobacco Products**

Work with a legal center to develop a definition of tobacco products in your policy. Tobacco products continue to evolve and definitions should ideally be broad enough to encompass new and emerging tobacco and nicotine delivery products. For example, Richmond, California’s ordinance defines tobacco as:

“(1) Any substance containing tobacco leaf, including, but not limited, to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.”
LEGAL CONSIDERATIONS

While pharmacy tobacco bans are considered fairly uncontroversial compared to other tobacco control policies, legal challenges can still arise. The resources provided will help make you aware of potential legal challenges so you can take measures to limit your community’s vulnerability to litigation. Remember that, as with any tobacco control policy, it is important to consult legal counsel. Many of the known potential legal challenges were learned through San Francisco’s efforts, and subsequent localities have been able to craft policies that have faced little to no legal opposition. In fact, Massachusetts’ communities have reported no lawsuits or compliance issues.

Preemption

Preemption means that laws at a higher level of government take precedence over the laws of a lower level of government. If you are considering a policy at the local level, make sure state law does not preempt such action.

RESOURCES:

- Griffin, M., Babb, S. D., Tynan, M., & MacNeil, A. E. State preemption of local tobacco control policies restricting smoking, advertising, and youth access—United States, 2000-2010. Morbidity and Mortality Weekly Report, 60(33), 1124-1127. cdc.gov/mmwr/preview/mmwrhtml/mm6033a2.htm

等保护

San Francisco’s original ordinance exempted big box stores and grocery stores with pharmacies. Walgreens sued, alleging that the ordinance violated its equal protection rights because Walgreens was similar to businesses like Safeway and Costco, but was treated differently by the law. Ultimately, the trial court agreed and San Francisco amended the law to include all pharmacies and stores with pharmacies enclosed. Policies that exclude certain kinds of pharmacies may be subject to legal challenges on the basis of equal protection unless there is a compelling government reason for the exclusions.

First Amendment

After San Francisco passed its pharmacy tobacco ban, Philip Morris filed suit claiming the law violated the company’s right to free expression by limiting its right to advertise. While the court ruled against Philip Morris since the law only banned sales and not advertising, this is a legal challenge that might arise.

Due Process

Once San Francisco removed the exemptions for grocery stores and big box stores, Safeway filed suit, arguing that the ordinance violated its property rights because it had lawful permits (the policy was implemented through San Francisco’s existing tobacco retailer permit system) to sell pharmaceuticals and tobacco. However, the court ruled that the San Francisco ordinance was a legitimate use of police power and therefore not a Due Process violation.

RESOURCES:


PREEMPTION

Preemption means that laws at a higher level of government take precedence over the laws of a lower level of government. If you are considering a policy at the local level, make sure state law does not preempt such action.

RESOURCES:

- Griffin, M., Babb, S. D., Tynan, M., & MacNeil, A. E. State preemption of local tobacco control policies restricting smoking, advertising, and youth access—United States, 2000-2010. Morbidity and Mortality Weekly Report, 60(33), 1124-1127. cdc.gov/mmwr/preview/mmwrhtml/mm6033a2.htm
In 2007, the California LGBT Tobacco Education Partnership (LGBT Partnership) wrote into its three-year plan the objective to restrict the sale of tobacco in pharmacies in San Francisco. The LGBT Partnership immediately set to work in the field, tracking which pharmacies sold tobacco products, surveying community members for public support, educating the community, and conducting a media campaign. They also worked with independent pharmacists, many of whom became key supporters of the policy. When San Francisco Director of Health Mitch Katz and Mayor Gavin Newsom introduced the idea of a tobacco-free pharmacy policy for the city, it quickly garnered support as a common sense measure. They promoted the idea that a “pharmacy is a place to get better, not to get cancer.” When Mayor Newsom brought the policy to the Board of Supervisors, the LGBT Partnership had already laid the groundwork by gathering community support for the proposed policy. The policy passed in July 2008 and despite several legal battles, took effect as planned on October 1, 2008. Tobacco products were effectively removed overnight from the shelves of pharmacies across the city. In doing so, San Francisco paved the way for future communities to pass similar restrictions.
IDENTIFY A POLICYMAKER TO SPONSOR AND ACT AS A CHAMPION

Based on your assessment of the political environment and the history of tobacco control policymaking in your community, identify one or more champions to sponsor your policy. Review the American Lung Association in California, Center for Tobacco Policy and Organizing’s resources on working with elected officials for more tips.

