



OROVILLE PLANNING COMMISSION

Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

**November 21, 2019
REGULAR MEETING
OPEN SESSION 7:00 PM
AGENDA**

CITY OF OROVILLE PLANNING COMMISSION

CHAIR: Damon Robinson
VICE-CHAIR: Carl Durling
MEMBERS: Randy Chapman; Wyatt Jenkins; Michael Britton, Tammy Flicker, Susan Sears

ALL MEETINGS ARE RECORDED AND BROADCAST LIVE

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Cota Cole, LLP, 2261 Lava Ridge Court, Roseville, California 95661.
Meeting is streamed live at cityoforoville.org and on YouTube*

CALL TO ORDER

ROLL CALL

Commissioners: Tammy Flicker, Michael Britton, Randy Chapman, Wyatt Jenkins, Susan Sears, Vice Chairperson Carl Durling, Chairperson Damon Robison

PLEDGE OF ALLEGIANCE

INSTRUCTIONS TO INDIVIDUALS WHO WISH TO SPEAK

If you would like to address the commission at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the City Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Mayor or presiding chair in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, please submit the form prior to the conclusion of the staff presentation for that item. Council has established time limitations of three (3) minutes per speaker on all items and an overall time limit of thirty minutes for non-agenda items. If more than 10 speaker cards are submitted for non-agenda items, the time limitation would be reduced to two minutes per speaker. If more than 15 speaker cards are submitted for non-agenda items, the first 15 speakers will be randomly selected to speak at the beginning of the meeting, with the remaining speakers given an opportunity at the end. **(California Government Code §54954.3(b))**. Pursuant to Government Code Section 54954.2, the commission is prohibited from taking action except for a brief response from the Council or staff to statements or questions relating to a non-agenda item.

PUBLIC COMMENTS

This is an opportunity for members of the public to address the Planning Commission on any subject not on the agenda related to the Planning Commission.

REGULAR BUSINESS

1. ORDINANCE TO LIMIT OR PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to limit or prohibit the sale of flavored tobacco products.

RECOMMENDATION

That the Planning Commission consider several options to regulate flavored tobacco, and after consideration recommend to the City Council whether they should adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010.

DIRECTOR'S REPORT

The Director shall report on information pertinent to the Planning Commission.

COMMISSION REPORTS

Reports by commission members on information pertinent to the Planning Commission.

ADJOURNMENT

Adjourn to Wednesday, December 18, 2019 at 7:00 P.M. in the Oroville City Council Chambers

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***** NOTICE *****

Any person who is dissatisfied with the decisions of this Planning Commission may appeal to the City Council by filing with the Zoning Administrator within fifteen days from the date of the action. A written notice of appeal specifying the grounds and an appeal fee immediately payable to the City of Oroville must be submitted at the time of filing. The Oroville City Council may sustain, modify or overrule this decision.



City of Oroville

Leonardo DePaola
Community Development Director

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PLANNING COMMISSION STAFF REPORT

Thursday, November 21, 2019

RE: ORDINANCE TO LIMIT OR PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

SUMMARY: The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to limit or prohibit the sale of flavored tobacco products.

RECOMMENDATION: That the Planning Commission consider several options to regulate flavored tobacco, and after consideration recommend to the City Council whether they should adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010.

APPLICANTS: None

LOCATION: City wide

GENERAL PLAN: NA

ZONING: NA

FLOOD ZONE: NA

ENVIRONMENTAL DETERMINATION: Not a project under CEQA (para 21065 & CEQA Guidelines 15378(b)(5))

REPORT PREPARED BY:

REVIEWED BY:

Wes Ervin, Senior Planner
Community Development Department

Leonardo DePaola, Director
Community Development Director

DISCUSSION

In the interest of improved public health and especially for Oroville’s youth, on October 1, 2019, the City Council heard testimony from many individuals and groups who pointed out the health effects and increasing use by youth of e-cigarettes and flavored tobacco liquids. All acknowledge that vaping has reached epidemic proportions across the nation. The Council then directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits. On October 1, there were 29 jurisdictions that had

enacted some form of an ordinance. As of November 14 there are 50 who have done so. Some of these changes involve amendments to Title 17, which is the purview of the Planning Commission. Accordingly, the Commission is asked to review at its earliest opportunity recommended changes to Title 17 and Title 5 of the Oroville Municipal Code, and to forward the Commission's recommendations to the City Council for action.

At its October 29, 2019 meeting the Planning Commission conducted a public hearing and considered the proposed changes, which included:

- Amending the definitions in OMC 17.04.060 (Zoning Code) to separate flavored tobacco from tobacco products so they can be separately regulated;
- Amending the definitions in OMC 5.28.010 (tobacco retailers), to separate flavored tobacco from tobacco products. Tobacco retailers will thus be prohibited from selling flavored tobacco products;
- No changes to OMC 17.16.190 (Smoke Shops). with the definition changes proposed above, Smoke shops will be prohibited from selling flavored tobacco products to minors or adults;
- No changes to OMC 9.04.170 (Regulation of Smoking). Smoking, including vaping and use of electronic cigarettes, will still be prohibited wherever already prohibited.

After discussion, rather than accept the recommended ordinance the Commission directed staff to develop information on three less restrictive options:

1. Take no action, assuming the State will soon take action that affects all jurisdictions;
2. Design a more nuanced ordinance that is less restrictive but still targets youth access to vaping and flavored products. May also include hiding flavored products on store shelves.
3. Design an ordinance that limits flavored tobacco products to smoke shops.

The Chairman also encouraged staff to meet with retailers to get more input prior to the November 21 meeting.

No Action Option

If the City takes no action, it would do so with the expectation that the State or Federal governments will ultimately take action against vaping and/or e-cigarettes.

Governor Newsom issued on September 16 an executive order directing a \$20 Million campaign to educate youth, young adults, and parents about the health risks of vaping and cannabis, and to post warning signs where these products are sold.

The State Assembly Committee on Health held an informational hearing on October 16, 2019¹. Assembly members Gray and McCarty are now expected to introduce legislation to regulate vaping, e-cigarettes and/or e-liquids.

The FDA is advancing a policy to address youth e-cigarette use, but has wavered on

¹ https://cheac.org/2019/10/18/assembly-holds-joint-informational-hearing-on-vaping-tobacco-and-cannabis-products/?utm_source=rss&utm_medium=rss&utm_campaign=assembly-holds-joint-informational-hearing-on-vaping-tobacco-and-cannabis-products

banning them until the policy is finalized².

Limiting sales to Smoke Shops Option

The rules for sale of tobacco products are the same at smoke shops and tobacco retailers, though our five smoke shops all have Use Permits and typically have more security and limit patronage to adults only. The City's smoke shops would certainly gain much of the sales lost by tobacco retailers, generating some but not all of the foregone tax revenues.

Nuanced and Less Restrictive Ban Options

Less restrictive bans that still try to limit youth access have included some of the approaches below.

1. Nine jurisdictions exempt menthol from their bans, which is a long-standing flavor in regular cigarettes, and the only flavor FDA allows in cigarettes;
2. Limit the ban to e-cigarettes and associated e-liquids;
3. Limit the ban to flavored e-liquids only, exempting pure liquid nicotine, and still allowing e-cigarettes;
4. Ban online sales by sellers located within the jurisdiction;
5. Prohibit new tobacco retailers within 500 feet of an existing one, or of a school;
6. Limit sales of flavored cigars and cigarillos to packs of 5 or 20;
7. Extend the smoking ban to more public places such as parks and public events;
8. Cap the number of tobacco retailers, much like smoke shops are now limited;
9. Enact a ban, but delay effective dates and enforcement to give retailers time to adjust, and/or give the State Legislature time to act.

Three examples of unique ordinances:

- Mono County -- April 17, 2018
 - Mono County prohibited the sale of flavored e-liquids for one year, excluding other flavored tobacco products. However, since October 2019 the County now has a complete ban on all flavored tobacco products;
 - The County also banned smoking in county vehicles, public parks, recreational areas, service areas, dining areas, and public places when used as a public event;
- Richmond -- July 17, 2018
 - Banned sale of all electronic smoking devices in stores or online;
 - Limits minimum pack size of 20 cigarettes or cigars/cigarillos, except those sold for over \$5 apiece;
 - Now prohibits new tobacco retailers from opening within 500 feet of another tobacco retailer, or within 1,000 feet of a school, park, playground or library;
 - Delayed enforcement until January 1, 2020;

² <https://www.cnn.com/2019/11/13/trump-administration-wavers-on-ban-of-flavored-e-cigarettes-no-final-answer.html>

- San Francisco -- June 27, 2017 (referendum vote June 5, 2018).
 - Banned sale of all electronic smoking devices in stores or online;
 - Bans new tobacco retailers after a maximum of 45 per supervisorial district;
 - Prohibits new tobacco retailers from opening within 500 feet of a school or another tobacco retailer;
 - Enforced beginning January 1, 2019

Since the options are many, staff will develop a specific draft ordinance after hearing direction from the Commission, and will prepare to present the draft to the Council.

Enforcement and Education Considerations

Staff consulted the Police Department for this item. Most tobacco related enforcement issues are about e-cigarettes, vaping, and youth use of tobacco. Menthol and other flavorings in cigarettes, cigars and smokeless tobacco are much more benign. Thus, from the enforcement standpoint the most effective ban would be e-cigarettes and e-liquids only.

There are laws that restrict placement of tobacco products in stores, but compliance is uncertain (e.g. behind the counter vs. on the counter). A code compliance effort may be indicated.

In addition, there is data to suggest that one third of smoke shops sell to minors statewide, and that 19% of all tobacco retailers do in fact frequently sell to minors despite the law. The Butte County Sheriff's Office has conducted several sting operations, including as recently as last month.

A ban limited to e-liquids and/or flavored tobacco will help but their effectiveness is limited, because online sales, buying at the two reservations, illicit sales, and adults supplying youth will all continue regardless. Education is thus a critical component of limiting access to youth. In addition to the many nonprofit organizations now educating our youth, the Oroville Police Department has received a 3-year Department of Justice grant for \$424,240 to help educate students at the Oroville City Elementary School District (OCESD), including hiring dedicated staff, installing cameras and smoke and vapor detectors, and increased monitoring of tobacco retailers near schools. OPD and OCESD are now actively engaged in tobacco prevention education for grades 4-8, and are actively supporting other anti-smoking programs.

Economic Loss to Retailers of a Flavored Tobacco Ban

The City has 40 licensed tobacco retailers, of which 16 appear to be C-stores (gas stations/mini-marts). Gas station/mini marts are typically among the highest sales tax generators in a community. Others are grocery markets of all sizes (13), liquor stores (3), smoke shops (5), and drug stores (3). Note that Raley's and CVS have corporate policies not to carry tobacco products.

Some national sales data are available for convenience stores from the National Association of Convenience Stores³. Using that data, staff estimates that the direct

³ 2018 NACS State of the Industry Summit, published by CSPdailynews.com, Volume 29, Issue 7
<http://cdn.coverstand.com/20858/497321/9ff769c3ec0939592ebae907b4ea96529ca9fc3a.5.pdf>

sales of e-cigarettes at the average C-store to be about \$12,000 per year, or less than 1% of total store sales. Average C-store tobacco sales including cigarettes, cigars, smokeless tobacco and paraphernalia total \$102,000 per year, or 43% of total sales. Cigarettes are the largest component of tobacco sales.

A ban on flavored tobacco products affects more than just that specific product. Patrons seeking e-cigarettes also purchase other goods at the same time. Those stores that do not carry flavored tobacco products would lose a greater percentage of sales due to customers bypassing that store, instead purchasing gasoline and other products elsewhere. The two Tribal casinos both have gas stations, mini marts and smoke shops, which would presumably gain from a ban, as would Billy Bob's Market and other stores in Thermalito.

For example, Oakland limited the sale of flavored tobacco products effective July 1, 2018. According to the APCA, the effect to C-store sales was lost revenue of 11% to fuel sales, 52% in cigarette and tobacco sales, and 20.47% overall. Similar data is not available for liquor stores and smoke shops, but the impact to sales at those stores would of course be much greater.

Input from Organizations Received to Date (in order received)

In addition to the many individuals who have testified, the following organizations have provided input to the City Council and/or Planning Commission. Some are attached:

1. The California Health Collaborative has presented, and has provided much information about the health effects of vaping, tobacco, and of youth access to those products. Data they provided is included in prior staff reports;
2. The County Department of Health has presented, and supports a ban on flavored tobacco products;
3. 92 individual form letters were received opposing a ban of flavored tobacco products;
4. The Cancer Action Network supports the ban – letter attached
5. The American Petroleum and Convenience Store Association opposes the ban and supports waiting until the State acts – letter and email attached

FISCAL IMPACT

Assuming a ban on all flavored tobacco products, the lost sales of e-cigarettes and other Tobacco (OTP) products would mean minimal sales tax revenue losses to the City -- in the range of \$10,000 - \$20,000 per year. Total sales tax revenues in 2018 from those likely to be tobacco retailers were \$660,334 (service stations, food markets, and liquor stores combined). However, if Oakland's experience is repeated in Oroville, lost sales tax revenue could be up to \$90,000 per year.

ATTACHMENTS

1. City Council staff report of October 1, 2019
2. Planning Commission staff report of October 24/29, 2019
3. Assembly Informational Hearing background paper of October 16, 2019
4. Updated matrix of flavored tobacco ordinances as of 11-14-19
5. Selected correspondence supporting and opposing the ban
6. Changes to Oroville Municipal Code assuming a full ban



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: LIMITING OR PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

DATE: OCTOBER 1, 2019

SUMMARY

The Council may consider adopting an ordinance that either limits the sale of flavored tobacco products to smoke shops, or that prohibits the sale outright.

DISCUSSION

In 2017 the City Council considered but did not enact an ordinance restricting the sale of Menthol cigarettes and other flavored tobacco products. At its last meeting on September 17, 2019, the Council heard a presentation by the California Health Collaborative about the problems associated with menthol and other flavored tobacco products. They directed staff to bring an agenda item forward for consideration.

Now there are a plethora of well-documented health issues associated with the use of this type of product, there is a high percentage of use by youth, and policymakers everywhere are acting. For instance:

1. The California Department of Health and Governor Newsome are actively warning about the health issues of flavored tobacco use in the media, including that there have been 4 deaths and hundreds of illnesses in the State;
2. The Trump Administration announced on September 11 that it is moving to pull flavored e-cigarettes from the market until/unless they are approved by the FDA¹;
3. The makers and sellers of flavored cigarettes are under tremendous public pressure by public officials at all levels of government. On September 25 the CEO of Juul stepped down, the company announced it would stop saying their

¹ <https://www.npr.org/sections/health-shots/2019/09/11/759851853/fda-to-banish-flavored-e-cigarettes-to-combat-youth-vaping>

products are safer than traditional cigarettes, and would not oppose new regulations for their products.²

- 4. Local and state governments across the country have enacted laws prohibiting or restricting the sale of flavored tobacco, including 37 in California (e.g. San Francisco, Hermosa Beach, Cloverdale, and Sacramento). On 9/24/19, the LA County Board of Supervisors became the latest - voting unanimously to ban flavored tobacco products.

How many retailers in Oroville will be affected?

There are 40 tobacco retailers in Oroville that sell tobacco as part of their product lines, and 5 smoke shops whose main business is tobacco and tobacco products. Three smoke shops are on Oro Dam Blvd, one is on Lincoln Blvd, and the fifth is on Feather River Blvd @ Bird St. Prohibition would eliminate a significant line of business at the 5 smoke shops. The sale of unflavored tobacco and tobacco products would not be affected.

What is a flavored tobacco product?

The ordinances of Hermosa Beach and Sacramento both define a flavored tobacco product as any tobacco product that imparts a characterizing flavor regardless of the name of the product. For example: "Tropical Mist" may be characterized as smelling / tasting like coconut

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.

FISCAL IMPACT

Limiting sale to smoke shops would have an undetermined but limited effect on annual sales at 40 stores that sell tobacco products in Oroville.

A prohibition would have a significant effect on sales at the five smoke shops.

RECOMMENDATION

Direct staff to prepare an ordinance that distinguishes between tobacco products and flavored tobacco products, and that also:

- 1. Limits the sale of all flavored tobacco products to smoke shops
- or
- 2. Prohibits the sale of all flavored tobacco products within City limits.

and

² <https://www.nytimes.com/2019/09/25/health/juul-vaping.html>

Direct Staff to bring the matter before the Planning Commission on October 24, then to Council for a First reading on November 5 or 19, and a second reading as soon as possible after that.

ATTACHMENTS

1. California Medical Association White Paper on Flavored and Mentholated Tobacco Products;
2. California Matrix of Local Flavored Tobacco Product ordinances;
3. Model California Ordinance Restricting Sale
4. Hermosa Beach Ordinance
5. Sacramento City Ordinance

Flavored and Mentholated Tobacco Products: Enticing a New Generation of Users

CMA White Paper

May 2016



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This document was prepared by the California Medical Association and reviewed by its Council on Science and Public Health, a panel of physician experts, with input from subject matter researchers. It was approved by the CMA Board of Trustees on April 21, 2016.

CMA would like to thank the following organizations and individuals for their feedback and assistance in the writing of this paper: CMA Foundation; Network of Ethnic Physician Organizations; University of California, San Francisco; the LOOP; Valerie Yerger, ND; Bettina Friese; African American Tobacco Control Leadership Council; Phillip Gardiner, DrPH; Rosalind A. Kirnon, MD; Janine Bera, MD; Donald Lyman, MD, MPH; Gordon Fung, MD; Robert Oldham, MD; Pamela Ling, MD, MPH; and Bonnie Halpern-Felsher, PhD, FSAHM.

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The California Medical Association’s (CMA) mission is “to promote the science and art of medicine, the care and well-being of patients, the protection of the public health and the betterment of the medical profession” and the organization has a similar core objective of advancing public health.

CMA has long recognized that tobacco use is a costly habit that often leads to illness and poor health; in 1963, CMA was the first among state medical societies to create policy to inform people about the harmful effects of cigarette smoking. Effective policy solutions that prevent and reduce tobacco use and the negative health impacts of these products should be guided by the current literature and research that indicates these interventions are necessary – namely, that there is a preponderance of evidence that highlights emerging issues and which can be used to help guide tobacco control efforts.

This report presents the evidence and research on the impact of flavored and mentholated tobacco products on public health, particularly among priority populations. Priority populations are groups that have higher rates of tobacco use than the general population, experience greater secondhand smoke exposure at work and at home, are disproportionately targeted by the tobacco industry, and have higher rates of tobacco-related disease compared to the general population.¹

Specifically, this report addresses:

- The evidence linking flavored and mentholated tobacco products with initiation of and sustained tobacco use by youth and other priority populations, and the resulting negative health effects.

While great strides have been made in reducing tobacco use in California, tobacco use is still the leading preventable cause of premature death and disability in the state and nationally – more than 440,000 people die prematurely from tobacco-related disease.² Evidence indicates that lifelong smoking and other tobacco use begins early in life; in California, 63% of smokers start by the age of 18, and 97% start by age 26.³

Although the overall prevalence of youth smoking is declining in California, the introduction of novel tobacco products that are offered in a variety of flavors designed to appeal to children, such as bubblegum, grape, and chocolate, may present new public health threats to adolescents and young adults. Other evidence indicates that flavor additives, such as menthol, may impose additional threats, particularly among certain priority population groups that have relatively higher use rates.

The use of flavor and menthol additives in tobacco products has long been a popular industry strategy to mask the natural harshness and taste of tobacco, making initiation easier for younger and beginner smokers.⁴ Like all tobacco products, flavored and mentholated tobacco products have serious health risks and are not considered safe by the United States (U.S.) Food and Drug Administration (FDA).⁵

In 2009, the Family Smoking Prevention and Tobacco Control Act (FSPTCA) was signed into federal law, making it illegal to manufacture cigarettes that contained “characterizing flavors” other than that of tobacco. This included flavors like strawberry, grape, orange, clove, chocolate, and cinnamon. The FDA concluded that flavored cigarettes are a gateway for many children and young adults to become regular smokers.⁶

Notably, the federal ban on flavored cigarettes did not apply to mentholated cigarettes or other flavored tobacco products.⁷

There are several types of flavored tobacco products on the market, including cigars, smokeless tobacco, hookah, liquid nicotine solutions (used in electronic smoking devices), and menthol cigarettes. These products come in a variety of candy and fruit flavors such as chocolate, watermelon, grape, cherry, apple, and wintergreen. This section describes each type of tobacco product and consumption patterns, as well as health impacts associated with use of these products.

Cigars

- Cigars are sold in a variety of candy, fruit, and alcohol-like flavors.
- Cigars are the second most common form of tobacco used by youth, and flavored cigars represent more than half of the cigar market.
- Cigar smoke contains many of the same carcinogens as cigarette smoke, and may even be more toxic.
- Cigars pose significant morbidity and mortality risks to users.



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Cigar Products and Market Share

Cigars tend to vary in terms of size and the quantity of tobacco used in their products. There are three types of cigar sizes sold in the United States:

- **Large or Premium Cigars:** Contain between 5 and 20 grams of tobacco, which can equate to a pack of cigarettes.
- **Little Cigars:** Very similar to cigarettes and sold in the same size (e.g., contain 1 gram of tobacco), shape and packaging (20 little cigars in a package).
- **Cigarillos:** Contain about 3 grams of tobacco, usually larger than little cigars and cigarettes.⁸

In 2014, about 13 billion cigars were sold in the United States, including 12.4 billion large cigars and cigarillos and 0.6 billion little cigars.⁹ While cigarette consumption has declined from 2000 to 2014, total consumption of cigars increased by 122% over this same period,¹⁰ with flavored cigars representing more than half of the U.S. cigar market.¹¹ Following the Family Smoking Prevention and Tobacco Control Act of 2009, research indicates that cigar manufacturers and the tobacco industry manipulated flavored cigarettes to become flavored cigars in order to circumvent the ban on flavored cigarettes.^{12,13} Cigars are also commonly sold as single products, making them an affordable alternative to cigarettes which are taxed at higher rates.¹⁴

Swisher International Inc.'s Swisher Sweets and Little products represent the most popular cigar brands on the market. They come in a variety of flavors, including chocolate, strawberry, ice cream, peach, and grape. Black & Mild brand cigars, owned by Altria (parent company of Philip Morris USA), also maintain a significant market share and sell flavors like apple, wine, and cream.¹⁶

Cigar Use by Certain Groups

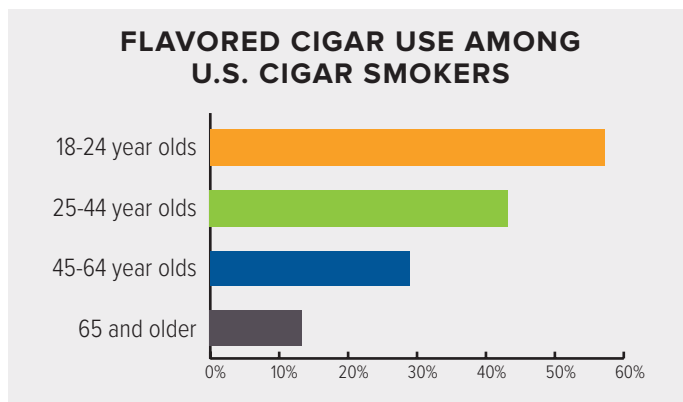
Cigars are the second most common form of tobacco used by high school students.¹⁷ That number increases among first-time tobacco users aged 12 and older, with nearly 2.7 million smoking cigars, in comparison to 2.3 million smoking cigarettes.¹⁸

A recent study found that more than 87% of adolescents who used cigarillos in the past 30 days used flavored cigarillos.¹⁹ When asked, 73.8% of current youth cigar smokers said they smoked cigars “because they come in flavors I like.”²⁰ More than two fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes.²¹

In fact, a recent study found that flavored tobacco products, such as sweet-flavored cigars, are being engineered with the same flavor chemicals used in popular candy and drink products like LifeSavers and Jolly Ranchers, providing a “familiar, chemical-specific flavor cue” to the user.¹⁵

When asked, 73.8% of current youth cigar smokers said they smoked cigars “because they come in flavors I like.”

