

Communities of Excellence Indicators: Which Are Affected by the FDA Law?

October 2009

The passage of the Family Smoking Prevention and Tobacco Control Act (“FDA law”) makes it possible to create some local tobacco regulations that communities were not legally able to pursue before the law passed. However, there are still a number of legal limits on what communities may do to restrict tobacco marketing and advertising. TALC and the Center have been asked about the legality of a number of new policy ideas that local communities have been interested in pursuing.

This document lists each CX indicator and explains whether each is legally safe to pursue and why.

Key:

GREEN	To the best of our knowledge, actions and policies created pursuant to these indicators are legal. There is, however, a lawsuit pending against the FDA law, which may affect the legality of some of the items marked “green,” particularly the indicators for creating local policies related to advertising, sponsorship, and sampling. Communities should take care when drafting laws to use the TALC model ordinances and to work with TALC to ensure that the new laws are legally sound.
YELLOW	These indicators touch on legal issues that require further legal research. Some communities may be interested in setting new precedent by pursuing these indicators. If your community is particularly interested in one of the indicators marked “yellow,” contact TALC to discuss the implications.
RED	These policy ideas are not legally permissible at this time and should not be pursued.

**Priority Area: Counter Pro-Tobacco Influences (1)
Tobacco Marketing and Deglamorization Indicators (.1)**

#	Description	
1.1.1	Number, type, time, place and manner of in-store tobacco advertising and promotions	GREEN: Under the new FDA law, voluntary policies (where the store voluntarily restricts its advertising and promotions) face no legal barrier.
	-or- Number of communities with a policy that imposes a specific ban or restrictions on time, place, and manner of in-store tobacco advertising and promotions consistent with the First Amendment and Food and Drug Administration (FDA) tobacco control law	YELLOW: Mandatory policies (where the city or county restricts advertising or promotions through a new law) require more legal research.
1.1.2	Number, type, time, place, and manner of tobacco advertising and promotions outside of stores	GREEN: Under the new FDA law, voluntary policies (where the store voluntarily restricts its advertising) face no legal barrier.
	-or- Number of communities with a policy that imposes a specific ban or restrictions on time, place, and manner of outdoor store tobacco advertising or promotions consistent with the First Amendment and FDA tobacco control law	YELLOW: Mandatory policies (where the city or county restricts advertising or promotions through a new law) require more legal research.
1.1.3	Number and type of tobacco advertisements in print media such as magazines and newspapers	GREEN: Under the new FDA law, voluntary policies (where the print media voluntarily restricts its advertising) face no legal barrier.
	-or- Proportion of print media organizations (e.g., magazines and newspapers) with a voluntary policy that regulates tobacco advertising	GREEN: Under the new FDA law, voluntary policies (where the print media voluntarily restricts its advertising) face no legal barrier.
1.1.5	Number and type of violations by tobacco manufacturers or retailers for advertising, sponsorship, promotional or other marketing requirements identified in the Master Settlement Agreement (MSA) or FDA tobacco control law.	GREEN: FDA law does not prohibit local governments from working on this issue.
1.1.6	Number and type of tobacco company sponsorship at public and private events including entertainment and sporting venues (e.g., county fairs, rodeos, motor sports, other sporting events, parades, concerts, museums, dances, festivals, business)	GREEN: Under the new FDA law, voluntary policies (where the venue voluntarily restricts sponsorships) face no legal barrier.
	-or-	

