



- Retail Policy Activity
- Barriers
- Opposition & Preemption
- Store Assessments
- Resources

# Tobacco Retail Policy Trends in 2019

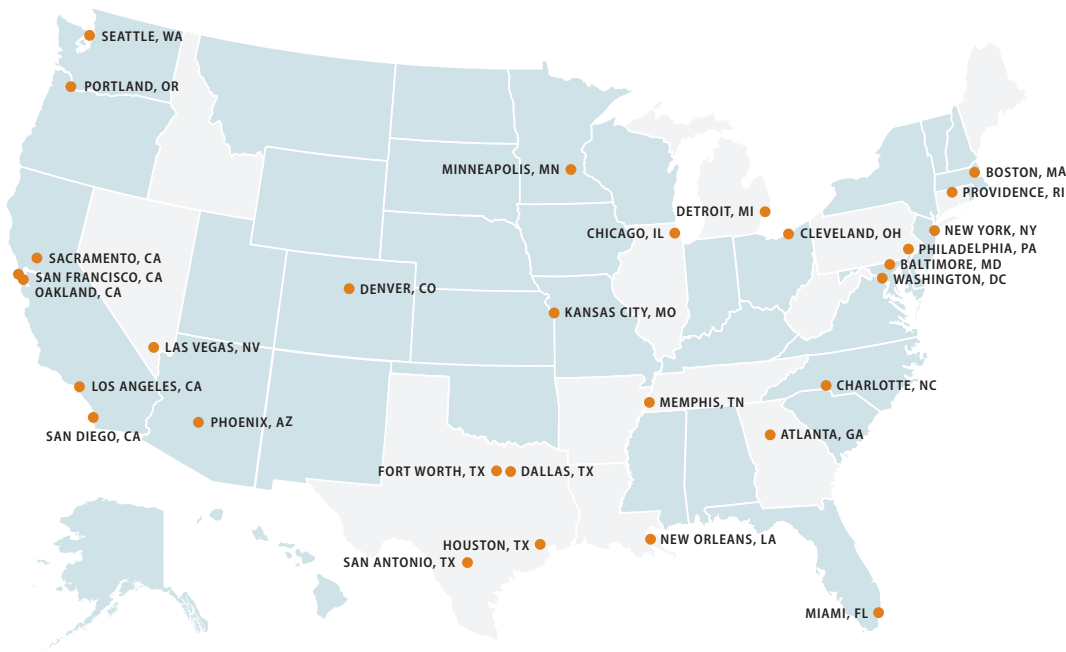
Insights from  
the Field

# Overview

Between March and July 2019, we interviewed tobacco control program managers or coalition members in each of the 30 ASPiRE Community Advisory Board (CAB) cities about their retail policy efforts. We also conducted an online survey of state tobacco control program managers in all 50 states. Fourteen of the 37 states that responded also host CAB cities.

We collected data on **Retail Policy Activity**, **Barriers** and **Opposition** to implementing policies, use of **Store Assessments**, and helpful and needed **Resources**. We then compiled and translated the information into five user-friendly reports intended for a broad audience of stakeholders working in the tobacco retail policy arena.

## Map of ASPiRE Community Advisory Board (CAB) city interview participants (●) and state online survey participants (■)



The ASPiRE Center is building a strong scientific evidence base for effective policies in the retail environment to help reduce tobacco use, tobacco-related disparities, and the public health burden of tobacco, including cancer.

### We are working to...

- Fill gaps in the evidence about how different aspects of the retail environment—such as retailer density—affect tobacco use and disease.

- Investigate the potential of different retail policies to raise the cost of tobacco products, reduce tobacco use, and increase cessation, especially for populations with the highest rates of tobacco use.

- Help communities implement scientifically sound, legally defensible, and practically feasible retail policies in retail settings by translating and sharing evidence about what works.

# Retail Policy Activity

There are approximately **27 tobacco retailers for every one McDonald's** in the United States. Cities and states are focusing on retail policy solutions to reduce tobacco use in their communities, but much more work remains.

We asked tobacco control practitioners in the 30 ASPiRE cities about their retail policy work and its priority in strategic plans. Here's what we learned...

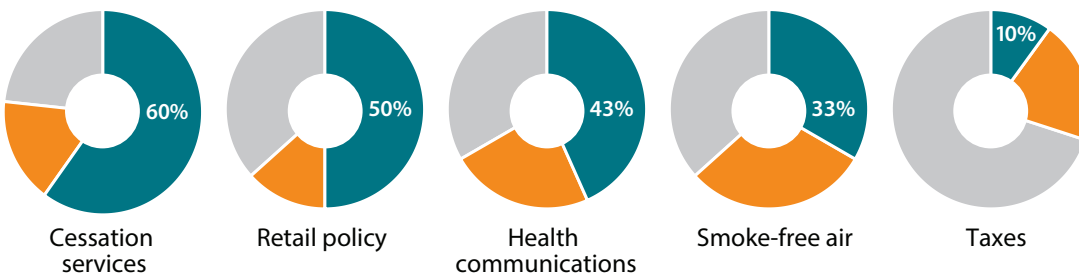


## Cities prioritize tobacco retail policy.

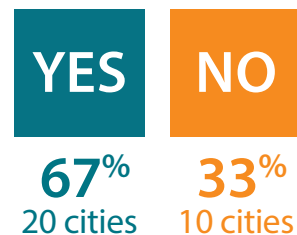
Most cities placed a high or moderate priority on retail policy and included it in their strategic plan. Cities ranked retail policy second only to cessation services as a high program priority.