Research indicates that use of flavored cigars decreases with age: an analysis of data from the National Adult Tobacco Survey show that flavored cigar use among cigar smokers was 57.1% for 18-24 year olds, 43.2% for 25-44 year olds, 28.9% for 45-64 year olds, and 13.4% for those 65 and older.²² In addition, youth, young adults, females, African-Americans, cigarette smokers, and daily cigar smokers are significantly more likely to report smoking a usual cigar brand that is flavored, with preference for a usual brand that produces flavored cigars decreasing significantly with age.²³



Source: Findings from the 2009–2010 National Adult Tobacco Survey. *Nicotine & Tobacco Research*. 2013;15:608–14.

Health Impacts of Cigar Use

Item 1.

Cigar smoke contains many of the same carcinogens as cigarette smoke, and may even be more toxic.²⁴ As a result of the curing and fermentation process involved in producing cigar tobacco, higher concentrations of cancer-causing nitrosamines are present and released upon combustion. Additionally, cigars have more tar for every gram of tobacco smoked in comparison to cigarettes, and higher concentrations of toxins due to less-porous cigar wrappers.²⁵

Cigars pose significant morbidity and mortality risks to users. While lung cancer risk is less strongly associated with cigar smoking than with cigarette smoking, the health risks from cigar smoking increase depending upon level of exposure as measured by cigars smoked per day, inhalation level, and past smoking history.^{26,27}

Cigar smokers have higher rates of lung cancer, heart disease, and lung disease as compared to nonsmokers.²⁸ Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophageal cancer, and has been linked to gum disease and tooth loss.^{29,30} Cigar smokers have also tested for higher levels of toxic and carcinogenic substances like cotinine, 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanol (NNAL), which is a tobacco-specific nitrosamine (TSNA) that is a known lung carcinogen, and lead concentrations, as compared to nontobacco users.³¹

Daily cigar use and deep inhalation has also been linked to elevated risk of heart disease and chronic obstructive pulmonary disease.³² Cigar smokers also increase their mortality risk for an aortic aneurysm.³³ Regular cigar smoking was responsible for approximately 9,000 premature deaths and more than 140,000 years of potential life lost among U.S. adults aged 35 years or older in 2010.³⁴

There is a misperception that cigars are not harmful because cigar smoke is not inhaled, however, studies indicate that some cigar smokers do inhale, especially current and former cigarette smokers.³⁵ Inhalation of cigar smoke into the lungs and bloodstream causes smoke particles to deposit into the lungs, stomach, and digestive tract and increases the risk for cancer.³⁶⁻³⁸ Other research indicates that some youth and adult users of little cigars fully inhale the cigar smoke, similar to cigarettes, often indicating that inhaling was necessary to get a “buzz” from little cigars.^{39,40} Regardless of the level of inhalation, all cigar smokers expose their lips, tongue, and throat to smoke and cancer-causing chemicals.⁴¹

Smokeless Tobacco

- Smokeless tobacco is sold in various flavors and forms, with newer products that do not require spitting.
- Moist snuff is the most popular smokeless tobacco product and flavors account for the largest portion of moist snuff sales.
- Smokeless tobacco users tend to be younger and evidence shows the industry has manipulated the nicotine content to attract and retain users.
- Smokeless tobacco contains at least 28 cancer-causing chemicals.

Smokeless Tobacco Products and Market Share

Smokeless tobacco contains nicotine and is addictive.⁴² It is not burned, and it may be sucked, chewed, spit, or swallowed. It can come in a variety of flavors such as winter-green, citrus blend, cinnamon, berry, vanilla, and apple.^{43,44}

There are three main types of smokeless tobacco:

- **Chewing tobacco:** includes cured tobacco that comes in various forms such as loose leaf, plug, or twist tobacco, and is available in multiple flavors. Users place chewing tobacco between the cheek and gums.
- **Snuff:** Oral snuff is a finely cut, processed tobacco which the user places between the cheek and gums. Snuff may be moist, dry, or packaged in tea-like pouches or packets (i.e., snus). Dry snuff may be sniffed or inhaled into the nose, while snus is a newer form of snuff that does not require spitting.
- **Dissolvables:** Finely ground tobacco and flavorings, shaped into tablets, strips, or other forms, that the user ingests orally. These products do not require spitting.

In 2011, smokeless tobacco sales totaled approximately 124.6 million pounds in the U.S., increasing from the 122.6 million pounds sold in 2010. Moist snuff is the most popular smokeless tobacco product with over 80% of the market share, followed by loose leaf at over 17% of the market.⁴⁵ Three companies account for nearly 90% of U.S. sales of smokeless tobacco—U.S. Smokeless Tobacco Company (owned by Altria, popular premium brands like Skoal and Copenhagen), American Snuff, and Swedish Match.⁴⁶

Between 2005 and 2011, sales of flavored moist snuff across all companies increased by 72%; and in 2011, flavored products accounted for more than half (56.1%) of all moist

snuff sales.⁴⁷ Internal documents for the U.S. Smokeless Tobacco Company indicate that flavors were intentionally used to “graduate” new users from the “milder-tasting, more flavored” products to those with a “more full-bodied, less flavored ... more concentrated tobacco taste.”⁴⁸

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Smokeless Tobacco Use by Certain Groups

The current demographics of smokeless tobacco users have changed as tobacco manufacturers introduce novel smokeless tobacco products with flavorings and new delivery methods appealing to a broader consumer base.⁴⁹ In 1970, men aged 65 and older were about six times more likely to use smokeless tobacco regularly as compared to men aged 18 to 24. By 1991, young men were 50% more likely than the oldest men to be regular users of smokeless tobacco.^{50,51}

In a 2013 survey of U.S. high school students, 14.7% of high-school boys and 8.8% of all high-school students reported current use of smokeless tobacco products.⁵² Furthermore, each year about 535,000 youth ages 12-17 report using smokeless tobacco for the first time.⁵³ More broadly, the number of persons aged 12 or older who used smokeless tobacco for the first time within the past year was 1.1 million in 2013.⁵⁴ Smokeless tobacco use among females has historically been low. Among males, smokeless use decreased between 1986 and 2000, but has been increasing since 2000.⁵⁵

There is evidence that users who begin with low-nicotine “starter” products are more likely to subsequently “graduate” to products with higher nicotine content,⁵⁶ and that use of starter products reinforces use of other tobacco products, including cigarettes.^{57,58} Industry marketing practices and introduction of novel products have encouraged cigarette smokers to use smokeless tobacco as an alternative in locations where smoking is not permitted.^{59,60} Cigarette smokers may also consider smokeless tobacco to be a cessation or harm reduction strategy to reduce use of combustible tobacco products.⁶¹ Studies have found that smokers who no longer use combustible tobacco may switch to smokeless tobacco as a substitute to smoking or may engage in dual use by using both products concurrently.⁶²⁻⁶⁴ Smokeless tobacco is not a safe alternative to combustible tobacco, and there is no conclusive evidence that shows that switching to smokeless tobacco is an effective long-term smoking cessation strategy.^{65,66}

Health Impacts of Smokeless Tobacco Use

Smokeless tobacco contains at least 28 cancer-causing chemicals⁶⁷ and has been shown to cause gum disease, tooth decay and cancers of the oral cavity, esophagus and pancreas.⁶⁸⁻⁷⁰ The health risks associated with smokeless tobacco use can vary depending upon the product characteristics, manner and frequency of use, as well as interactions with dual use of other tobacco products.⁷¹

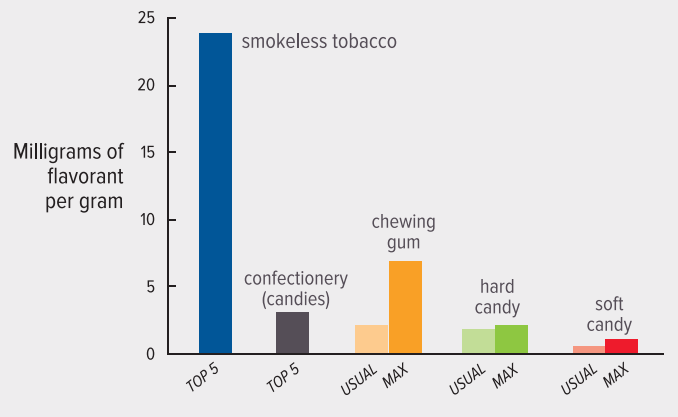
The use of flavorings in some oral smokeless tobacco products presents another level of exposure as the flavorings are ingested along with the tobacco.⁷² A measurement of the mint and wintergreen contents found in popular moist snuff products indicated that these products contain far more of these flavorings (i.e., methyl salicylate) than found in hard candies – a typical smokeless tobacco user could ingest up to 12 times the acceptable daily intake level of methyl salicylate as established by a scientific expert committee on food additives.⁷³ Smokeless tobacco products may also contain additives that have been prohibited for use in food; coumarin, for example, is an additive that has been banned in foods due to its liver toxicity, that is also found in Camel Mellow Orbs, a dissolvable tobacco product.⁷⁴

Smokeless tobacco products differ considerably in their concentrations of nicotine, volatile and nonvolatile nitrosamines including TSNAs, the most abundant strong carcinogens in smokeless tobacco products, as well as toxic metals and other compounds.⁷⁵⁻⁷⁷ All smokeless tobacco products contain nicotine and almost all contain TSNAs.⁷⁸ A comparison of studies found that biomarkers indicating exposure to carcinogens in the urine of users of moist snuff varied by brand used and, for some brands, were higher than levels seen in Marlboro cigarette smokers.⁷⁹

Smokeless tobacco use is strongly associated with the prevalence of oral lesions on the cheeks, gums, and/or tongue, such as leukoplakia.^{80,81} Lesions typically occur at the site in the mouth of smokeless tobacco application and indicate a high risk of cancers arising from leukoplakia and

METHYL SALICYLATE IN “WINTERGREEN” TYPES OF SMOKELESS TOBACCO, CANDY, AND GUM

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Source: Chen C, et al. (2010)

oral submucous fibrosis.^{82,83} Research suggests that more than half of daily smokeless tobacco users had lesions or sores in the mouth,⁸⁴ and lesions are more severe in people who begin use at an earlier age, use for more hours per day, use greater dosages, or use on more days per month.⁸⁵ Other oral conditions associated with smokeless tobacco use include gingival recession, which can be observed within one year of smokeless tobacco use, dental decay, and caries.⁸⁶ A study found chewing tobacco users were four times more likely than non-users to have decayed dental root surfaces.⁸⁷

Other health impacts from smokeless tobacco use include an association with increased risk of fatal ischemic heart disease and stroke.⁸⁸⁻⁹⁰ Use during pregnancy heightens risk for early delivery and stillbirth, and can affect how a baby's brain develops before birth.^{91,92} Research shows that users who engage in dual use of smokeless tobacco and cigarettes may have greater levels of toxicants and may prolong the duration of smoking than those who use only one tobacco product, potentially posing greater health risks.^{93,94}

Hookah Tobacco

- Hookah has a wide range of flavors and flavor mixes available for purchase.
- Hookah smoking is a social activity and its popularity has increased among youth and college students.
- Flavored hookah tobacco is the preferred tobacco for use in water pipes.
- Hookah is not safer than cigarettes and has many of the same health risks as cigarette smoke.

Hookah Products and Market Share

Hookah—also called shisha, narghile, and goza—refers to water pipes that are used to smoke tobacco by indirectly heating it with burning embers or charcoal.⁹⁵ The tobacco comes in a range of flavors, such as apple, mint, cherry, chocolate, cardamom, watermelon, and cappuccino,⁹⁶ and some manufacturers even mix flavors to produce combinations such as strawberry-peach or raspberry-orange.⁹⁷ Several Middle Eastern companies manufacture and import the tobacco, including Al Fakher, Al Waha, Nakhla, Romman, and Fumari, and there are also U.S. companies that manufacture and distribute their own brands of tobacco for water pipe smoking.⁹⁸

Hookah Use by Certain Groups

Hookah smoking is often a social activity and two or more people may share the same waterpipe.⁹⁹ Hookah use began centuries ago in ancient Persia and India,¹⁰⁰ but hookah cafes have gained popularity nationwide in the U.S.¹⁰¹ and use by American youth^{102,103} and college students is increasing.¹⁰⁴⁻¹⁰⁸ One study found that hookah use in California was much higher among young adults (24.5% among men, 10% among women) than it was among all adults (11.2% among men, 2.8% among women) in the U.S.¹⁰⁹ A 2014 study found that teens that use hookah are two-to-three times more likely to start smoking cigarettes or to become current smokers than teens who have not tried hookah.¹¹⁰ In addition, an analysis of the 2012–2013 National Adult Tobacco Survey found that among young adults who had never established cigarette smoking, two of five hookah smokers reported being susceptible to smoking cigarettes.¹¹¹

The World Health Organization (WHO) found that the reduction of sweetened flavored water pipe tobacco **Item 1.** *maassel*, is one of the contributing factors that has caused hookah's explosive growth.¹¹² Prior to the introduction of *maassel*, most water pipe smokers used some type of raw tobacco that produced a strong, harsh smoke, unlike the smoother, aromatic smoke produced from *maassel*.¹¹³ Research indicates that *maassel* is the preferred tobacco for use in water pipes, especially among young smokers.¹¹⁴ One study found that 88.7% of 12-17 year olds who had ever smoked hookah used flavored hookah the first time they tried the product, and 89% of current hookah smokers used a flavored product in the last month.¹¹⁵ Similarly, the 2014 National Youth Tobacco Survey found that 60.6% of middle and high school hookah smokers had used flavored hookah in the past month.¹¹⁶

Health Impacts of Hookah Use

Many young adults falsely believe that hookah smoking is safer than cigarette smoking,¹¹⁷ however, hookah poses many of the same health risks as cigarette smoking. One hookah session delivers approximately 125 times the smoke, 25 times the tar, 2.5 times the nicotine, and 10 times the carbon monoxide as a single cigarette.¹¹⁸ During an hour-long hookah smoking session the average user will take 200 puffs, while smoking an average cigarette involves only about 20 puffs.^{119,120} In fact, smoking hookah for 45 to 60 minutes can be equivalent to smoking 100 or more cigarettes.¹²¹

The charcoal that is used to heat the tobacco in a hookah can increase health risks for smokers, as the smoke contains toxicants emitted from both the charcoal and the tobacco product, including flavorings.¹²² Hookah smoke has high levels of carbon monoxide, metals, and cancer-causing chemicals.¹²³ As a result, hookah use can cause negative health effects on the respiratory system, cardiovascular system, oral cavity and teeth, and long-term use has been linked to high incidences of chronic obstructive pulmonary disease and periodontal disease.^{124,125} Hookah smokers may also be at risk for some of the same diseases as cigarette smokers, including oral cancer, lung cancer, stomach cancer, and esophageal cancer.^{126,127}

Liquid Nicotine Solution

- Liquid nicotine solution is a broad term that encompasses “e-juice” or “e-liquid” which is often used in electronic nicotine delivery devices, or electronic cigarettes.
- Liquid nicotine solution is available in a plethora of candy and fruit-flavors, many of which use popular brand names and logos that appeal to youth.
- Youth uptake of electronic cigarettes has vastly increased over the last several years.
- While there is insufficient research on the long-term health effects of liquid nicotine solution, evidence shows that toxic additives are often included in the aerosol spray.



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Liquid Nicotine Products and Market Share

Liquid nicotine solution, also called “e-juice” or “e-liquid,” is used in electronic smoking devices such as e-cigarettes and vaporizers. The term “electronic cigarette” or “e-cigarette” is a common term that can refer to a wide variety of products that use liquid nicotine solution, which is a derivative of tobacco. Unlike combustible tobacco products, e-cigarettes are battery-operated devices that heat liquid nicotine solution to form an inhalable aerosol.¹²⁸ Some e-cigarettes are reusable and users can replace or refill the liquid nicotine solution, while others are disposable and cannot be refilled.¹²⁹ Other more advanced devices, called modulators or “mods,” can be assembled with separate component parts and accessories, which permits greater variation in the battery power, style, and size.¹³⁰

Sales of electronic cigarettes and supplies have experienced triple-digit growth over the past five years, climbing to over \$3.5 billion with market analyses projecting use of e-cigarettes and vaporizers to overtake combustible cigarettes in ten years.¹³¹ Almost 50% of the

electronic cigarette market is owned by the largest companies, and that market share is expected to reach 80% in 2021.¹³² However, sales have decelerated over the past year due to customer dissatisfaction, safety concerns, and increased state regulation.¹³³

As a result of this growth, there are now over 460 brands of e-cigarettes and more than 7,700 unique e-cigarette flavors available for purchase online.¹³⁴ This includes a wide range of candy and fruit-flavors that are not permitted in cigarettes, many of which use well-known brand name candy and cereal products, such as Wrigley’s, Atomic Fireball, Tutti Frutti, and Cap N’ Crunch, which are considered to be appealing to children.¹³⁵

Liquid Nicotine Use by Certain Groups

Data trends depict increasing use of e-cigarettes by youth. From 2013 to 2014, a Centers for Disease Control and Prevention (CDC) survey found that youth use of e-cigarettes had tripled and now exceeds youth use of traditional cigarettes. Current e-cigarette use among high school students increased from 4.5% to 13.4%, amounting to 2 million high school students and 450,000 middle school students who currently use e-cigarettes.¹³⁶

A 2015 Monitoring the Future study found that 40% of youth who used e-cigarettes did so because “they tasted good” compared to only 10% who use them to quit smoking traditional cigarettes.¹³⁷

Other studies found similar increases in youth uptake of e-cigarettes,¹³⁸⁻¹⁴⁰ and preliminary California specific data indicates e-cigarette youth use to be at much higher rates than traditional cigarettes.¹⁴¹

A gateway effect has been observed for youth users: a recent longitudinal study of e-cigarette use found that adolescents who use e-cigarettes are more likely to start smoking cigarettes. Among nonsmoking students who used e-cigarettes, 20% indicated they had smoked their first cigarette a year later. Among nonsmokers who had not used e-cigarettes, only 6% had used cigarettes a year later.¹⁴² Similar findings were published in *The Journal of the American Medical Association (JAMA) Pediatrics* that indicates young people who smoke e-cigarettes are more likely to start smoking traditional cigarettes within a year

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as compared to their peers who do not use e-cigarettes.¹⁴³ Using data from the 2012 National Youth Tobacco Survey, one study confirmed that e-cigarette users who had never smoked cigarettes and who had experimented with smoking had elevated intention to smoke cigarettes compared with their counterparts who had never used e-cigarettes.¹⁴⁴ Additionally, a new analysis of a nationally representative sample of adolescents supports these findings: use of electronic nicotine delivery systems (such as e-cigarettes) was associated with initiation of cigarette smoking in the last year.¹⁴⁵

Health Impacts of Liquid Nicotine Use

There is insufficient research regarding the long-term health effects of using e-cigarettes.¹⁴⁶ As e-cigarettes have largely been unregulated, they have been heavily marketed as a safer alternative to conventional cigarettes. However, the liquid nicotine solution used in e-cigarettes frequently contains nicotine, as well as propylene glycol, glycerin, flavorings, and other toxic additives.¹⁴⁷ Research has found chemicals and toxins contained in the aerosol; such as nicotine, formaldehyde, lead, nickel, and acetaldehyde, all of which are found on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.¹⁴⁸ It is posited that nicotine exposure during periods of developmental vulnerability has multiple adverse health consequences, including impaired fetal brain and lung development, and altered development of cerebral cortex and hippocampus in adolescents.¹⁴⁹

Furthermore, certain chemicals used to flavor liquid nicotine, like diacetyl, 2,3-pentanedione, and acetoin, are present in many e-liquids at levels which are unsafe for inhalation.¹⁵⁰ While diacetyl has been approved for ingestion in human food, it has not been similarly evaluated and approved for use in tobacco products, which result in exposures other than ingestion (e.g., inhalation).¹⁵¹ A recent study found diacetyl in 75% of flavored e-cigarette liquids and refill liquids that were tested, and at least one of the three

flavoring chemicals (i.e., diacetyl, 2,3-pentanedione, and acetoin) was detected in 92% of the tested e-cigarette and liquids.¹⁵² Diacetyl, when inhaled, is associated with the development of the severe lung condition called bronchiolitis obliterans, also known as "popcorn lung," which causes an irreversible loss of pulmonary function and damage to cell lining and airways.¹⁵³ Still another study has found that users of flavored e-cigarettes are likely inhaling a chemical called benzaldehyde, a widely used flavoring agent found in foods, as well as medicines like cough syrup, that when inhaled can irritate the airways.¹⁵⁴

In addition, the liquid nicotine solution contains varying concentrations of nicotine, ranging from no nicotine to 100 mg per milliliter (a milliliter is approximately a fifth of a teaspoon). The lethal dose of nicotine is estimated to be 30-60 mg in an adult and 10 mg in a child. The toxicity of a 60 mg dose of liquid nicotine is similar to or even higher than that of cyanide.¹⁵⁵ Accidental exposure to nicotine, particularly by children aged five and younger, has led to significant increases in calls to poison control centers in California and nationally.¹⁵⁶

Although there are claims that e-cigarettes are an effective smoking cessation tool, there is not enough evidence to indicate that e-cigarettes will help smokers quit or reduce the number of cigarettes smoked.^{157,158} The U.S. Preventive Services Task Force, which makes recommendations about the effectiveness of specific preventive care services after a thorough assessment of the science, recently concluded that "the current evidence is insufficient to recommend electronic nicotine delivery systems for tobacco cessation..."¹⁵⁹ In fact, recent evidence points to potential signs of dual use instead of cessation: instead of using e-cigarettes as a cessation tool, some users are using e-cigarettes in indoor environments where use of traditional cigarettes may be prohibited, but continuing to smoke traditional cigarettes outdoors.¹⁶⁰⁻¹⁶³

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Menthol Cigarettes

- Menthol is an anesthetic additive used in cigarettes that imparts a cooling effect and minty taste, and reduces the harsh taste of cigarette smoke.
- Menthol cigarettes represent about one third of the U.S. cigarette market.
- Menthol users tend to be younger, female and members of ethnic minorities, and the FDA has concluded that menthol cigarettes are “starter” products.
- Menthol cigarettes lead to greater addiction and can inhibit cessation.