	<p>Number of public and private entertainment and sporting venues with a voluntary policy that regulates tobacco company sponsorship (e.g., county fairs, rodeos, motor sports, other sporting events, parades, concerts, museums, dances, festivals, business)</p> <p>-or-</p> <p>Number of communities with a policy that imposes a specific ban or restrictions on time, place, and manner of tobacco company sponsorship and marketing consistent with the First Amendment and FDA tobacco control law at public, entertainment and sporting venues (e.g., county fairs, rodeo, motor sports, other sporting events, parades, concerts, museums, dances, festivals, businesses)</p>	<p>GREEN: Under the new FDA law, voluntary policies (where the venue voluntarily restricts sponsorships) face no legal barrier.</p> <p>YELLOW: Mandatory policies (where the city or county restricts advertising through a new law) require more legal research.</p>
1.1.7	<p>Number of adult-only-facilities (e.g., bars, night clubs) with a voluntary policy prohibiting tobacco company/product marketing/sponsorship</p> <p>-or-</p> <p>Number of communities with a policy that imposes a specific ban or restrictions on time, place, and manner of tobacco product marketing and sponsorship at adult-only facilities (e.g., bars and night clubs) consistent with the First Amendment and FDA tobacco control law</p>	<p>GREEN: Under the new FDA law, voluntary policies (where the print media voluntarily restricts its advertising) face no legal barrier.</p> <p>YELLOW: Mandatory policies (where the city or county restricts marketing or sponsorship through a new law) require more legal research.</p>
1.1.8	<p>Number and type of tobacco company/product marketing and sponsorship of college-related events</p> <p>-or-</p> <p>Number of colleges and universities with a policy that regulates tobacco company/product marketing and sponsorship</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: The FDA law does not prohibit colleges and universities from working on this issue. However, in this area in particular, it is important to adhere to the TALC sample policy to ensure a legally sound approach.</p>
1.1.9	<p>Number of institutions and groups such as education, research, public health, women's, cultural, entertainment, fraternity/sorority groups, and social service institutions that accept tobacco-related contributions</p> <p>-or-</p> <p>Number of groups and institutions such as education, research, public health, women's, cultural, entertainment, fraternity/sorority groups, and social service institutions with a policy to prohibit acceptance of tobacco-related contributions</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
1.1.10	<p>Amount of tobacco industry contributions to support political campaigns of elected officials or political caucuses</p> <p>-or-</p>	<p>GREEN: Not affected by the FDA law.</p>

	Number of elected officials or political caucuses that have signed a pledge not to accept tobacco company contributions	GREEN: Not affected by the FDA law.
1.1.11	Number and type of tobacco use, tobacco advertising, and secondhand smoke depiction by the entertainment industry (e.g., movies, music videos, TV, music, etc.) -or- Number of elected officials, parent organizations, health groups, and others that have adopted resolutions and voluntary policies that promote a socially responsible depiction of tobacco use, tobacco advertising, and secondhand smoke by the entertainment industry (e.g., movies, music videos, TV, music)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
1.1.12	Number of retailers with a voluntary policy prohibiting the sale of edible products packaged to resemble tobacco products (e.g., candy cigarettes, bubble gum cigars, chewing gum) -or- Number of communities with a policy to prohibit the sale of edible products packaged to resemble tobacco products (e.g., candy cigarettes, bubble gum cigars, chewing gum)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
1.1.13	Number and quality of news media stories, blogs, or social media efforts focusing on the harmful impact of tobacco industry practices and/or political lobbying to health and/or the environment	GREEN: Not affected by the FDA law.
1.1.15	Number of local resolutions in support of the FDA regulating use of menthol in cigarettes and/or the use of an artificial or natural flavor, herb, spice or other flavoring additive in other tobacco products (e.g., smokeless, little cigars, hookah tobacco, dissolvable tobacco products) including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee flavorings	GREEN: The FDA law does not prohibit local governments from working on this issue. (The FDA law bans most flavored cigarettes, but menthol flavored cigarettes may still be sold.)
1.1.16	Number of communities with a policy that imposes a specific ban or restrictions on time, place, and manner of any tobacco advertising or marketing (other than retail or sponsorship) consistent with the First Amendment and FDA tobacco control law	YELLOW: Mandatory policies (the city or county restricts advertising or marketing through a new law) require more legal research.
1.1.17	Number of communities with a policy that requires a 1:1 or 3:1 placement of anti-tobacco advertising in prime retail locations to counter tobacco company buydown or promotion offers	YELLOW: Mandatory policies (the city or county requires certain counter-advertisements through a new law) require more legal research.