### Level of priority placed on different areas of tobacco prevention & control

■ High ■ Moderate ■ Low, none, not sure



### Proportion of cities that include retail policy in their strategic plan



## Polls show support for retail policy among policymakers & the public.

Forty percent of cities reported polling the public or policymakers about retail policy. These cities reported generally strong support from the public and moderate support among policymakers.

6 cities polled members of the public only

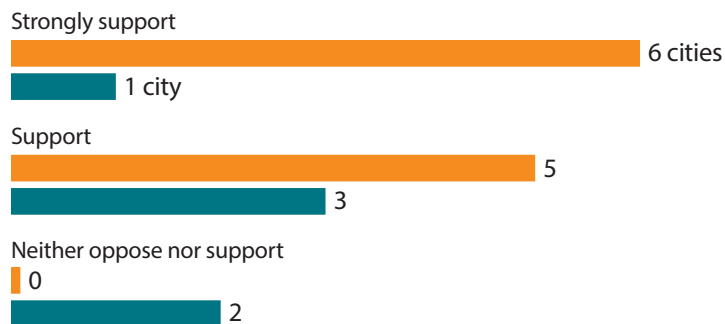


1 city polled policymakers only



5 cities polled both members of the public & policymakers

### Level of support from the public and policymakers





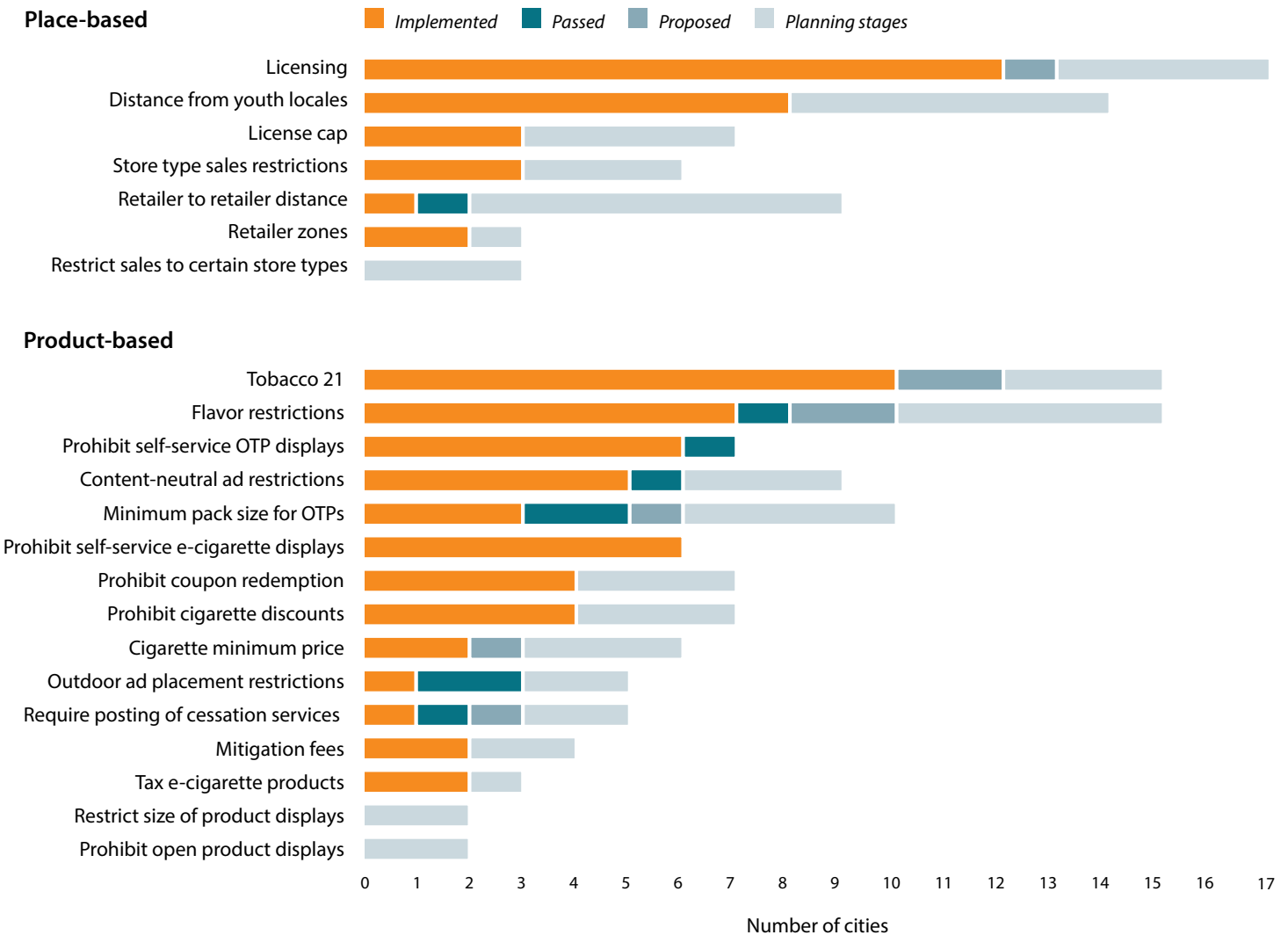
## Cities show the most activity in retailer licensing & Tobacco 21 policies.

