

COMPREHENSIVE MINIMUM PRICES & PACKAGING

Guidance and Considerations

One effective way local jurisdictions can reduce the use of commercial tobacco¹ products is by adopting price controls. Increasing the price of tobacco products has proven to have a substantial impact on use, especially for price-sensitive populations like youth, young people, and lower-income communities.²

The Centers for Disease Control and Prevention and the U.S. Surgeon General have concluded that “increasing the price of tobacco products is the single most effective way to reduce consumption,” finding that a 10 percent increase in prices reduces consumption by 3 to 5 percent. Among price-sensitive groups like youth and lower income communities, the range may be greater.³

Keeping tobacco products cheap and widely affordable serves only to further health disparities. For this reason, more than half of the states⁴ and territories in the U.S. have minimum prices for cigarettes.⁵



Some jurisdictions have adopted minimum prices for cigars as well.⁶ However, most tobacco products are not subject to any minimum price floor, and with non-cigarette products dominating youth tobacco product use, local jurisdictions should use every tool they have to curb the appeal of commercial tobacco.

Packaging follows a similar logic to pricing when it comes to policies that can reduce tobacco product use. Federal⁷ and state⁸ law require

cigarette packages to contain a minimum of 20 cigarettes per package, and local jurisdictions may enact packaging quantity requirements for other tobacco products.

Taken together, communities across the U.S., where state law allows, may implement price floors and require minimum package or quantity sizes that could make the purchase of tobacco products less appealing overall.

What authority exists to pass price and package sales restrictions?

Federal law already establishes a minimum package size for cigarettes and multiple states have minimum prices for cigarettes. Some cities and counties have adopted minimum prices for other tobacco products as well. California's law expressly authorizes local jurisdictions to regulate more restrictively than the state the sale of and access to tobacco products.⁹

Over 50 jurisdictions in California have minimum price and/or package requirements for at least some tobacco products.¹⁰ Alameda, for example, requires that cigarettes be sold at no less than \$7 per pack.¹¹ Hermosa Beach requires that little cigars or cigarillos be sold in packages of at least 20.¹² San Diego County has one of the most comprehensive minimum price and package rules in the state, requiring minimum prices for cigarettes (\$10/pack of 20), cigars (\$5 per cigar/pack minimum of six, excepting cigars sold for a minimum of \$10 each), little cigars (\$10/pack of 20), electronic smoking devices (\$20/device) and e-liquids (\$10/unit), and electronic smoking device starter kits (\$30/kit).¹³

Examples Outside California: New York City and Chicago

New York City has one of the best examples of a minimum price and package system.¹⁴ The city adopted minimum prices and packages for cigars, smokeless tobacco, snus, shisha, and loose tobacco in 2018. To a less comprehensive extent, Chicago has established separate minimum prices for little cigars, large cigars, smoking tobacco, smokeless tobacco, and pipe (loose) tobacco.¹⁵

Considerations

Minimum prices and package sizes work best in coordination with other commercial tobacco control policies. Prohibiting coupons and discounts, including add-ons and rebates, will help ensure that tobacco marketing tactics will not undermine the goals of a minimum price and package ordinance. Requiring that all transactions occur in-person at a retail location will

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further support tobacco control efforts, and help promote health equity. Ensuring compliance with these policies often requires active engagement and education for retailers as well as enforcement agents, and includes the development of in-depth materials and aids.

Prohibiting the sale of tobacco products, partially or wholly, would be the most effective way to reduce tobacco use. Nevertheless, minimum prices and packages can be seen as a productive means to that end.

Sample Language

Drawing on the language adopted in various jurisdictions in the U.S., the Public Health Law Center has developed language and considerations to guide local jurisdictions as they consider establishing comprehensive minimum price and packaging rules.

Definitions

Many jurisdictions — and the Center’s own model language for tobacco retailer licenses — include most or all tobacco products and e-cigarettes under one comprehensive definition for “tobacco product.” Because minimum price and packaging provisions are product-specific, those products warrant their own separate definitions as well. For example:

- (A) “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand.