**Priority Area: Counter Pro-Tobacco Influences (1)
Economic Indicators (.2)**

1.2.1	Number and type of public (e.g., county and city government) and private institutions (e.g., unions; private universities) divested from tobacco stock	GREEN: Not affected by the FDA law.
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1.2.2	Number and type of public and private employers that offer discounted health insurance premiums to non-tobacco users	GREEN: Not affected by the FDA law.
1.2.4	Number of communities with a mitigation fee on tobacco products or manufacturers with a portion of the generated revenue earmarked for tobacco control	GREEN: Not affected by the FDA law.
1.2.5	Number of public or private funders that have a policy or contract language that prohibits any institution and/or group (e.g., education, research, social service, community) from accepting tobacco funding during the period which it is funded	GREEN: Not affected by the FDA law.
1.2.6	Number of communities with a policy that sets a minimum retail sale price for tobacco products and bans or constrains buydowns and tobacco industry promotional practices such as buydowns, multi-pack offers, and discounts	YELLOW: Mandatory policies (the city or county regulates tobacco pricing or promotions through a new law) require more legal research.
1.2.7	Number of communities with a policy that permits carton only sales of cigarettes	GREEN: Not affected by the FDA law.

Priority Area: Counter Pro-Tobacco Influences (1)
School and Community-based Prevention Indicators (.3)

1.3.1	Proportion of schools that provide instruction on tobacco-use prevention that meets CDC guidelines (e.g., intensive tobacco use prevention instruction in junior high. middle school years with reinforcement in high school using a curricula that addresses the negative physiologic and social consequences of tobacco use, social influences on tobacco use, peer norms regarding tobacco use and refusal skills)	GREEN: Not affected by the FDA law.
1.3.2	Proportion of schools or school districts that provide tobacco use prevention specific instruction for teachers	GREEN: Not affected by the FDA law.
1.3.4	Number of youth serving programs (e.g., 4-H, Girl Scouts, etc.) that provide intensive tobacco use prevention instruction using a curriculum that addresses the physiologic and social consequences of tobacco use, social influences on tobacco use, peer norms regarding tobacco use, and refusal skills	GREEN: Not affected by the FDA law.

**Priority Area: Countering Pro-Tobacco Influences (1)
Physical Environment Indicators (.4)**

1.4.1	The amount of tobacco-related litter at public places including parks, playgrounds, beaches, etc. -or- Number of communities with a policy that prohibits tobacco litter in public places including parks, play grounds, beaches, etc	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
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**Priority Area: Countering Pro-Tobacco Influences (1)
Global Movement Indicators (.5)**

1.5.1	Number of local resolutions in support of national policies to hold U.S. tobacco companies to the same standards in the sale and marketing of their products nationally and internationally	GREEN: Not affected by the FDA law.
1.5.3	Number of local resolutions in support of the United States ratifying the Framework Convention on Tobacco Control (FCTC)	GREEN: Not affected by the FDA law.

**Priority Area: Reduce Exposure to Secondhand Smoke (2)
Enforcement/Compliance Indicators (.1)**

2.1.1	Number of warnings, citations and fines issued for violations of non-tribal indoor smoke-free worksite policies, excluding bars and gaming policies -or- Proportion of worksites in compliance with non-tribal indoor smoke-free worksite policies excluding bars and gaming policies	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.1.2	Number of warnings, citations, and fines issued for violations of American Indian tribal government indoor smoke-free worksite policies, excluding gaming/leisure complexes policies -or- Proportion of worksites in compliance with indoor smoke-free American Indian tribal government worksite policies, excluding gaming/leisure complexes policies	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.