Respondents' jurisdictions most often passed or implemented **retailer licensing and Tobacco 21 policies**. It is important to note that city interviews and state surveys took place before the federal government passed Tobacco 21 nationwide. Flavor restrictions, limiting retailers near places youth visit, and prohibitions on self-service displays of e-cigarettes and other tobacco products were also popular.



Window cling for Multnomah County tobacco retailers to notify customers of new Oregon T21 law, January 2018

### Local retail policy activity in 30 ASPIRE cities, 2019



NOTES: OTP = Other tobacco products such as cigarillos and little cigars. All policies are at the local level. Policies are listed from most to least activity for both the place-based and product-based environment. Policies represent those in place at the local (municipal or county) level at the time of the interview. Cities on average had implemented 2.7 policies and were planning 2.1 policies.

# A View from the States

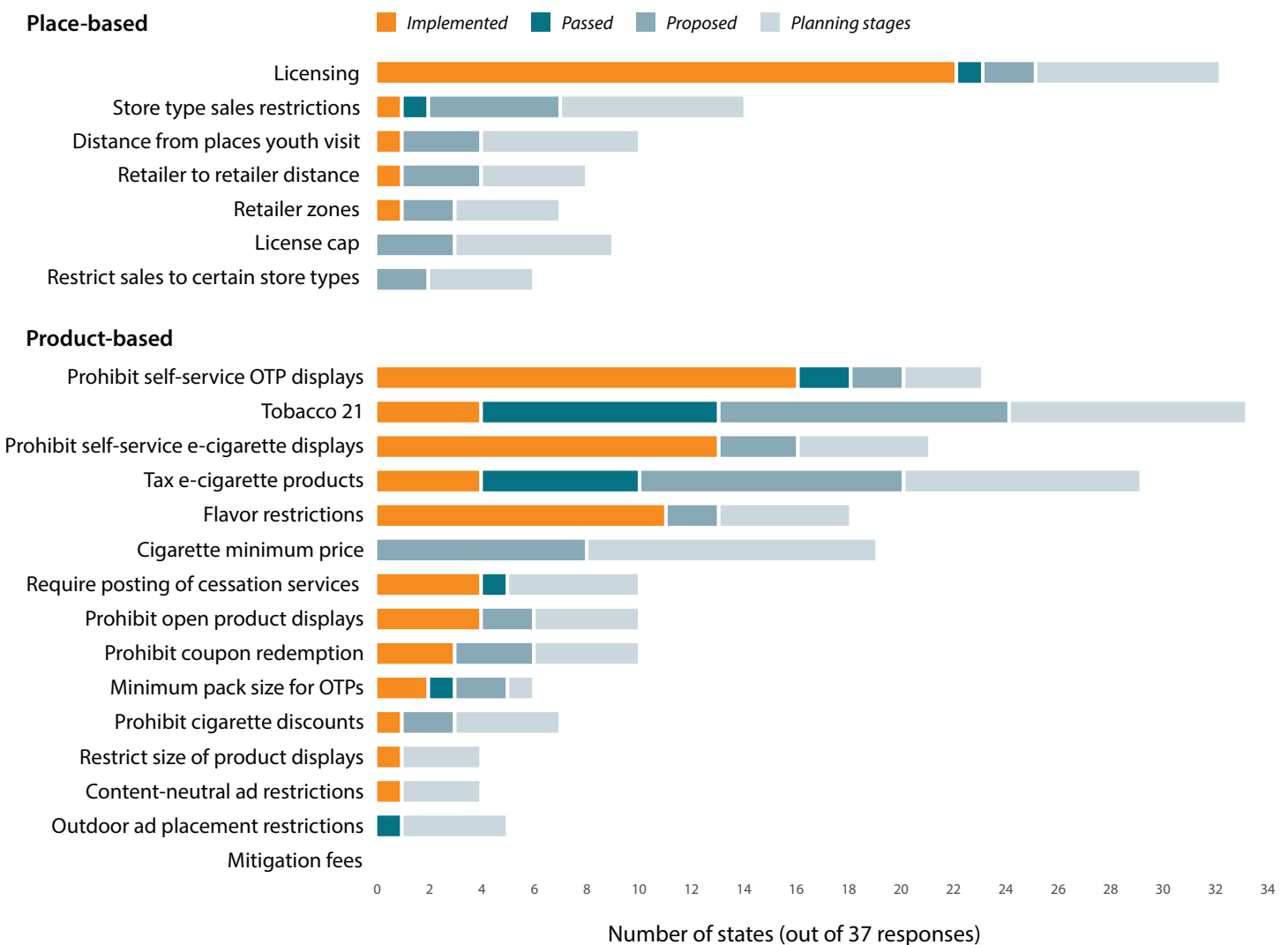
We also surveyed state-level tobacco control program managers about retail policy activity.