- (B) “Electronic smoking substances,” also known as e-liquids, disposable vapes, pods, or vape pods, means any product that contains tobacco or nicotine, in any form, that is consumed through vaporization, aerosolization, or any other non-combustible means when used in conjunction with, attachment to, embedded in, or combination with an electronic smoking device.
- (C) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- (D) “Little cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. “Little Cigar” includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.
- (E) “Loose tobacco,” also known as pipe tobacco, means any product that consists of loose leaves or pieces of tobacco that is intended for use by consumers in a pipe, roll-your-own cigarette, or similar product or device.
- (F) “Shisha” means any product that contains tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe. For the purposes of this statute, “shisha” tobacco and “hookah” tobacco refer to the same product.
- (G) “Smokeless tobacco” means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.
- (H) “Tobacco or nicotine pouches” means any smokeless tobacco product marketed and sold as snus or sold in ready-to-use pouches or loose as a moist powder containing any form of tobacco or nicotine.

Minimum Prices

Localities have the authority to set minimum prices for tobacco products. To ensure that a pricing policy has the greatest impact, local governments should set the floor as high as possible.

Note

The following sample language and values are informed by floor prices set by New York City in its minimum price rubric, as well as other factors, including previous tobacco retail licensing ordinance proposals in California. Please customize the language to fit your community's needs.

(See New York City Municipal Code, [Chapter 13](#)).

[SEC **] MINIMUM PRICES FOR TOBACCO PRODUCTS.

No tobacco retailer shall sell:

- (1) Cigarettes at a price that is less than [\$15.00] per package of 20 cigarettes, plus \$1.75 for every additional cigarette, including all applicable taxes and fees; or
- (2) Little cigars at a price that is less than [\$15.00] per package of little cigars, plus \$1.75 for every additional little cigar, including all applicable taxes and fees; or
- (3) Cigars at a price that is less than [\$8.00] per cigar, including all applicable taxes and fees including all applicable taxes and fees. Cigars sold in packages no less than [6] per pack shall be sold not less than [\$40.00] per pack, plus \$1.75 for every additional cigar, including all applicable taxes and fees; or
- (4) Electronic smoking devices at a price that is less than [\$20.00] per device, including all applicable taxes and fees. This price is applicable to any type of electronic smoking device, and applies per unit even if sold together. For example, a package of two electronic smoking devices must sell for not less than \$40.00, including all applicable taxes and fees; or
- (5) Electronic smoking substances at a price of less than [\$15.00] per unit, including all applicable taxes and fees. This price is applicable to any type of electronic smoking substance, and applies per unit even if sold together. For example, a package of two cartridges must sell for \$30 or more, including all applicable taxes and fees; or
- (6) Smokeless tobacco at a price that is less than [\$8.00] per pack, plus \$2 for every additional 0.3 ounces or less, including all applicable taxes and fees. For example, a pack of smokeless tobacco that is 1.2 ounces must cost no less than \$8.00, while a pack of smokeless tobacco that is 1.2-1.5 ounces must cost no less than \$10.00 and a pack of smokeless tobacco that is 1.5-1.8 ounces must cost no less than \$12.00; or

- (7) Shisha and/or hookah tobacco at a price that is less than [\$17.00] per pack, plus \$3.40 for every additional 0.7 ounces or less, including all applicable taxes and fees; or
- (8) Loose tobacco at a price that is less than [\$2.55] per pack, plus \$0.50 for every additional 0.3 ounces or less, including all applicable taxes and fees; or
- (9) Tobacco or nicotine pouches at a price that is less than [\$8.00] per pack, plus \$2.00 for every additional 0.08 ounces or less, including all applicable taxes and fees.

The minimum prices established in this section shall be adjusted annually by the Department in proportion with the Consumer Price Index, using a system established by the Department. The Department shall recommend to the [City Council/Board of Supervisors] a minimum price for any tobacco product not otherwise listed here or that may enter the consumer market in the future.

Note

New tobacco products, including those using non-tobacco nicotine, may emerge that are not yet captured by the current minimum price model. This language is intended to help the city respond promptly to future products.

Minimum Package Sizes

Along with minimum price policies, minimum package size requirements give local cities and counties a great deal of control over how tobacco products are sold — if they may be sold at all — in their jurisdictions. Establishing minimum package sizes not only dovetails with setting a floor price for the purchase of the product, but also indirectly forces tobacco manufacturers and retailers to raise prices because of the increased volume of product they must sell.

