

# The Haverstraw Experience: The First Tobacco Product Display Ban in the United States

| Laurel E. Curry, MPH, Carol L. Schmitt, PhD, and Harlan Juster, PhD

In April 2012, the village of Haverstraw, New York, passed the first tobacco retail display ban in the United States. Community groups funded by the New York State Department of Health Tobacco Control Program mobilized community members to support an initiative to protect youths in their area from tobacco marketing via methods consistent with a community transformation framework. The law was soon rescinded after 7 tobacco companies and the New York Association of Convenience Stores filed a federal lawsuit against the village that challenged the law's constitutionality. We discuss lessons learned and next steps for adoption of local point-of-sale policies. (*Am J Public Health*. 2014;104:e9–e12. doi:10.2105/AJPH.2013.301861)

## KEY FINDINGS

In April 2012, the first tobacco product display ban in the United States was enacted in the village of Haverstraw, NY. A youth action program and community coalition used a community transformation framework, including community mobilization and education of community members and decision-makers, that led to policy adoption. Choosing to work with organizations whose goals aligned with theirs facilitated community engagement.

Local anti-tobacco coalitions and groups

- Can play a key role in the adoption of tobacco control policies, even those policies that have not been adopted in any other US jurisdiction.
- Can be more effective at community engagement by working with organizations whose goals are aligned with theirs rather than creating a tobacco-focused coalition from the ground up.

Groups should appraise program and community capacity for policy adoption, implementation, enforcement, and defense. The postadoption phase is crucial and may require additional capacity and partnerships.

**NEW YORK HAS A COMPRE-**hensive statewide smoke-free air law and the highest cigarette tax in the nation. In 2009, the New York State Department of Health Tobacco Control Program implemented the point-of-sale (POS) initiative, a focused effort to reduce youth exposure to tobacco product marketing. Activities were conducted by the program's community-level grantees, Community Partnerships for a Tobacco Free New York and Reality Check Youth Action Program, who worked collaboratively across the state to educate the public and policymakers about the problem of POS tobacco product marketing and policy solutions to reduce it. We describe the elements of the program that led to the first successful adoption of one of the program's model POS policies, a ban on tobacco product displays in the village of Haverstraw, New York.

## RESEARCH

As the independent evaluator of the New York State Department of Health Tobacco Control Program, RTI International studied a subset of community-level grantees across New York to learn how the tobacco control program's POS initiative was implemented and to document challenges and successes. We present results from a September 2012

group interview with the community programs POW'R Against Tobacco of Rockland County<sup>1</sup> and Reality Check Rockland.<sup>2</sup> We also interviewed legal staff from the Center for Public Health and Tobacco Policy at New England Law Boston who supported the program's efforts and used Village of Haverstraw Board of Trustees meeting minutes to construct a timeline of key events.<sup>3</sup>

## KEY PLAYERS AND INITIATIVE STRATEGIES

The efforts of the community program in New York align with the Policy Adoption and Implementation Model developed in California by the Los Angeles County Tobacco Control and Prevention Program as a framework for mobilizing communities to advance local tobacco control policy.<sup>4</sup> The experience in Haverstraw proceeded along the following 5 phases of the model.

## COMMUNITY ASSESSMENT

POW'R Against Tobacco and Reality Check Rockland work in Rockland County exclusively and assessed the community based on experience with community members and elected officials, as well as the tobacco control policy environment. Progressive and community-minded, Rockland County has been a trailblazer in

**Key Programs and Actors in the Haverstraw, NY, Tobacco Product Display Ban Experience**

Program / Actor	Role
New York State Department of Health Tobacco Control Program	Funder of 16 youth action programs and 29 community partnerships across New York State.
POWR Against Tobacco of Rockland County	One of 29 community partnership programs funded by the New York State Department of Health Tobacco Control Program whose goal is to implement strategies and programs that will decrease the social acceptability of tobacco use. The coalition is made up of organizations and private citizens in Rockland County.
Reality Check Rockland	One of the 16 New York State Department of Health Tobacco Control Program-funded youth action programs in New York State, operating in Rockland County. Middle- and high-school-aged youths work through school-based clubs to change community policies, norms, and attitudes about tobacco.
Haverstraw Collaborative	Cofounded by the Department of Youth and Family Services and the Rockland County Office of Community Resources, it is open to all community organizations that provide services to the residents of Haverstraw. The Haverstraw Collaborative's mission is "to unite our efforts and resources for the health, safety, and well being of the children, youth elders, adults and families of Haverstraw, and to raise the quality of life of all people in our diverse community." <sup>17</sup>
Haverstraw governance	The village is governed by a mayor and board of trustees who have the authority to create laws in the village of Haverstraw code.
New York Convenience Store Association, Lorillard Tobacco Company, RJ Reynolds Tobacco Company, Philip Morris USA Inc, Santa Fe Natural Tobacco Company, American Snuff Company LLC, US Smokeless Tobacco Brands Inc, and John Middleton Company	Plaintiffs in the lawsuit against the village of Haverstraw