Here's what states were working on...

As with cities, about half of responding states placed a high priority on retail policy work, and most included it in their strategic plans.

Retailer licensing, Tobacco 21, and self-service prohibitions were popular among both states and cities, but cities were more active in advancing policies placing restrictions on places youth visit.

## U.S. state-level retail policy activity, 2019



# Barriers

Tobacco companies spend **more than \$1 million an hour** to advertise and promote tobacco products in retail stores. Advocates working to reduce the deadly effects of these products on their communities face challenges at every step in the policy process.

We asked tobacco control practitioners in 30 ASPiRE cities about barriers to adopting and enforcing tobacco retail policies. Here's what we learned...



## Lack of political will & industry activity are roadblocks to policy adoption.

**Lack of political will** and **industry opposition** and were the most common barriers cities experienced to advancing retail policies.

**LACK OF POLITICAL WILL:** Limited or no committed support among key decision makers to address policy problems or for particular policy solutions.

“ The biggest challenge is how to make it a bread-and-butter issue for community members and elected officials.

**INDUSTRY ACTIVITY:** Lobbying, litigation, or influence on legislative proposals by tobacco companies, local retailers, or retailer associations that may be mobilized by the tobacco industry.

“ The industry's a big barrier, and there's the fact that they come to all the hearings and say whatever they want to say.



Sign from St. Paul Coalition of Neighborhood Retailers opposing the proposed menthol restrictions in 2017. Source: Association for Nonsmokers Minnesota



## When retailers avoid enforcement, cities get creative.

**Retailers try to avoid enforcement** in many different ways depending on the retail policy in place, including:

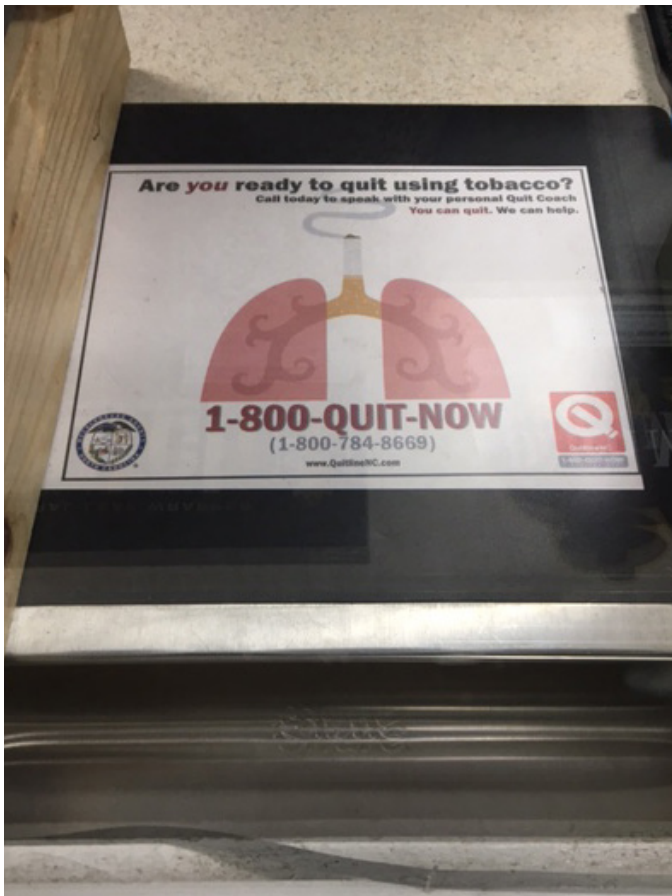
- Claiming retailer did not receive inspection notices
- Claiming retailer falls outside distance restrictions
- Failing to post signage of age requirement
- Putting products out-of-sight
- Sectioning off areas of the store or building internal walls to identify as an adult-only retailer
- Selling separate vials of liquid nicotine and flavoring and then mixing them for free

**Cities found a variety of solutions** to meet enforcement challenges, such as:

- Educating retailers on changes in the law
- Working with GIS specialists to create resources for retailers to check if they are within distance restrictions
- Amending laws to allow seizure of hidden products
- Helping enforcement officers by tracking compliance and researching which products violate policies
- Funding enforcement efforts by adding license fees or prioritizing Master Settlement funds
- Increasing the number of inspections

“ Some stores have split their business in two. They have sectioned off certain areas of the store. A couple of them have built internal walls for their tobacco area.