Menthol Cigarette Products and Market Share

Menthol is an anesthetic additive that can be natural or synthetically produced, and is commonly used as a minty flavoring in cigarettes. At low doses, menthol has a cooling, sensory effect that reduces the perceived harshness of tobacco and increases ease of smoking.¹⁶⁴ At high doses, menthol can cause irritation and pain via effects on certain receptors located in the nose, mouth and airways. Menthol is present in most cigarettes in the U.S., both as a characterizing flavor (higher levels) and for other taste reasons (lower levels).^{165,166} Menthol is also an active ingredient in many medicinal products, such as cough drops, and it is regulated as a drug by the FDA. The use of menthol in tobacco products is not regulated by the FDA, and it may be found in cigarettes, cigars, smokeless tobacco, and other tobacco products.¹⁶⁷

Menthol was first used as a cigarette additive in 1925, with sales totaling only 3% of the overall U.S. cigarette market prior to 1956.¹⁶⁸ Once the tobacco industry realized menthol made cigarettes more palatable upon initiation and could be used to retain smokers, marketing strategies were refined to target youth and certain groups (See Priority Populations Section).^{169,170}

There are approximately 19 million Americans who smoke menthol cigarettes, including 1.1 million adolescents, and sales of these products comprise between 28% and 34% of the U.S. cigarette market.^{171,172} Common menthol cigarette brands include Kool, Newport, and Salem, although the cigarette market is highly consolidated among three companies: Altria (parent company of Phillip Morris, Marlboro products), Reynolds American and Lorillard.¹⁷³

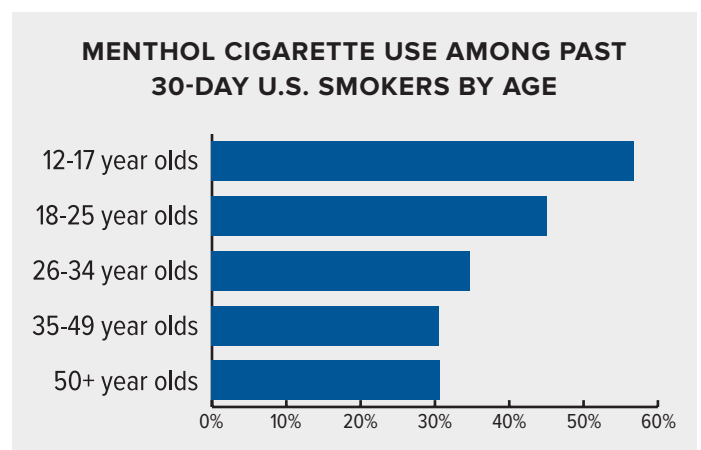
Lorillard’s brand of mentholated cigarettes, Newport, historically outpaced all other menthol brands and its main product line. In 2014, Reynolds acquired Lorillard in a merger allegedly designed to give Reynolds access to the Newport product.¹⁷⁴

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Menthol Cigarettes Use by Certain Groups

Analyses of internal tobacco industry documents reveal that the tobacco industry knowingly manipulated the menthol content in cigarettes to account for sensory preferences among younger and more experienced smokers,¹⁷⁵ understanding that the amount of menthol in a cigarette changes how the cigarette is smoked and how pleasurable it is to the smoker.¹⁷⁶ Menthol enhances the sensory experience or “throat grab” of the smoke, and through desensitization, reduces the irritating effect of nicotine, leading to a positive association by novice smokers.^{177,178}

Research indicates that menthol cigarettes are a “starter” product for youth and use of menthol is more likely among those who are recent initiates.¹⁷⁹⁻¹⁸³ Using data from the National Surveys on Drug Use and Health, one study found that menthol cigarette use is more common among 12–17 year olds (56.7%) and 18–25 year olds (45.0%) than among 26–34 year olds, 35–49 year olds, and 50+ year olds (range of 30.5% to 34.7%). The study also found that while adolescent and young adult use of non-menthol cigarettes has decreased from 2004–2010, menthol smoking rates have remained constant (adolescents) and increased (young adults) over this same period.¹⁸⁴



Source: Giovino GA, et al. (2015)

Menthol users are associated with being younger, female, and of non-Caucasian race/ethnicity, and use is especially high among minority youth. A review of three national data sets determined that more than 80% of adolescent African American smokers and more than half of adolescent Latino smokers use menthol cigarettes. Menthol cigarettes are also used by more than half of Asian American middle-school smokers.¹⁸⁵ In addition, an analysis on the 2008 and 2009 National Survey on Drug Use and Health found that an elevated prevalence of menthol use was found among persons with severe psychological distress,¹⁸⁶ while another study indicated that menthol is disproportionately used among young adult tobacco users with mental health problems.¹⁸⁷

Strong evidence also suggests that use of mentholated cigarettes during childhood and early adulthood increases nicotine addiction and dependence,¹⁸⁸⁻¹⁹⁰ with the FDA surmising that youth appeared to be particularly vulnerable to the effects of menthol cigarette smoking.¹⁹¹ Further, evidence indicates that menthol smokers in general, and African American smokers in particular, are less likely to quit successfully than non-menthol cigarette users.¹⁹²⁻¹⁹⁵

In 2011, after an extensive survey of the literature and research, the FDA released a report concluding that menthol cigarettes are “starter” products and increase smoking initiation among youth and young adults, lead to greater addiction, and can inhibit quitting smoking.¹⁹⁶ The FDA concluded that the removal of menthol cigarettes from the marketplace would greatly benefit public health.

Health Impacts of Menthol Cigarettes

Tobacco industry documents and empirical studies suggest that consumers, particularly younger users, tend to perceive menthol cigarettes as less hazardous than non-menthol cigarettes.¹⁹⁷ However, menthol cigarettes are not safer than non-menthol cigarettes and carry many of the same health risks: smokers are more likely than nonsmokers to develop heart disease, stroke, lung cancer and other respiratory diseases.¹⁹⁸

Due to the anesthetic effect of mentholated cigarettes, evidence suggests that they may facilitate deeper and more prolonged inhalation of toxic cigarette smoke.¹⁹⁹ Additionally, by reducing airway pain and irritation, continuous menthol smoking can mask the early warning symptoms of smoking-induced respiratory problems.²⁰⁰ Still other evidence has associated menthol with inhibiting the metabolism of nicotine in the body, and smokers of menthol cigarettes have been found with higher levels of cotinine and carbon monoxide in the bloodstream as compared to non-menthol smokers.^{201,202}

Menthol in high concentrations may also inhibit the detoxification of tobacco-specific carcinogens (NNAL), which could increase the risk of cancer,²⁰³ although the FDA in its 2013 report did not find enough evidence to support this claim. Lastly, a study of current smokers using data from the 2001-2008 U.S. National Health and Nutrition Examination Surveys found significantly increased odds of stroke for smokers of mentholated cigarettes compared with non-mentholated cigarette smokers.²⁰⁴

Priority populations are groups that have higher rates of tobacco use than the general population, experience greater secondhand smoke exposure at work and at home, are disproportionately targeted by the tobacco industry, and have higher rates of tobacco-related disease compared to the general population.²⁰⁵ This section describes the evidence which indicates particular priority populations (i.e., youth, racial/ethnic minorities, and other targeted groups) are more likely to initiate and use flavored and mentholated tobacco products.

Adolescents (12-17) and Young Adults (18-26)

A multitude of research indicates that flavored products appeal to youth and young adults leading to increased use for this population. Despite prevalence rates for cigarette use trending downward for youth, research shows that more youth are using other flavored tobacco products. A national study found that 80.8% of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product, and that 79.8% of current tobacco users had used a flavored tobacco product in the past month.²⁰⁶ Additionally, an examination of young adult tobacco users (18-34 year olds) found that 18.5% currently use a flavored tobacco product, with younger age being a predictor of flavored tobacco product use: young adults aged 18-24 year olds had an 89% increased odds of using a flavored tobacco product compared to those aged 25-34 year olds.²⁰⁷

Menthol cigarettes carry similar results. Among cigarette smokers, menthol cigarette use was more common among 12-17 year olds (56.7%) and 18-25 year olds (45%) than among 26-34 year olds, 35-49 year olds, and 50+ year olds (range of 30.5% - 34.7%).²⁰⁸ In fact, adolescents smoke menthol cigarettes at a higher rate than any other age group.²⁰⁹

Flavors Make Using Tobacco More Enticing and Harder to Quit

Flavorings and menthol additives mask the naturally harsh taste of tobacco, making it easier for youth to initiate and sustain tobacco use.^{210,211} A 2014 review of internal tobacco industry documents indicate that menthol and candy-like

flavors in little cigars and cigarillos were used to increase product appeal to beginning smokers by masking the heavy cigar taste, reducing throat irritation, and making the cigar smoke easier to inhale.²¹²

The majority of youth ever-users reported that the first product they had used was flavored, including 88.7% of ever hookah users, 81.0% of ever e-cigarette users, 65.4% of ever users of any cigar type, and 50.1% of ever cigarette smokers. Youth consistently reported product flavoring as a reason for use across all product types, including e-cigarettes (81.5%), hookahs (78.9%), cigars (73.8%), smokeless tobacco (69.3%), and snus pouches (67.2%).²¹³

Studies indicate that individuals who begin smoking at a younger age are more likely to develop a more severe addiction to nicotine than those who start later.²¹⁴ Further, both the FDA and the U.S. Surgeon General have warned that flavored tobacco products help new users establish habits that can lead to long-term addiction.^{215,216} A recent study of middle and high school students supports this: among cigar smokers, prevalence of no-intention-to-quit tobacco use was higher among flavored-little-cigar users (59.7%) than nonusers (49.3%).²¹⁷ Additionally, youth who initiate smoking with menthol cigarettes are more likely to become regular, addicted smokers and to show higher measures of dependence than youth who initiate with non-menthol cigarettes.²¹⁸ Furthermore, a nationally representative sample of U.S. youth tobacco users found that dual use (i.e., use of two tobacco product categories) was the most prevalent pattern (30.5%) detected among these users.²¹⁹

Flavored and Mentholated Tobacco Products are Heavily Marketed with Sweet Flavors, Colorful Packaging, and Brand Recognition

The U.S. Surgeon General concluded that, "... advertising and promotional activities by the tobacco companies cause the onset and continuation of smoking among adolescents and young adults."²²⁰ Tobacco industry documents containing information about tobacco companies' advertising, manufacturing, marketing, and research activities demonstrate a strategic focus on designing brand varieties with particular appeal to youth, such as mentholated, candy-flavored, and fruit-flavored brands.²²¹

For example, one internal industry memo described sweetened products as “... for younger people, beginner cigarette smokers, teenagers ... when you feel like a light smoke, want to be reminded of bubblegum.”²²²

Several flavored tobacco products share the same names, packaging and logos as popular candy brands like Jolly Rancher, Kool-Aid, and Life Savers.²²³ They are also engineered with the same flavoring agents as those used in popular kid-friendly candy and drink products such as Life Savers and Jolly Ranchers, providing a “familiar, chemical-specific flavor cue” to the user.²²⁴ Bright packaging and product placement at the register, near candy, and often at children’s eye-level, increases tobacco flavored products’ visibility to kids.²²⁵ As stated in an industry publication, “While different cigars target a variety of markets, all flavored tobacco products tend to appeal primarily to younger consumers.”²²⁶

The tobacco industry has aggressively used branding and advertising as a method to exploit particular youth populations and use of mentholated cigarettes. The vast majority of adolescents who smoke before the age of 18 use the three most heavily advertised brands. One of these heavily advertised brands, Newport, is the cigarette brand leader among African-American youth in the United States. Nearly eight out of every ten African American youth smokers smoke Newport cigarettes.²²⁷

Many Youth Believe Flavored or Mentholated Tobacco Products are Safer than Non-flavored Tobacco Products

Multiple studies of youth perception indicate that many younger users falsely believe that flavored or mentholated tobacco products are safer than non-flavored tobacco products. A recent study found that people younger than 25 years of age were more likely to say that hookahs and e-cigarettes were safer than cigarettes,²²⁸ and that mentholated cigarettes were less hazardous than

non-menthol cigarettes.²²⁹ This finding has been seen in other studies that show cigar smokers misperceive as being less addictive, more “natural,” and less harmful than cigarettes.²³⁰

Recent research indicates that some teens may be more likely to use e-cigarettes prior to using combustible tobacco because of beliefs that e-cigarettes are not harmful or addictive, as a result of youth targeted marketing and availability of e-cigarettes in flavors that are attractive to youths.²³¹ A longitudinal study of e-cigarette use found that adolescents who use e-cigarettes are more likely to start smoking cigarettes, and that risk for use was greater for students who had the impression that e-cigarettes were less dangerous than regular cigarettes.²³²

Racial and Ethnic Minorities

Menthol Cigarette Use is Higher Among African Americans, Especially Minority Youth

Significant disparities exist in the use of menthol flavored tobacco products by certain racial and ethnic minority communities. African American smokers are far more likely to smoke menthol cigarettes than smokers of other racial and ethnic groups, and this trend is pervasive across all categories, regardless of stratification by income, age, gender, region, education, etc. African American youth are especially impacted: more than 80% of all African American adolescents who smoke use menthol cigarettes—the highest usage among all minority groups.²³³

Although African Americans usually smoke fewer cigarettes and start smoking cigarettes at an older age, their smoking-related morbidity and mortality is significantly higher than white smokers.^{234,235} This disparity in tobacco-related morbidity and mortality among African Americans may partly result from the greater use of menthol cigarettes among African American smokers.²³⁶ A smoking simulation model predicted that a 10% quit rate among menthol smokers



would save thousands of lives, preventing more than 4,000 smoking-attributable deaths in the first ten years, and over 300,000 lives over the next 40 years. Approximately 100,000 of those lives saved would be African Americans.²³⁷

In addition, menthol cigarettes are used disproportionately by other minority youth groups. Data from the National Survey on Drug Use and Health (NSDUH) shows that among adolescent smokers aged 12-17 years, 51.5% of Asians, 47.0% of Hispanics, and 41.4% of Native Hawaiians/Pacific Islanders reported smoking a menthol brand in the past 30 days.²³⁸ Further, other research shows that during the last year of high school, one third of Asian American youth are smokers. Of these youth, 60% report that their usual brand of cigarettes is a menthol brand.²³⁹

Lower Cessation Rates Common Among Minority Menthol Smokers

Research indicates that menthol smoking can lead to lower rates of cessation outcomes, especially for non-white smokers.²⁴⁰ Generally, quitting menthol cigarettes is particularly difficult because menthol smokers have to overcome the dependency on nicotine as well as positive associations with menthol itself.²⁴¹ In addition, one study found that among African Americans and Hispanic/Latino current smokers, those who smoked mentholated cigarettes were more likely to be seriously considering quitting smoking in the next six months and to think that they would quit smoking successfully in the next six months compared to non-menthol smokers. However, the evidence did not support this outcome: African Americans and Hispanics/

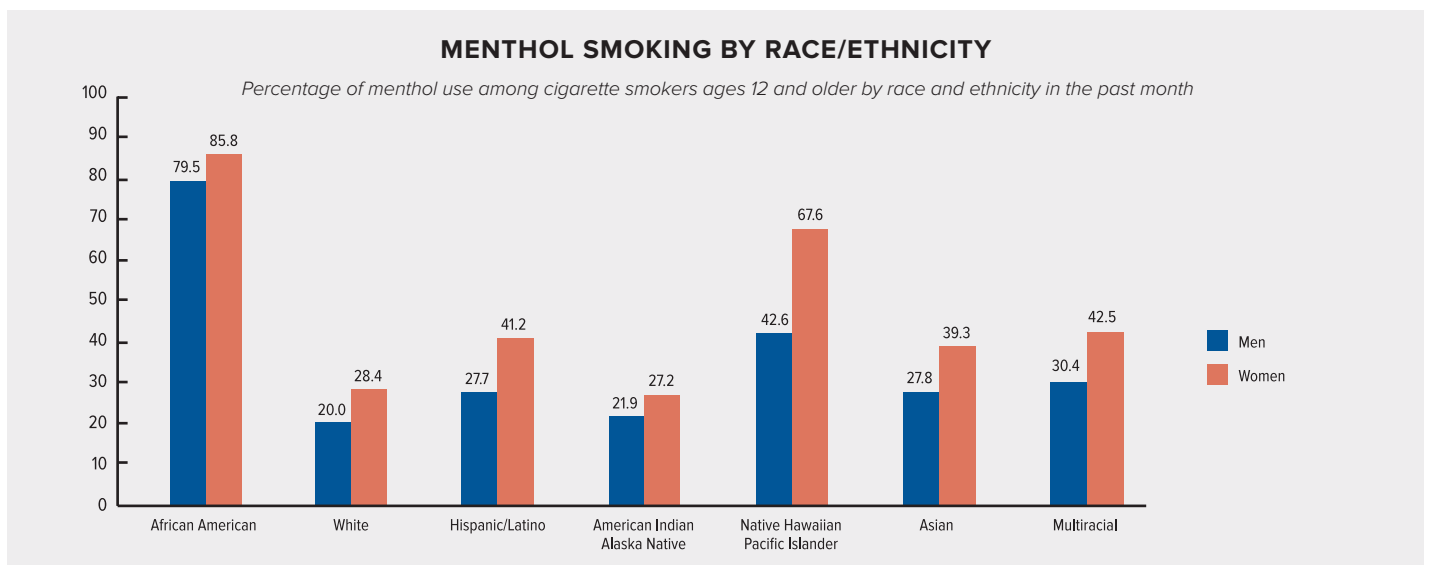
Latinos who smoked mentholated cigarettes were to quit successfully for at least six months compared to those who smoked non-mentholated cigarettes.²⁴²

Another study found that despite smoking fewer cigarettes per day, African American and Hispanic/Latino menthol smokers were less likely to successfully quit as compared to non-menthol smokers within the same ethnic/racial group.²⁴³ This suggests that lower rates of cessation among these populations may be linked to higher rates of smoking mentholated cigarettes.

Tobacco Industry Has a Long History of Targeting Racial and Ethnic Minorities

Through strategic marketing and price discounting, the tobacco industry has targeted communities of color with mentholated tobacco products and flavored, cheap little cigars and cigarillos. Price discounting contributes to tobacco-related health disparities because vulnerable populations including youth, racial minorities, and persons with low incomes are more likely to purchase tobacco products through affordable discounts.^{244,245}

In particular, the tobacco industry has aggressively targeted African American populations through the use of multiple advertising mediums and branding to convey sociocultural messages around menthol products.²⁴⁶ Research indicates that African American neighborhoods have a disproportionate number of tobacco retailers,²⁴⁷ many which employ various point-of-sale strategies, such as price discounting, to encourage initiation and use in these communities.



Source: Substance Abuse and Mental Health Administration. The National Survey on Drug Use (NSDUH) and Health Report: Use of Menthol Cigarettes. November 2009.

One study found that a higher proportion of African American and young adult residents was associated with more exterior little cigar advertising and cheaper prices, with 95% of these stores selling little cigars in fruit, candy, and wine flavors.²⁴⁸

Other communities of color have similarly been targeted by industry. A review of tobacco industry documents suggests that RJ Reynolds, one of the leading cigarette manufacturers, developed a sophisticated surveillance system to track the market behavior of Hispanic/Latino smokers and understand their cultural values and attitudes. This information was translated into targeted marketing campaigns for the Winston and Camel brands, and in 2005, RJ Reynolds launched a music-themed marketing campaign to target African American and Hispanic/Latino youths.²⁴⁹ Empirical research examining menthol and non-menthol advertising also found a higher proportion of menthol advertisements out of all cigarette advertisements in Hispanic/Latino neighborhoods and magazines, than in non-Hispanic white neighborhoods and magazines.²⁵⁰

Since the mid-1980s, tobacco companies have targeted Asian Americans and Pacific Islanders in their marketing campaigns. The tobacco industry considered these groups to be a “potential gold mine” because of high rates of smoking in Asia and the Pacific, concentration in certain geographic regions, and the high proportion of Asian retailers.²⁵¹ A tobacco industry document review provided further evidence that Asian Americans and Hawaiian/Pacific Islanders were targeted in menthol marketing by cigarette companies.²⁵²

Lesbian, Gay, Bisexual, and Transgender (LGBT)

Similar to other priority populations, LGBT individuals have been aggressively targeted by tobacco industry through advertising and sponsorships on specific themes that resonate within the community: liberation, individualism, social success, and acceptance.²⁵³ For example, an ad for Camel Snus directed at LGBT audiences to “Take pride in your flavor,” and according to initial assessments of prevalence data, this industry messaging may be working.

Overall, LGBT individuals smoke cigarettes at a higher rate than the general population.^{254,255} In a national study conducted in 2009-2010, 71% of LGBT young adult smokers

(18-25) reported smoking menthol cigarettes.²⁵⁶ In **Item 1.** current menthol cigarette smoking was higher among LGBT adults (9.7%) than heterosexual/straight adults (4.2%), and LGBT women are more likely to smoke menthols cigarettes than straight women (42.9% vs.32.4%).²⁵⁷

LGBT individuals are also more likely to smoke flavored cigars (8.2%) than heterosexual/straight individuals (2.7%).²⁵⁸ Furthermore, 4.5% of LGBT adults use e-cigarettes, compared to 1.9% of heterosexuals.²⁵⁹ A Missouri study comparing heterosexual general population youth and LGBT youth found that these two groups differed significantly on many tobacco use related factors. General population youth initiated smoking at a younger age, and LGBT youth did not catch up in smoking initiation until age 15 or 16. However, LGBT youth (41.0%) soon surpassed heterosexual general population youth (11.2%) in initiation and proportion of current smokers and were more likely to use cigars/cigarillos and be poly-tobacco users.²⁶⁰ The latter finding is supported in a representative sample of U.S. high school youth that examined the concurrent use of multiple tobacco products: data indicated the prevalence of poly-tobacco use to be 21.7% among sexual minority youth compared with only 12.1% among heterosexual youth.²⁶¹

Women

Over 18 million adult women and 1.3 million girls in the U.S. currently smoke cigarettes.²⁶² Although men are more likely to smoke cigarettes than women, that is not the case with menthol cigarettes: women are 1.6 times more likely to smoke menthol cigarettes than men, and this pattern is seen across all racial/ethnic groups, except among American Indians/Alaskan Natives.²⁶³

Research suggests that among women smokers, menthol cigarette use is associated with higher tobacco dependence. More female menthol smokers, as compared to female non-menthol smokers, reported smoking their cigarette within five minutes of waking up in the morning and fewer quit attempts greater than 90 days.^{264,265}

A review of tobacco industry documents show extensive research was conducted on female smoking patterns, needs, and product preferences, including menthol brands. The tobacco industry has targeted some menthol brands to women, using women’s social and cosmetic concerns for cleanliness and freshness, and incorporated these themes in menthol cigarette product design and marketing.²⁶⁶

California and its tobacco control program have achieved great success in reducing the burden of tobacco use: over a 25 year period, cigarette consumption has decreased in California by 65%,²⁶⁷ with over 1 million lives saved²⁶⁸ and \$134 billion in averted health care costs.²⁶⁹ Despite this progress, tobacco use remains the chief risk factor for the leading causes of death in the state,²⁷⁰ and evidence shows that the tobacco industry continues to engage in efforts that entice a new generation of users. A foundation of this strategy is the use of candy and fruit flavors and cooling additives in tobacco products that are intended to attract and retain users by masking the naturally harsh taste of tobacco. More specifically, the combination of flavorings, the introduction of novel tobacco products, and deployment of predatory marketing has presented new public health threats in the form of increased initiation and sustained use of tobacco, particularly among certain vulnerable groups.

Contrary to popular beliefs, flavorings do not reduce the health impacts and risks associated with tobacco use, and are not safer than non-flavored tobacco products;²⁷¹ in fact, the literature suggests that flavored and mentholated tobacco products pose significant public health risks because they make these toxic tobacco substances more appealing and palatable upon use. There is also a

growing body of research which shows that these chemical flavorings and additives may present another level of exposure that has not been deemed safe for inhalation.

Furthermore, the literature shows that the tobacco industry has manipulated and marketed these flavor and menthol tobacco products to account for user preferences that skew younger, and reinforce sociocultural messages with priority populations. Research supports the finding that flavors and menthol tobacco products are “starter” products that establish daily habits and increase addiction to tobacco products, make it harder to quit, and increase use of multiple tobacco products concurrently.

Consumption of flavored tobacco products such as cigars, smokeless tobacco, hookah tobacco, and liquid nicotine solutions (used in electronic smoking devices) have increased in recent years, while menthol cigarettes continue to corner a large part of the U.S. cigarette market. Strong evidence supports the finding that youth, certain racial/ethnic groups, and other targeted priority populations (i.e., LGBT and women) are particularly vulnerable to sweet flavors and menthol, and are largely driving this increased uptake and sustained use of flavored tobacco products.

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Item 1.

