



Center for Public Health
and Tobacco Policy

Ways & Means

Countering Common Concerns:

Prohibiting the Sale of
Tobacco Products at
Pharmacies

This work provides educational materials and research support for policy initiatives and does not constitute and cannot be relied upon as legal advice.

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Introduction

Pharmacies bill themselves as a trustworthy healthcare resource, serving the community through promoting healthier lives. Yet over half of New York pharmacies sell tobacco products.¹ Tobacco is an inherently dangerous, potentially deadly product. Allowing its sale by the very same retailer that consumers rely on to fill their healthcare needs – including medications treating their tobacco related illnesses – is incongruous and sends a mixed message.² Prohibiting the sale of tobacco products in pharmacies resolves this conflicted messaging.

Pharmacy tobacco sales also imply that pharmacists approve of tobacco use.³ In truth, most pharmacists, including the American Pharmacists Association and the Pharmacist Society of the State of New York, have formally opposed selling tobacco in pharmacies.⁴ Further, eliminating tobacco sales by pharmacies removes the accompanying tobacco marketing and implicit normalization of tobacco products - significant factors in youth tobacco product initiation.

In 2008, San Francisco, CA became the first city in the nation to prohibit the sale of tobacco products in pharmacies.⁵ San Francisco's ordinance survived legal challenge and was upheld as a valid exercise of a city's power to promote the public's health.⁶ Boston, MA soon followed, noting "[t]he sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication[.]"⁷ This logic widely resonated and ordinances prohibiting pharmacy tobacco sales have since been implemented in jurisdictions across the state.⁸ The experience of these communities demonstrates a pharmacy ban on tobacco products rests on sound legal footing and is unlikely to result in economic hardship.⁹

This document responds to some common concerns raised over implementing an ordinance prohibiting pharmacies from selling tobacco products.

ECONOMIC CONCERNS

CLAIM

1. Prohibiting pharmacy tobacco sales will cause pharmacies to lose revenue and risk going out of business.

- Tobacco product sales currently make up a very small percentage of total sales at pharmacies, so the potential for revenue loss is minimal.
 - The 2007 economic census reports that tobacco sales account for less than 2% of total sales of pharmacies and drug stores selling tobacco products.¹⁰ In comparison, sales of drugs, health aids, beauty aids, and cosmetics account for 87% of total sales.¹¹
- **Ending the sale of tobacco products has had little or no economic effect on pharmacies** in jurisdictions that have implemented pharmacy sale prohibitions or in pharmacies that have voluntarily stopped selling tobacco products.
 - In the year following its tobacco-free pharmacy law, Ontario, Canada saw a net gain of 70 pharmacies (120 opened, 50 closed – fewer closings than the year prior to the ban).¹² Despite pharmacies’ opposition citing concerns of job loss and economic hardship, the data fails to show a sales ban resulted in pharmacy closings.¹³
 - Independent pharmacies that voluntarily stopped selling tobacco products have not reported economic loss.¹⁴ For example, a survey conducted in California in 2000 indicated that 88% of independently owned pharmacies that went tobacco-free experienced **no loss or an increase** in business.¹⁵
 - In Massachusetts, no pharmacy in any of the 25 municipalities with a tobacco-free pharmacy law has issued a written statement detailing income or job loss.¹⁶ Although some store managers voiced economic concerns prior to passage of the law, since implementation those pharmacies have not reported concerns about profit loss.¹⁷
 - Exaggerated claims of economic hardship caused by tobacco control policies often originate with the tobacco industry.¹⁸ The tobacco industry organizes campaigns to oppose tobacco control policies, but typically keeps its role hidden.¹⁹ Despite the tobacco industry’s repeated forecasts of economic disaster, its **claims of economic hardship resulting from tobacco control policies have consistently been unfounded**. For example:
 - Tobacco tax increases have not harmed local retailers, despite tobacco industry (and retailer) predictions to the contrary.²⁰
 - Workplace smoke-free laws have not had a negative economic impact on restaurants and bars, despite tobacco industry insistence that they would cause significant losses in business.²¹

CLAIM

2. A law prohibiting the sale of tobacco in pharmacies could put some stores containing a pharmacy at a competitive disadvantage.

- **A comprehensive law prohibiting pharmacy tobacco sales would apply equally to all retailers with pharmacies, leveling the economic playing field.**
 - San Francisco attempted a tobacco-free pharmacy law exempting supermarkets and big box stores containing a pharmacy. An appellate court struck down the law, ruling the exemption unfairly differentiated by retailer type in violation of the Equal Protection Clause of the United States and California constitutions; a law prohibiting the sale of tobacco in pharmacies must apply equally to all retailers with a pharmacy.²² (San Francisco has since amended its tobacco-free pharmacy law to apply to all retailers.²³)
 - Boston’s tobacco sales ban applies to all pharmacies, providing no exemption for grocery or big box stores.²⁴
 - The town of Everett, Massachusetts made a narrow exception for retailer Costco Wholesale, which is licensed as both a wholesaler and retailer of cigarettes, to sell cartons of cigarettes wholesale to licensed tobacco retailers.²⁵ Tobacco sales are still prohibited to all except a licensed retailer.²⁶ Unlike a general exemption for grocery and big box stores which differentiates by retailer type, this narrow exception legitimately distinguishes sales made directly to consumers from sales to licensed tobacco retailers.