“ Enforcement is based on listed prices for visible products. If people are selling loosies or other products that are not visible, that is a barrier to enforcement.



Mecklenburg County, NC (Charlotte) uses countertop flyers in its Healthy Corner Store initiative



Retailer sign from SmokeFree Philly, Philadelphia, PA



## Limited resources & competing priorities hinder enforcement.

Many cities reported that enforcement was not happening enough, or at all. Lack of **staffing**, **coordination**, and **funding** for enforcement activities were challenges for many cities. These challenges were especially prevalent among cities with low levels of retail policy activity.

- “ One of the primary challenges that law enforcement always has is that they don't have the staffing. They're notoriously short on funding and people power.
- “ Law enforcement and public health are in two different spheres of government administration, so there isn't always a lot of crossover and talking with each other.

In many ASPIRE cities, police, rather than health departments, were responsible for enforcing retail tobacco laws. Cities reported that law enforcement often considered other issues more pressing than monitoring tobacco retail laws. These **competing priorities** hindered active enforcement of these laws.

- “ I don't think tobacco or retail licensing is regularly enforced anywhere unless there are public health folks pushing the enforcement body to do that.
- “ They're going to prioritize problems that seem more urgent. Drug problems, alcohol problems, and violence-related problems are always going to take precedence over what they see as monitoring and compliance for tobacco laws.

## A View from the States

We also surveyed state-level tobacco control program managers about retail policy activity.

Here's what they had to say about the barriers to policy progress in their state.

**Lack of political will** was also a key challenge for states. States with more policy activity experienced more barriers to policy progress, especially around enforcement and industry political activity.

### LACK OF POLITICAL WILL

- “ There is a very conservative, local control mindset. Passing policies that impose restrictions on businesses is not very popular.

### ENFORCEMENT

- “ Enforcement of policy is labor intensive. We have to train youth and law enforcement. The sheer number of flavored products, plus unclearly labeled products, makes it difficult.

### INDUSTRY ACTIVITY

- “ E-cigarette lobby is very active and puts up a united front against both state and local legislation.





# Opposition & Preemption

Opposition from the tobacco and vaping industries and other groups, along with state-level preemptions that limit local authority to regulate tobacco, **hamper local innovation in retail policy and can leave local stakeholders virtually powerless**, with few or no options to address tobacco use.

We asked tobacco control practitioners in the 30 ASPiRE cities about opposition to tobacco retail policies and the impact of preemption laws. Here's what we learned...



## Retailers & trade groups challenge proposed policies.

Opposition came most frequently from **retailers and retail associations** and focused on the potential for loss of sales. Retail representatives spoke at **city council hearings** and other public meetings, met with **policymakers**, donated to **political campaigns**, and gave **recognition and awards** to law enforcement and other public officials.

### Frequently opposed policies:

- Flavored product regulations
- Menthol-only regulations
- Other tobacco control policies, such as smokefree laws or tobacco taxes

“ The tobacco industry came, but they weren't nearly as vocal as the retail industry. Retailer representatives met with all of the council members.

“ Those hearings that I mentioned about the regulations, we encounter a lot of opposition...retailers saying you're stealing our livelihood and we're not gonna be able to retire.



## Tobacco industry aims to stall policy action.

The tobacco industry often voiced its opposition by intervening in the political process. It brought in well-known personalities to **testify at public hearings** or speak at community forums. Cities also reported that industry representatives not only lobbied lawmakers, but also **blocked legislation**, introduced **counter-proposals**, and attempted to **weaken policy language**.

“ When we have presented a bill or we've gone to committee to try to get something passed, the tobacco industry has funded whoever they fund to fight what we're doing, and most of our work is sent to summer study or just gets bottled up in committee.



## Vaping industry joins the opposition.

The vaping industry also **opposed retail policies**, such as clean indoor air ordinances and flavored product restrictions that included e-cigarettes. Many vaping industry advocates focused their arguments on harm reduction and also on **suggesting that e-cigarettes could aid cessation**.



We've faced challenges from the vaping industry. They seem to have a really strong network of vapor advocates that really try to beat us down whenever we try to incorporate vaping into any tobacco policy. We just try to use science, and they come with their anecdotal stories of success about quitting tobacco with vaping.