IDENTIFY OPPOSITION

Compared to other tobacco control policies, prohibiting the sale of tobacco in pharmacies has faced relatively little opposition. However, you still need to anticipate who might oppose your policy and why. Local or national level retail and trade organizations, many of which have ties to the tobacco industry, may voice opposition. In California, the Neighborhood Market Association has been a vocal tobacco control opponent. Business groups such as Chambers of Commerce will sometimes oppose tobacco control policies, so be prepared for arguments in support of protecting business rights. New York communities have also faced opposition from the New York State Association of Convenience Stores and the Food Industry Alliance.

National Association of Tobacco Outlets (NATO)

NATO is an avid opponent of tobacco control policies and has actively opposed local tobacco retail licensing policies. Read more about NATO, their arguments, and how to counter these arguments at:

- countertoabacco.org/news/2013/09/16/cities-pursuing-progressive-pos-policies-hear-nato

RESOURCES:

- American Lung Association in California, Center for Tobacco Policy and Organizing. Preparing for a City Council or Board Presentation: A Checklist. center4tobaccopolicy.org/wp-content/uploads/2013/05/Preparing-for-a-City-Council-or-Board-Presentation-A-Checklist.pdf
**STEP 3: BUILD SUPPORT FOR THE POLICY**

**USING EARNED MEDIA**

Educating the community through earned media outlets about the burden of tobacco use in your community and the problem of tobacco sales in pharmacies is a simple way to gain favorable publicity for your proposed policy. You can garner earned media attention by writing letters to the editor or editorials and being quoted in news articles. Encourage your coalition members and other partners to write letters to the editor to help demonstrate your wide support base. Consider asking health voluntary organizations (e.g., American Heart Association) to write letters of support.

There are some simple strategies and tactics to help you write effective letters to the editor. When talking with reporters or policymakers, use short and to-the-point sound bites (two to three sentences). A successful media bite should:

**Speak to shared values.** Refer to common themes shared by the majority of people:

- "Banning the sale of tobacco in pharmacies is common sense for protecting the role of these institutions in health promotion."
- "Limiting the types of retailers that sell tobacco protects our children from exposure to tobacco products and marketing."

**Talk about what is at stake.**

- "Tobacco is the leading cause of death. Banning tobacco sales in pharmacies is a simple step to help people quit smoking."

**Use reasonable language.** Avoid jargon or acronyms. For example, while "point of sale" is a term widely used by tobacco control researchers, the wider public might not understand it.

**Evoke pictures.** Make your message memorable.

- "In my local pharmacy, cigarettes are sold right next to cessation products and where I pick up my medications. This is sending the wrong message."

**Propose a solution.** Make sure you not only highlight the problem, but also inform your audience about what they can do about it.

- "Ask your local council member to support a policy to prohibit tobacco sales in pharmacies."

The following quotes from press in communities that have passed or are advocating for pharmacy tobacco bans are good examples of messages to include in letters to the editor. Visit no-smoke.org/learnmore.php?id=615 for more press examples.

**Compare your community to others.** Never underestimate the power of competition!

- "More than 55 municipalities in Massachusetts have successfully banned the sale of tobacco in any store that contains a pharmacy. Teens and smokers who are trying to quit are protected from the mixed message sent when a licensed health provider sells a product that kills 50 percent of its users."

  -Laura Waterhouse, Latham, NY Times Union"
Highlight irony.

“The very store that sells the medicines for treatment of heart and lung diseases is the same store that sells the cigarettes.”
-Dr. Martin Chavitz, New Rochelle, NY New York Times

“A pharmacy ban will reinforce a powerful message that smoking harms and kills and that tobacco has no place in an establishment whose primary purpose is health care and where licensed health care professionals work. It will also end the hypocrisy of pharmacies that sell both products to improve and maintain health and a product that is the leading preventable cause of death in the world.”
-Dr. Lynda Young, Worcester, MA The Republican

Counter opposition arguments.

