

Prohibiting Sampling of Tobacco Products through a Local Ordinance

July 2009

A long used tactic of the tobacco industry is to distribute free and low cost tobacco products, called sampling or nonsale distribution, to retain and build customer support and loyalty. While California state law prohibits sampling of tobacco products in specific locales, there are exceptions to the law for adult only locations and tobacco companies take full advantage of these loopholes. In California, tobacco companies regularly distribute their products or coupons at young adult, family and youth oriented events including bar nights, rodeos, festivals, and county fairs.

Many cities and counties, after seeing the impact of sampling on their youth and young adults, want to go beyond state law and completely prohibit tobacco sampling in their community. State law explicitly allows local jurisdictions to enact stricter restrictions on the sampling of tobacco products. Several cities, including Chico and San Francisco, have already adopted strong local policies. This document is designed to assist other interested communities by providing background information on the tobacco industry's sampling efforts and giving an overview of the state law on sampling as well as sharing one city's successful efforts to adopt a local sampling ordinance.

Background Information on Tobacco Industry Sampling

Every year the tobacco industry makes thousands of visits to bars and nightclubs, selected specifically to target and gain access to young adults and provide them with free samples of tobacco products. With these bar nights, tobacco companies provide the bars with financial incentives, entertainment and games and supply bar paraphernalia such as coasters, napkins, and related gear. This helps gain access to an environment that is targeted to young adults and conducive to the distribution of tobacco products. In addition to providing samples and coupons, the tobacco companies collect personal information, such as names and addresses. Tobacco companies gain new customers through distributing free samples and targeted direct mailing campaigns. Individuals who attended bar nights receive coupons, magazines, lighters, ashtrays, and other products in the mail. Scientific studies have linked these promotions and marketing efforts with increases in tobacco use among young adults and influencing previously non-susceptible teenagers to become susceptible to, and experiment with, smoking.^{1,2}

Tobacco industry spending on free samples is on the rise. The Federal Trade Commission reports that in 2005, tobacco companies provided \$28.18 million in free samples of smokeless tobacco products, an increase of \$12.43 million from a decade earlier. Tobacco companies also provided \$17.21 million in free samples of cigarettes, an increase of \$3.37 million since 1995. In addition, tobacco companies spent \$214.5 million for adult only public entertainment (such as sponsored bar nights) in 2005.^{3,4}

In January 2009, Altria Group, Inc., the parent company of Philip Morris USA, acquired the US Smokeless Tobacco Company. With this acquisition, all of the major tobacco companies now own or manufacture smokeless tobacco products. Through promotions, price discounts and other advertising the major tobacco companies are in the business of finding new customers for cigarettes and smokeless tobacco products.

California State Law on Sampling

Both the Master Settlement Agreement (MSA) and California state law restrict the sampling of tobacco products. The MSA and the Smokeless Tobacco MSA prohibit all participating manufacturers from distributing free samples except in an Adult Only Facility, which is defined as an enclosed or unenclosed facility or restricted area where the operator ensures that no underage people are present, such as by checking identification. California state law prohibits any nonsale distribution of smokeless tobacco products or cigarettes on all public grounds (including parks, sidewalks and public buildings) or any private property open to the general public. Nonsale distribution is defined as providing samples of smokeless tobacco products or cigarettes to the general public at no or nominal cost or to give coupons, coupon offers or rebate offers for these products. The state law outlines several exceptions to this prohibition in which nonsale distribution are allowed:

- On public grounds or private property open to the public if minors are prohibited from being there by law.
- On public grounds if the grounds are leased for a private event and minors are denied access by a peace officer or security guard.
- On private property open to the public if there is a separate enclosed area for nonsale distribution and minors are denied access by a peace officer or security guard.

1. Sepe E, Glantz SA. Tobacco promotions in the alternative press: targeting young adults, *American Journal of Public Health*. 2002; 92:75-78

2. Pierce, J. et al. Tobacco industry promotion of cigarettes and adolescent smoking. *JAMA*. February 1998; 279(7): 511-515.