## Cities overcome opposition by engaging youth & using innovative strategies.

The most common strategy cities used to overcome industry influence was **engaging youth** to speak in support of retail policy. Cities also used a variety of other strategies, including:

- **Educating policymakers** about industry tactics and dispelling myths about tobacco policy
- **Forming partnerships** with retailers and chambers of commerce
- **Gathering economic data** from other cities
- Finding a strong **champion**
- **Framing** tobacco use as a social justice issue



The city has a youth congress and their motto is, 'No decision about us without us.' They were incredibly engaged. They made presentations to the city council health committee and told them about the challenges of cheap flavored tobacco.



Youth show support for Tobacco 21 in Pennsylvania. Source: Pennsylvania TRU



## State legislatures repeatedly shoot down local efforts to overturn preemption.

Nearly half the cities that are working to repeal preemption reported a **lack of political will at the state level** in overturning preemption. Support for repealing preemption was greater where there was stronger support for tobacco control laws.



Every year, our partners continue to advocate for preemption to be repealed. So far, no luck. Even though bills are proposed, they either get struck down at committee or never get voted on at all.

**WHAT IS PREEMPTION?** Preemption occurs when, by legislative or regulatory action, a higher level of government (state or federal) eliminates or reduces the authority of a lower level over a given issue.



## Preemption laws stifle innovative local policies.

State preemption laws limit the authority and ability of local governments to regulate tobacco. Most cities that reported preemption barriers had little retail policy activity. To counter preemption, cities used strategies such as **encouraging businesses to voluntarily adopt** retail restrictions and seeking **legal help** in strengthening policy language to regain local control over tobacco policies.

- “ It shapes what we can and cannot do and limits what we want to do. We just move on to other things that we’re not preempted from doing.
- “ Having that broad preemption laid out in the law has really hampered any innovation. We can’t even get past our internal conversations to bring it to a policymaker.

- “ It stopped our youth program from doing that work. About eight years ago, they tried to work on point-of-sale. They did a project on it, and then had tried to get some youth groups to work on it, but preemption made it stop.
- “ Store owners know that we’re preempted, so we can’t force them to do anything. We can try to convince them to do it, but if they think it’s going to affect their bottom line, whether it’s healthy or not, they don’t want to do it. They don’t want to be a part of it.

## A View from the States

We also surveyed state-level tobacco control program managers about retail policy activity.

Here’s what they had to say about industry challenges.

**States reported that industry influence stalled progress on retail policy.**

- “ The tobacco/vape lobbyists have worked successfully behind the scenes to convince legislators to oppose or disassemble good tobacco control legislation.

**States were often blocked from pursuing state-level changes.**

- “ The main barrier is at the state level...we are gathering data and trying to set the stage for making state-level changes but we cannot even get clean indoor air passed.



# Store Assessments

**Most tobacco is purchased from neighborhood stores.** Store assessments help educate policymakers and the public about tobacco's impact on their communities and illuminate neighborhood disparities.

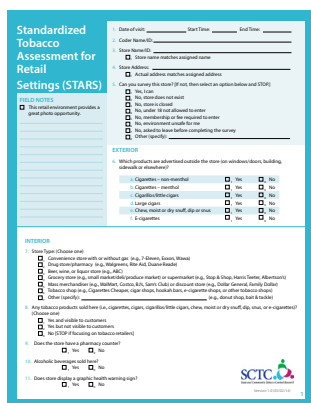
We asked tobacco control practitioners from the 30 ASPiRE cities how they assess the tobacco retail environment and use the data they collect. Here's what we learned...



## Cities use store assessment data to plan approaches & educate policymakers.

### STARS (Standardized Tobacco Assessment for Retail Settings)

is a simple, 20-item store observation tool that takes about 10 minutes to complete. Most of the 30 ASPiRE cities conducted store assessments at least once. While some cities used the STARS tool as-is, **most used a modified version of STARS** or used other tools.



STARS is available for download at [countertobacco.org](http://countertobacco.org)

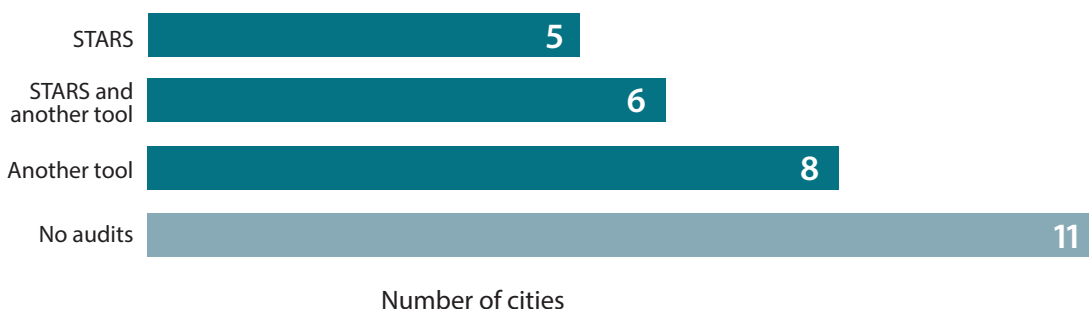
“ We were able to put the STARS locations onto a website and map which ZIP codes had the highest populations of tobacco retail outlets with respect to race, ethnicity, age, gender, education, socioeconomic status, etc.