TAX CONCERNS

CLAIM

3. My locality cannot afford the tax revenue loss resulting from a pharmacy tobacco sales ban.

- A law prohibiting pharmacy tobacco sales would apply only to retailers containing a pharmacy. Licensed tobacco retailers without a pharmacy may continue to sell tobacco products.
- Most cigarette purchases are not from pharmacies; tobacco sales are usually at convenience stores and gas stations.
 - Nationwide, only 4.5% of cigarette sales occur in pharmacies.²⁷
 - In New York, the vast majority of smokers report purchasing cigarettes at a convenience store or gas station.²⁸
 - There is no evidence demonstrating economic harm resulting from a community/locality pharmacy tobacco ban.
 - Any decrease in tobacco sales, and thus decrease in tax revenue, resulting from a pharmacy tobacco sales ban would likely be gradual and due to fewer new tobacco users and an increase in cessation (attributable to decreased exposure to tobacco product marketing – the very point of this ordinance!).

GOVERNMENT AUTHORITY

CLAIM

4. The government has no authority to ban tobacco sales by pharmacies.

- States and municipalities are granted police powers, allowing them to enact legislation to promote public health, safety and welfare.²⁹
 - Regulating sales of tobacco products fits within this government charge: Tobacco products are inherently dangerous and unique – they are the only product that, when used as intended, will likely kill you.
- The Family Smoking Prevention and Tobacco Control Act explicitly authorizes states and municipalities to regulate the sale of tobacco products.³⁰
- **Prohibitions on tobacco sales in pharmacies have been upheld by the courts.** San Francisco's prohibition was upheld as a valid exercise of the city's power to promote the public health.³¹ Subsequently, many other municipalities, including Boston and various other cities and towns in Massachusetts, have enacted prohibitions **without facing any lawsuits**.³²
- A pharmacy ban builds on New York's current regulation of tobacco product sales, including prohibiting sales to minors,³³ requiring age verification through a driver's license or photo ID,³⁴ and restricting sales by vending machine.³⁵



CLAIM

5. The government should not tell pharmacies what they may sell.

- The government has an interest in and the authority to regulate the health, safety, and well-being of the population.
- Regulating sales of harmful and other products is a typical government function. New York State regulations on the sale of dairy products,³⁶ firearms,³⁷ and tobacco,³⁸ are just a few examples.
 - Licensing businesses is a well-established method for government to regulate sales. Business owners accept the terms of their license, including its restrictions selling certain products.

- **Pharmacies are health focused so selling tobacco products sends a mixed message.**
 - Pharmacies market themselves as a health care resource. Customers visit them to purchase medications and other products intended to promote health.
 - Pharmacies are increasing their role as direct healthcare providers, dramatically expanding the number of scope of their retail clinics.³⁹
 - Tobacco products stand in stark contrast to pharmacies’ health care mission. Tobacco products are the most deadly product sold in America, killing up to half of its users when used exactly as intended.⁴⁰
 - Accordingly, pharmacy sales of tobacco products are highly contradictory and permitting their sale broadcasts an implicit message that tobacco products are good for your health.⁴¹
- **Pharmacies cater to customers who are especially vulnerable to tobacco use, such as former users.**
 - Customers visit pharmacies to purchase medicines to treat their tobacco related diseases and for assistance with tobacco product cessation. Selling cigarettes and other tobacco products alongside these medications and cessations aids is contradictory and potentially detrimental to smoking cessation efforts and the public health.⁴²
 - Finally, because tobacco products themselves cause numerous diseases for which pharmacies sell medications and treatments, it is a conflict of interest for pharmacies to sell tobacco products. In effect, pharmacies that sell tobacco products simultaneously sell products that cause and cure the same diseases.⁴³

GOVERNMENT NECESSITY

CLAIM

6. Some pharmacies have voluntarily stopped selling tobacco– is a government mandate needed?

- **Implementation of a voluntary policy is uncommon and unlikely at most chain pharmacies.**
 - **99% of large chain pharmacies in New York still sell tobacco products.**⁴⁴ These pharmacies make up roughly one-third of all licensed pharmacies in New York.⁴⁵ In addition, 88% of grocery stores containing pharmacies still sell tobacco products.⁴⁶ Overall, 52% of all pharmacies in the state still sell tobacco products.⁴⁷
 - Unlike independent pharmacies and pharmacies affiliated with hospitals and clinics, which have overwhelmingly voluntarily stopped selling tobacco, chain pharmacies continue to sell tobacco products. (Just 15% of independent pharmacies and zero hospital or clinic pharmacies still sell tobacco products.⁴⁸)
 - Chain pharmacies are typically corporate entities less influenced by pressure from community values and organizations than independent and clinically affiliated pharmacies.⁴⁹

- Local franchises may not have authority to voluntarily stop selling tobacco without a government mandate.
- Voluntary sales bans in other jurisdictions have proven insufficient.
 - Chain pharmacies nominal rates of implementing a voluntary tobacco sales ban in San Francisco bolstered support for San Francisco’s 2008 tobacco-free pharmacy law.⁵⁰
 - In Canada, voluntary efforts to ban the sale of tobacco products had only limited success.⁵¹ As a result, eight provinces (Ontario, Quebec, New Brunswick, Nova Scotia, Nunavut, Newfoundland, Labrador, and Prince Edward Island) enacted laws prohibiting the sale of tobacco products in pharmacies.⁵²
- **Voluntary policies are ineffective:** An enforceable government mandate is necessary to ensure implementation of a pharmacy tobacco sales ban.