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Alameda Ordinance No. 3230	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: November 27, 2018 Effective: July 1, 2019 Enforced: July 1, 2019	None	<p>No TRLs may be issued to a pharmacy</p> <p>No TRLs may be issued within 300 feet of a youth populated area</p> <p>No TRL's may be issued within 500 feet of another tobacco retailer</p> <p>The total number of TRLs within the city shall be limited to one for each 2,500 inhabitants of the city</p> <p>No tobacco retailers shall honor or redeem a coupon to allow a consumer to purchase a tobacco product for less than full price, sell a tobacco product through a multi-package discount, provide free or discounted items, or sell a tobacco product for less than full retail price</p> <p>Cigars and little cigars must be sold in packages of at least five</p> <p>Sets a minimum price of \$7 per package of cigarettes and \$5 for cigars</p>	<p>The City's Planning, Building and transportation Department or any other City department shall inspect each tobacco retailers for compliance</p> <p>A violation of the provisions of this chapter within any five-year period may result in:</p> <ol style="list-style-type: none"> 1. A fine of \$1500 for a first violation 2. A 15 day suspension of the tobacco retail license for a second violation 3. A 30 day suspension of the tobacco retail license for a third violation 4. A license will be revoked for a fourth violation 	No
Albany Ordinance No. 2019-04	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: April 15, 2019 Effective: October 16, 2019	None	None	<p>The City of Albany Police Department is responsible for enforcing this ordinance</p> <p>A tobacco retailer's license shall be revoked if the licensee is found to have violated any of the provisions of this chapter</p> <p>After revocation at a location within any 60-month period:</p> <ol style="list-style-type: none"> 1. No new license may be issued at a location for 30 days after a first violation 2. No new license may be issued at a location for 90 days after a second violation and the retailer will be subject to a \$250 fine 3. No new license may be issued at a location for one year after a third violation and the retailer will be subject to a \$500 fine 4. No new license may be issued at a location for five years after four or more violations and the retailer will be subject to a \$1000 fine 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Berkeley Ordinance No. 7,441-N.S. Municipal Code Chapter 9.80	Prohibits the sale of flavored tobacco products, including menthol flavored tobacco products, within a 600 foot buffer zone of a school (public and private K-12 with at least 25 students enrolled)	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: September 2015 Effective: January 1, 2017 Enforced: January 1, 2020	Only applies to retailers located within 600 feet of schools Medical cannabis dispensaries are not required to have a tobacco retail license to sell electronic smoking devices or other tobacco paraphernalia if not accompanied by any tobacco product	No new TRL may be issued to a pharmacy or renewed by a pharmacy No new TRLs may be issued within 600 feet of school	Environmental Health staff is responsible for enforcement A violation of the provisions of this chapter within any five-year period may result in: <ol style="list-style-type: none"> 1. The suspension of a license for up to 30 days for a first violation 2. The suspension of a license for up to 90 days for a second violation 3. The suspension of a license for up to one year for a third violation 4. The revocation of a license upon the fourth violation 	Grace period of 3 years of effective date for retailers with “good cause showing”
Beverly Hills Ordinance No. 18-2758 Municipal Code Chapter 4-2-21	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: August 21, 2018 Effective: September 21, 2018 Enforced: December 21, 2018	None	The flavors policy is enforced through a TRL that must be paid annually	A violation of the provisions of this chapter will result in: <ol style="list-style-type: none"> 1. A civil penalty fine of \$250 for a first violation within any five year period 2. The suspension of the TRL for 90 days and a civil penalty fine of \$750 for a second violation within a five year period 3. The revocation of the TRL and a civil penalty fine of \$1,000 for a third violation within a five year period 	No
Cloverdale Municipal Code Chapter 8.08	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excluding menthol flavored tobacco products)	No	Adopted: December 12, 2017	Menthol tobacco products, including cigarettes, are not included in the restrictions	Smoking (including tobacco and marijuana) is prohibited in enclosed places of employment, public places, sports arenas, and multi-unit residence common areas; and unenclosed places of employment, recreational areas, service areas, outdoor dining areas, public places, and multifamily residence common areas No tobacco retailers shall sell any single cigar or any package of cigars containing fewer than five cigars (does not apply to the sale of single cigars if the price exceeds \$5) Pharmacies may not sell tobacco products	Any person or business that violates the provisions of this chapter shall be guilty of an infraction, punishable by: <ol style="list-style-type: none"> 1. A fine not exceeding \$100 for a first violation 2. A fine not exceeding \$200 for a second violation within one year 3. A fine not exceeding \$500 for each additional violation within five years 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Contra Costa County Ordinance No. 2017-01 Municipal Code Chapter 445-2	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within 1,000 feet of schools (public and private), parks, playgrounds and libraries in the unincorporated areas of the county	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: July 18, 2017 Effective: August 1, 2017 Enforced: January 1, 2018	Only applies to retailers within 1,000 feet of schools, parks, playgrounds and libraries	No new tobacco retail licenses may be issued in pharmacies Little cigars must be sold in packs of at least 10, and cigarillos must be sold in packs of at least 10 unless the sales price of one cigar is over \$5 No new tobacco retail licenses will be granted to businesses located within 1,000 feet of schools, parks playgrounds or libraries, or within 500 feet of another business that sells tobacco Sets a cap on the total number of tobacco retailers Prohibits the redemption of coupons or redemptions Smoking is prohibited in specified enclosed and unenclosed areas and in all multi-unit residence areas, with some exceptions	A violation of the provisions of this chapter will result in: 1. The suspension of the TRL for up to 30 days for a first violation 2. The suspension of the TRL for up to 90 days for a second violation that occurs within five years after the first violation 3. The suspension of the TRL for up to one year for a third violation and for each subsequent violation that occurs within five years after the first violation	No
Corte Madera Ordinance No. 983	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: March 19, 2019 Effective: April 18, 2019 Enforced: January 1, 2020	None	Prohibits the sale of: 1. any single cigar ,whether or not packaged for individual sale 2. any number of cigars fewer than then number contained in the manufacturer’s original consumer packaging designed for retail sale 3. any package of cigars containing fewer than five cigars (this does not apply to the sale of a single cigar for which the retail price exceeds \$5) No new tobacco retail licenses may be issued in pharmacies	Compliance is monitored by the Town Manager Any peace officer may enforce the penal provisions of the policy. A violation of the provisions of this chapter will result in: 1. The issuance of a warning for a first violation 2. The suspension of the license for 30 days for a second violation within a 60-month period 3. The suspension of the license for 90 days for a third violation within a 60-month period 4. The suspension of the license for one year for a fourth violation within a 60-month period 5. The revocation of a license for five or more violations within a 60-month period	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jursidiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>El Cerrito Ordinance No. 2015-08 Municipal Code 6.100.160</p>	Prohibits the sale of all flavored, non-cigarette tobacco products, including menthol flavored non-cigarette tobacco products, within the city limits	All flavored non-cigarette tobacco products, including e-cigarettes and menthol non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: October 2015 Effective: January 1, 2016 Enforced: October 2017	Menthol cigarettes are not included in the restrictions	<p>No new licenses may be issued to authorize tobacco retailing within 500 feet of schools, youth sensitive locations (parks and playgrounds, libraries), residential zones, or other tobacco retailers (tobacco retailers already in operation are exempt)</p> <p>No new licenses may be issued to authorize tobacco retailing within 1,000 feet of another tobacco retailer (tobacco retailers already in operation are exempt)</p> <p>Single cigar sales prohibited (except single cigars over \$5), a package of cigars must have at least five cigars</p> <p>Tobacco samples & coupons prohibited (except as allowed in adult-only businesses per state and federal law)</p> <p>Hookah lounges, cigar lounges, vape shops, or similar establishments are prohibited within the city limits</p> <p>New tobacco retailers may not operate as a “Significant Tobacco Retail Establishment” (use over 20% of the store display area for or derive over 50% of gross sales receipts from tobacco products or smoking paraphernalia) (existing tobacco retailers may seek an exception)</p> <p>Imitation tobacco products also included in prohibition</p>	<p>Compliance is monitored and enforced by the City’s Community Development Department, in conjunction with the El Cerrito Police Department</p> <p>A violation of the provisions of this chapter within a five year period will result in the suspension of a license for:</p> <ol style="list-style-type: none"> 1. 10 days for first violation 2. 30 days for second violation 3. 60 days for third violation 4. Upon the fourth or more violations the license shall be revoked 	Existing establishments within a certain distance of schools, youth sensitive areas and other tobacco retailers are allowed to continue to sell flavored tobacco products until January 1, 2018 but they must comply with all other TRL requirements
<p>Fairfax Municipal Code 8.44.210</p>	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excludes menthol flavored tobacco products)	No	Adopted: December 6, 2017 Effective: December 6, 2018 Enforced: January 1, 2019	Tobacco retailers may sell flavored tobacco products if the tobacco product:	<p>It shall be a violation to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none"> 1. Any single cigar, whether or not packaged for individual sale 2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer 3. Any package of cigars containing fewer than five cigars <p>*(This does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5)</p> <p>Prohibits the sale of tobacco products in pharmacies</p>	<p>Regulations shall be monitored by the Town Manger and the Marin County Tobacco Program</p> <p>A violation of the provisions of this chapter within any 60-month period may result in:</p> <ol style="list-style-type: none"> 1. A 30 day suspension of a license for a first violation of this article 2. A 90 day suspension of a license for a second violation of this article 3. A one year suspension for a third violation of this article 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Half Moon Bay Municipal Code Section 7.60.120	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: October 2018 Effective: April 1, 2019	None	No tobacco retail permits may be issued to new or existing pharmacies (this provision effective April 1, 2019) No tobacco may be sold from a vending machine No person shall distribute free tobacco products or coupons for tobacco products	The ordinance will be enforced by the county of San Mateo, its officers, employees and agents A violation of the provisions of this chapter may result in: 1. A suspension of the license for up to 30 days for the first violation 2. A suspension of the license for no less than 30 days and up to 90 days for the second violation of the ordinance within 24 months of the first determination 3. A suspension of the license for no less than 90 days and up to one year for the third and each subsequent violation of the ordinance within 24 months of a prior determination	No
Hayward Municipal Code Sec. 10-1.2780	Prohibits the sale of flavored tobacco products with the exception of menthol flavored cigarettes within a 500-foot radius of schools (public and private kindergarten, elementary, middle, junior high or high school) for <i>new</i> tobacco retailers (established after the passage of this policy) within the city limits	All flavored non-cigarette tobacco products, including e-cigarettes and menthol non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: July 1, 2014 Effective: August 1, 2014	Menthol cigarettes are not included in restrictions Retailers that sold products before provisions took effect are exempt Restrictions only apply to retailers within 500 feet of schools	Prohibits the sale of cigar packages containing fewer than 5 cigars or a single cigar (unless the retail price exceeds \$5) No new tobacco retailers or new sales of flavored tobacco within 500 feet of a public or private K-12 school Vapor bars, lounges, smoking device bars, electronic smoking device lounges, and hookah bars and lounges are prohibited in all zoning districts Imitation tobacco products also included in prohibition	Regulations are enforced by the City’s Planning Director, in conjunction with the City’s Code Enforcement Division and the Hayward Police Department Any Tobacco Retail Sales Establishment that violates regulations in ordinance three times within a three-year period shall be subject to revocation of its tobacco retail license and/or its conditional use permit	Retailers selling flavored tobacco products prior to the ordinance effective date are exempt
Hermosa Beach Ordinance No. 18-1389	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: January 8, 2019 Effective: June 1, 2019	Flavored tobacco products may still be sold in stores that permits only patrons 21 years of age or older to enter	Tobacco retailers must be located at least 500 feet from a youth-populated area No license may be issued to authorize tobacco retail licensing at farmers’ markets, special temporary events, or mobile carts A TRL may not be issued to a pharmacy No TRL may be issued for businesses licensed to serve alcohol Minimum pack size requirement of 20 for little cigars	Compliance checks shall be conducted by any member of the Hermosa Beach Code Enforcement Department, Police Department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees Tobacco Retailer’s license shall be suspended or revoked for a violation of any provision of this chapter	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Larkspur Ordinance No. 1037	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: April 3, 2019 Effective: May 3, 2019 Enforced: January 1, 2020	None	Establishes a minimum pack size of five for cigars and prohibits the sale of a single cigar or any number of cigars fewer than the number contained in the original packaging (this does not apply to the sale of a single cigar for over \$5) Prohibits the sale of tobacco products in pharmacies	Compliance will be monitored by the City Manager and the Marin County Tobacco Program Any violation of the TRL within a 60-month period may result in: <ol style="list-style-type: none"> 1. A warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations 	No
Los Gatos Ordinance No. 2259	Limits the sale of flavored tobacco products, including menthol flavored tobacco, to adult-only tobacco stores within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: May 16, 2017 Effective: January 1, 2018	Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited	TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer Limits storefront advertising to no more than 15% of the window and clear doors	Compliance will be monitored by the Town or its Designee; a peace officer may enforce the provisions in this policy Any violation of the TRL within a 12-month period may result in: <ol style="list-style-type: none"> 1. A fine not to exceed \$100 for a first violation 2. A fine not to exceed \$200 for a second violation 3. A fine not to exceed \$500 for each additional violation For any violation of the TRL within a 24-month period, permit suspension includes: <ol style="list-style-type: none"> 1. Permit suspension for up to 30 calendar days for a first violation 2. Permit suspension for up to 90 calendar days for a second violation 3. Permit suspension for up to one year for each additional violation 	No
Manhattan Beach Ordinance No. 15-0020 Municipal Code 4.118.030	Limits the sale of flavored tobacco, with the exception of menthol flavored tobacco products, to adult-only tobacco stores with the city limits	All flavored tobacco products (excludes menthol flavored tobacco products)	No	Adopted: December 2015 Effective: January 1, 2016	Flavored tobacco products may still be sold in adult-only tobacco stores Menthol tobacco products are not included in the prohibition	No tobacco retailer permit may be issued within 500 feet of a school or an existing retailer	The retail permit may be revoked or suspended for two or more violations within a 36-month period	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Marin County Ordinance No. 3698	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: November 6, 2018 Effective: December 5, 2018 Enforced: July 1, 2019 (Non-Tobacco Stores) July 1, 2020 (Tobacco Stores)	None	It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from the County of Marin for each location where these sales are conducted	Enforcement shall be conducted by the Marin County Dept. of Health and Human Services A violation of the provisions of this chapter may result in: <ol style="list-style-type: none"> 1. An administrative citation and fine not less than \$200 for a first violation 2. An administrative citation and fine not less than \$500/violation for subsequent violations 	No
Mono County Ordinance No. 18-03 Municipal Code 7.92.070	Prohibits the sale of all flavored e-liquids, including menthol flavored e-liquids, within the unincorporated areas of the county	All flavored e-liquids (excludes all other flavored tobacco products)	Yes (only for menthol-flavored e-liquids)	Adopted: April 17, 2018 Effective: May 17, 2018	Does not include flavored tobacco products other than e-liquids	Prohibits smoking in all areas where smoking is prohibited by state or federal law, as well as county vehicles, public parks recreational areas, service areas, dining areas and public places when used for a public event Smoking may not occur closer than 20 feet outside any enclosed area and from entrances, windows, or ventilation systems * Limited flavored e-liquid sales policy is set to sunset in October 2019 and a complete ban on all flavored tobacco and menthol products will become effective Policy is not attached to a TRL	The Mono County Public Health Director or his/her designee is authorized to enforce this ordinance and to refer enforcement to the Mono County Code Compliance Division Any person or business found in violation of any provision of this Chapter shall be guilty of an infraction and subject to a fine of: <ol style="list-style-type: none"> 1. \$100 for the first violation 2. \$200 for the second violation 3. \$500 for any subsequent violation 	No
Novato Ordinance No. 1615 Municipal Code 7-8	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and marijuana (excludes menthol flavored tobacco products)	No	Adopted: January 31, 2017 Effective: January 1, 2018 Enforced: January 1, 2019	Menthol tobacco products are not included in the prohibition Flavored tobacco products may be sold if the product is: <ol style="list-style-type: none"> 1. a package of cigars containing at least five cigars 2. a single cigar for which the retail price exceeds five dollars 3. pipe tobacco 4. a package of chewing tobacco or snuff containing at least five units or more 	Minimum pack size requirements prohibit the sale of: <ol style="list-style-type: none"> 1. A single cigar (unless the price of the single cigar exceeds \$5) 2. A package of cigars containing fewer than five cigars, or any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer No pharmacies may sell tobacco products	Compliance will be monitored by the Department or other designated agency Any violation of this chapter within a 60-month period may result in: <ol style="list-style-type: none"> 1. A warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Oakland Municipal Code 5.91</p>	<p>Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits</p>	<p>All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: September 19, 2017 Effective: July 1, 2018</p>	<p>Flavored tobacco products may still be sold in adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors under the age of 18 unless accompanied by a parent or legal guardian, and do not sell food or alcoholic beverages</p>	<p>An amendment allows clerks aged 18 and older to sell tobacco Tobacco retailers may not sell tobacco products at a discount less than full retail price, including honoring or redeeming coupons</p>	<p>The City designates the Oakland Police Department to enforce this Ordinance A violation of this Chapter at a location within any 60-month period may result in:</p> <ol style="list-style-type: none"> 1. An agreement to stop acting as a Tobacco Retailer for at least one day and a settlement payment to the City of at least \$1,000 for a first violation 2. An agreement to stop acting as a Tobacco Retailer for at least ten days and a settlement payment to the City of at least \$5,000 for a second violation 3. No new license may be issued until five years have passed from the date of the violation for a third or subsequent violation 	<p>No</p>
<p>Palo Alto Ordinance No. 5418 Municipal Code 4.64.030</p>	<p>Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits</p>	<p>All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: October 2, 2017 Effective: January 1, 2019</p>	<p>Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited</p>	<p>TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer</p>	<p>Compliance will be monitored by the City or its Designee, and any peace officer may enforce the penal provisions of the ordinance A violation of the provisions of this chapter may result in:</p> <ol style="list-style-type: none"> 1. A fine not to exceed \$100 (within a 12-month period) and a suspension up to 30 days (within any 24-month period) for a first violation 2. A fine not to exceed \$200 (within a 12-month period) and a suspension of the retailer permit for up to 90 days (within any 24-month period) for a second violation 3. A fine not to exceed \$500 (within a 12-month period) and the suspension of the retailer permit for up to one year (within any 24-month period) for each additional violation 	<p>No</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Portola Valley Ordinance No. 2018-425	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: September 12, 2018 Effective: October 11, 2018 January 1, 2019	None	No existing or new pharmacies may sell tobacco products	Compliance monitored will be conducted through the Environmental Health Division of San Mateo County Health Department Penalties for violation of this ordinance include: <ol style="list-style-type: none"> 1. A suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation 2. A suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation 3. A suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations 	None
Richmond Ordinance No. 20-18 N.S. Municipal Code 7.106	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: July 17, 2018 Effective: April 17, 2019	None	The ordinance establishes a minimum pack-size of 20 cigars and cigarillos, except for cigars that sell for more than \$5 each, and prohibits the sale of any single little cigar or cigar Prohibits new tobacco retailers from opening within 500 feet of existing tobacco retailers and 1,000 feet from a school, park, playground or library	Compliance will be monitored by the Richmond Police Department A tobacco retail license shall be revoked if the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions in the municipal code. The enforcement agency may also enforce through administrative fines	Existing tobacco retailers not in line with the distance requirement for tobacco retailers from schools and other tobacco retailers are grandfathered in unless the business changes ownership
Sacramento Ordinance No. 2019-0012	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: April 16, 2019 Effective: January 1, 2020	None	No new tobacco retail licenses shall be issued or existing licenses renewed to authorize tobacco retailing within 1,000 feet of another tobacco retailer	Penalties for violation of ordinance within a 5 year period include: <ol style="list-style-type: none"> 1. The suspension of a license for 30 days for a first violation 2. The suspension of a license for 90 days for a second violation 3. The revocation of a license for a third violation Any person violating the provisions of this chapter shall also be liable for civil penalties of not less than \$250 or more than \$25,000 for each day the violation continues	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
San Carlos Ordinance No. 1544	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: April 8, 2019 Effective: May 8, 2019	None	No existing or new pharmacies may sell tobacco products Flavor Policy is not tied to a TRL	The City Manager or designee may enforce this chapter.	No
San Francisco Ordinance No. 140-17	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the county limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: June 27, 2017 Referendum Vote: June 5, 2018 Effective: July 20, 2018 Enforced: January 1, 2019	None	No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a school No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing tobacco retailer	Compliance will be monitored through the Director of Health or his or her designee For a violation of the ordinance, the Director of Health may suspend a Tobacco Sales Permit: 1. For a maximum of 90 days of the first violation 2. For a maximum of six months for a second violation that occurs within the first 12 months of the first violation 3. For a maximum of one year for a third violation if within 12 months of the prior violation	No
San Leandro Municipal Code 4-36	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits (including flavored products that do not contain nicotine)	All flavored tobacco products, including e-cigarettes (excluding menthol tobacco products)	No	Adopted: October 16, 2017 Effective: August 15, 2018	Menthol tobacco products are not included in the prohibition Wholesale companies are excluded from the ordinance if the tobacco products made or distributed in San Leandro are sold by retailers outside the city	No tobacco retailer shall sell, offer for sale, or exchange any 1. Single cigar 2. Any pack of cigars at a price that is less than \$7.00 per five cigars (does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either five dollars or the dollar amount adopted by resolution of the City Council and adjusted from time to time, whichever is higher)	Compliance will be monitored by the San Leandro Police Department Penalties for violation of this ordinance within a 36 month period include: 1. A written warning and 30 days to correct violation for the first violation 2. A \$2,500 fine for a second violation 3. A 20 day license suspension for a third violation 4. After four or more violations, the license shall be revoked and no new license may issue for the location or tobacco retailer until three years have passed from the date of revocation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
San Mateo County Ordinance No. 4799 Municipal Code 7.41	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: June 19, 2018 Effective: July 19, 2018 Enforcement: January 1, 2019	None	No existing or future pharmacies may sell tobacco products	Compliance will be monitored through the Environmental Health Division of San Mateo County Health Department Penalties for violation of ordinance include: <ol style="list-style-type: none"> 1. A suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation 2. A suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation 3. A suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations 	No
San Pablo Ordinance No. 2018-006 Municipal Code 5.06	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: December 17, 2018 Effective: March 2019	None	Requires a minimum pack size for cigars (6 per pack), cigarillos (25 per pack) and little cigars (20 per pack) Requires a minimum price of \$10.00 per cigar	Penalties for violation of ordinance within any 60-month period include: <ol style="list-style-type: none"> 1. A suspension of the license for up to 30 days for a first violation. At the election of the tobacco retailer, the tobacco retailer may pay a penalty of \$1000 in lieu of such suspension 2. A suspended of the license for one year for a second violation 3. The revocation of the license for and the proprietor or proprietors who had been issued the license shall never again be issued a tobacco retailer's license pursuant to this chapter for the third and subsequent violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Santa Clara County Ordinance No. NS-300.883	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores in the unincorporated areas of the County	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes (revised in 2016 to include menthol)	Adopted: June 2010 Effective: January 1, 2016 Revised version effective: July 1, 2017	Revised ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors, do not sell food or beverages, and post a sign outside saying that minors are prohibited	No TRLs may be issued to a retailer containing a pharmacy No TRLs may be issued to a retailer within 1,000 feet of a school (existing retailers exempt) No TRLs may be issued to a retailer located within 500 feet of another retailer (existing retailers exempt)	Compliance shall be monitored by the Department of Environmental Health Penalties for violations of this ordinance within a 12-month period include: <ol style="list-style-type: none"> 1. A fine not to exceed \$100 for the first violation within a 12-month period and a license suspension for up to 30 days within any 24-month period 2. A fine not to exceed \$200 for a second violation within a 12-month period and a license suspension for up to 90 days within any 24-month period 3. A fine not to exceed \$500 for each additional violation within a 12-month period and a license suspension for up to one year for each additional violation within any 24-month period 	No
Santa Cruz Ordinance No. 2018-19 Municipal Code 6.07	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: November 27, 2018 Effective: June 11, 2019 Enforced: January 1, 2020	None	No license shall be issued to authorize tobacco retailing that is within six hundred feet of a high-risk alcohol outlet No license shall be issued to authorize tobacco retailing that is within that is within one thousand feet of a school *This prohibition shall not apply to a license applicant whose application seeks authorization to conduct tobacco retailing at a location where such retailing was taking place as of January 1, 2014, and has continued without interruption at that location since May 8, 2014	Every violation of this chapter determined to be an infraction is punishable by: <ol style="list-style-type: none"> 1. A fine not exceeding \$100 for a first violation and a license suspension for up to 60 days 2. A fine not exceeding \$200 for a second violation and the suspension of a license for 120 days 3. A fine not exceeding \$500 for a third and each additional violation and the suspension of a license for 180 days 4. The tobacco retailer's license shall be revoked, and no new license may be issued for the location until five years have passed from the date of revocation upon the fourth and each subsequent violation 	No
Saratoga Municipal Code 4-90	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: October 3, 2018	Menthol flavored tobacco products are not included in the policy	No tobacco retailer permit tobacco may be issued to a licensed pharmacy No tobacco retailers established after September 16, 2016 shall be granted a tobacco retailer license for a location which is within 500 feet of another retailer or within 1000 feet of an elementary, middle, or high school or a City park No tobacco product or paraphernalia may be sold from a vending machines	Penalties for violations of this ordinance within a 24 month period include: <ol style="list-style-type: none"> 1. The suspension of an existing license for up to 60 days from the date of the citation issuance for a first violation 2. The revocation of any existing license shall for up to 24months from the date of the administrative citation issuance for a second or subsequent citation 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Sausalito Ordinance No. 1264	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: July 2018 Effective: November 1, 2018	None	Ordinance amends city’s current “Clean Indoor Air and Health Protection” municipal code chapter to add “Tobacco Retail License Requirement and Prohibit the Sale of Flavored Tobacco Products” Smoking is prohibited in all enclosed places of employment, public places, recreational areas, common areas Smoking is prohibited in all unenclosed places of employment, recreational areas, services areas, dining areas, common areas that meet certain requirements Smoking restrictions included for multi-unit housing complexes and rental units	Anyone who violates a provision in this chapter will be deemed guilty of an infraction The City may seek the revocation or suspension of a tobacco retailer’s license	No
Sonoma Ordinance No. 04-2015 Municipal Code 7.25	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excluding menthol flavored tobacco products)	No	Adopted: June 1, 2015 Effective: September 1, 2015 Enforced: September 1, 2015	Menthol flavored tobacco products are not included in the policy Flavored tobacco products may still be sold if 1. the tobacco product consists of a package of cigars that contains at least five cigars 2. a single cigar for which the retail price exceeds \$5 3. the tobacco product consists of pipe tobacco 4. the package of chewing tobacco or snuff contains at least five units or more	It is a violation to sell any single cigar (unless the retail price of the cigar exceeds \$5) and a package of cigars containing fewer than five cigars or the number of cigars contained in the manufacture’s original consumer packaging Limits the eligibility of retailers permitted to apply for a tobacco retail license	Decoy enforcement operations conducted annually by Sonoma Police Department Penalties for violations of this ordinance within a 60-month period include: 1. The suspension of a license for 30 days for a first violation 2. The suspension of a license for 90 days for a second violation 3. The suspension of a license for one year for a third violation 4. The revocation of a license for a fourth or subsequent violations Violations of this chapter are subject to a civil action punishable by a fine not less than \$250 and not exceeding \$1,000 per violation	No
West Hollywood Ordinance No. 16-991 Municipal Code 5.114	Prohibits the sale of all tobacco products, including flavored tobacco products and menthol flavored tobacco products, within 600 feet of a youth-populated area (school, youth center, child-care facility, etc.)	All tobacco products	Yes	Adopted: October 2016 Effective: November 2016	Tobacco retailers operating prior to May 1, 2016, adult-only facilities, and hotels that sell tobacco products as part of incidental sales on the premises may still sell all tobacco products regardless of location	Policy includes a ban on all tobacco products, not just flavored tobacco products No new tobacco retailer licenses may be issued for tobacco retailers within 600 feet of a school No new licenses may be issued for tobacco product shops within 1000 feet of a youth-populated area Little cigars must be sold in pack size of at least 20	Any member of the West Hollywood Code Compliance Division, Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees are authorized to monitor and enforce the provision	Yes, existing retailers operating prior to May 1, 2016 are grandfathered regardless of any change or transfer of ownership of the business