tobacco control: in 2007, it was the first county in New York to ban smoking in cars with children<sup>5</sup>; it has the lowest smoking rate in the state (11%)<sup>6</sup>; and it requires that owners of properties with multiple units disclose their smoking policies to prospective tenants. POW'R Against Tobacco's survey of the county found that more than three quarters of Rockland residents supported the idea of a display ban.<sup>7</sup>

**POLICY CAMPAIGN STRATEGY**

Tobacco product marketing has been recognized as an area for policy change since at least

the early 1990s.<sup>8</sup> After achieving the key policy goals of a comprehensive statewide smoke-free air law and high cigarette taxes, the New York State Department of Health Tobacco Control Program focused on asking tobacco retailers in 2003 to voluntarily reduce or eliminate tobacco product advertising in their stores. However, these efforts were unsuccessful. Passage of the Family Smoking Prevention and Tobacco Control Act in 2009 enabled localities to regulate the time, place, and manner of tobacco product marketing and sales.<sup>9</sup> With this new authority, the tobacco control program shifted its POS efforts away from voluntary retailer policies

and focused on local laws or ordinances that could be adopted by a village, town, city, or county. POW'R Against Tobacco and Reality Check Rockland had been engaged in implementing a community transformation framework for years, including educating and mobilizing the community, using media advocacy and paid advertising, and educating decision-makers on the effect of tobacco product marketing on youths. Youths aged 13 to 18 years were engaged in tobacco prevention activities, presenting information to the village board and the public. Technical assistance by the New York State Department of Health Tobacco

Control Program included workshops, summits, trainings, and access to legal experts at the New England Center for Public Health and Tobacco Policy. The New York State Department of Health Tobacco Control Program disseminated print and radio media campaign messages statewide to educate New Yorkers about the effect of tobacco industry marketing in retail stores on youths.

**COALITION BUILDING**

One facet of the community transformation framework includes community mobilization, which involves engaging influential community members

and organizations to publicly support and call for actions that help achieve the coalition's goals. Rather than recruiting community members to build a local coalition focused on tobacco policy, POW'R Against Tobacco and Reality Check Rockland mobilized established community and health coalitions to take up their cause. They developed a relationship with the Haverstraw Collaborative, more than 50 member agencies working together to promote community health and wellness. In addition, a community champion emerged who was passionate about the issue and spent her professional and personal time educating the Haverstraw Collaborative and the mayor on the issue and possible policy solutions. The Haverstraw Collaborative's support was instrumental in passing the tobacco retail display ban.

**CAMPAIGN IMPLEMENTATION AND POLICY ADOPTION**

With the support of the Haverstraw Collaborative, POW'R Against Tobacco and Reality Check Rockland met with the mayor in September 2011 and presented POS policy solutions to the village board at a public hearing in December 2011. Research prepared by POW'R Against Tobacco identified only 2 businesses in the village with "power walls"—large displays of tobacco products covering most of the space behind the cash register. In preparation for the policy, POW'R Against Tobacco visited all of the tobacco retailers in the village to educate them about a possible display ban. POW'R Against Tobacco was met with universal support.