“Efforts within our state Legislature to eliminate the sale of tobacco products in facilities where health professionals are employed are not about "annoying smokers" (editorial, "Don’t ban cigarettes in drug stores," Aug. 4), but about supporting their efforts to quit. Any smoker trying to quit should be able to go into a pharmacy knowing they will not have to see tobacco products displayed next to “the patch” and nicotine gum designed to help their efforts to quit.”
-Dr. David Neumeyer, Wayland, MA MetroWest Daily News

“51 cities and towns in Massachusetts have passed regulations that do not allow for tobacco products to be sold in pharmacies in their communities. In those cities and towns, she [Marilyn Edge, Somerset Tobacco Control Coordinator] said not one pharmacy has laid off a worker or closed because of not being allowed to sell tobacco products.”
-The Spectator

RESOURCES:
PAID MEDIA
While not an option for all communities, paid media campaigns are an effective way to amplify your message, if resources are available. San Francisco and New York have used paid media campaigns (e.g., billboards and bus ads) with compelling visuals and messages that draw attention to the irony of selling tobacco in pharmacies.

MOBILIZE COALITION TO SHOW SUPPORT FOR THE POLICY
Once a proposed policy is drafted, it is important to maintain pressure to pass the policy. Your coalition can do this by showing support at public hearings, communicating with policymakers, and continuing to submit earned media pieces. Earned media should shift from just talking about the problem to drawing explicit attention to the proposed solution.

California Department of Public Health Media Campaign
WRITE LETTERS OR MEET WITH POLICYMAKERS

Remaining in contact with policymakers, such as written communication and face-to-face meetings, is crucial to getting the votes you need. Messages are particularly powerful if they come from the policymakers’ constituents. Letters to policymakers can use strategies similar to earned media pieces as well as incorporate local data from the community. Another option, used in many communities, is to start a petition. New York coalitions, for example, use postcards that constituents can sign in support of prohibiting the sale of tobacco in pharmacies, which are then sent to policymakers.

“Do we want to send that mixed message to youth? Do we want to say that this place of health also sells a deadly product? Does our society really value profits that much more than people’s health? Is this the message we want to send to kids like me and my classmates? I sincerely hope not.”

—Albany County High School Student at a public hearing

RESOURCES:
- American Lung Association in California, Center for Tobacco Policy and Organizing. Preparing for a City Council or Board Presentation: A Checklist. center4tobaccopolicy.org/wp-content/uploads/2013/05/Preparing-for-a-City-Council-or-Board-Presentation-A-Checklist.pdf

As a pharmacist, I am dedicating my career to the well-being of my patients. I aspire to assist my patients in making the best decisions in order to ensure they live healthy lives. Allowing the sale of tobacco products prevents me from fulfilling this obligation to my patients…Being forced to sell tobacco products would make it incredibly difficult for me to aid patients in smoking cessation. How are patients trying to quit supposed to choose relatively expensive nicotine replacement therapies over a pack of cigarettes on a nearby display? Why should we tempt these quitters? Selling tobacco products in pharmacies is not only a matter of patient health, but also a matter of professional ethics”

—Pharmacy Student at Albany College of Pharmacy & Health Sciences at an Albany County Public Hearing
ATTEND CITY COUNCIL MEETINGS, BOARD PRESENTATIONS OR MEET WITH POLICYMAKERS

These meetings are important opportunities to make your case and demonstrate public support. Make sure to have spokespersons from a variety of perspectives (refer back to the stakeholder table).26

To prepare for these meetings, follow these steps
(adapted from the American Lung Association in California, Center for Tobacco Policy and Organizing48):

• Learn the details of the meeting, such as when public comment is allowed.
• Know your elected officials, including who is likely to support the policy.
• Prepare your policy champion. Make sure he or she knows the facts and is prepared with talking points.
• Identify your spokespersons. Ideal spokespersons might have personal stories to share, be known personally by the elected officials, or be a part of an influential organization.
• Prepare your spokespersons with talking points. Use some of the tips from crafting media messages to prepare talking points. Make sure spokespersons are prepared to counter opposition arguments (see table below).

<table>
<thead>
<tr>
<th>OPPOSITION ARGUMENT</th>
<th>COUNTERARGUMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pharmacies will lose money if they are forced to stop selling tobacco.</td>
<td>Studies have not found any significant profit loss to pharmacies from banning tobacco sales.8,49</td>
</tr>
<tr>
<td>It is not the government’s role to tell a business that they cannot sell a legal product.</td>
<td>Tobacco products should not be sold in businesses that are related to health care. Hospital and clinic pharmacies do not sell tobacco products because they are health care establishments, and tobacco products are addictive and deadly. Also, governments already restrict the sales of other legal products, such as alcohol.</td>
</tr>
<tr>
<td>Pharmacies sell other unhealthy products too, like candy and soda. Are we going to tell them they cannot sell these products either? (the “slippery slope” argument)</td>
<td>Tobacco is the only consumer product that when used as directed causes illness and death. Selling tobacco products in the same store that sells medications to treat tobacco-related illness is a conflict of interest for pharmacists.</td>
</tr>
<tr>
<td>Prohibiting the sale of tobacco in pharmacies will result in lost tax revenue.</td>
<td>Pharmacies only make up a small proportion of total tobacco sales (less than 5%).2 Furthermore, by helping smokers quit, the policy can result in savings for taxpayers via reduced healthcare costs.</td>
</tr>
</tbody>
</table>