2.1.3	<p>Number of warnings, citations, and fines issued for violations of non-tribal indoor smoke-free bar and gaming worksite policies</p> <p>-or-</p> <p>Proportion of worksites in compliance with non-tribal indoor smoke-free bar and gaming worksite policies</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.1.4	<p>Number of warnings, citations, and fines issued for violations of American Indian tribal government indoor smoke-free gaming/leisure complex worksite policies</p> <p>-or-</p> <p>Proportion of worksites in compliance with American Indian tribal government indoor smokefree gaming/leisure complex worksite policies</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.1.5	<p>Proportion of schools or school districts in compliance with the state law that prohibits the use of tobacco by all students, school staff, parents, and visitors in public school district-owned or leased buildings, on district grounds, and in district vehicles</p>	<p>GREEN: Not affected by the FDA law.</p>
2.1.6	<p>Number of warnings, citations and fines issued for violations of policies that prohibit smoking within 20 feet or more of doorways, windows, vents, and openings</p> <p>-or-</p> <p>Proportion of worksites in compliance with policies that prohibit smoking within 20 feet or more of doorways, windows, vents, and openings</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.1.7	<p>Number of warnings, citations and fines issued for violations of policies that regulate smoking in outdoor recreational areas, facilities, and venues such as amusement parks, beaches, fairgrounds, parks, parades, piers, playgrounds, sport stadiums, tot-lots, zoos, and service lines</p> <p>-or-</p> <p>Proportion of outdoor recreational areas, facilities, and venues in compliance with policies that regulate smoking in places such as amusement parks, beaches, fairgrounds, parks, parades, piers, playgrounds, sport stadiums, tot-lots, zoos, and service lines</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.1.8	<p>Proportion of communities with policies that include enforcement mechanisms in smoke-free multiunit housing laws, such as enforcement by government agencies, enforcement by tenants and/or landlords, and enforcement by private citizens</p>	<p>GREEN: Not affected by the FDA law.</p>
2.1.9	<p>Number of warnings, citations, or fines issued for violations of the state law that prohibits smoking in vehicles when a minor is present</p> <p>-or-</p>	<p>GREEN: Not affected by the FDA law.</p>

	Proportion of vehicles in compliance with the state law that prohibits smoking in vehicles when a minor is present	GREEN: Not affected by the FDA law.
2.1.10	Number of warnings, citations, or fines issued for violations of policies that regulate smoking in outdoor public areas not primarily intended for recreational use (e.g., walkways, streets, plazas, college campuses, shopping centers, transit stops, farmers markets, swap meets, service lines) -or- Proportion of public places in compliance with policies that regulate smoking in places not primarily intended for recreational use (e.g., public walkways, streets, plazas, college campuses, shopping centers, transit stops, farmers markets, swap meets, service lines)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.

**Priority Area: Reduce Exposure to Secondhand Smoke (2)
Policy Indicators (.2)**

2.2.1	Proportion of homes (e.g., single dwelling house, mobile home, apartment, boat) with a smoker in the household who report their home is smoke-free -or- Proportion of families with a policy that does not permit smoking in the home (e.g., single dwelling house, mobile home, apartment, boat)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.3	Number of businesses on American Indian tribal lands with a voluntary smoke-free workplace policy, excluding casino/leisure complexes -or- Number of American Indian tribal governments with a smoke-free worksite policy covering worksites on American Indian lands, excluding casino/leisure complexes	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.4	Number of communities with a policy that regulates indoor worksite smoking in those areas that are exempted by the state smoke-free workplace law, such as owner operated bars and tobacco shops (excluding hotels)	GREEN: Not affected by the FDA law.
2.2.5	Number of hotels/motels with a voluntary policy that designates the following areas as smokefree: guest rooms, guest room balconies and patios, lobbies, and outdoor common areas (e.g., swimming pools, dining patios, reception areas, hotel entrances) -or- Number of communities with hotel/motel policies that designates the following areas as smokefree: guest rooms, guest room balconies and patios, lobbies, and outdoor common areas (e.g., swimming pools, dining patios, reception areas, hotel entrances)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.