3. Federal Trade Commission. Smokeless Tobacco Report for the Years 2002-2005. Issued 2007.

4. Federal Trade Commission. Cigarette Report For 2004 and 2005. Issued 2007.

The City of Chico

The Need for the Law

The city of Chico, with a population of 86,000, is located in Northern California and is home to California State University, Chico. The 17,000 student population was an enticing target for the tobacco companies, specifically the US Smokeless Tobacco Company, which sponsored bar nights in the city and hosted parties at the university's fraternities and sororities. Tobacco company employees, often paid attractive students, would give away free samples of smokeless tobacco. The tobacco available included all products in the brand 'family', from inexpensive brands (Wolf, Rooster), to flavored pouches designed to make it easier for those not used to chewing tobacco (Skoal, Bandits), and all the way up to the Skoal and Copenhagen long-cut straight brands for the experienced user. Free promotional items, including t-shirts, shot glasses, and necklaces, were also distributed. In exchange, students would provide their personal information, including name, address and details about current tobacco use. Having this personal information allowed the tobacco companies to focus future marketing efforts specifically to each student. The large amount of sampling in Chico gave tobacco companies easy access and influence over college students. The tobacco companies have more than a 30 year history and presence in the city and college students began to take notice. They wanted to take action and deny the tobacco industry influence over their community.

The Campaign

The American Lung Association in California began the policy process by advocating downtown bars to adopt voluntary policies prohibiting free sampling of tobacco products in their bar. While most bars signed the voluntary policy, none of the bars that already allowed the tobacco industry in their facility would do so. Thus the voluntary policies had little or no effect. The only way to eliminate the free distribution of tobacco products in bars was to pass a city ordinance, which Chico did in 2007.

An important key to this success was involving the student taskforce (TAG – Tobacco Action Group) in every aspect of the campaign, from conducting bar event observation and patron surveys, meeting with key city staff and elected officials, and helping to identify and recruit a policy champion. Key informant interviews, conducted after the policy passed, showed TAG members were very influential in persuading policy makers to support the sampling ban by sharing their individual experiences of being aggressively approached at bar night events. The overwhelming collection of smokeless tobacco products and promotional items from bar nights was displayed to the City Council and demonstrated how large a presence the tobacco companies had in the community and the extent of their efforts to target college students. Council members were convinced of the negative impact these bar nights and free samples were having on their community and over time introduced an ordinance to prohibit free sampling. The campaign took several years and many different student volunteers but it led to the adoption of a strong ordinance.

The Ordinance

The ordinance was adopted in December 2007 by a vote of 6-1. The ordinance defines nonsale distribution of tobacco products, prohibits it within city limits, and establishes penalties for violations. According to the ordinance, nonsale distribution is to distribute smokeless tobacco products or cigarettes to the general public at no cost or nominal cost or to give coupons, coupon offers or rebate offers for these products. Distribution of these products is prohibited anywhere in the city, including bars and parties at fraternities and sororities. However, distribution of these products or coupons in conjunction with the sale of another item, is still allowed. Violations of these provisions are subject to a fine of at least \$200 for a first violation, at least \$500 for a second violation and at least \$1,000 for any additional violations. Each individual package or coupon is considered a separate violation.

Implementation

To date no citations have been issued since the ordinance went into effect. Because this ordinance was unique, the community benefited from significant local media coverage, which helped increase the public's knowledge of the ordinance. In addition, the American Lung Association in California coordinated a comprehensive community and bar owner public awareness campaign. Activities included issuing a press release in January 2008 discussing the specifics of the new ordinance and implementation strategies, placing an educational ad in the local print media and writing a letter to the editor commending the city council on its decision and encouraging compliance. At the beginning of the spring 2008 semester, the project sent educational informational letters to all bar owners in Chico as well as to all the fraternities and sororities and the Inter-Fraternity Council. To date, the tobacco companies have discontinued efforts to host bar nights and parties in the city and bar owners are complying with the law.

Additional Resources

This document is available on the Center's website at www.Center4TobaccoPolicy.org/localpolicies-sampling.

The Technical Assistance Legal Center (TALC) has several resources on sampling, including a model sampling ordinance, available at <http://phlpnet.org>.

The Chico ordinance is available at http://www.chico.ca.us/government/municipal_code.asp under section 9.18 of the municipal code. For more information about the Chico ordinance, please contact Shelly Brantley with the American Lung Association in California at (530) 897-4140.

The Center for Tobacco Policy & Organizing • American Lung Association in California
1029 J Street, Suite 450 • Sacramento, CA 95814 • Phone: (916) 554.5864 • Fax: (916) 442.8585 • www.Center4TobaccoPolicy.org