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Windsor Ordinance No. 2018-323 Municipal Code 3-11-115</p>	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excludes menthol tobacco products)	No	Adopted: March 7, 2018 Effective: April 6, 2018 Enforcement: July 30, 2018	<p>Menthol flavored tobacco products are not included in the policy</p> <p>Tobacco retailers may sell flavored tobacco products if:</p> <ol style="list-style-type: none"> The tobacco product consists of a package of cigars containing at least five cigars or little cigars The tobacco product is a single cigar for which the retail price exceeds \$5.00 The tobacco product consists of pipe tobacco The package of chewing tobacco or snuff contains at least five units 	<p>No tobacco retailer shall sell to a consumer:</p> <ol style="list-style-type: none"> A package of cigarettes at a price that is less than \$7.00 per package of twenty 20 cigarettes, including all applicable taxes and fees A package of little cigars that is less than \$7.00 per package of five little cigars, including all applicable taxes and fees A package of cigars that is less than \$7.00 per five cigars, including all applicable taxes and fee. A package of chewing tobacco or snuff that is less than \$7.00 per package of five units <p>It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none"> Any single cigar or little cigar, whether or not packaged for individual sale; Any number of cigars or little cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; Any package of cigars or little cigars containing fewer than five cigars. Any package of chewing tobacco or snuff containing fewer than five units. <p>*This section shall not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5.00</p> <p>No license may be issued to authorize tobacco retailing within 1,000 feet of a school (unless the retailer was operating before the date of the ordinance codified in this chapter)</p> <p>Limits the eligibility of retailers permitted to apply for a tobacco retail license</p>	<p>The policy will be enforced by the County of Sonoma Department of Health Services</p> <p>Penalties for violations of this ordinance within a 60-month period include:</p> <ol style="list-style-type: none"> The suspension of a license for 30 days for a first violation The suspension of a license for 90 days for a second violation The suspension of a license for one year for a third violation 4. The revocation of a license for four or more violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Yolo County Ordinance No. 1474 Municipal Code 6-15.10	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the County	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: October 2016 Effective: May 1, 2017	None	Only existing tobacco retailers are eligible for a tobacco license	<p>Yolo County District Attorney is authorized to perform stings for any violations of the TRL</p> <p>Penalties for violations of this ordinance within a 60-month period include:</p> <ol style="list-style-type: none"> 1. A fine not less than \$250 and not exceeding \$1,000 and the suspension of a license for no less than 30 days for a first violation 2. A fine not less than \$1,000 and not exceeding \$2,500 and the suspension of a license for no less than 90 days for a second violation 3. A fine not less than \$2,500 and not exceeding \$5,000 and the suspension of a license for no less than five years for a third or subsequent violation <p>In addition to any other penalty authorized by law, a license shall be revoked if any court of competent jurisdiction determines, or if the Director finds after the Tobacco Retailer or Permittee is afforded notice and an opportunity to be heard, that the Tobacco Retailer or Permittee, or any of the Tobacco Retailer's or Permittee's officers, agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter</p>	No

Chapter 5.78
TOBACCO RETAILERS Revised 6/19 Revised 7/19

Sections:

- 5.78.010 Title.** Revised 6/19
- 5.78.020 Purpose.** Revised 6/19
- 5.78.030 Definitions.** Revised 6/19 Revised 7/19
- 5.78.040 Tobacco retailer license required.** Revised 6/19
- 5.78.050 Limits on eligibility and location.** Revised 6/19
- 5.78.060 License application procedure.** Revised 6/19
- 5.78.070 Issuance of tobacco retailer license.** Revised 6/19
- 5.78.080 Term and renewal.** Revised 6/19
- 5.78.090 License nontransferable.** Revised 6/19
- 5.78.100 Operating requirements.** Revised 6/19 Revised 7/19
- 5.78.110 Compliance monitoring and enforcement.** Revised 6/19
- 5.78.120 Violations.** Revised 6/19
- 5.78.130 Tobacco retailing without a valid license.** Revised 6/19
- 5.78.140 New license after revocation.** Revised 6/19
- 5.78.150 Implementing rules and regulations.** Revised 6/19

5.78.010 Title. Revised 6/19

This chapter shall be known as the "Tobacco Retailer Ordinance" of the city of Hermosa Beach. (Ord. 19-1389 §1 (part), 2019)

5.78.020 Purpose. Revised 6/19

In enacting this chapter, it is the intent of the city council to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those involving the sale or distribution of tobacco and nicotine products to youth. (Ord. 19-1389 §1 (part), 2019)

5.78.030 Definitions. Revised 6/19 Revised 7/19

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter, is not an arm's length transaction.

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

"Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.

"Electronic smoking device" has the same meaning as the term is defined in Section 8.40.010.

"Enforcement official" means any member of the Hermosa Beach Code enforcement department, the Hermosa Beach police department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County sheriff's department, or their designees.

"Flavored tobacco product" means any tobacco product that imparts a characterizing flavor.

"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 three (3) pounds per thousand. "Little cigar" includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "little cigar."

"Package" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

"Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

"Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the state of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

"Restaurant" means a place where people pay to sit and eat meals that are cooked and served on the premises. "Restaurant" does not include a deli where prepared foods are ordered, purchased, and picked up by a person to be eaten outside or off the premises without service.

"Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

"Self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or retailer's agent or employee. A vending machine is a form of self-service display.

"Smoking" means the combustion, electrical ignition or vaporization and/or inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation that facilitates the release of gases, particles, or vapors into the air.

"Tobacco paraphernalia" means any item designed for the consumption, use, or preparation of tobacco products.

"Tobacco product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and
2. Any electronic smoking device, with or without nicotine.
3. Notwithstanding any provision of subsections (1), (2) and (3) of this definition to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

"Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ord. 19-1392 §1, 2019; Ord. 19-1389 §1 (part), 2019)

5.78.040 Tobacco retailer license required. Revised 6/19

It shall be unlawful for any person to engage in tobacco retailing in the city without first obtaining and maintaining a valid tobacco retailer license pursuant to the provisions of this chapter for each location at which that activity is to occur. (Ord. 19-1389 §1 (part), 2019)

5.78.050 Limits on eligibility and location. Revised 6/19

A. No license may be issued under this chapter to authorize tobacco retailing at other than a fixed location, such as on foot or from vehicles.

B. No license may be issued under this chapter to authorize tobacco retailing at a temporary or recurring temporary event, such as farmers' markets, special events, or mobile carts.

C. No license may be issued under this chapter to authorize tobacco retailing at any location that violates any provision of the Hermosa Beach Zoning Ordinance.

D. Pharmacies. No license may be issued to authorize tobacco retailing in a pharmacy.

E. Schools and Youth-Populated Areas. Tobacco retailing is prohibited near schools and areas with youth populations as follows:

1. No license may issue to authorize tobacco retailing within five hundred (500) feet of a youth-populated area as measured by a straight line from the nearest point of the property line of the parcel on which the youth-populated area is located to the nearest point of the property line of the parcel on which the applicant's business is located.

For the purposes of this subsection, a "youth-populated area" means a parcel in the city that is occupied by:

- a. A private or public kindergarten, elementary, middle, junior high, or high school;
- b. A library open to the public;
- c. A playground or sandbox area open to the public, as defined by California Health and Safety Code Section [104495](#); or
- d. A youth center, defined as a facility where children, ages six (6) to seventeen (17), inclusive, come together for programs and activities.

F. Premises Furnishing Alcohol and/or Food for On-Site Consumption. No license may issue to authorize tobacco retailing at any of the following locations: (1) a place that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); or (2) a restaurant, as the term is defined in this chapter.

G. Notwithstanding the foregoing, a tobacco retailer operating lawfully on the effective date of the ordinance codified in this chapter that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as: (1) the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); (2) the tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days; (3) the tobacco retailer does not substantially change the business premises or business operation; and (4) the tobacco retailer retains the right to operate under other applicable laws, including without limitation the Zoning Ordinance, building codes, and business license tax ordinance. (Ord. 19-1389 §1 (part), 2019)

5.78.060 License application procedure. Revised 6/19

A. Any person seeking a license pursuant to this chapter shall submit a completed application, on a city-approved form, to the finance department.

B. The application for a license under this chapter shall be submitted in the name of each and every business owner proposing to conduct retail tobacco sales for each location at which retail tobacco sales are being proposed and shall be signed by each business owner or an authorized agent thereof.

C. Said application shall contain the following information:

1. The name, address, and telephone number of each business owner seeking a license.

2. The business name, address, and telephone number of the single, fixed location for which a license is sought.

3. A single name and mailing address of an agent authorized by each business owner to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter. If an authorized agent is not supplied, each business owner shall be understood to consent to the provision of notice at the business address specified in subsection (C)(2) of this section.

4. Proof that the location for which a tobacco retailer license is sought has been issued a valid state tobacco retailer's license by the California Department of Tax and Fee Administration.

5. Whether any business owner or any agent of the business owner was previously issued a license pursuant to this chapter which was at any time suspended or revoked, and, if so, the dates of the suspension period or the date of the revocation.

6. Whether any business owner or any agent of the business owner has been determined to have violated any provision of this chapter or any state or federal tobacco-related law, and, if so, the dates of all such violations within the preceding five (5) years.

7. Such other information as the finance department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this chapter.

D. The city council may establish by resolution the amount of an application fee for the tobacco retailer license in an amount not to exceed the city's reasonable cost of providing the services required by this chapter, in which case the city shall accept no application unless accompanied by payment of such fee.

E. An applicant or agent thereof shall inform the finance department in writing of any change in the information submitted on an application for a tobacco retailer registration within ten (10) business days of a change. (Ord. 19-1389 §1 (part), 2019)

5.78.070 Issuance of tobacco retailer license. Revised 6/19

A. Upon the receipt of a completed application for a tobacco retailer license and the corresponding application fee, if any, the finance department, with consultation of community development department for location requirements, shall issue a license unless substantial evidence demonstrates that one (1) or more of the following bases for denial exists:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

2. The application seeks authorization for tobacco retailing at a location prohibited by Section 5.78.050.

3. The applicant has had a license issued pursuant to this chapter revoked within the preceding twelve (12) months.

4. The application seeks authorization for tobacco retailing that is otherwise prohibited pursuant to this chapter, that is unlawful pursuant to this Code (including without limitation the Hermosa Beach Zoning Ordinance and business license regulations), or that is unlawful pursuant to any other law.

5. The applicant is indebted to the city for any unpaid fee or fine.

B. Any applicant aggrieved by a decision denying a license pursuant to this chapter may contest the decision by appealing the decision to the city council by filing with the city manager a written notice of appeal within ten (10) business days of the date of receipt of the license denial. Upon receipt of a timely, written request for an appeal, the city clerk shall set a hearing to occur within forty-five (45) days before the council or its designated hearing officer and shall provide written notice of same by first class mail to the appellant. The city council shall sustain or overrule with conditions, the denial or intended revocation upon written findings within thirty (30) days of the conclusion of the hearing. (Ord. 19-1389 §1 (part), 2019)

5.78.080 Term and renewal. Revised 6/19

A. A tobacco retailer license issued pursuant to this chapter shall be valid for one (1) year after the date of issuance, unless it is revoked earlier in accordance with the provisions of this chapter. The expiration date of each tobacco retailer license shall be shown on the license itself and each tobacco retailer license shall expire at midnight on the expiration date.

B. Each tobacco retailer who seeks to renew a license issued pursuant to this chapter shall submit a renewal application on a city-approved form and tender any applicable fees to the finance department no later than thirty (30) calendar days prior to the expiration of the license. Any license issued pursuant to this chapter that is not timely renewed shall expire and become null and void at the end of its term.

C. An application to renew a license issued pursuant to this chapter may be denied by the finance department upon the grounds set forth in Section 5.78.070. (Ord. 19-1389 §1 (part), 2019)

5.78.090 License nontransferable. Revised 6/19

A. No person shall operate under a name, or conduct business under a designation, not specified on the license.

B. A license issued pursuant to this chapter may not be transferred from one (1) person to another or from one (1) location to another. A change in business owner, business name, or location shall render the license null and void, and shall require a new license to be obtained in accordance with the provisions of this chapter. (Ord. 19-1389 §1 (part), 2019)

5.78.100 Operating requirements. Revised 6/19 Revised 7/19

The following operating requirements shall be deemed conditions of any tobacco retailer license issued pursuant to the provisions of this chapter, and failure to comply with any such requirement shall be grounds for suspension, revocation, or the imposition of administrative fines in accordance with Section 5.78.120.

A. Posting of License. Each license issued pursuant to this chapter shall be prominently displayed in a publicly visible location at the permitted location.

B. Retail Sales to Persons under Twenty-One (21) Prohibited. No person engaged in tobacco retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any tobacco product to any person who is under the legal age under state law to purchase and possess tobacco products, which is age twenty-one (21) (or eighteen (18) if active military).

C. Positive Identification Required. No tobacco retailer shall sell or transfer a tobacco product to any person who appears to be under the age of thirty (30) years old without first examining the identification of that person to confirm that person is at least the minimum age under state law to purchase and possess the product. The tobacco retailer or agent thereof shall refuse the sale or transfer of any tobacco product to any person who appears to be under the age of thirty (30) years old, who fails to present valid, legal photo identification prior to the sale or transfer.

D. Minimum Age for Persons Selling Tobacco. No person who is younger than twenty-one (21) shall engage in tobacco retailing.

E. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.

F. Electronic Smoking Device.

1. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any electronic smoking device. The prohibition in the preceding sentence shall not apply to a retailer that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the tobacco product is sold.

2. There shall be a rebuttable presumption that a tobacco retailer in possession of four (4) or more electronic smoking devices, including but not limited to individual electronic smoking devices, packages of electronic smoking devices, or any combination thereof, possesses such electronic smoking devices with intent to sell or offer for sale.

G. Flavored Tobacco Products.

1. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.

2. There shall be a rebuttable presumption that a tobacco retailer in possession of four (4) or more flavored tobacco products, including but not limited to individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

3. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has done the following:

- a. Made a public statement or claim that the tobacco product imparts a characterizing flavor;
- b. Used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or
- c. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

H. Packaging and Labeling. No tobacco retailer shall sell any tobacco product to any consumer unless such product: (1) is sold in the original manufacturer's package intended for sale to consumers; and (2) conforms to all applicable federal labeling requirements.

I. Minimum Package Size for Little Cigars. No tobacco retailer shall sell to a consumer any little cigar unless it is sold in a package of at least twenty (20) little cigars.

J. False and Misleading Advertising Prohibited. A tobacco retailer who does not have a valid license pursuant to this chapter or whose license has been suspended or revoked shall not display any item or advertisement relating to tobacco products that promotes the sale or distribution of such products from the premises or that could lead a reasonable consumer to believe that tobacco products can be obtained at that location. Such display or advertisement in violation of this provision shall constitute tobacco retailing without a valid license. (Ord. 19-1392 §2, 2019; Ord. 19-1389 §1 (part), 2019)

5.78.110 Compliance monitoring and enforcement. Revised 6/19

A. Compliance checks shall be conducted so as to allow enforcement officials to determine, at a minimum, if a tobacco retailer is complying with laws regulating youth access to tobacco. The chief of police may also conduct compliance checks to determine compliance with other laws applicable to tobacco retailing.

B. During business hours, enforcement officials shall have the right to enter any place of business for which a license is required by this chapter for the purpose of making reasonable inspections to observe and enforce compliance with the provisions of this chapter and any other applicable regulations, laws, and statutes.

C. The Hermosa Beach police department (or designee thereof) may promulgate and adopt policies, procedures, and guidelines for the participation of persons under the minimum legal age for tobacco purchases in compliance checks pursuant to this chapter ("youth decoys").

D. Enforcement officials shall inspect each tobacco retailer at least one (1) time per every twelve (12) month period. Nothing in this subsection shall create a right of action in any licensee or other person against the city or its agents. (Ord. 19-1389 §1 (part), 2019)

5.78.120 Violations. Revised 6/19

A. Administrative Fine. In addition to any other penalty authorized by law, violations of this chapter are subject to the administrative citations and penalties provisions in Chapter 1.10.

B. Suspension or Revocation.

1. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if the city finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that any of the following has occurred:

- a. The licensee or his/her agent or employee has violated any provision of this chapter;

- b. The licensee or his/her agent or employee has continued to operate as a tobacco retailer after a license issued pursuant to this chapter has been suspended; or
- c. The retailer violates any provision of this chapter twice within any thirty-six (36) month period.

2. Notwithstanding the foregoing, a license may be revoked if it is determined that one (1) or more grounds for denial of a license under Section 5.78.070 existed at the time the application was made or at any time before the license was issued. No administrative fine shall accompany a revocation of a wrongly issued license.

3. Any applicant aggrieved by a decision revoking or suspending a license pursuant to this chapter may contest the decision in the same manner as a challenge of an administrative citation, pursuant to the procedure set forth in Section 5.78.070(B), (Ord. 19-1389 §1 (part), 2019)

5.78.130 Tobacco retailing without a valid license. Revised 6/19

In addition to any other penalty authorized by law, if the city based on a preponderance of evidence, after notice and an opportunity to be heard, determines that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

A. After a first violation of this section at a location, no new license may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until thirty (30) days have passed from the date of the violation.

B. After a second violation of this section at a location within any thirty-six (36) month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until ninety (90) days have passed from the date of the violation.

C. After of a third or subsequent violation of this section at a location within any thirty-six (36) month period, no new license may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until three (3) years have passed from the date of the violation. (Ord. 19-1389 §1 (part), 2019)

5.78.140 New license after revocation. Revised 6/19

Notwithstanding any other provision of this chapter, no tobacco retailer's license shall be issued to a tobacco retailer (or business owner thereof) whose license has previously been revoked pursuant to this chapter for a period of twelve (12) months from the date of the prior revocation, unless ownership of the business at the location has been transferred in an arm's length transaction. (Ord. 19-1389 §1 (part), 2019)

5.78.150 Implementing rules and regulations. Revised 6/19

The city manager is hereby authorized to make and promulgate any rules and regulations necessary to implement the requirements of this chapter. The rules and regulations shall be in addition to the requirements set forth in this chapter. In the event of a conflict between a provision set forth in this chapter and a rule or regulation promulgated by the city manager pursuant to this section, the more stringent or restrictive requirement or condition shall apply. (Ord. 19-1389 §1 (part), 2019)

Web Version

ORDINANCE NO. 2019-0012

Adopted by the Sacramento City Council

April 16, 2019

An Ordinance Amending Various Sections of Chapter 5.138 of the Sacramento City Code, Relating to Tobacco Retailers

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 5.138.010 of the Sacramento City Code is amended to read as follows:

5.138.010 Legislative findings.

- A. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to persons under 21 years of age except active duty military personnel who are 18 years of age or older (California Penal Code § 308).
- B. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age (California Business & Professions Code § 22956) and provides procedures for using persons under 21 years of age to conduct onsite compliance checks of tobacco retailers (California Business & Professions Code § 22952).
- C. State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 21 years of age is illegal (California Business & Professions Code § 22952, California Penal Code § 308).
- D. State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (California Business & Professions Code § 22962).
- E. State law prohibits the sale of “bidis” (a type of hand-rolled filterless cigarette) except at those businesses that prohibit the presence of minors (California Penal Code § 308.1).
- F. State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than six-tenths of an ounce of tobacco (California Penal Code § 308.3).

- G. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (California Education Code § 48901(a)).
- H. Sacramento City Code section 5.140.040 prohibits the sale or distribution of tobacco products from vending machines.
- I. From 2013 to 2015, an estimated 15% of ninth and eleventh grade students in California reported using electronic smoking devices.
- J. Over 9% of high school students in California reported buying their own electronic cigarette from a store.
- K. In 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 80% tobacco retailers near schools sold flavored non-cigarette tobacco products.
- L. Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term addiction.
- M. Between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (18 to 25 years of age) and adults (over 26 years of age).
- N. Unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and, in some cases, increased among youth.
- O. Flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation.
- P. The density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day.
- Q. Adults who smoke have a harder time quitting when density of tobacco retailers is high.
- R. Policies to reduce tobacco retailer density have been shown to be effective and may reduce or eliminate inequities in the location and distribution of tobacco retailers.
- S. Neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, electronic smoking devices, or the solutions used in these devices.

- T. The city has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by persons under 21 years of age; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to persons under 21 years of age; and in protecting youth and underserved populations from the harms of tobacco use.
- U. California courts in Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, Bravo Vending v. City of Rancho Mirage (1993) 16 Cal.App.4th 383, and Prime Gas v. City of Sacramento (2010) 184 Cal.App.4th 697, have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.
- V. State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (California Business & Professions Code § 22971.3).
- W. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the city to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

SECTION 2.

Section 5.138.030 of the Sacramento City Code is amended to read as follows:

5.138.030 Definitions.

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

“Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be an “arm’s length transaction.”

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.

“City manager” means the city manager of the city or his or her designee.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor.

“Itinerant tobacco retailing” means engaging in tobacco retailing at other than a fixed location.

“License” means a tobacco retailer license issued by the city pursuant to this chapter.