2.2.6	<p>Number of outdoor restaurant, bar, and mobile catering businesses with a voluntary policy that designates the outdoor dining, bar, and service line as smoke-free</p> <p>-or-</p> <p>Number of communities with a policy that designates the outdoor dining, bar and service line of mobile catering businesses as smoke-free</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.2.7	<p>Number of non-dining outdoor worksites (e.g. construction sites, lumber mills, forests) with a voluntary policy designating the worksite as smoke-free</p> <p>-or-</p> <p>Number of communities with a policy that designates non-dining outdoor worksites (e.g., construction sites, lumber mills, forests) as smoke-free</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.2.8	<p>Number of worksites with a voluntary policy that prohibits smoking within 20 feet or more of all doorways, windows, vents, and openings</p> <p>-or-</p> <p>Number of communities with a policy that prohibits smoking within 20 feet or more of all doorways, windows, vents, and openings</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.2.9	<p>Number of outdoor public areas, not primarily intended for recreational use, with a voluntary policy that regulates smoking (e.g., walkways, streets, plazas, college campuses, shopping centers, transit stops, farmers markets, swap meets, service lines)</p> <p>-or-</p> <p>Number of communities with a policy regulating smoking at outdoor public areas that are not primarily intended for recreational use (e.g., walkways, streets, plazas, school college campuses, shopping centers, transit stops, farmers markets, swap meets, service lines)</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
2.2.10	<p>Number of businesses providing in-home health care and assistance with daily living services which have a policy that prohibits smoking by employees when delivering in-home services</p> <p>-or-</p> <p>Number of licensed health care and/or assisted living facilities (e.g., acute health care facilities; drug and rehab facilities; adult residential care facilities for the chronically ill, elderly, or people with developmental or mentally disabilities; social rehabilitation facilities; adult group homes; assisted living facilities; skilled nursing facilities) with a voluntary policy that designates the premises, inside and out, as smoke-free at all times</p> <p>- or-</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>

	Number of communities with a policy that designates the premises, inside and out, of licensed health care and/or assisted living facilities (e.g., acute health care facilities; drug and rehab facilities; adult residential care facilities for the chronically ill, elderly, or people with developmental or mental disabilities; social rehabilitation facilities; adult group homes; assisted living facilities; and skilled nursing facilities) as smoke-free at all times	GREEN: Not affected by the FDA law.
2.2.13	Number of multi-unit housing owners and/or operators with a voluntary policy that restricts smoking in individual units (including balconies and patios) -or- Number of communities with a policy that restricts smoking in the individual units of multi-unit housing (including balconies and patios)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.16	Number of outdoor recreational facilities, areas, and venues with a voluntary policy that regulates smoking in places such as amusement parks, beaches, fairgrounds, parks, parades, piers, sport stadiums, zoos, and service lines (e.g., movie theaters, food service, restrooms) -or- Number of communities with a policy that regulates smoking at outdoor recreational facilities, areas, and venues in places such as amusement parks, beaches, fairgrounds, parks, parades, piers, playgrounds, sport stadiums, tot lots, zoos, and service lines (e.g., movie theaters, food service, restrooms)	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.17	Number of private elementary, middle, and high schools that designate campuses as tobacco free (Note, state law requires public schools to be tobacco-free vs. smoke-free, which is why this indicator uses the term tobacco-free)	GREEN: Not affected by the FDA law.
2.2.18	Number of licensed child care homes and foster care homes that are smoke-free inside at all times - or - Number of communities with a policy that requires licensed child care homes and foster care homes to be smoke-free inside at all times	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.20	The number of faith community organizations (e.g., churches, synagogues, mosques, and temples) with a policy that regulates smoking on their grounds and at events	GREEN: Not affected by the FDA law.
2.2.22	The number of communities that use zoning regulations, building codes, housing or other general plan elements, HUD consolidated plans, permitting processes, etc. to increase the amount of smoke-free indoor or outdoor areas in multi-unit housing	GREEN: Not affected by the FDA law.
2.2.23	The number of communities with a policy that requires landlords, affordable housing providers, condo associations, single residency occupancy hotels, and other similar groups to disclose the location of smoking and non-smoking units, the smoking history of a unit, and require rental vacancy listings to include a category for smoking and non-smoking units	GREEN: Not affected by the FDA law.