Adapted from the Rhode Island Tobacco Control Network50 and the Center for Public Health & Tobacco Policy51
Many tobacco control policies are implemented in conjunction with cessation and education efforts to help those who may be motivated to quit when the policy is passed. Consider increasing cessation efforts during this time, such as Quitline promotion.

**IMPLEMENTATION**

The job is not over if you have passed a policy. To facilitate policy implementation and compliance, communities have found it helpful to send a letter to affected retailers about the new policy and budget time for retailer education about the new policy. It is recommended that the policy take effect within 30 to 90 days of passage.26

**Sample Language for a Letter to Affected Pharmacies:**

*Dear Tobacco Retailer:*

*This letter serves to inform you that the [city/town] [governing body (e.g., Board of Health, Town Council)] has [amended/developed] its regulation dealing with [(e.g., licensing of tobacco retailers)]. The regulation includes the prohibition against the sale of tobacco products by pharmacies [Section of the regulation]. In addition, retailers that operate or contain a pharmacy or drug store will be prohibited from selling tobacco products.*

*As your establishment currently holds a permit to sell tobacco products and you are a pharmacy or a retailer that operates or has a pharmacy within it, please ensure that starting [date] you no longer sell tobacco products and that all such products are completely removed from the premises. A copy of the regulation has been included for your attention.*

*The [city/town] [governing body (e.g., Board of Health)/enforcement organization] will be visiting your establishment to ensure compliance with the new regulation. Please contact our office at [governing body or tobacco control contact information] with any questions.*

*Adapted from the Massachusetts Medical Society52*
EVALUATION

Evaluating both the policy adoption process and the local impact of the policy can build support for future tobacco control policies both in your community and in other communities seeking to implement similar policies.

Process Evaluation

Since the passage of a tobacco pharmacy ban is likely only one part of your community’s point-of-sale tobacco control efforts, be sure to evaluate coalition activities and the policy adoption and implementation processes to learn lessons that will inform future efforts. The Partnership for Prevention recommends assessing the following:

• Was your coalition representative of the community?
• What audiences did you engage in your education efforts?
• How much media (e.g., counts of earned and paid media pieces) did you generate?
• How many educational presentations did you deliver?
• Why did policymakers vote for or against the policy?
• How many compliance checks were conducted?
• How many violations were reported and/or confirmed?

Outcome/Impact Evaluation

To date, little evaluation has been done on the impact of pharmacy tobacco bans. However, there are some simple assessments that can monitor the impact of your policy:

• What impact did the policy have on tobacco retailer density? Use GIS mapping.
• Did smoking rates or cessation attempts change? Local health departments may already collect this data.
• What is the awareness of and support for the policy among the public? How has this changed since passage of the policy? Conduct public opinion polls and compare the results with polls conducted earlier in the campaign. Use the same questions identified in Step 1 so that you can compare results over time.

RECOGNIZE YOUR STAKEHOLDERS & MAINTAIN SUPPORT BASE

After you pass a policy, it is important to acknowledge your support base and all of the stakeholders involved in the process. A pharmacy tobacco ban is only one piece of a comprehensive retail tobacco control plan, so you will likely want to maintain these relationships for future efforts.

RESOURCES:

• Center for Public Health and Tobacco Policy. Countering Common Concerns: Prohibiting the Sale of Tobacco Products at Pharmacies. 2013; tobaccopolicycenter.org/documents/Pharmacy%20CCC%20Feb%202013%202014%20update.pdf

• Center for Tobacco Policy and Organizing, American Lung Association of California. Success in Policy Campaigns: 5 Phases to Victory. 2010; center4tobaccopolicy.org/wp-content/uploads/2013/05/The-Center-Campaign-Five-Phases-June-2010.pdf


• Tobacco Free Rx. tobacofreerx.org

Cessation products and cigarettes sold next to each other in a pharmacy.
REFERENCES