“Licensee” means any proprietor holding a license issued by the city pursuant to this chapter.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

“Tobacco product” means:

1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff;
2. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah; and
3. Any component, part, or accessory of a tobacco product, whether or not sold separately.
4. “Tobacco product” does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

“Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of a tobacco product.

“Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailing” means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

SECTION 3.

Section 5.138.040 of the Sacramento City Code is amended to read as follows:

5.138.040 Requirement for tobacco retailer license.

- A. It shall be unlawful for any person to act as a tobacco retailer without a valid license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.
- B. No license shall issue, and no existing license shall be renewed, to authorize tobacco retailing within 1,000 feet of a tobacco retailer already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.
- C. Nothing in this chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the city identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by California Labor Code section 6404.5.

SECTION 4.

Section 5.138.060 of the Sacramento City Code is amended to read as follows:

5.138.060 Issuance and renewal of license.

- A. Upon the receipt of an application for a license and the applicable license fee, the city manager shall issue a license unless:
 - 1. The application is incomplete or inaccurate;
 - 2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:
 - a. The applicant provides the city with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction;
 - b. It has been more than five years since the most recent license for that location was revoked;

3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law; or
 4. The city manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding 30-day period.
- B. A license is valid for one year and must be renewed not later than 30 days prior to the expiration of the license, but no earlier than 60 days prior to the expiration of the license. Unless revoked on an earlier date, all licenses expire one year after the date of issuance. A license may be renewed for additional one-year periods by submitting an application to the city manager and payment of the applicable license fee; provided, however, a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. The application and license fee shall be submitted at least 30 days, but not more than 60 days, prior to the expiration of the current valid license. The applicant shall follow all of the procedures and provide all of the information required by section 5.138.050. The city manager shall process the application according to the provisions of this section.
- C. Notwithstanding section 5.138.040B, a tobacco retailer operating lawfully on the date this subsection C is effective that would otherwise be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as all of the following conditions are met:
1. The license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
 2. The tobacco retailer is not closed for business or has not ceased tobacco retailing for more than 60 consecutive days;
 3. The tobacco retailer does not substantially change the business premises or business operation for the purpose of increasing the sale or display of tobacco products; and
 4. The tobacco retailer retains the right to operate under all other applicable laws.
- D. When the city manager does not approve a license or renewal of a license, the city manager shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the California Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

SECTION 5.

Section 5.138.100 of the Sacramento City Code is amended to read as follows:

5.138.100 License violation.

- A. It is a violation of a license for a licensee or his or her agents or employees to sell or offer for sale any flavored tobacco product. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or its agents or employees has made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, or images on the product's labeling or packaging that are used to expressly or impliedly communicate that a tobacco product has a characterizing flavor.
- B. It is a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

SECTION 6.

Section 5.138.110 of the Sacramento City Code is amended to read as follows:

5.138.110 Suspension or revocation of license.

- A. In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section, if the city manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this chapter; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.
 - 1. Upon a finding by the city manager of a first license violation within any five-year period, the license shall be suspended for 30 days.
 - 2. Upon a finding by the city manager of a second license violation within any five-year period, the license shall be suspended for 90 days.
 - 3. Upon a finding by the city manager of a third license violation within any five-year period, the license shall be revoked.
- B. Notwithstanding section 5.138.110A, a license shall be revoked if the city manager finds that either one or both of the following conditions exist:
 - 1. One or more of the bases for denial of a license under section 5.138.060A existed at the time application was made or at any time before the license issued.
 - 2. The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

- C. In the event the city manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five days of the suspension or revocation in the manner prescribed in section 5.138.060D. The notice shall contain:
1. A brief statement of the specific grounds for such suspension or revocation;
 2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of section 5.138.120, to the city manager, within 10 calendar days of the date of service of the notice; and
 3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.
- D. A licensee for whom a license suspension is in effect, or whose license has been revoked, must cease all tobacco retailing and remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended or revoked license.

SECTION 7.

Section 5.138.120 of the Sacramento City Code is amended to read as follows:

5.138.120 Denial, suspension and revocation—Appeals.

- A. Any applicant or licensee aggrieved by the decision of the city manager in denying, suspending, or revoking a license, may appeal the decision by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, or revocation. The appeal must be accompanied by an appeal fee set by resolution of the city council. The written appeal shall contain:
1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
 2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
 3. The signatures of all parties named as appellants and their official mailing addresses; and
 4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- B. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

- C. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:
1. If the appeal is received by the city manager not later than 15 days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.
 2. If the appeal is received by the city manager on a date less than 15 days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.
- D. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
- E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion of the notice and order.
- F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
- G. Any suspension or revocation of a license shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section.

SECTION 8.

Section 5.138.140 of the Sacramento City Code is amended to read as follows:

5.138.140 Conduct of hearing.

- A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subdivisions (a), (b) and (c), shall apply to hearings under this chapter.
- B. Oral evidence shall be taken only upon oath or affirmation.
- C. Irrelevant and unduly repetitious evidence shall be excluded.
- D. Each party shall have these rights, among others:
1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 2. To introduce documentary and physical evidence;

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 4. To impeach any witness regardless of which party first called the witness to testify;
 5. To rebut the evidence presented against the party; and
 6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.
- E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

SECTION 9.

Section 5.138.150 of the Sacramento City Code is amended to read as follows:

5.138.150 Form and contents of decision—Finality of decision.

- A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the license, the hearing examiner shall affirm the city manager's decision to deny, suspend, or revoke the license. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.
- B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

SECTION 10.

Section 5.138.160 of the Sacramento City Code is amended to read as follows:

5.138.160 Enforcement.

- A. In addition to any other remedy, any person violating any provision of this chapter shall be guilty of a misdemeanor for each day such violation continues.
- B. Any violation of this chapter may be remedied by a civil action brought by the city attorney. The city may recover reasonable attorneys' fees and costs of suit in any civil action brought by the city attorney to remedy any violation of this chapter.

- C. Any person violating the provisions of this chapter shall also be liable for civil penalties of not less \$250 or more than \$25,000 for each day the violation continues.
- D. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the city.
- E. In addition to criminal sanctions, civil penalties as provided in this section, and other remedies set forth in this chapter, administrative penalties may be imposed pursuant to chapter 1.28 against any person violating any provision of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to chapter 1.28.

SECTION 11.

The effective date of this ordinance is January 1, 2020.

Adopted by the City of Sacramento City Council on April 16, 2019, by the following vote:

Ayes: Members Ashby, Guerra, Hansen, Harris, Jennings, Schenirer and
Mayor Steinberg

Noes: Member Carr

Abstain: None

Absent: Members Warren

Attest:

Mindy Cuppy Digitally signed by Mindy Cuppy
 Date: 2019.04.29 12:10:02
 -07'00'

Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

Passed for Publication: March 12, 2019
 Published: March 15, 2019
 Effective: January 1, 2020



Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products

Updated June 2017
(Originally published January 2014)

Developed by ChangeLab Solutions

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Introduction and Report

This Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products (Model Ordinance) is one potential policy intervention to reduce the consumption of tobacco products. It is based on ChangeLab Solutions' legal research and analysis, as well as the research and evidence base regarding consumption of tobacco products and the rising popularity of flavored tobacco products. The Model Ordinance should complement other policy and programmatic efforts to reduce tobacco use.

This version of the Model Ordinance (revised in June 2017) includes the following changes from the previous version: (1) It prohibits the sale of flavored cigarettes (including menthol cigarettes), and (2) it provides an optional provision to grandfather certain businesses, which exempts those businesses from complying with the flavored tobacco prohibition for a limited period of time.

The Introduction and Report section summarizes our nonpartisan analysis of the health, equity, and policy issues related to the use and sale of menthol cigarettes and other flavored tobacco products, and it outlines why it is important to restrict the sale of such products. It should be distributed broadly to the public and local groups to help people understand the relevant data and the purpose of developing a policy restricting the sale of menthol cigarettes and other flavored tobacco products.

This Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data. It allows readers to draw their own conclusions about the merits of this Model Ordinance.

The Model Ordinance offers a variety of options. In some instances, blanks (e.g., [____]) prompt you to customize the language to fit your community's needs. In other cases, the ordinance offers you a choice of options (e.g., [choice one / choice two]). Some of the options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community's existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

Background

In 2009, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) banned the manufacture of flavored cigarettes. However, the law contains an exception for menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco. Moreover, California doesn't have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth.¹ These products also pose significant barriers to achieving health equity. Thanks to tobacco companies’ marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.

This Model Ordinance restricts the sale of all flavored tobacco products, including the following:

- (1) Flavored cigarettes already prohibited by the Tobacco Control Act;
- (2) Menthol cigarettes;
- (3) Flavored other tobacco products (OTPs), such as cigars, little cigars, cigarillos, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices (ESDs), and the solutions used in ESDs; and
- (4) Flavored components, parts, and accessories, such as flavored rolling papers, filters, and blunt wraps.

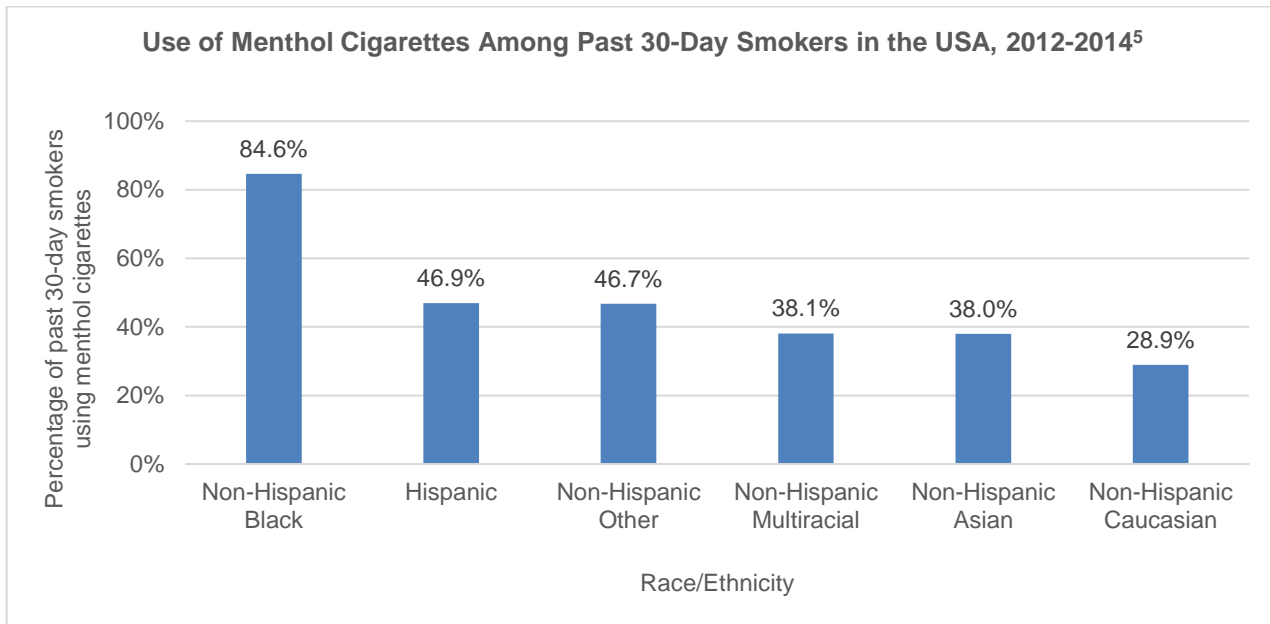
Menthol Cigarettes

For decades, tobacco companies have added menthol—a crisp, minty flavoring—to their products. By adding menthol to cigarettes, tobacco companies mask the natural harshness and taste of tobacco. The minty flavor makes tobacco products more mild, and therefore easier to use and more appealing to youth and new users.^{2,3}

Tobacco companies have manipulated the amount of menthol in cigarettes to encourage many people—particularly youth and populations targeted by the tobacco industry—to start and continue using tobacco.^{4,1} Smoking menthol cigarettes is associated with increased use of cigars and smokeless tobacco products,⁵ and it reduces the likelihood of successfully quitting smoking.^{3,6} Indeed, despite decreases in overall cigarette use in recent years, the proportion of cigarette smokers who use menthol cigarettes continues to rise.⁵ In 2014, more youth smokers used menthol cigarettes than non-mentholated cigarettes.⁵ Moreover, a 2017 study reported an increase in menthol cigarette use among youth cigarette smokers following the 2009 federal ban on flavored non-menthol cigarettes.⁷

Scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the US Food and Drug Administration (FDA) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire US population, and especially among youth, African Americans,³ and possibly Hispanic and Latino populations.⁶ Indeed, these groups bear the burden of menthol cigarette use: 84.6% of non-Hispanic Black smokers in the US reported smoking menthol cigarettes in the last month, in addition to 46.9% of Hispanic smokers, 38.1% of non-Hispanic multiracial smokers, 38% of non-Hispanic Asian smokers, and 46.7% of other smokers with non-Hispanic, non-Caucasian racial/ethnic backgrounds.⁵ Members of LGBTQ communities and young

adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use.^{8,9}



Tobacco companies have helped create and exacerbate these disparities. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to communities of color and youth.^{10,11} One analysis of cigarette advertising, promotions, and pack prices at stores near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of menthol cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.”¹² There was no such association found for non-mentholated cigarettes.¹² Similarly, a New York study found that promotions that reduce the price of menthol cigarettes are disproportionately targeted to youth.¹³

Other Flavored Tobacco Products

In addition to selling menthol cigarettes, tobacco companies have developed flavored OTPs that have the same youth-friendly characteristics as the banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.¹⁴ In fact, cigars follow only ESDs and cigarettes as the third most common form of tobacco used by youth.¹⁵ Smokeless tobacco products, including chewing tobacco, snuff, and snus, come in flavors such as mint, wintergreen, berry, cherry, and apple¹⁶ to mask the harsh taste of tobacco.^{14,17} Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.¹⁸ Nicotine solutions, also known as e-liquids and which are consumed via ESDs such as electronic

cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.¹⁹

Consumption of flavored tobacco products has grown in recent years. From 1995 to 2008, sales of little cigars increased by 316%,²⁰ and in 2014, “flavored cigars accounted for more than half of all cigar sales (53.3%).”²¹ A 2009-2010 survey found that 42.9% of adult cigar smokers used flavored cigars,² and a 2014 survey found that 66.4% of people who smoked little cigars or cigarillos used flavored products.²² In 2014, nearly two-thirds of US middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored ESD within the past 30 days.²³ Moreover, a 2013-2014 survey found higher rates of flavored cigar use among vulnerable populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”²⁴

Like menthol, flavorings such as chocolate or apple help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.² In fact, a 2013-2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”^{25,26} Policy interventions that target youth tobacco use are particularly critical because most individuals start using tobacco as minors or young adults.²⁷ In California, 64% of smokers start smoking by age 18, and 96% start smoking by age 26.²⁸ Compared with individuals who start smoking later in life, individuals who start smoking at a young age are at increased risk for severe addiction to nicotine.¹⁴

OTPs pose a threat to public health for several reasons. One major concern is that many users, especially young people, assume that OTPs do not pose significant health risks. Research shows that cigar smokers have misconceptions about the safety of cigars; for example, they often believe cigars are less harmful and less addictive than cigarettes.²⁰ Studies have found that young people believe smoking hookah is safer than smoking cigarettes, and incorrectly believe that hookah smoke is less toxic than cigarette smoke.^{29,30} Moreover, 58.8% of 12th-grade students report that they *don't* believe regular use of smokeless tobacco presents a great risk of harm.²⁷ The misperception among many young people that OTPs do not present significant health risks, coupled with the fact that many OTPs are flavored, may contribute to increased use of these products among young people.

Despite these misconceptions, the FDA has stated that “[a]ll tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products.”³¹ Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophagus cancers.³² Hookah use has been associated with lung cancer, respiratory illness, and periodontal disease.³³ Smokeless tobacco contains at least 28 carcinogens, and there is strong evidence that users have an increased risk of developing oral cancers.¹⁴ The Surgeon General has reported that e-cigarettes “contain harmful ingredients that are dangerous to youth” and that e-cigarette aerosol “can contain

harmful and potentially harmful constituents.”³⁴ Moreover, multiple studies have confirmed that e-cigarette vapor contains toxic substances.^{35–37} To reduce the health impacts of menthol cigarette use and OTP use, communities can adopt policy interventions to regulate tobacco industry efforts that encourage youth, low-income populations, and communities of color to use mentholated and flavored products.

Considerations When Regulating Flavored Tobacco Products

A combination of strategies can protect youth from using tobacco and reduce industry-driven health inequities. Many communities are exploring programmatic and policy approaches to address the chronic health conditions associated with tobacco use. Some viable approaches are requiring local tobacco retailer licenses, limiting tobacco retailer density, setting minimum package sizes, and restricting the distribution of free or low-cost tobacco products. ChangeLab Solutions has developed this Model Ordinance as one tool to help communities reduce tobacco use, particularly among young people and vulnerable populations.

Policies that regulate the sale of flavored tobacco products can raise tensions between the government’s duty to protect individual liberty and its duty to promote and protect public health and well-being. Tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth. However, despite youth access laws, young people continue to buy and use tobacco products. Indeed, overall youth tobacco use didn’t change significantly between 2011 and 2015, with a 2015 survey reporting that nearly one-third (31.4%) of high school students used cigarettes, cigars, smokeless tobacco, or ESDs in the 30 days preceding the survey.¹⁵ In particular, young people are using a variety of OTPs:

- In 2015, 10.3% of high school students reported using cigars, cigarillos, or little cigars.¹⁵
- Youth hookah use increased more than 75% from 2011 to 2015, and youth ESD use increased more than tenfold during the same period.³⁸
- The percentage of high school students using smokeless tobacco products increased from 6.4% in 2012³⁹ to 7.3% in 2015.¹⁵
- A significant percentage of youth cigarette smokers concurrently use OTPs, increasing their risk for addiction and other health problems.¹⁴
- In a 2013-2014 survey, more than two-thirds of youth who used a non-cigarette tobacco product within the past 30 days reported doing so “because they come in flavors I like.”²⁶

Due to industry practices, individuals from communities of color, particularly young adults of color, are also more likely to use OTPs, such as little cigars.⁴⁰ In addition, a study found that daily menthol cigarette users are significantly more likely than occasional, non-menthol smokers to use flavored little cigars and cigarillos.⁴¹ African Americans and other communities of color are burdened with

disproportionately high rates of menthol cigarette use; this data, coupled with the findings from the study mentioned above, suggest that these populations are also more likely to use flavored little cigars and cigarillos. Many of these disparities are likely the result of tobacco companies' efforts to make these products more available, more heavily advertised, and cheaper in African American communities.⁴² Accordingly, interventions such as a flavored tobacco restriction, may be necessary to regulate the marketing and sale of flavored tobacco products, including menthol cigarettes, to youth and in communities of color.

Tobacco industry representatives have asserted that laws restricting the sale of flavored tobacco products overreach because they strip adults of the ability to buy lawful flavored products that they may prefer to non-flavored products. Additionally, retailer associations have asserted that laws restricting flavored tobacco products will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by flavored tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation restricts the ability of adults to purchase these products or results in reduced tobacco sales for local retailers.

Congress grappled with this issue in enacting the Tobacco Control Act. They ultimately determined that the government couldn't meet the Act's goals of reducing the use of, dependence on, and social costs associated with tobacco products by allowing unrestrained access to all tobacco products. For that reason, Congress banned flavored cigarettes except menthol-flavored cigarettes (eg, fruit- and candy-flavored cigarettes), finding that a ban was appropriate given the strong youth appeal of these products.⁴³

Similarly, the US Court of Appeals for the Second Circuit found that New York City's flavored tobacco law advanced the Tobacco Control Act's goals of reducing the use of tobacco products and the harms resulting from such use.⁴⁴ Restricting the sale of flavored tobacco products is also consistent with the California legislature's decision in 2001 to ban the sale of *bidis*—hand-rolled filterless cigarettes that were sold in a variety of candy flavors. Although tobacco industry groups argued that the California bill overreached by prohibiting bidi sales to adults, state lawmakers decided to ban bidis based on the need to “reduce youth access to a particularly harmful and addictive form of tobacco.”⁴⁵

Legal Issues

Below we discuss some of the key legal issues associated with this Model Ordinance.

Federal Preemption

Preemption is a legal doctrine that provides that a higher level of government may limit, or even eliminate, the power of a lower level of government to regulate a certain issue. Under the US Constitution's “Supremacy Clause,” federal law governs over state or local law. So, if a state or local law conflicts with a federal law, the federal law trumps the lower-level law.

Tobacco industry groups and manufacturers have argued that the Tobacco Control Act, which prohibits the manufacture of flavored cigarettes (except menthol), preempts local regulation of flavored tobacco products. However, US cities have implemented ordinances restricting the sale of flavored tobacco products, including menthol cigarettes and/or flavored OTPs, and these ordinances have survived preemption challenges.

In 2009, New York City passed an ordinance restricting the sale of flavored OTPs. A smokeless tobacco manufacturer filed a lawsuit arguing that the Tobacco Control Act preempts localities from passing their own laws regulating flavored tobacco products. An appellate court upheld the ordinance, finding that federal law did not preempt New York City's ordinance because the ordinance regulated *the sale* of tobacco products, not the manufacture of those products.⁴⁴

In January 2012, Providence, RI, passed a similar law restricting the sale of flavored OTPs. Tobacco industry groups and manufacturers filed a lawsuit claiming that the Tobacco Control Act preempted the ordinance. A federal district court upheld the Providence law. The court found that the Tobacco Control Act does not preempt local laws related to the sale of tobacco products, such as Providence's ordinance restricting the sale of flavored OTPs. On September 30, 2013, the US Court of Appeals for the First Circuit affirmed the district court's decision.⁴⁶

In December 2013, Chicago passed a law prohibiting the sale of all flavored tobacco products, including menthol cigarettes, within 500 feet of any school. A trade group sued Chicago over the law, claiming that the Tobacco Control Act preempted the ordinance. On June 29, 2015, a US District Court in Illinois upheld the law, finding that the Tobacco Control Act does not preempt local laws that restrict the sale of menthol cigarettes and flavored OTPs.⁴⁷

Taken together, the decisions from Chicago, New York City, and Providence reaffirm the authority of state and local governments to enact laws regulating the sale of tobacco products and to adopt restrictions that are more stringent than federal law.

First Amendment

The First Amendment of the US Constitution protects the right to freedom of speech. Courts have determined that advertising and marketing are forms of expressive conduct—they communicate information about products to consumers. Thus, advertising, or commercial speech, is considered a type of speech under the First Amendment. For this reason, advertising has some degree of protection against government regulation; laws that attempt to restrict marketing, promotional content, or similar types of communication may not be permissible.

Under this Model Ordinance, a tobacco product is presumed to be flavored and cannot be sold if the text or images on its labeling or packaging indicate that the product imparts a flavor, taste, or aroma other

than that of tobacco. In Providence, tobacco industry groups argued that a similar provision in the city's ordinance was a marketing restriction that implicated the First Amendment. The Providence ordinance provides that a public statement made by a manufacturer that a tobacco product has a characterizing flavor constitutes presumptive evidence that the product is a flavored tobacco product. A federal court rejected the industry's First Amendment argument, finding that the use of a public statement made by a manufacturer to determine whether a product is flavored does not amount to a prohibition against speech.

The court noted that the sale of a flavored tobacco product in Providence is illegal, regardless of whether the product is specifically described as a flavored tobacco product. In other words, the court found that manufacturers are still free to describe their products as having a characterizing flavor, even though their flavored tobacco products cannot be sold in Providence. Thus, challenges to flavored tobacco regulations on First Amendment grounds have not been successful thus far.