2.2.24	The number of communities with a policy declaring non-consensual exposure to secondhand smoke as a nuisance	GREEN: Not affected by the FDA law.
2.2.25	The number of businesses with a voluntary policy that designates American Indian casino/leisure complexes as smoke-free - or - Number of American Indian tribal governments with a policy that designates casino/leisure complexes as smoke-free	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.26	Number of multi-unit housing complexes with a voluntary policy that designates common indoor (e.g., laundry room, hallways, stairways, and lobby) and outdoor areas (e.g., playground, swimming pool area, and lobby) as smoke-free -or- Number of communities with a policy that designates common indoor (e.g., laundry room, hallways, stairways, and lobby) and outdoor (e.g., playground, swimming pool area, and entrances) areas of multi-unit housing complexes as smoke-free	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.
2.2.27	Number of licensed child care centers and children’s residential facilities (e.g., commercial and non-profit child care centers, crisis nurseries, youth group homes, transitional living centers) with a voluntary policy that designate the premises, inside and out, as smoke-free at all times -or- Number of communities with a policy that designates the premises, inside and out, of licensed child care centers and children’s residential facilities (e.g., commercial and non-profit child care centers, crisis nurseries, youth group homes, transitional living centers) as smoke-free at all times	GREEN: Not affected by the FDA law. GREEN: Not affected by the FDA law.

**Priority Area: Reduce the Availability of Tobacco (3)
Enforcement/Compliance Indicators (.1)**

3.1.1	Number of warnings, citations, and fines issued for violating policies that prohibit the sale of tobacco to minors and that require ID checking -or- Proportion of tobacco retailers in compliance with policies that prohibit the sale of tobacco to minors and that require ID checking	GREEN: The FDA law does not prohibit local governments from working on this issue. GREEN: The FDA law does not prohibit local governments from working on this issue.
3.1.7	Number and type of violations of the MSA and FDA tobacco control law by tobacco companies, distributors/wholesalers or retailers for tobacco sale and distribution requirements	GREEN: The FDA law does not prohibit local governments from working on this issue.

3.1.9	<p>Number of warnings, citations, and fines issued for violations of policies that prohibit the distribution of free or low-cost tobacco products, coupons, coupon offers, rebate offers, gift certificates, gift cards or other similar offers for tobacco products</p> <p>-or-</p> <p>Proportion of venues and businesses in compliance with policies that prohibit the distribution of free or low-cost tobacco products, coupons, coupon offers, rebate offers, gift certificates, gift cards or other similar offers for tobacco products</p>	<p>GREEN: The FDA law does not prohibit local governments from working on this issue.</p>
3.1.11	<p>Number of warnings, citations, and fines issued for violations of policies that require display of STAKE Act age-of-sale warning signs and the tobacco retail license; prohibit the sale of single cigarettes; prohibit the sale of tobacco products from self-service displays; and prohibit the sale of bidis in businesses where minors are not allowed</p> <p>-or-</p> <p>Proportion of tobacco retailers in compliance with policies that require display of STAKE Act age of-sale warning signs and the tobacco retail license; prohibit the sale of single cigarettes; prohibit the sale of tobacco products from self-service displays; and prohibit the sale of bidis in businesses where minors are not allowed</p>	<p>GREEN: The FDA law does not prohibit local governments from working on this issue.</p> <p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>

**Priority Area: Reduce the Availability of Tobacco (3)
Policy Indicators (.2)**

3.2.1	<p>The number of communities with a tobacco retail licensing policy that earmarks a portion of the license fee for enforcement activities</p>	<p>GREEN: Not affected by the FDA law.</p>
3.2.2	<p>Number of communities with a policy that regulates the number, location, and/or density of tobacco retail outlets through use of any of the following means: conditional use permits, zoning, tobacco retail permits or licenses</p>	<p>GREEN: Not affected by the FDA law.</p>
3.2.4	<p>Number and type of venues/events (e.g., county fairs, rodeos, motor sports, other sporting events, parades, concerts, museums, dances, festivals, business) with a voluntary policy that prohibits the distribution of free or low-cost tobacco and nicotine products, coupons, coupon offers, gift certificates, gift cards, rebate offers or other similar offers for tobacco and nicotine products</p> <p>-or-</p> <p>Number of communities with a policy that prohibits the distribution of free or low-cost tobacco and nicotine products, coupons, coupon offers, gift certificates, gift cards, rebate offers or other similar offers for tobacco and nicotine products</p>	<p>GREEN: Under the new FDA law, voluntary policies (where the venue voluntarily enacts a policy) face no legal barrier.</p> <p>GREEN: The FDA law does not prohibit local governments from working on this issue. However, in this area in particular, it is important to adhere to the TALC model sampling ordinance to ensure a legally sound approach.</p>

