PUBLIC HEALTH POLICY CHANGE

REGULATING TOBACCO IN THE RETAIL ENVIRONMENT: WALKING THROUGH A CORNER STORE
Public Health Policy Change Webinar Series

- Providing substantive public health policy knowledge, competencies & research in an interactive format
- Covering public health policy topics surrounding Tobacco, Obesity, School and Worksite Wellness, and more
- Two Tuesdays a month from 12:00 p.m. to 1:30 p.m. Central Time
- Visit [http://publichealthlawcenter.org/](http://publichealthlawcenter.org/) for more information
How to Use Webex

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All participants are muted. Type a question into the Q & A panel for our panelists to answer. Send your questions in at any time.

This webinar is being recorded. If you arrive late, miss details or would like to share it, we will send you a link to this recording after the session has ended.
Today’s Webinar

• Overview (Dave Schaibley)
• Approaching the Tobacco Retail Store (Catherine Mongeon)
  • Retailer Location, Density, Quantity and Type
  • Retail Advertising
• Within the Tobacco Retail Store (Ilana Knopf)
  • Product Types and Sales
  • Product Placement and Display
• Q&A (moderated by Dave Schaibley)
The Tobacco Control Legal Consortium

A national network of attorneys and legal centers dedicated to advancing tobacco-control policy.
Webinar Overview: Tobacco and the Retail Environment

• The Role of the Tobacco Industry in Local Retail Stores

• Impact on the Community

• Policy Options and Solutions

• Let’s Take a Walk…
PHLP’s team of lawyers, urban planners, and policy analysts works to improve community health by supporting public health leaders around the country.

PHLP does this by providing sophisticated legal and policy tools for use in everyday practice.
Retailer Location
Retailer Location
Retailer Location
Proximity to schools
Retailer Location
Proximity to schools
Retailer Location
Proximity to schools
Retailer Location
Youth sensitive areas

- Park with multiple playgrounds
- Play ground
- High School
Retailer Location
Youth sensitive areas

- Play ground
- Park with multiple playgrounds
- High School
Retailer Location
Density
Type of Retailer
Pharmacies

To help a persistent cough go to aisle 8.
To get a persistent cough go to aisle 14.

Cigarettes & Pharmacies Don’t Mix.
Advertising
Advertising
Advertising
Advertising
IN LEVEL D, PERMANENT COMPETITIVE SIGNAGE IS ALLOWED ON RETAILER’S CHOICE AREA OF THE FIXTURE(S).

IN LEVEL E, NO PERMANENT COMPETITIVE SIGNAGE IS ALLOWED ON THE FIXTURE(S).

HOWEVER, COMPETITIVE PERMANENT AND/OR TEMPORARY PRICE CALL-OUTS AND CHANNEL STRIPS ARE ALWAYS ALLOWED, PROVIDED THAT THEY DO NOT OBSTRUCT PM USA SIGNAGE OR PM USA PRODUCTS.

ENHANCED HEADER(S) AREOptional FOR THIS SET.
Advertising
Advertising
Prohibits any state or local:

• requirement or prohibition
• based on smoking and health
• with respect to the advertising or promotion of any cigarettes
Family Smoking Prevention and Tobacco Control Act

Signed into law on June 22, 2009
New Authority over Tobacco Products

- Restrictions on marketing of tobacco products

www.fda.gov/TobaccoProducts/default.htm
The **NEW!** FCLAA provision:
State or local governments may impose:
• specific bans or restrictions
• on the “time, place, and manner, ”
• “but not content,”
• of the advertising or promotion of any cigarettes
FCLAA  “Time, Place or Manner”
FCLAA

“But not content”
### FCLAA

#### Summary

<table>
<thead>
<tr>
<th>Ok</th>
<th>Not ok</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Regulating time, place or manner of cigarette ads</td>
<td>• Regulating the content of cigarette ads</td>
</tr>
<tr>
<td>• Regulating non-cigarette tobacco</td>
<td>• Cigarette label requirements</td>
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Why Are Time, Place, Manner Restrictions Risky if the FDA Law Says They’re OK?

FCLAA Preemption

1st Amendment

Changed by FDA law

NOT changed by FDA law
1st Amendment

Commercial Speech

Bill of Rights

Congress of the United States.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
Advertising
Advertising
Content-neutral restrictions
Advertising
The Center for Public Health & Tobacco Policy

- The Center is funded by grants through the Departments of Health of New York State and Vermont. We work with state tobacco control programs, as well as program contractors and partners, to develop and support policy initiatives that reduce tobacco-related morbidity and mortality.