Conclusion

Research has shown that cigarette and OTP use have serious health consequences. Young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes and OTPs. These products are considered “starter” products that help establish long-term tobacco use. Moreover, flavored tobacco products, particularly menthol cigarettes, pose significant barriers to achieving health equity. Thanks to tobacco companies' marketing efforts, communities of color, low-income populations, and LGBTQ communities are significantly more likely to use menthol cigarettes and disproportionately bear the burden of tobacco-related harm. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

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AN ORDINANCE OF THE [CITY / COUNTY] OF [____] RESTRICTING THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AND AMENDING THE [____] MUNICIPAL CODE

The [City Council of the City / Board of Supervisors of the County] of [____] does ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. [See **Appendix A: Findings**]

COMMENT: A draft ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this legislation. The findings section is part of the ordinance and legislative record, and it contains information explaining the health and equity issues that the law would help address. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 22. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

SECTION II. [Article / Section] of the [____] Municipal Code is hereby amended to read as follows:

Sec. [____ (*1)]. **DEFINITIONS.** The following words and phrases, whenever used in this [article / chapter], shall have the meanings defined in this section unless the context clearly requires otherwise:

COMMENT: Some terms defined in this Model Ordinance may already be defined in the jurisdiction’s municipal code. Include only the definitions that are necessary, and review all definitions for consistency. For example, the definition of Tobacco Product below covers a broad range of tobacco products (including electronic smoking devices), and may be more expansive than an existing definition in the municipal code. In restricting the sale of flavored tobacco products, jurisdictions with an existing definition of Tobacco Product need to decide whether to use this Model Ordinance’s definition or rely on their current definition. A jurisdiction is allowed to use different definitions of Tobacco Product in separate sections of its municipal code. However, to avoid confusion, the jurisdiction should make clear which sections of the municipal code are governed by a particular definition.

- (a) “Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- (b) “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

COMMENT: This definition of Flavored Tobacco Product includes cigarettes. Federal law already prohibits the manufacture of flavored cigarettes, but it excludes menthol cigarettes from its prohibition. This Model Ordinance is more restrictive than federal law because it prohibits both the sale of menthol cigarettes and the sale of other flavored tobacco products. Below are some examples of the types of products prohibited by this Model Ordinance.

- Menthol cigarettes, roll-your-own tobacco, and components (eg, menthol flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- All other flavored cigarettes, roll-your-own tobacco, and components (eg, flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- Flavored cigars and little cigars
- Flavored smokeless tobacco
- Flavored electronic smoking devices
- Flavored non-cigarette components, parts, and accessories (eg, flavored blunt wraps and flavored additives for e-liquids)

- (c) “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (d) “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- (e) “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

- (f) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (g) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (h) “Tobacco Product” means:
- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff;
 - (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

COMMENT: This definition of Tobacco Product is designed to cover a wide variety of tobacco products, including cigarettes, cigars, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices, and the solutions and component parts that are used in these devices. The definition includes electronic smoking devices with or without nicotine. The definition also includes any component, part, or accessory normally used with a Tobacco Product.

- (i) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Sec. [____ (*2)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

- (a) It shall be a violation of this [article / chapter] for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.

COMMENT: Some communities have created “buffer zones” by prohibiting the sale of flavored tobacco products within a specific distance of youth-populated areas, such as schools. For example, Berkeley, CA, and Chicago, IL prohibit the sale of flavored tobacco products, including menthol cigarettes, within 600 feet of any school and within 500 feet of any high school, respectively. Although these buffer zones are an important intervention, they're not comprehensive prohibitions on flavored tobacco product sales.

Communities can consider similar policies, but they should weigh the benefits and drawbacks of implementing a non-comprehensive flavored tobacco prohibition. A buffer zone approach may not provide the same public health benefits as a comprehensive, communitywide flavored tobacco restriction. Moreover, local jurisdictions that create buffer zones will likely face increased costs for implementation and potential enforcement challenges. For example, before a community can implement a buffer zone, it must conduct mapping surveys to determine the location of schools and tobacco retailers and measure the distances between them. Communities must routinely update the maps to reflect changes that affect where flavored tobacco products may be sold (eg, if a school opens, closes, or relocates). Developing and updating these maps may require significant resources.

Local jurisdictions must also educate tobacco retailers and the general public on how to determine whether a store is located within a buffer zone that prohibits the sale of flavored tobacco. This may include developing appropriate tools and resources for tobacco retailers to determine whether their store is within a buffer zone.

Despite these considerations, buffer zones remain a viable policy option for communities. If your community is interested in adopting a flavored tobacco product buffer zone, contact ChangeLab Solutions for assistance. This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

- (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.
- (c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

- (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
- (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

-----OPTIONAL PROVISION-----

[(d) A Tobacco Retailer lawfully operating as of the date this ordinance is adopted is exempt from subsection (a) for a period of up to [6 months] from the effective date of this ordinance, provided that all of the following requirements are met:

- (1) Within [thirty (30) days] of the effective date of this ordinance, the Tobacco Retailer submits to the [City Manager / County Manager] written notice that it seeks temporary exemption from subsection (a) and documentation that demonstrates: (i) the Tobacco Retailer was lawfully operating as of the date this ordinance was adopted; (ii) [seventy percent (70%)] or more of gross sales receipts are derived from Tobacco Products, Tobacco Paraphernalia, or both, or [fifty percent (50%)] or more of completed sales transactions include Tobacco Products, Tobacco Paraphernalia, or both; and (iii) the amortization period afforded by the [6-month] period for the effectiveness of the ordinance adopting this section is insufficient to allow the Tobacco Retailer to sell, return to the distributor or wholesaler, or otherwise obtain the benefit of, property which has no lawful use by virtue of the ordinance adopting this section. The submission shall include all information and documentation the [City Manager / County Manager] may request to determine the Tobacco Retailer's qualifications for this exemption.
- (2) The [City Manager / County Manager] determines the Tobacco Retailer meets the qualifications set forth in [subsection (d)(1)].
- (3) The Tobacco Retailer submits all information and documentation requested by the [City Manager / County Manager] to determine continued qualification for this exemption. This exemption to subsection (a) shall not apply if the [City Manager / County Manager] determines that the Tobacco Retailer no longer meets the qualifications set forth in [subsection (d)(1)].]
- (4) The [City Manager / County Manager] shall offer the Tobacco Retailer an opportunity for an oral or paper hearing and render a written decision on the record of that hearing.

That decision shall be final as to the [City / County] and subject to judicial review pursuant to Code of Civil Procedure section 1094.5.]

COMMENT: This Model Ordinance provides a 6-month delay between when a jurisdiction adopts the ordinance and when the flavored tobacco prohibition goes into effect (see “SECTION IV. Effective Date” on page 21). This delay provides all tobacco retailers with a 6-month period to sell their remaining inventory of flavored tobacco products. The delay also provides the local government with time to plan for implementation and enforcement.

The optional provision above (subsection (d)) temporarily grandfathers certain tobacco retailers, which exempts them from having to comply with the flavored tobacco prohibition in subsection (a) for an additional limited period of up to 6 months. Thus, a local jurisdiction that includes the optional subsection (d) above is granting certain tobacco retailers a period of 12 months in which to comply with the prohibition following the adoption of the ordinance (6 months is allowed for all tobacco retailers pursuant to SECTION IV on page 21, and an additional 6 months is allowed for certain tobacco retailers pursuant to subsection (d) above). The exemption in subsection (d) applies only to tobacco retailers that primarily sell tobacco products and/or tobacco paraphernalia, as specified above (we refer to these businesses informally as “significant tobacco retailers”). To qualify for the exemption in subsection (d), a retailer must meet the following requirements.

Requirements to Qualify for the Exemption:

- (1) The Tobacco Retailer submits a written notice indicating a request for temporary exemption and documentation that demonstrates the following:
 - (a) The Tobacco Retailer was lawfully operating on the date the ordinance was adopted;
 - (b) 70% or more of gross sales receipts are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both, or 50% or more of completed sales transactions are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both; and
 - (c) The amortization period (see explanation below) provided between the date of adoption and the effective date is insufficient to allow the Tobacco Retailer to sell or return its inventory of prohibited Flavored Tobacco Products.
- (2) The government determines the Tobacco Retailer meets these qualifications and grants it an additional 6 months to comply with the prohibition.

Importantly, this exemption lapses if at any time the government determines the tobacco retailer no longer meets these qualifications. The government’s decision is not subject to an internal appeal, but it can be reviewed in court under the administrative mandamus statute.

Jurisdictions seeking the maximum public health impact from this Model Ordinance should not insert this optional provision. Many public health laws take effect immediately and apply to all existing businesses without exception. The findings in this Model Ordinance (page 22) explain how a flavored tobacco prohibition protects public health, and in particular, how it protects youth from the significant harms of tobacco use. Exempting businesses, even temporarily, can slow progress and undermine the benefits of this Model Ordinance.

Takings

Sometimes government staff ask whether applying a prohibition on flavored tobacco sales to existing businesses is a taking. A taking is a restriction on private property—which, in this case, is flavored tobacco products—that is so burdensome that a court determines that the government must pay just compensation for the property (because the government has effectively “taken” the property). Whether a law amounts to a taking is case-specific—it depends on the business—and the burden of proof falls on the business. In most settings, allowing the regulated business a reasonable time (typically a few months) to amortize the value of any investment in property—selling any remaining flavored tobacco products, for instance—that cannot be used after the prohibition takes effect prevents a taking.

An amortization period gives certain existing businesses a period of time to do business as usual before they must make changes to comply with a new law. Amortization periods are constitutional ways for local governments to balance the public interest and any financial impact on a private business. These periods are often short, measured in months, not years.

It is important to note that the financial impact is less severe for a business that sells many other products in addition to tobacco products (eg, convenience stores and grocery stores), and that inventory can be returned to the wholesaler or resold for retail sale outside the city or county adopting the prohibition. Moreover, the time between adoption of an ordinance and its effective date is sufficient to amortize minor investments in inventory and signage. For these reasons, the optional temporary grandfathering provision applies only to tobacco retailers that sell a significant amount of tobacco products and/or tobacco paraphernalia; these businesses may be most affected by a flavored tobacco prohibition. Nevertheless, a flavored tobacco prohibition does not require businesses to close, or even to stop selling all tobacco products. It is a reasonable restriction on a type of tobacco product that is particularly harmful, especially to youth. Examples of reasonable amortization periods in different contexts include the following.

- An amortization period of 1 to 4 years is sufficient for a billboard removal ordinance. *Metromedia, Inc. v. City of San Diego*, 28 Cal.3d 848, 882 (1980), reversed on other grounds, 453 U.S. 490 (1981).
- An amortization period of 32 months is sufficient to amortize a billboard. *People ex. rel. Department of Pub. Wks. v. Adco Advertisers*, 35 Cal.App.3d 507 (1979). (Note: Amortization is often litigated in the context of billboards.)
- An amortization period of 18 months is sufficient to terminate operation of an automobile wrecking yard. *People v. Gates*, 41 Cal. App. 3d 590 (1974).
- An amortization period of 20 months is sufficient to change or relocate an adult entertainment business. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004).
- An amortization period of 24 months is sufficient to terminate operation of a cement batching plant that invested \$98,000 (1950 dollars) in the business. *Livingston Rock & Gravel Co. v. Los Angeles County*, 43 Cal. 2d 121 (1954).

Notably, a federal district court upheld a San Francisco law prohibiting the sale of all tobacco products in pharmacies and requiring that pharmacies comply by the effective date of the ordinance. In other words, the law didn’t grant an amortization period. The court explained that

the ordinance “merely regulates the sale of tobacco products; it does not force Plaintiff to engage in a certain type of business.” The court further concluded that “although Plaintiff has alleged it has a vested property right in its [tobacco retailer] permits, it cannot overcome the fact that the enactment of the amended ordinance was a reasonable and permissible use of Defendants’ police power.” *Safeway Inc. v. City & Cty. of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).

-----END OPTIONAL PROVISION-----

Sec. [____ (*3)]. ENFORCEMENT.

- (a) The remedies provided by this [article / chapter] are cumulative and in addition to any other remedies available at law or in equity.

COMMENT: The subsections below offer a variety of enforcement options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency has the discretion to choose which enforcement tools to use in each case. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

The enforcement options included in this Model Ordinance penalize Tobacco Retailers who sell or offer to sell Flavored Tobacco Products. In other words, this Model Ordinance does *not* penalize individuals for purchasing, attempting to purchase, possessing, or using Flavored Tobacco Products. Well-enforced laws targeting retailers are more effective and provide greater public health benefits than laws penalizing users. Moreover, laws penalizing purchasers and users raise significant equity concerns because their enforcement often disproportionately affects communities of color.

Some communities face challenges in enforcing their Flavored Tobacco Product ordinances. For example, enforcement officials may have trouble determining when a Tobacco Product qualifies as a Flavored Tobacco Product, particularly when the packaging and marketing materials do not explicitly identify a Characterizing Flavor (eg, Tobacco Products using “concept flavors” like “Arctic” and “Lightning”). Communities should consider potential challenges and develop guidelines for staff enforcement. If your community is concerned about enforcement, please contact ChangeLab Solutions for assistance.

- (b) Violations of this [article / chapter] are subject to a civil action brought by the [City Prosecutor / District Attorney] or the [City Attorney / County Counsel], punishable by a civil fine not less than [two hundred fifty dollars (\$250)] and not exceeding [one thousand dollars (\$1,000)] per violation.

COMMENT: This provision outlines the civil fines for violations of the ordinance. It requires the

city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. Government Code section 36901.

- (c) Violations of this [article / chapter] may, at the discretion of the [City Prosecutor / District Attorney], be prosecuted as infractions or misdemeanors when the interests of justice so require.

COMMENT: Sometimes called a “wobbler,” this provision affords the prosecuting attorney discretion to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or 6 months in a county jail). Alternatively, violations can be set as either an infraction or a misdemeanor in all circumstances. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.

SECTION III. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The [City Council / Board of Supervisors] of the [City / County] of [____] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

COMMENT: This is standard language. Often this “boilerplate” is found at the end of an ordinance, but its location is irrelevant.

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [6 months after date of enactment].

COMMENT: This section specifies the effective date of the ordinance, and it should be tailored to give the enforcing agency adequate time to educate tobacco retailers and the general public. The agency should also use this time to determine enforcement protocols for flavored tobacco products. General law cities and counties in California must provide a minimum of 30 days between an ordinance’s adoption and its effective date.

Appendix A: Findings.

The [City Council of the City / Board of Supervisors of the County] of [____] hereby finds and declares as follows:

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹ largely because these flavored products were marketed to youth and young adults,² and younger smokers were more likely than older smokers to have tried these products;³ and

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law,⁴ neither federal law nor California law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices; and

WHEREAS, flavored tobacco products are very common in California tobacco retailers as evidenced by the following:

- 97.4% of stores that sell cigarettes sell menthol cigarettes;⁵
- 94.5% of stores that sell little cigars sell them in flavored varieties;⁶
- 84.2% of stores that sell electronic smoking devices sell flavored varieties;⁷ and
- 83.8% of stores that sell chew or snus sell flavored varieties;⁸ and

WHEREAS, more than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes);⁹ and

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco¹⁰ and that these products help establish tobacco habits that can lead to long-term addiction;¹¹ and

WHEREAS, at least one study has found that the majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product;¹² and

WHEREAS, young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco;¹³ and

WHEREAS, 70% of middle school and high school students who currently use tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets;¹⁴ and

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of US middle school and high school smokers report using flavored little cigars or flavored cigarettes;¹⁵ and

WHEREAS, much of the growing popularity of small cigars and smokeless tobacco is among young adults and appears to be linked to use of flavored products;¹⁶ and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015;¹⁷

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸ and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;¹⁹ and

WHEREAS, between 2004 and 2014 use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);²⁰ and

WHEREAS, people ages 12 and older from communities of color are more likely to smoke mentholated cigarettes, as evidenced by the following percentages of people who smoke cigarettes reported smoking mentholated cigarettes in the last month:²¹

- 82.6% of Black or African American individuals;
- 53.2% of Native Hawaiians or Other Pacific Islanders;
- 36.9% of individuals with multiracial backgrounds;
- 32.3% of Hispanic or Latino individuals;
- 31.2% of Asian individuals;
- 24.8% of American Indians or Alaska Natives; and
- 23.8% of White or Caucasian individuals; and

WHEREAS, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos, and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these

products easier to use and increasing their appeal among youth;²² and

WHEREAS, the tobacco industry has been manipulating the dose of menthol in cigarettes to ensure the uptake and continued use of tobacco, especially by young people and vulnerable populations for many years;²³ and

WHEREAS, smoking mentholated cigarettes reduces the likelihood of successfully quitting smoking;²⁴ and

WHEREAS, the tobacco industry has a well-documented history of developing and marketing mentholated brands to communities of color and youth;²⁵ and

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;²⁶ and

WHEREAS, a New York study found that price reduction promotions for menthol cigarettes are disproportionately targeted to youth markets;²⁷ and

WHEREAS, scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, and especially among youth, African Americans,²⁸ and possibly Hispanic and Latino individuals;²⁹

WHEREAS, scientific studies on the impact of a national ban on menthol in cigarettes found 36.5% of menthol cigarette users would try to quit smoking if menthol was banned³⁰ and between 300,000 and 600,000 lives would be saved by 2050;³¹ and

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco.³²

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City of Oroville

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PLANNING COMMISSION STAFF REPORT

Thursday, October 24, 2019

RE: ORDINANCE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

SUMMARY: The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to prohibit the sale of flavored tobacco products.

RECOMMENDATION: Recommend that the City Council adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010

APPLICANTS: None

LOCATION: City wide

GENERAL PLAN: NA

ZONING: NA

FLOOD ZONE: NA

ENVIRONMENTAL DETERMINATION: Not a project under CEQA (para 21065 & CEQA Guidelines 15378(b)(5))

REPORT PREPARED BY:

REVIEWED BY:

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DISCUSSION

In the interest of improved public health and especially for Oroville’s youth, on October 1, 2019, the City Council directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits.

Some of these changes involve amendments to Title 17, which is the purview of the Planning Commission. Accordingly, the Commission is asked to review at its earliest opportunity recommended changes to Title 17 and Title 5 of the Oroville Municipal Code, and to forward the Commission’s recommendations to the City Council for action.



Assembly Committees on Governmental Organization, Business & Professions, and Health Joint Informational Hearing:

**Vaping Tobacco and Cannabis Products: Health Effects
and Deficiencies in Regulation and Current Law
Wednesday, October 16, 2019
1:00 p.m., Room 4202**

INTRODUCTION

This will be the first of two hearings. This hearing will provide an overview of the issues related to vaping, including the health effects and regulatory landscape, with testimony provided by medical professionals, tobacco and vaping experts, and state government regulators. The hearing will also look into the growing popularity of e-cigarettes and vaping, and examine the overall impact on youth and general consumers.

BACKGROUND

On September 10, 2019, President Trump, Health and Human Services Secretary Alex Azar, and Dr. Ned Sharpless, the acting Commissioner of the Food and Drug Administration (FDA) announced they would issue a draft ban on most flavored e-cigarettes within several weeks. The agencies stated that the announcement was prompted by recent findings from the National Youth Tobacco Survey that indicate a rise in youth vaping, with over 25% of high school students stating they have used e-cigarettes in the past 30 days. Pursuant to a final rule from August 8, 2016, all electronic smoking devices (ESD) or electronic nicotine delivery system (ENDS) products would be required to file premarket tobacco product applications within two years; however, the FDA had delayed the requirements until August 2021. In July 2019, a federal judge overseeing a lawsuit brought against the FDA by the American Academy of Pediatrics over the delay of the rule, ruled that e-cigarette companies must submit their products for FDA review within 10 months, or by May 2020. However, the judge held that these products would be allowed to remain on the market in the interim and for up to one year while the FDA reviews the applications.

The September 10 announcement is an indication that the FDA intends to finalize enforcement guidance to require any non-tobacco flavored product (i.e. kid-appealing flavors) to be removed from the market until an application for premarket approval has been obtained under the Tobacco Control

Act. To provide a non-combustible nicotine option for adults, tobacco-flavored products will be exempt from the enforcement order. However, Acting Commissioner Sharpless stated action would be taken against tobacco-flavored products if children start to migrate to those products as well.

Prior to this announcement, in September 2018, Dr. Scott Gottlieb, the FDA Commissioner at the time, declared that youth vaping is now an epidemic, and the FDA initiated the Youth Tobacco Prevention Plan, which focuses on preventing youth access to tobacco products, curbing the marketing of tobacco products aimed at youth, and educating teens about the dangers of using any tobacco products. The FDA then issued 12 warning letters to companies that continued to advertise and sell products to youth. The FDA also sent letters to five ESD manufacturers whose products were sold to kids during the FDA's ramped up enforcement period: JUUL, Vuse, MarkTen, blu e-cigs, and Logic, which comprise 97% of the e-cigarette market. The FDA requested that these companies provide robust plans on how they will address the widespread use of their products by minors or face increased enforcement.

These federal initiatives are a result of a multistate outbreak of lung injuries related to vaping. According to the Centers for Disease Control and Prevention (CDC), as of October 8, 2019, 1,299 lung injury cases associated with using e-cigarette, or vaping, products have been reported to CDC from 49 states and one U.S. territory. Twenty-six deaths have been confirmed in 21 states, including three in California. All patients have reported a history of using e-cigarette, or vaping, products. Most patients report a history of using products containing Tetrahydrocannabinol (THC) [the psychotropic ingredient in marijuana]. The latest national and regional findings suggest products containing THC play a role in the outbreak. Health officials are advising that people avoid using vaping devices of all kinds, whether loaded with nicotine or THC from cannabis. According to the CDC, the demographics of the lung injury cases are as follows: approximately 70% of patients are male; approximately 80% of patients are under 35 years old; sixteen percent of patients are under 18 years old; and 21% of patients are 18 to 20 years old.

It should be noted that e-cigarettes are not currently approved by the FDA as an aid to quit smoking. The U.S. Preventive Services Task Force, a group of health experts that makes recommendations about preventive health care, has concluded that evidence is insufficient to recommend e-cigarettes for smoking cessation in adults, including pregnant women. However, e-cigarettes may help non-pregnant adult smokers if used as a complete substitute for all cigarettes and other smoked tobacco products. To date, the few studies on the issue are mixed. A Cochrane Review found evidence from two randomized controlled trials that e-cigarettes with nicotine can help smokers stop smoking in the long term compared with placebo (non-nicotine) e-cigarettes. However, there are some limitations to the existing research, including the small number of trials, small sample sizes, and wide margins of error around the estimates. A recent CDC study found that many adults are using e-cigarettes in an attempt to quit smoking. However, most adult e-cigarette users do not stop smoking cigarettes and are instead continuing to use both products (known as "dual use").

According to Jeff Chen, Director of the UCLA Cannabis Research Initiative, to date there has never been a study on vaping cannabis. The current vaping crisis has focused attention on the substances used to dilute cannabis oil for vaping and little is known about what happens when those products are heated. There are also concerns about the devices used to vape nicotine and cannabis, which almost exclusively come from China. The federal government has left it to the states to create testing standards, while companies in the industry have sought to reassure consumers that their cannabis oil does not contain harmful chemicals. California tests cannabis and vaping products for pesticides and other contaminants from licensed entities. The lack of research stems from a longstanding federal prohibition on cannabis that has further impacted health studies on overall vaping products, which happens to be the fastest-growing market.

Within the last month, Massachusetts announced a four-month ban on the sale of all vaping products. New York and Michigan imposed bans on sales of flavored products, and the retailers Walmart and Kroger announced they would stop selling e-cigarettes. On September 27, 2019, Washington Governor Jay Inslee, through an executive order, called for the state to impose an emergency ban on all flavored vaping products, including those that contain nicotine and THC. On October 2, 2019, Utah health officials announced emergency rules requiring all tobacco retailers that sell e-cigarettes to post notices regarding the dangers of vaping unregulated THC products, and on October 7, 2019, Hawaii state officials issued an advisory to vaping.

CALIFORNIA INITIATIVES

On September 16, 2019, Governor Gavin Newsom issued an executive order directing the California Department of Public Health (DPH) to launch a \$20 million statewide digital and social media public awareness campaign to educate youth, young adults, and parents about the health risks associated with vaping nicotine and cannabis products. DPH was also tasked with developing recommendations to reduce smoking among young adults and teens by establishing warning signs with health risks where vaping product are sold, and on product advertisements. The Governors' executive order also directs the California Department of Tax and Fee Administration (CDTFA) to develop recommendations to remove illegal and counterfeit vaping products from stores and include nicotine content in the calculation of the existing tax on electronic cigarettes. On September 24, 2019, DPH issued a health advisory urging everyone to refrain from vaping, no matter the substance or source.