“ We used it to help policymakers and decision makers understand the impact of tobacco price, product placement, and promotion, as well as density and violation rates in their community.

### Cities used store assessment results to:

- **Understand** the local retail environment to plan policy approaches
- **Create** maps of tobacco retail density
- **Educate** policymakers, retailers, and partners about the retail environment
- **Advance** specific retail policies

### Most cities used a modified version of STARS or used another tool





## Cities survey retail stores, but not regularly.

Most cities conducted store assessments as a **one-time event** or **every few years**. Some cities conducted assessments only when requested, such as to gather information about an emerging tobacco control issue or for a new retail policy initiative.



Recently, it's been every two years. I think it depends on funding.



## Education & technology make data collection easier.

Retailers were sometimes hesitant to let data collectors into stores. **Educating store employees** about the assessment process made it easier to get cooperation, and **mobile apps** made data collection simpler and less intrusive. Analyzing the large amount of data collected during store assessments and using it to create specific policy recommendations also presented difficulties, especially for cities with fewer resources.



Back in 2011, STARS was a paper and pen survey. It was a disaster for data collection and synthesizing the results. This time we created a modified STARS mobile application where our STARS field workers can go in the community and conduct the STARS survey straight on their mobile phone.



It's really hard to take that information and make solid policy recommendations. It was difficult to narrow our focus.



Inga Suneson, an AmeriCorps VISTA service member with Multnomah County, OR (Portland) Health Department, collects data for the tobacco retail assessment. Source: Multnomah County Health Department



## Cities modify STARS to meet their needs.

Of the cities who used STARS, about half modified the tool. They made changes to **better reflect state policies** or collect information about **non-tobacco products**, such as alcohol or food. Some cities modified the tool to improve data collection, such as creating a mobile version of the tool or shortening it to speed up the surveillance process.

- “ We documented the presence of Tobacco 21 signage to get some assessment of level of compliance with our policies.
- “ We created a modified STARS mobile application where you can download the app on your mobile phone and conduct the STARS survey straight from your phone.
- “ We shortened it so that we could make it quick, fast, and easy.

# A View from the States

We also surveyed state-level tobacco control program managers about retail policy activity.

Here's what they had to say about conducting retailer assessments.

**All of the responding states had conducted store assessments at least once. States with more retail policy activity usually assessed retailers every year, while lower-activity states were more likely to conduct assessments irregularly or on a single occasion.**

- “ This is conducted annually, but it isn't conducted in every locality. There are only a handful of areas that have the time and capacity to conduct the survey.

**States most commonly used the STARS tool to conduct store assessments. Several states used different tools or developed their own assessments. A few modified STARS or used it with another tool.**

- “ We use tools similar to STARS which we call 'Operation Storefront' and 'Operation Vapefront.'

**Although retail assessment went smoothly in most states, a few identified challenges with data collection and analysis, similar to those that cities experienced.**

- “ With the vast amount of data that is collected, community members are having a difficult time sorting through it to determine what to use.



When people learn about the tobacco industry's deceptive tactics, they come together and fight back. Partnerships have driven local tobacco retail policy successes, and **states and cities need more resources to keep the momentum going.**

In 2019, we asked tobacco control practitioners in the 30 ASPiRE cities to identify the organizations and products that are most helpful to advance their policy work. Here's what we learned...



## Local & national partners are key to adopting retail policies.

City respondents found local and national partners the most helpful in advancing their policy work. In particular, **city council members** advanced policy proposals and **youth advocates** gave moving testimony. **National organizations** helped lobby for retail policy and provided retail policy expertise. Other helpful resources included support from **state tobacco control programs** and data from **store assessment tools like STARS.**



Supporters celebrate final vote for menthol restrictions in Minneapolis, MN.  
Source: Association for Nonsmokers Minnesota

### Cities cited these national organizations as supportive of retail policy:

- American Lung Association
- American Heart Association
- American Cancer Society
- National Association of Attorneys General
- Counter Tools

“ Mostly, I think it was that there was a very motivated elected official who moved it forward. He wanted to see local action.

“ We have people from American Lung and American Heart that are on the team who are able to provide resources that we can't. They do things like lobby and talk to city council members and state legislators.

Several cities, mainly those with **lower policy activity** levels, could not specify helpful resources.

Cities with **more policy activity** used **data from scientific research** to build support for retail policy and **case studies** to guide implementation.



## Cities seek advice & information on retail policy from model jurisdictions.



New York City, NY. Photo: Fezbot2000/Unsplash

Cities frequently cited places with more policy activity, such as **New York**, **San Francisco**, and **Chicago** as models. Other cities looked to places with similar demographics or political environments.