[SEC **] MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS.

No tobacco retailer shall sell:

- (1) any cigarette unless sold in a package of at least 20 cigarettes; or
- (2) any little cigar unless it is sold in a package of at least [20] little cigars; or
- (3) any cigar unless it is sold in a package of at least [6] cigars; provided, however, that this subsection shall not apply to a cigar that has a price of at least [\$8.00] per cigar, including all applicable taxes and fees.

- (4) any smokeless tobacco unless it is sold in a package weighing at least [1.2 ounces] per pack;
- (5) any tobacco or nicotine pouch unless it is sold in a package weighing at least [0.32 ounces] per pack;
- (6) any shisha and/or hookah tobacco unless it is sold in a package weighing at least [3.5 ounces] per pack;
- (7) any loose tobacco unless it is sold in a package weighing at least [1.5 ounces] per pack.

Note

These suggested numbers are selected for consistency with other model ordinances and values from certain source materials (i.e. New York City's tobacco product minimum price rubric). However, other figures may be used, as preferred.

Conclusion

Minimum prices and packaging sizes are another commercial tobacco control measure for jurisdictions to consider. Requiring that tobacco products be sold no lower than a specified price point, and not less than at a minimum quantity, creates another opportunity to undermine the appeal of these products, particularly to price-sensitive populations like youth and young people. By making tobacco products more expensive and thus less desirable for purchase and consumption, minimum prices and packaging requirements complement existing commercial tobacco control efforts well.

Cities and counties considering minimum prices and packaging requirements should consider such measures as part of a comprehensive local tobacco retailer license, which would put the onus of responsibility on tobacco retailers to ensure the products on their shelves are sold in compliance. Similarly, cities and counties are strongly encouraged to eliminate any retailer industry opportunity to alter the price of commercial tobacco products at the point of sale, by prohibiting retailers from honoring or redeeming any coupons and similar discount incentives.

For more information, please visit the Public Health Law Center's *Model Comprehensive Tobacco Retailer Licensing Ordinance*, *Death on a Discount: Regulating Tobacco Product Pricing*, or connect with us at publichealthlawcenter.org.

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. In contrast, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://keepitsacred.itcml.org>. When the word “tobacco” is used throughout this publication, a commercial context is implied and intended.
- 2 See, e.g., Nigar Nargis et al., *Price, Income, and Affordability as the Determinants of Tobacco Consumption: A Practitioner’s Guide to Tobacco Taxation*, 23 NICOTINE & TOBACCO RES. 40 (2021).
- 3 Ctrs. Disease Ctrl. & Prevention, *Economic Trends in Tobacco* (Jan 26, 2022), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm.
- 4 See Patricia McDaniel et al., *The Tobacco Endgame: a Qualitative Review and Synthesis*, 25 TOB. CTRL. 594 (2016); Campaign for Tobacco-Free Kids, *Taxation and Price: Countering Industry Arguments* (2020), https://assets.tobaccofreekids.org/global/pdfs/en/TAX_countering_industry_claims_en.pdf.
- 5 Tobacco Control Legal Consortium, *Cigarette Minimum Price Laws* (2011), <https://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-cigminimumpricelaws-2011.pdf>.
- 6 Public Health Law Center, *Setting a Minimum Price and Package for Cigars* (2017).
- 7 Minimum Cigarette Package Size, 21 C.F.R. § 1140.16(b) (2010).
- 8 CAL. PENAL CODE § 308.3 (West 2002).
- 9 CAL. BUS. & PROF. CODE § 22962(e) (West 2016).
- 10 American Nonsmokers’ Rights Foundation, *California Municipalities that Set Minimum Price and/or Minimum Pack Size for Tobacco Products* (2023).
- 11 ALAMEDA, CAL., CODE § 6-60.40(b) (2018).
- 12 HERMOSA BEACH, CAL., CODE § 5.78.080(I) (2020).
- 13 SAN DIEGO CTY., CAL., CODE § 21.2605(d)-(e) (2021).
- 14 NEW YORK CITY, N.Y., CODE § 13-03 (2018).
- 15 CHICAGO, ILL., CODE § 4-64-810 (2018).