Timeline of Key Events	
February 2011	"Tobacco Marketing Works" campaign launched
September 2011	POW'R Against Tobacco of Rockland County met with mayor about the policy for the first time. He had already signed a letter of support prior to that meeting.
December 2011	POW'R Against Tobacco of Rockland County and Reality Check Rockland presented the issue of point-of-sale marketing to the Village of Haverstraw Board of Trustees.
December 2011-April 2012	Contractors attended street fairs, talked to tobacco retailers, and put extra media money into radio advertisements leading up to the vote.
March 5, 2012	"This Is Tobacco Marketing" campaign launched
April 16, 2012	Regular meeting of the Village of Haverstraw Board of Trustees Public hearing on the advertising and sale of tobacco products to minors The display ban (Resolution 96-2012, Law No. 5-2012) is adopted.
June 26, 2012	Lawsuit filed in the US District Court against the village of Haverstraw seeking to overturn the ordinance.
July 9, 2012	Regular meeting of the Village of Haverstraw Board of Trustees Village attorney informed the board about the lawsuit regarding the newly adopted Local Law No. 5-2012 to restrict tobacco product displays in all stores in the village that are accessible to minors. Resolution 166-2012 adopted by the board to delay implementation of the law for 6 months at tobacco companies' request, moving the timeframe from October 2012 to April 2013.
July 16, 2012	Special meeting of the Village of Haverstraw Board of Trustee Board meets to address the litigation and decides to repeal the Tobacco Display Law No. 5-2012 by approving Tobacco Display Law No. 6-2012, requiring a public hearing. Village attorney authorized by the board to sign an agreement with the plaintiff's attorneys to dismiss the lawsuit against the village 5 days after the village rescinds the Tobacco Display Law.
August 13, 2012	Public hearing wherein the board passed Local Law No. 6, which rescinded Local Law No. 5, repealing the tobacco display ban

Another important component of the community transformation framework is paid media. POW'R Against Tobacco and Reality Check Rockland increased radio advertising in the weeks leading up to the public hearing on the display ban to further build community support. The coalition had no way of knowing whether the tobacco industry was monitoring what was happening in

Haverstraw, but they advised legislators that a lawsuit by the tobacco industry was possible should the law pass. On April 16, 2012, the Village of Haverstraw Board of Trustees adopted a first-in-the-nation resolution to ban the display of tobacco products in all businesses within the village limits. The law would not apply to adult-only businesses. The ordinance was drafted on

the basis of a model policy developed by the New England Center for Public Health and Tobacco Policy.

**POLICY IMPLEMENTATION AND ENFORCEMENT**

On June 26, 2012, a lawsuit was filed in the US District Court against the village of Haverstraw seeking to overturn

the ordinance. The lawsuit was brought by the New York Association of Convenience Stores and 7 major tobacco companies. According to the lawsuit, plaintiffs claimed that the ordinance violated their First Amendment free speech rights under the US Constitution and the New York State Constitution, and was also preempted by the Federal Cigarette Labeling and Advertising Act, which governs the content of cigarette advertising and promotion. The lawsuit alleged that no credible evidence supports claims that tobacco marketing increases youth initiation of tobacco use.<sup>10,11</sup>

Although the mayor and board of trustees of Haverstraw were poised to implement the ordinance and willing to defend the law, the village could not marshal adequate financial resources once the tobacco companies contested the law. Some national partners indicated willingness to help, but many thought that the village was too small to attract the attention of the tobacco industry, and the speed and ease with which the village passed the law caught these groups off guard. Therefore, mechanisms to assist in defending the law were not in place quickly enough. Village officials were not willing to let taxpayers shoulder the financial burden,<sup>12</sup> so the village rescinded the law on July 16, 2012, just 3 months after the ordinance was adopted and 1 month before it was to take effect.<sup>13</sup>

## NEXT STEPS

Prominent tobacco product displays, such as those seen at checkout counters, are a primary means of enticing new tobacco users.<sup>14,15</sup> Product display bans are a tobacco control strategy

recommended by the World Health Organization's Framework Convention on Tobacco Control. As a result of passage of the Family Smoking Prevention and Tobacco Control Act, localities can consider product display bans. Although appraising community capacity to mobilize around an issue is key to policy adoption, similar appraisal of community capacity to defend a law is instrumental to implementation. The village of Haverstraw was the first to pass such a ban in the United States, but this policy option may be better suited to high-capacity jurisdictions with the resources to defend a lawsuit. Alternatively, national tobacco control groups could leverage their resources to prepare to defend a law should it be challenged.

To date, the tobacco industry has not been successful in overturning a display restriction law in other countries. It is not certain how a court would rule on such a restriction were it to come to court in the United States. Display bans may qualify as commercial speech restriction, and courts will likely scrutinize such regulations as to whether they can be upheld under the *Central Hudson* test, the most commonly applied test for deciding whether a law violates commercial speech protections.<sup>16</sup>

Regardless of the outcome of the local display ban in Haverstraw, it is clear that coordinated community efforts that include public and policymaker education, community mobilization, and technical assistance can lead to policy change in local jurisdictions across the nation. ■

## About the Authors

Laurel E. Curry and Carol L. Schmitt are with the Public Health Research Division, RTI International, Washington, DC. Harlan

Juster is with the Bureau of Tobacco Control, New York State Department of Health, Albany.