SLIPPERY SLOPE

CLAIM

7. Tobacco products are unhealthy, but so are many products, such as alcohol and junk foods. What is next?

- **Tobacco products are unique.**
 - They are the most deadly product sold in America and the only legal product that, when used exactly as intended, will kill up to half of its long-term users.⁵³
 - Virtually all new tobacco product users are youth,⁵⁴ and the tobacco industry has a record of impermissibly targeting youth with its marketing.⁵⁵
 - The majority of consumers do not want to use the product: most smokers want to quit, and most smokers try to quit.⁵⁶
- The Surgeon General has identified tobacco use as a pediatric epidemic and limiting tobacco product displays and marketing as one instrument to help combat it.⁵⁷
- Unlike some retail outlets, visiting a pharmacy may not be a choice.
- Prohibiting pharmacy tobacco sales are an appropriate legislative response to public health crises caused by tobacco product use.

PUBLIC SUPPORT CONCERNS

CLAIM

8. New Yorkers do not support a tobacco-free pharmacy law.

- New Yorkers widely support prohibiting tobacco sales in pharmacies.
 - 69% of residents of the Capital Region think that pharmacies should not sell tobacco products.⁵⁸
 - 73% of residents of Broome County think that pharmacies should not sell tobacco products.⁵⁹
 - 56% of residents of Hudson Valley and Long Island think that pharmacies should not sell tobacco products.⁶⁰
 - 58% of residents of New York City favor a law that would ban tobacco sales in pharmacies.⁶¹

CLAIM

9. Pharmacists do not support a ban on the sale of tobacco products in pharmacies.

- Pharmacists overwhelmingly support a ban on pharmacy sales of tobacco products.⁶²
 - Since 1971 the American Pharmacists Association has opposed the sale of tobacco products in pharmacies.⁶³
 - In July 2009, the House of Delegates of the Pharmacist Society of the State of New York passed a resolution supporting efforts to end the sale of tobacco products in pharmacies. The Pharmacist Society is the largest pharmacy association in New York State and represents nearly 2,700 pharmacists.⁶⁴
 - 75% of pharmacists polled in western New York support a law prohibiting the sale of tobacco products in pharmacies.⁶⁵
 - 82% of California pharmacists surveyed for a 2006 report were against or strongly against tobacco sales in pharmacies, while less than 2% favored of such sales.⁶⁶



Citations

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- ³ Id. (“By selling tobacco products, pharmacies convey tacit approval to their purchase and use; this, in turn, sends a mixed message to consumers, who typically patronise pharmacies to receive health care services.”)
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- ¹¹ Id.
- ¹² Mark C. Taylor, *Banning Cigarette Sales in Pharmacies Does Not Result in Pharmacy Closures*, smoke-free.ca, http://www.smoke-free.ca/pdf_1/pharmacy.PDF (last visited Mar. 22, 2013).
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- ¹⁴ See, e.g., *How Californians Really Feel About Tobacco in Pharmacies . . .*, PRESCRIPTION FOR CHANGE (Oct. 2000), <http://www.thecmafoundation.org/rxchange/pdfs/otherpdfs/califax.pdf>.
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- ¹⁶ *Briefing Sheet: Tobacco Sales Bans in Health Care Institutions (Pharmacies)*, *supra* note 8.
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- ¹⁹ CAMPAIGN FOR TOBACCO FREE KIDS, *DEADLY ALLIANCE: HOW BIG TOBACCO AND CONVENIENCE STORES PARTNER TO MARKET TOBACCO PRODUCTS AND FIGHT LIFE-SAVING POLICIES* 11 (March 5, 2012), *available at* http://www.tobaccofreekids.org/content/what_we_do/industry_watch/store_report/deadlyalliance_full_report.pdf.
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- ⁴³ See *id.*
- ⁴⁴ *Prescription for Change: New York Pharmacy Facts*, supra note 1.
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- ⁴⁶ *Id.*
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- ⁴⁸ *Id.*
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⁵⁰ Katz, *supra* note 42 at 1452; and Eule, *supra* note 50 (comparing pharmacies by type offering cigarettes for sale between 1976 and 2003 and finding traditional chain pharmacies declined from 100% to 93.8%, independent pharmacies declined from 90.6% to 24.1%, and clinically affiliated pharmacies declined from 58.3% to 0%).

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⁵² *Id.* at 1451.

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⁶⁰ *Id.*

⁶¹ *Id.*

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