3.2.7	<p>The number of independent/chain pharmacy stores, health care facilities or businesses that engage in the delivery of direct health care services that have a voluntary policy to NOT sell tobacco products</p> <p>-or-</p> <p>Number of communities with a policy that bans the sale of tobacco products wherever prescription medications are sold and dispensed</p> <p>-or-</p> <p>Number of communities with a policy that prohibits the issuance of a tobacco retail license to any business or facility that engages in the delivery of direct health care services to consumers including, but not limited to, such activities as dispensing prescription medications, providing health screenings, and direct health care services provided by a licensed health care professional</p>	<p>GREEN: Not affected by the FDA law.</p> <p>YELLOW: Not affected by the FDA law. However, there are pending lawsuits challenging San Francisco's ordinance banning the sale of tobacco in pharmacies. The outcome of those lawsuits will determine whether this policy is legal in California.</p> <p>GREEN: Not affected by the FDA law.</p>
3.2.9	<p>Number of tobacco retailers that adopt a voluntary policy to eliminate the sale of mentholated cigarettes and other tobacco products (e.g., smokeless tobacco, hookah tobacco, little cigars, and dissolvable tobacco products) flavored by artificial or natural flavor, herb, spice, or other flavoring additive including, but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee flavorings</p> <p>-or-</p> <p>Number of communities with a policy that prohibits the sale and distribution of mentholated cigarettes and other tobacco products (e.g., smokeless tobacco, little cigars, hookah tobacco, and dissolvable tobacco products) flavored by artificial or natural flavor, herb, spice, or other flavoring additive including, but no limited to strawberry, grape, orange, clove, cinnamon , pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee flavorings</p>	<p>GREEN: The FDA law bans most flavored cigarettes, but menthol flavored cigarettes may still be sold. The law does not prohibit voluntary policies on this issue.</p> <p>GREEN: The FDA law bans most flavored cigarettes, but menthol flavored cigarettes may still be sold. The FDA law does not prohibit local governments from working on this issue.</p>
3.2.10	<p>Number of tobacco retailers that adopt a voluntary policy to eliminate the sale and distribution of tobacco products</p> <p>-or-</p> <p>Number of communities with a policy that prohibits the sale or distribution of tobacco products</p>	<p>GREEN: Not affected by the FDA law.</p> <p>GREEN: Not affected by the FDA law.</p>
3.2.11	<p>Number of communities with new or updated policies that define "tobacco product" broadly to include not only cigarettes, smokeless tobacco, and cigars, but also any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but excluding cessation products specifically approved by the FDA for use in treating nicotine or tobacco dependence</p>	<p>GREEN: Not affected by the FDA law.</p>

**Priority Area: Reduce the Availability of Tobacco (3)
Behavior Indicators (.3)**

3.3.1	Proportion of minors reporting they have received tobacco products from a social source	GREEN: Not affected by the FDA law.
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**Priority Area: Promote Tobacco Cessation (4)
Cessation Service Indicators (.1)**

4.1.1	Extent to which evidence-based and culturally and linguistically appropriate behavior modification based tobacco cessation services are available in the community	GREEN: Not affected by the FDA law.
4.1.3	Extent to which free or low cost pharmacological quitting aids are available to tobacco users who are not eligible for this benefit through a government or employer subsidized health insurance plan	GREEN: Not affected by the FDA law.
4.1.4	Extent to which health care and social service providers refer patients and clients to accessible, evidence-based tobacco cessation programs such as the California Smokers' Helpline	GREEN: Not affected by the FDA law.

