

96-04

## STATEMENT OF POLICY

### Local Tobacco and Vaping Control Regulations

#### Policy

The National Association of County and City Health Officials advocates for the inclusion of language in all state legislation to preserve local government autonomy and eliminate potential conflicts regarding the following:

- More restrictive tobacco and vaping control ordinances and regulations, including those governing smoke-free or vape-free indoor air;
- Increasing tobacco product taxes;
- Regulating the sales and retail environments to reduce use of tobacco and vaping products through product placement and elimination of advertising,
- Increasing the minimum age for sale.
- NACCHO urges state legislatures to enact such legislation. NACCHO encourages local public health officials to work to see that all preemptive state tobacco/vaper control legislation be repealed.

#### Justification

Tobacco use is the leading preventable cause of premature death, disability and disease in the United States. Each year, an estimated 480,000 people die from cigarette smoking in the United States where 42,000 of these deaths are related to secondhand smoke.<sup>1</sup> Approximately 40 million U.S. adults smoke cigarettes.<sup>2</sup> Each day, more than 3,200 young people under 18 years of age smoke their first cigarette, and more than 2,1,00 youth under age 18 become daily cigarette smokers.<sup>3</sup>

An estimated 58 million nonsmoking Americans, including 41% of children aged 3–11 years, are exposed to secondhand smoke. Secondhand smoke exposure causes serious disease and death, including heart disease and lung cancer in nonsmoking adults and sudden infant death syndrome, acute respiratory infections, ear problems, and more frequent and severe asthma attacks in children. The CDC estimates that between the years of 2005-2009, secondhand smoke exposure accounted for more than 7,300 lung cancer deaths annually and more than 33,951 deaths from heart disease respectively.<sup>4</sup> Based on the most recent CDC data to date, about 150,000 – 300,000 children younger than 18 months have lower respiratory tract infections resulting in between 7,500 and 15,000 hospitalizations each year.<sup>5</sup>

The rising use of e-cigarettes, or vaping products, has created a new category of products with limited regulation that may be excluded from typical tobacco control laws. Local governments must be permitted to institute ordinances to include vaping products in clean indoor air laws and regulate sales of vaping products and their accessories.



Preemptive legislation at the state level prohibits localities from enacting laws that vary from or are more stringent than state law. In the case of tobacco/vapor legislation, state preemption language prevents local governments from passing stronger, more comprehensive regulations regarding smoke or vape-free indoor air, increasing tobacco product taxes, regulating the sales and retail environments to reduce use of tobacco and vaping products, and increasing the minimum age for sale.

The tobacco industry has historically supported preemptive state laws as a way to reverse existing local tobacco control ordinances and prevent future enactment of such ordinances.<sup>6</sup> In fact, the tobacco industry's leading legislative strategy against local tobacco control laws has been preemptive state laws.<sup>7</sup>

For many years, the Federal Cigarette Labeling and Advertising Act (FCLAA) preempted states from taking any action, for health purposes, to restrict cigarette advertising or promotion. However, the Family Smoking Prevention and Tobacco Control Act, signed into law June 22, 2009, changes this by allowing states or local communities to restrict or regulate the time, place, and manner (but not the content) of any cigarette advertising or promotions.<sup>8</sup> Given that federal law can no longer preempt state law, state laws should not preempt local laws.

The U.S. Department of Health and Human Services made the elimination of preemption in tobacco control a national goal in Healthy People 2020, with the following objective: Eliminate State laws that preempt stronger local tobacco control laws. This includes preemption on smoke-free indoor air, smoke-free indoor air, preemption on advertising, and preemption on youth access.<sup>9</sup>

Between 2004 and 2016, seven states repealed provisions that preempt local tobacco control law.<sup>10</sup> As of 2016, however, 31 states held laws that preempted more restrictive local policies in one or more of the following areas: smoke-free indoor air, tobacco retailer licensure, youth access, and tobacco advertising.<sup>10</sup>

## **References**

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### **Record of Action**

*Proposed by NACCHO Healthy Living and Prevention Workgroup*

*Adopted by NACCHO Board of Directors June 12, 1996*

*Updated November 2010*

*Updated May 2013*

*Updated November 2016*