The legal information and assistance provided in this webinar does not constitute legal advice or legal representation.
Disclaimer

This presentation provides educational information and does not constitute and cannot be relied upon as legal advice. The Center for Public Health and Tobacco Policy does not provide legal representation.
POS: Inside the Store

Product Types

Product Placement
Product Type

• Combustible Tobacco Products
Non-Combustible = Smokeless Tobacco

Traditional

Newer & Novelty
Attractive to Youth

"It's a well-known fact that teen-agers like sweet products. Honey might be considered"

Product Placement: Why it Matters
Industry Influence

Marketing Expenditures by Industry

<table>
<thead>
<tr>
<th>Industry</th>
<th>Total Marketing Budget</th>
<th>POS Marketing Budget</th>
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</thead>
<tbody>
<tr>
<td>Cigarette &amp; Smokeless Tobacco</td>
<td>$10,490,941,100</td>
<td>$9,806,743,453</td>
</tr>
<tr>
<td>(2008*)</td>
<td>$2,148,617,300</td>
<td>$392,711,000</td>
</tr>
<tr>
<td>Junk Food &amp; Soda (2006*)</td>
<td>$3,131,130,000</td>
<td>$1,251,209,000</td>
</tr>
<tr>
<td>Alcoholic Beverage (2005*)</td>
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</tbody>
</table>
## Industry Contracts & Retailer “Choice”

### B. Displays

1. **General Requirements.** All Displays utilized to merchandise PM USA Cigarettes must contain exclusively PM USA Cigarettes. Retailer must merchandise all Displays for PM USA Cigarettes on the store’s counter or within the Line of Sight of a Selling Counter. Any Display(s) on which PM USA Cigarettes are merchandised are subject to PM USA approval.

2. **Counter Displays.** If, at any time, Retailer merchandises another manufacturer’s cigarettes on a Counter Display, Retailer must merchandise Marlboro cigarettes on a Counter Display in the Number One Counter Display location. If, at any time, Retailer merchandises 1 or more other manufacturers’ cigarettes on 2 Counter Displays, Retailer must merchandise a second brand of PM USA Cigarettes designated by PM USA on a Counter Display in the Number Three Counter Display location. If, at any time, Retailer merchandises 1 or more other manufacturers’ cigarettes on 3 or more Counter Displays, Retailer must merchandise a third brand of PM USA Cigarettes designated by PM USA on a Counter Display in the Number Five Counter Display location. Retailer may not merchandise PM USA Cigarettes on more than 3 Counter Displays. Any Counter Display on which PM USA Cigarettes are merchandised must be NSS.
Industry Contracts & Retailer “Choice”

B. Displays.

(1) General Requirements. All Displays utilized to merchandise PM USA Cigarettes must contain exclusively PM USA Cigarettes. Retailer must merchandise all Displays for PM USA Cigarettes on the store’s counter or within the Line of Sight of a Selling Counter. Any Display(s) on which PM USA Cigarettes are merchandised are subject to PM USA approval.

If, at any time, Retailer merchandises 1 or more other manufacturers’ cigarettes on 3 or more Counter Displays, Retailer must merchandise a third brand of PM USA Cigarettes designated by PM USA on a Counter Display in the Number Five Counter Display location. Retailer may not merchandise PM USA Cigarettes on more than 3 Counter Displays. Any Counter Display on which PM USA Cigarettes are merchandised must be NSS.
Self-Service Displays
Powerwalls
“Eye Level is Buy Level”*

Powerwalls Revisited: Display Restrictions
Summary & Issue Spotting

Where in Store Products are Sold

By Whom Products are Sold

Type of Product Sold

How product is Packaged*
Contact us:

Center for Public Health and Tobacco Policy

tobacco@nesl.edu

www.tobaccopolicycenter.org

Thank you!
Q&A Session

• Type Questions in Webex Q&A Box
• Moderator Will Direct Questions to Speakers

Questions after today’s presentation? Email us at: publichealthlawcenter@wmitchell.edu
Next Webinar in the Series

Policy and Legal Issues with Community and School Gardens

Tuesday, March 20th, 12:00 p.m. – 1:30 p.m. CST

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