Correspondence should be sent to Laurel E. Curry, MPH, 701 13th St NW, Suite 750, Washington, DC 20005 (e-mail: lcurry@rti.org). Reprints can be ordered at <http://www.ajph.org> by clicking on the "Reprints" link.

This article was accepted December 23, 2013.

## Contributors

L. E. Curry conducted study interviews, drafted the article, and revised drafts. C. L. Schmitt conceptualized and designed the study and edited all drafts. H. Juster provided feedback and approval of drafts.

## Acknowledgments

This study was funded by the New York State Department of Health.

We would like to thank Maureen Kenney, Alana Boutelle, and Denise Hogan for participating in the study.

## Human Participant Protection

This study was reviewed and approved by institutional review boards at RTI International and the New York State Department of Health.

## References

- POWR Against Tobacco. Available at: <http://www.powragainsttobacco.org>. Accessed November 1, 2013.
- Welcome to Reality Check. Available at: <http://www.putitoutrockland.com/index.php?section=reality-check>. Accessed November 1, 2013.
- The Village of Haverstraw Board Minutes. Available at: [http://www.voh-ny.com/board\\_minutes.htm](http://www.voh-ny.com/board_minutes.htm). Accessed November 1, 2013.
- Weber MD, Simon P, Messex M, Aragon L, Kuo T, Fielding JE. A framework for mobilizing communities to advance local tobacco control policy: the Los Angeles County experience. *Am J Public Health*. 2012;102(5):785–788.
- Rockland County, NY. Article III: Smoking in vehicles. 2007. Available at: <http://www.ecode360.com/9668931>. Accessed November 1, 2013.
- University of Wisconsin Population Health Institute. County Health Rankings. 2012. Available at: <http://www.countyhealthrankings.org/#app/new-york/2012/measures/factors/9/data>. Accessed November 1, 2013.
- Making POWR moves. *Rockland County Times*. April 19, 2012; Available at: <http://www.rocklandtimes.com/2012/04/19/making-powr-moves>. Accessed November 1, 2013.
- National Cancer Institute. *Strategies to Control Tobacco Use in the United States: A Blueprint for Public Health Action in the 1990's*. Bethesda, MD: National Institutes of Health, National Cancer Institute; 1991.
- Family Smoking Prevention and Tobacco Control Act, Pub L No. 111-31 (2009).
- New York Association of Convenience Stores v Village of Haverstraw*. 2012. Available at: <http://www.natocentral.org/wp-content/uploads/2012/06/Complaint-Against-Village-of-Haverstraw.pdf>. Accessed November 1, 2013.
- Philip Morris sues village of Haverstraw. *Rockland County Times*. June 28, 2012. Available at: <http://www.rocklandtimes.com/2012/06/28/philip-morris-sues-village-of-haverstraw>. Accessed November 1, 2013.
- Skriloff D. Tobacco industry squashes village's ordinance. *Rockland County Times*. July 19, 2012. Available at: <http://www.rocklandtimes.com/2012/07/19/tobacco-industry-squashes-villages-ordinance>. Accessed November 1, 2013.
- SMOKED OUT: Haverstraw Village to drop anti-tobacco ordinance. *Rockland County Times*. July 16, 2012. Available at: <http://www.rocklandtimes.com/2012/07/16/smoked-out-haverstraw-village-to-drop-anti-tobacco-ordinance>. Accessed November 1, 2013.
- Paynter J, Edwards R, Schluter PJ, McDuff I. Point of sale tobacco displays and smoking across 14-15 year olds in New Zealand: a cross-sectional study. *Tob Control*. 2009;18(4):268–274.
- Wakefield M, Germain D, Durkin S, Henriksen L. An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays. *Health Educ Res*. 2006;21(3):338–347.
- Berman M, Miura M, Bergstresser J. *Tobacco Product Display Restrictions*. Boston, MA: Center for Public Health and Tobacco Policy; 2012. Available at: <http://publichealthlawcenter.org/sites/default/files/nycenter-syn-tobproductdisplaybans-2013.pdf>. Accessed November 1, 2013.
- The Village of Haverstraw. Department of Youth and Family Services. Available at: [http://www.voh-ny.com/dept\\_youth.htm](http://www.voh-ny.com/dept_youth.htm). Accessed November 1, 2013.