



Policy Options to Address Tobacco Product Samples and Sampling

Through licensing and related regulations, local governments (cities and counties) have the opportunity to address the sale of tobacco and related devices and products (such as electronic cigarettes) in the retail environment. This fact sheet provides an overview of considerations involved when regulating tobacco product samples and sampling. It is one in a series of resources providing Minnesota-specific information on local retail tobacco licensing and point-of-sale options.

Background

Tobacco manufacturers, distributors, and retailers frequently distribute **free** or **low-cost samples** of their products. Tobacco stores, vape shops, and hookah bars also allow **on-site sampling** where customers smoke or use products and devices in the store. Both the distribution of samples and on-site sampling are effective marketing tools used by the tobacco industry to attract new consumers and promote the use of their products.

Federal and state laws restrict the distribution of some tobacco product samples and limit the smoking and use of these products in some locations. However, not all retailers and products are subject to these restrictions. Fortunately, local governments can adopt more restrictive regulations that address samples and sampling.

Federal Law

The Family Smoking Prevention and Tobacco Control Act of 2009:

- **Prohibits** the distribution of **free samples of cigarettes**.
- **Prohibits** the sale of **cigarettes in packages of less than twenty** (no “loosies,” or single cigarettes, placed near the cash register).
- **Restricts** the distribution of **free samples of smokeless tobacco products** to “**qualified adult-only facilities**”.
- **Does not prohibit charging a nominal amount** for tobacco products (like charging a nickel per cigar).

Federal law does not currently regulate cigars, pipe tobacco, hookah tobacco, e-cigarettes, or other

tobacco products. In April 2014, the U.S. Food and Drug Administration proposed to extend its regulatory authority and expand the sampling prohibition to these other tobacco products. The final rule has not been issued as of the date of this publication and may be different than what was proposed.

Minnesota Law

Provisions in our state's laws:

- **Restrict the promotional distribution of free and low-cost samples of most tobacco products to “tobacco stores.”**
- **Prohibit conventional smoking** in most indoor public places and places of employment, but **allow smoking for the purpose of sampling in certain “tobacco products shops.”**

Minnesota's restrictions do not explicitly address electronic delivery devices.

Policy Options

Local governments can adopt more stringent restrictions, including:

- **Prohibiting the distribution of samples:** A retail licensing ordinance can prohibit the distribution of samples in the community. For example:

Distribution of samples prohibited. No person shall distribute samples of any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product free of charge or at nominal cost.

This would close exceptions in federal and state law and prohibit free or low-cost distribution of all products at all times by anyone.

- **Prohibiting the redemption of coupons:** Manufacturers and retailers may try to evade a samples prohibition by offering coupons for free or low-cost products. Local governments can prohibit retailers from redeeming these coupons. Coupon restrictions in other states have been upheld by the courts. While not a guarantee of similar results, those experiences and court decisions may help support local restrictions here in Minnesota.

- **Prohibiting smoking in all licensed retail establishments:** Sampling undermines clean indoor air laws, exposing employees and customers to hazardous secondhand smoke and potentially hazardous e-cigarette vapor. Communities can broadly define and prohibit smoking in their retail licensing ordinances. For example:

Smoking. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling aerosol or vapor from an electronic delivery device. Smoking includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product intended for inhalation, or an electronic delivery device that is turned on or otherwise activated.

Smoking prohibited. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment licensed under this ordinance. Smoking for the purposes of sampling any licensed product is prohibited.

Local clean air laws can also prohibit smoking in tobacco shops and prohibit the use of electronic delivery devices in all public places and places of employment.

CONTACT US

Please feel free to contact the Public Health Law Center at (651) 290-7506 or publichealthlaw@mitchellhamline.edu with any questions about the information included in this fact sheet or to discuss concerns you may have about implementing these policy options.