**Priority Area: Promote Tobacco Cessation (4)
Policy Indicators (.2)**

4.2.1	Extent to which health insurance purchasers make tobacco assessment and coverage of treatment a contractual obligation of health care insurers and/or the clinicians who provide services to them, consistent with the U.S. Public Health Service Clinical Practice Guidelines, Treating Tobacco Use and Dependence (2008 Update)	GREEN: Not affected by the FDA law.
4.2.2	Extent to which health care administrators and insurers provide clinicians with assistance to ensure that institutional changes promoting tobacco dependence treatment are implemented universally and systematically, consistent with the U.S. Public Health Service Clinical Practice Guidelines, Treating Tobacco Use and Dependence (2008 Update)	GREEN: Not affected by the FDA law.
4.2.3	Number of policies that restrict or prohibit use of alternative tobacco products (e.g., smokeless tobacco) at the worksite	GREEN: Not affected by the FDA law.
4.2.4	Number of alcohol and drug treatment programs, mental health treatment programs, migrant clinics, and other health or social service programs that have implemented evidence-based tobacco cessation treatment, consistent with the U.S. Public Health Service Clinical Practice Guidelines, Treating Tobacco Use and Dependence (2008 Update)	GREEN: Not affected by the FDA law.

4.2.5	Number of employers that have adopted a comprehensive plan to promote tobacco cessation among their employees, including covering multiple evidence-based treatments, promotion awareness of these benefits and of the importance of quitting, and providing financial incentives for employees use of cessation services	GREEN: Not affected by the FDA law.
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Communities of Excellence Assets

Tobacco Control Funding Assets (1)

1.1	<p>Global per capita appropriation for tobacco control activities, from various sources, is consistent with the recommendations of the National Association of County and City Health Officials:</p> <ul style="list-style-type: none"> • <100,000 population: \$8-\$10/capita; • 101,000-500,000 population: \$6-\$8/capita; • >501,000 population: \$4-\$6/capita. <p>Subset of Global per capita funding for school programs:</p> <ul style="list-style-type: none"> • \$4-\$6 per student regardless of student population size 	GREEN: Not affected by the FDA law.
1.2	Amount of MSA funds that are appropriated for the purpose of tobacco control activities	GREEN: Not affected by the FDA law.
1.3	Amount of local Prop 10 funds that are appropriated for cessation and secondhand smoke education targeting pregnant women and families with young children	GREEN: Not affected by the FDA law.

Social Capital Assets (2)

2.1	Number, type, and availability of technical assistance and resources including, but not limited to advocacy, coalition building, participatory community planning, community assessment, community organizing, cessation, countering pro-tobacco influences, enforcement, evaluation, legal, secondhand smoke, social determinants of health, and tobacco availability	GREEN: Not affected by the FDA law.
2.2	Amount of satisfaction among coalition or advisory committee members with program planning, involvement of the community, implementation activities, quality of services, and progress made by the project	GREEN: Not affected by the FDA law.
2.3	Amount of support by local key opinion leaders for tobacco related community norm change strategies	GREEN: Not affected by the FDA law.
2.4	Amount of community activism among youth to support tobacco control efforts	GREEN: Not affected by the FDA law.
2.5	Amount of community activism among adults to support tobacco control efforts	GREEN: Not affected by the FDA law.

2.6	Number and type of non-traditional partners participating in coalitions or advisory committees facilitates tobacco control efforts	GREEN: Not affected by the FDA law.
2.7	Number and quality of collaborative partnerships with health, education, social, environmental, business, political, and other organizations and agencies to address tobacco control and social determinants of health	GREEN: Not affected by the FDA law.

Cultural Diversity and Cultural Competency (3)

3.1	Number and diversity (i.e., ethnic, cultural, sexual orientation) of partners participating in coalition or advisory committee is relative to their proportion in the community	GREEN: Not affected by the FDA law.
3.3	Extent that the coalition or advisory committee by-laws and member agency mission statements promote cultural diversity and competency	GREEN: Not affected by the FDA law.
3.4	Extent that educational and media materials used by the agency reflect the culture, ethnicity, sexual orientation, and languages of the communities served, relative to the demographics of the community	GREEN: Not affected by the FDA law.
3.6	Extent to which culturally and ethnically diverse organizations are funded to implement community norm change-focused tobacco control efforts in the community, in proportion to the demographics of the community	GREEN: Not affected by the FDA law.
3.7	Extent to which a tobacco control program implements organizational policies and practices that promote and institutionalize the provision of culturally competent and linguistically appropriate services for diverse populations, including organizational values that articulate commitment to cultural competency, participatory collaborative planning, provision of community capacity building, translation policies, staff diversity, and formative research/surveillance within diverse communities	GREEN: Not affected by the FDA law.

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