San Francisco, CA. Photo: Eduardo Santos/Unsplash



I depend on my colleagues in Chicago and Philadelphia a lot because our cities mirror around certain issues. I look to them for what they're doing policy-wise, and programmatically.



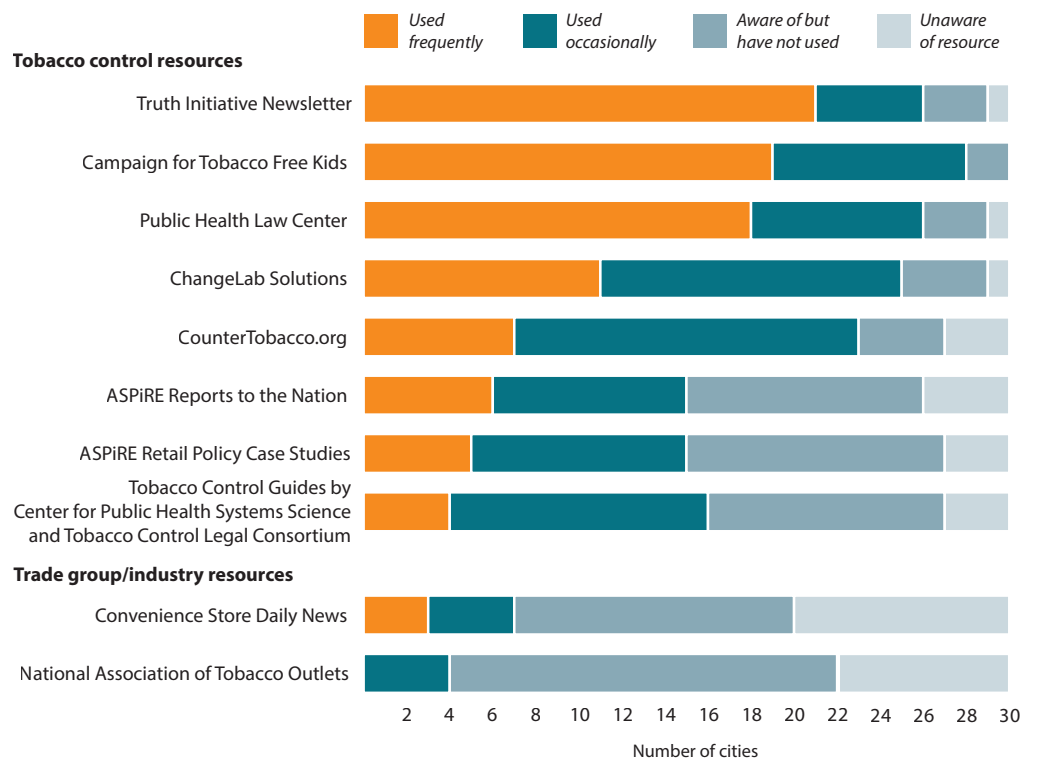
## Truth Initiative, Campaign for Tobacco-Free Kids top list of go-to resources.

Respondents also frequently mentioned the **Public Health Law Center** as a great resource.

A few respondents **monitored tobacco trade group news** outlets that track retail trends. These publications can be informative sources for new products and marketing campaigns. They can also be helpful for other public health-related issues, like the availability of sugar-sweetened beverages or healthy or unhealthy food products.

“That’s my favorite recently [referring to *Convenience Store Daily News*]...we get all kinds of good stuff from them.”

### Top 10 helpful resources, ranked by use







## Cities need data, evidence, & policy briefs.

In addition to noting helpful resources, city respondents also noted which resources they most needed. Most often, these included **research and evaluation data** to show the need for retail policies and the effectiveness of different policy strategies. Those relatively more active in retail policy also wanted **case studies** to learn about retail policy efforts in other cities.

“ I always think case studies are helpful because more often than not, whether it’s our board of supervisors or city council, they want to know what other cities have done and if they’re effective.



Some city respondents also reported needing **policy briefs** with the latest policy language and case law, especially around flavor restrictions.

“ Policy briefs would be awesome; anything to help reduce or eliminate the flavored stuff, or even info from other states that have successfully overturned preemption.

### Cities need resources on a variety of topics:

- Flavor restrictions that include menthol
- Tobacco 21
- Overturning preemption
- E-cigarette regulation
- Retailer density

## A View from the States

We also surveyed state-level tobacco control program managers about retail policy activity.

Here’s what they had to say about the resources they use and need most...

### What resources (partner support & publications/data) are most helpful to states?

- National resources (e.g., Public Health Law Center, Counter Tools, and Change Lab Solutions)
- Other state departments (e.g., alcohol and tax)
- State program work groups focused on retail policy
- State attorneys general

“ The Public Health Law Center has been invaluable for furthering our efforts.

### What resources do states need most?

- Legal and policy support, to help draft legislation
- Retail sales and evaluation data, to help make the case for retail policy