DPH, other states, the CDC, the FDA, local health departments, and health care providers are investigating what is in the vape materials that is making people sick. In the health advisory DPH notes that, "All individuals put themselves at risk any time they inhale a foreign substance into their lungs. The risk of vaping for any individual may include serious illness and death. Vaping is not just a concern for youth; the vaping cases under investigation affect youth and adults alike."

VAPORIZERS, E-CIGARETTES, AND ENDS

According to the FDA, vapes, vaporizers, vape pens, hookah pens, electronic cigarettes (e-cigarettes or e-cigs), and e-pipes are some of the many terms used to describe ENDS. ENDS are noncombustible tobacco products. These products, or devices, use an “e-liquid” that may contain nicotine, as well as varying compositions of flavorings, propylene glycol, vegetable glycerin, and other ingredients. The liquid is heated to create an aerosol that the user inhales. ENDS may be manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or “mods,” bear little or no resemblance to cigarettes. These devices are also used to vaporize cannabis.



Use of e-cigarettes, now the most popular tobacco product among teens, has jumped 78% among high school students compared with 2017, with 20.8% (more than 3 million) of high schoolers now using e-cigarettes, according to new FDA data. The data also show that more than half of those high schoolers (51.2%) use menthol- or mint-flavored e-cigarettes. Research has demonstrated that flavored tobacco products play an important role in youth vaping. Almost a third of the middle and high school students who used e-cigarettes in 2016 said the availability of flavors is a main reason they used the products, according to a report from the CDC and the FDA. A study that included both middle and high school students found that 43% of youth who ever used e-cigarettes tried them because of appealing flavors. The majority of youth e-cigarette users think they vaped only flavoring, not nicotine, the last time they used a product, according to an annual national survey of more than 40,000 students from the University of Michigan *2016 Monitoring the Future* study, even though 99% of e-cigarettes sold in most brick-and-mortar stores contain nicotine. California monitors smoking rates among high school students using the California Student Tobacco Survey, administered by DPH on a biennial basis. One in eight California high school students currently use tobacco products, with the most used product among all student being ESDs (10.9%). In addition, 86.4% of youth tobacco users reported using flavored tobacco products

HEALTH IMPACTS OF VAPING

While there is little research on the health effects of vaping THC, in light of the recent outbreak of vaping related injuries/illnesses, the CDC recommends while the investigation is ongoing, that people consider refraining from using e-cigarette, or vaping products, particularly those containing THC. Adults who used e-cigarettes containing nicotine to quit cigarette smoking are encouraged not to return to smoking cigarettes, and anyone who recently used an e-cigarette or vaping product having symptoms like those reported in this outbreak, see a healthcare provider.

The CDC also states that anyone who uses an e-cigarette or vaping product should not buy these products (e.g., e-cigarette or vaping products with THC or Cannabidiol (CBD) oils) off the street, and should not modify or add any substances to these products that are not intended by the manufacturer. The CDC notes that youth, young adults, and pregnant women should not use e-cigarette or vaping products and adults who do not currently use tobacco products should not start using e-cigarette or vaping products.

The CDC's recommendations are bolstered by a growing body of research on the effects of e-cigarette use. A survey of recent studies, published in 2019 in the *American Journal of Respiratory and Critical Care Medicine*, *Journal of the American College of Cardiology*, and *Cardiovascular Toxicology*, found that e-cigarette aerosol with nicotine caused a significant increase in heart rate and arterial stiffness, having an acute impact on vascular and pulmonary function. A Yale study published in July of 2019 in the *American Journal of Preventative Medicine*, focused on the effects of the common flavoring vanillin, which is banned from combustible cigarettes, but allowed in e-cigarettes, and was found to irritate airways when combined with the acetals (molecules) in the aerosol, also known as vapor, produced by JUUL. A March 2018 Dartmouth study, published in the peer reviewed *Public Library of Science Journal*, concluded that, based on existing scientific evidence related to e-cigarettes and optimistic assumptions about the relative harm of e-cigarette use compared to cigarette smoking, e-cigarette use currently represents more population-level harm than benefit. The study also shows that, for every additional adult who quits smoking using e-cigarettes; there are 80 additional youth who initiate daily tobacco use through e-cigarettes.

Although there have been claims that e-cigarettes assist in quitting smoking, e-cigarettes are not currently approved by the FDA as a quit smoking aid. The U.S. Preventive Services Task Force, a group of health experts that makes recommendations about preventive health care, has concluded that evidence is insufficient to recommend e-cigarettes for smoking cessation in adults, including pregnant women.

TOBACCO LAWS AND REGULATIONS

Although there are robust combustible tobacco laws and regulations at the federal level, e-cigarettes have not yet been the subject of final federal regulations. In 1992, Congress passed

Section 1926 of Title XIX of the federal Public Health Service Act, commonly called the Synar Amendment. The Synar Amendment requires states to pass and enforce laws that prohibit the sale of tobacco to individuals under 18 years of age. It also requires federal alcohol and substance abuse block grant funding to be applied to enforce state law in a manner that can reasonably be expected to reduce the illegal sales rate of tobacco products to minors. Up to 40% of the block grant funding can be withheld from states for not complying with the Synar Amendment. In response to the Synar Amendment, in September 1994, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act) was signed into law in California to address the increase in tobacco sales to minors and fulfill the federal mandate. The STAKE Act created a new statewide enforcement program authorizing regulatory actions against businesses that illegally sell tobacco to minors.

Federal law banning cigarette advertisements on television and radio went into effect in 1971; however, smokeless tobacco products were not banned until 1986. The Master Settlement Agreement (MSA) is an accord reached in November 1998 between the state Attorneys General of 46 states (including California), five U.S. territories, the District of Columbia, and the five largest tobacco companies in the U.S. concerning the advertising, marketing, and promotion of tobacco products. In addition to requiring the tobacco industry to pay the settling states approximately \$10 billion annually for the indefinite future, the MSA set standards for, and imposed restrictions on, the sale and marketing of cigarettes by participating cigarette manufacturers including targeting youth, using cartoons to advertise tobacco products, using brand-name merchandise, and sponsoring youth-oriented events. E-cigarettes are not part of this agreement. Under the MSA, states must pass laws requiring non-participating manufacturers to make payments to the state based on their cigarette sales, and, to diligently enforce the payments requirements by tracking all cigarettes sold in the state.

In California, e-cigarettes are included in the definition of tobacco products and the same limits apply to e-cigarettes as to combustible cigarettes, including limits on where they may be used. Existing California law prohibits the sale of tobacco products, including electronic cigarettes to individuals under age 21, but does not limit or restrict the types of flavors of electronic cigarettes. Recent efforts at the state and local level have focused on restricting the sale of tobacco products instead of advertising practices to avoid First Amendment challenges. Over 30 cities in California have passed local ordinances that ban the sale of flavored tobacco products. For example, the City of San Francisco recently banned the sale of all flavored tobacco products and e-cigarettes, including mint and menthol. The Los Angeles County Board of Supervisors voted unanimously on October 1, 2019, to ban flavored tobacco products, including menthol, taking effect in 30 days from the vote.

Approved by voters in 2016, Proposition 56 increased taxes on cigarettes and other tobacco products, including e-cigarettes, by \$2.00 starting in April 2017. It should be noted that that the

current vapor product tax is collected based on a percentage of the wholesale price of the end product sold to the consumer. The Proposition specifically allocates \$30 million of annual revenue to the California Department of Justice (DOJ). These funds support local agencies to enforce tobacco-related statutes and ordinances, including reducing the illegal sale of tobacco products to minors. Grantees may use grant funds to enforce state and local laws related to the illegal sale and marketing of tobacco products to minors and youth including: retailer compliance checks, retailer training programs, installation of signage, youth outreach, tobacco retail license inspections, and/or preventing and deterring use of tobacco products on school premises. On October 2, 2019, the Attorney General announced that 76 local agencies would receive a total of \$30.5 million in Proposition 56-authorized funds for 2019-20 through the DOJ's Tobacco Grant Program. The local entities, which include school districts, police departments and sheriff's offices, can use the money to hire additional officers and roll out enforcement programs and educational outreach initiatives.

In addition to being required to verify the purchasers' age for tobacco sales, retailers of cigarettes and tobacco products in California must have a Cigarette and Tobacco Products Retailer's License. As of June 9, 2016, state law expanded the definition of a tobacco product for cigarette and tobacco products retail licensing purposes to include nicotine products, electronic nicotine or other vaporized liquid delivery devices, and any component, part, or accessory of a tobacco product. Effective January 1, 2017, any retailer that sells any product included in the expanded definition of tobacco products is required to obtain and maintain a Cigarette and Tobacco Products Retailer's License from the CDTFA in order to engage in the retail sale of these products. A retailer's license is valid for a 12-month period, is not assignable or transferable, and must be renewed annually. A license fee payment is required for each retail location at initial registration, every year at the time of renewal. Many cities also have local licensing requirements, which may be more restrictive than state licensing requirements.

DPH also enforces the STAKE Act and its enforcement authority includes conducting unannounced inspections of retailers selling tobacco products to ensure retailers are not selling to youth. According to DPH, it conducted 4,675 compliance inspections and collected \$265,100 in civil penalties in fiscal year (FY) 2018-19. Currently, DPH is required to notify the CDTFA within 60 days of the final adjudication of a retailer's third, fourth, or fifth violation within a five-year time frame, however, DPH did not have any retailers that fit these criteria in FY 2018-19. DPH received an additional \$1.9 million in local assistance funding in FY 2019-20 to allocate grants to local entities for enforcement activities. According to CDTFA as of August 1, 2019, there are 30,685 registered cigarette and tobacco retail locations in California.

CANNABIS LAWS AND REGULATIONS

The regulation and study of the cannabis industry is particularly complex. Although the federal government considers cannabis a controlled substance, 33 states now allow its use for

either recreational or medicinal purposes, or both. Hundreds of cannabis products are sold, legally and illegally, such as THC oil, or cannabis oil with THC. The FDA has warned some sellers of cannabis product supplement not to make health claims, but so many are doing so that the agency cannot monitor them all. Liquid nicotine and THC, sometimes sold in cartridges for use in vaping devices can each contain oils that may be safe to swallow but can damage the lung when vaporized into a mix of unknown chemicals. The CDC has noted that many vaping injuries have been linked to unregulated THC products.

California first legalized cannabis for medical consumption through Proposition 215, also known as the Compassionate Use Act, in 1996. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes. The Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. MCRSA established for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the Bureau of Cannabis Control within the Department of Consumer Affairs, DPH, and the California Department of Food and Agriculture.

Shortly following the passage of MCRSA in November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" (AUMA), which legalized adult-use cannabis. In California, licensed cannabis retailers are required to sell products obtained from a licensed cannabis manufacturer that have been tested by a licensed laboratory. Cannabis products sold by licensed sources are tested for a variety of chemicals, pesticides, microbial impurities, and heavy metals. Under MCRSA, DPH was given the duty of promulgating regulations governing the labeling of all manufactured cannabis products, including determining a universal symbol to be used to mark all edible cannabis products.

DPH's Manufactured Cannabis Safety Branch (MCSB) released its final regulations in January of 2019. Under these regulations, a universal symbol must be placed on an inhaled product container, like a vape cartridge, if that container is separable from the outer-most packaging, like a vape pen. Existing emergency regulations required the universal symbol to be at least one-half inch by one-half inch and to be black in color.



CONCLUSION

Vaping has reached epidemic proportions across the nation and in California. The detrimental impact of smoking on health has been documented for many years and much like tobacco-use, vaping can be considered a risk factor for vascular and pulmonary diseases, as discussed above. Exposure to tobacco smoke is a risk factor for chronic diseases and is considered a human carcinogen. Acute effects of secondhand smoke are serious and include increased frequency and severity of asthma attacks, respiratory symptoms such as coughing and shortness of breath, and respiratory infections such as bronchitis and pneumonia. In addition, using tobacco or being exposed to tobacco smoke during pregnancy is detrimental in fetal development and increases the risk of sudden infant death syndrome.

The safety and long-term health effects of using e-cigarettes or other vaping products are not well known. Relating to the current crisis, federal and state officials have reported hundreds of total possible cases of pulmonary disease and several deaths related to vaping. State and federal health authorities state that the latest finding from their investigation into lung injuries suggest products containing THC play a role in the outbreak, however no single product or substance has been linked to all lung injury cases. According to the CDC, “THC use has been associated with a wide range of health effects, particularly with prolonged heavy use. The best way to avoid potentially harmful effects is to not use THC, including through e-cigarette, or vaping products.

Although the economic costs of vaping to society is not well established, the economic costs of smoking nationwide is more than \$300 billion a year, including nearly \$170 billion in direct medical care for adults and more than \$156 billion in lost productivity due to premature death and exposure to secondhand smoke. The 2012 California DPH State Health Officer's Report on Tobacco Use and Promotion in California estimated that adult tobacco related health care expenditures cost California \$6.5 billion that year, or about \$400 per taxpayer. Those figures did not include other health care costs for children, costs resulting from secondhand smoke exposure, the value of lost time/productivity, or lives lost.

The Governor’s initiatives are prudent first steps to addressing the growing vaping epidemic but more needs to be done to address the long-term health and economic cost of vaping, especially curbing its use among the youth. A second joint hearing, yet to be scheduled, will focus on how best to solve the problem, and how to identify and address obstacles to reducing the incidence of vaping, and the associated health risks.

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Alameda Ordinance No. 3230	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: November 27, 2018 Effective: July 1, 2019 Enforced: July 1, 2019	None	<p>No TRLs may be issued to a pharmacy</p> <p>No TRLs may be issued within 300 feet of a youth populated area</p> <p>No TRL's may be issued within 500 feet of another tobacco retailer</p> <p>The total number of TRLs within the city shall be limited to one for each 2,500 inhabitants of the city</p> <p>No tobacco retailers shall honor or redeem a coupon to allow a consumer to purchase a tobacco product for less than full price, sell a tobacco product through a multi-package discount, provide free or discounted items, or sell a tobacco product for less than full retail price</p> <p>Cigars and little cigars must be sold in packages of at least five</p> <p>Sets a minimum price of \$7 per package of cigarettes and \$5 for cigars</p>	<p>The City's Planning, Building and transportation Department or any other City department shall inspect each tobacco retailers for compliance</p> <p>A violation of the provisions of this chapter within any five-year period may result in:</p> <ol style="list-style-type: none"> 1. A fine of \$1500 for a first violation 2. A 15 day suspension of the tobacco retail license for a second violation 3. A 30 day suspension of the tobacco retail license for a third violation 4. A license will be revoked for a fourth violation 	No
Albany Ordinance No. 2019-04	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 15, 2019 Effective: October 16, 2019	None	<p>No tobacco retailers shall allow a consumer to purchase tobacco for less than full retail price through a coupon, multi-package discount, or provide a tobacco products for free</p> <p>No retailer shall sell:</p> <ol style="list-style-type: none"> 1. Any little cigar unless it is sold in a package of at least twenty little cigars or 2. Any cigar unless it is sold in a package of at least six cigars (this does not apply to a cigar that has a price of at least \$8.00 per cigar, including all fees and taxes) <p>No retailers shall sell cigarettes, little cigars, or a single cigar at a price that is less than \$8.00, including all applicable fees and taxes</p> <p>*the minimum price shall be adjusted annually by increments of \$.25 in proportion with the Consumer Price Index</p>	<p>The City of Albany Police Department is responsible for enforcing this ordinance</p> <p>A tobacco retailer's license shall be revoked if the licensee is found to have violated any of the provisions of this chapter</p> <p>After revocation at a location within any 60-month period:</p> <ol style="list-style-type: none"> 1. No new license may be issued at a location for 30 days after a first violation 2. No new license may be issued at a location for 90 days after a second violation and the retailer will be subject to a \$250 fine 3. No new license may be issued at a location for one year after a third violation and the retailer will be subject to a \$500 fine 4. No new license may be issued at a location for five years after four or more violations and the retailer will be subject to a \$1000 fine 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Berkeley Ordinance No. 7.672-N.S. Municipal Code Chapter 9.80</p>	Prohibits the sale of flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: September 2015 Effective: January 1, 2017 Enforced: January 1, 2020 Updated: July 23, 2019	None	No new TRL may be issued to a pharmacy or renewed by a pharmacy No new TRL may be issued within 600 feet of school Little cigars/cigarillos must be sold in packages of at least 20 and cigars must be sold in packages of at least 6 No tobacco retailer may sell cigarettes at a price less than \$8 per package of 20 cigarettes, little cigars at a price less than \$8 per package of little cigars, and cigars at a price less than \$7 per cigar, including all taxes and fees (the established minimum prices shall be adjusted annually) Tobacco retailers may not honor or redeem coupons, sell tobacco products through a multi-package discount, or provide free or discounted tobacco products	A violation of the provisions of this chapter within any five-year period may result in: <ol style="list-style-type: none"> 1. The suspension of a license for up to 30 days for a first violation 2. The suspension of a license for up to 90 days for a second violation 3. The suspension of a license for up to one year for a third violation 4. The revocation of a license upon the fourth violation 	
<p>Beverly Hills Ordinance No. 18-2758 Municipal Code Chapter 4-2-21</p>	Prohibits the sale of all tobacco products, including flavored and menthol flavored tobacco products, within the city limits	All tobacco products	Yes	Adopted: August 21, 2018 Effective: September 21, 2018 Enforced: December 21, 2018	None	The flavors policy is enforced through a TRL that must be paid annually	A violation of the provisions of this chapter will result in: <ol style="list-style-type: none"> 1. A civil penalty fine of \$250 for a first violation within any five year period 2. The suspension of the TRL for 90 days and a civil penalty fine of \$750 for a second violation within a five year period 3. The revocation of the TRL and a civil penalty fine of \$1,000 for a third violation within a five year period 	No
<p>Burbank Ordinance No. 19-3.921 Municipal Code Chapter 3-4-25</p>	Restricts the sale of all flavored tobacco products, with the exception of flavored hookah tobacco for use in a non-e-hookah, to a tobacco bar within the city limits	All tobacco products (with the exemption of hookah)	Yes	Adopted: October, 2019 Effective: November, 2019 Enforced: May 1, 2020	Ordinance exempts tobacco bars (including smoking bars and hookah bars) Ordinance exempts the sale of hookah tobacco for use in a non-e-hookah from any tobacco retailer	A tobacco bar is defined as a smoking bar including a hookah bar that, in the calendar year ending December 31, 2018, and each calendared year thereafter, generated 70 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors or hookah pipes, not including any sales from vending machines, and is registered with the Department. Existing hookah lounges are exempted from the 70 minimum revenue percentage as long as the business remains in its current location AND under current ownership. This policy not only applies to the sale of hookah tobacco at any location, but also to any flavored tobacco intended for onsite consumption at any tobacco bar. Further, it exempts existing hookah bars from the 70% sales requirement, which might theoretically mean that those shops could begin selling any type of flavored tobacco product as long as they still offer some (even minimal) amount of hookah smoking onsite.	Compliance is monitored by the Burbank Police Department. A violation of the provisions of this chapter will result in: <ol style="list-style-type: none"> 1. The suspension of the license for up to 30 days for a first violation 2. The suspension of the license for up to 90 days for a second violation within a five year period of the first violation 3. The revocation of the license for a third violation within a five year period of the first violation 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Capitola Ordinance No. 1031 Municipal Code Section 8.38.130	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: July 25, 2019 Enforced: January 1, 2020	None	No new TRL may be issued within 1,000 feet of a school and/or a public library	A violation of the provisions of this chapter within six months of the first violation will result in: <ol style="list-style-type: none"> 1. A fine of \$100 and the suspension of the TRL for up to 30 days for a first violation 2. A fine of \$200 and the suspension for the TRL for 90 days for a second violation 3. A fine \$400 and the revocation of the TRL for a third violation 4. A fine of \$800 for the fourth and each subsequent violation 	No
Cloverdale Municipal Code Chapter 8.08	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: December 12, 2017 Effective: November 14, 2017	Menthol tobacco products, including cigarettes, are not included in the restrictions	Smoking (including tobacco and marijuana) is prohibited in enclosed places of employment, public places, sports arenas, and multi-unit residence common areas; and unenclosed places of employment, recreational areas, service areas, outdoor dining areas, public places, and multifamily residence common areas No tobacco retailers shall sell any single cigar or any package of cigars containing fewer than five cigars (does not apply to the sale of single cigars if the price exceeds \$5) Pharmacies may not sell tobacco products	Any person or business that violates the provisions of this chapter shall be guilty of an infraction, punishable by: <ol style="list-style-type: none"> 1. A fine not exceeding \$100 for a first violation 2. A fine not exceeding \$200 for a second violation within one year 3. A fine not exceeding \$500 for each additional violation within five years 	No
Contra Costa County Ordinance No. 2017-01 Municipal Code Chapter 445-2	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within 1,000 feet of schools (public and private), parks, playgrounds and libraries in the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: July 18, 2017 Effective: August 1, 2017 Enforced: January 1, 2018	Only applies to retailers within 1,000 feet of schools, parks, playgrounds and libraries	No new tobacco retail licenses may be issued in pharmacies Little cigars must be sold in packs of at least 10, and cigarillos must be sold in packs of at least 10 unless the sales price of one cigar is over \$5 No new tobacco retail licenses will be granted to businesses located within 1,000 feet of schools, parks playgrounds or libraries, or within 500 feet of another business that sells tobacco Sets a cap on the total number of tobacco retailers Prohibits the redemption of coupons or redemptions Smoking is prohibited in specified enclosed and unenclosed areas and in all multi-unit residence areas, with some exceptions	A violation of the provisions of this chapter will result in: <ol style="list-style-type: none"> 1. The suspension of the TRL for up to 30 days for a first violation 2. The suspension of the TRL for up to 90 days for a second violation that occurs within five years after the first violation 3. The suspension of the TRL for up to one year for a third violation and for each subsequent violation that occurs within five years after the first violation 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Corte Madera Ordinance No. 983</p>	<p>Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: March 19, 2019 Effective: April 18, 2019 Enforced: January 1, 2020</p>	<p>None</p>	<p>Prohibits the sale of:</p> <ol style="list-style-type: none"> any single cigar ,whether or not packaged for individual sale any number of cigars fewer than then number contained in the manufacturer’s original consumer packaging designed for retail sale any package of cigars containing fewer than five cigars (this does not apply to the sale of a single cigar for which the retail price exceeds \$5) <p>No new tobacco retail licenses may be issued in pharmacies</p>	<p>Compliance is monitored by the Town Manager Any peace officer may enforce the penal provisions of the policy.</p> <p>A violation of the provisions of this chapter within a 60-month period will result in:</p> <ol style="list-style-type: none"> The issuance of a warning for a first violation The suspension of the license for 30 days for a second violation The suspension of the license for 90 days for a third violation The suspension of the license for one year for a fourth violation The revocation of a license for five or more violations 	<p>No</p>
<p>Culver City Ordinance No 2019-013 § 3 Municipal Code Chapter 11.15</p>	<p>Prohibits the sale of all flavored tobacco products, with the exception of flavored tobacco products sold in a hookah lounge, within the city limits</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: October 17, 2019 Effective: November 27, 2020 (for all tobacco stores with a valid TRL as of October 14, 2019) May 25, 2020 (for all other tobacco retailers)</p>	<p>The ordinance exempts hookah lounges that have a valid tobacco retail license and continue under the same ownership and control existing as of October 14, 2019</p>	<p>A hookah lounge is defined as an establishment holding a valid Tobacco Retail License that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of hookah tobacco for consumption by customers on the premises; (ii) generates more than 70% of its gross revenues annually from the sale of hookah tobacco and the rental of on-site hookahs; (iii) does not sell food or beverages for consumption on the premises; and (iv) prohibits entry to anyone under 21 years of age</p>	<p>Compliance shall be monitored by the Finance Department, Police Department and/or Enforcement Services Division</p> <p>A violation of the provisions of this chapter will result in:</p> <ol style="list-style-type: none"> The suspension of the license for 30 days for a first violation The suspension of the license for 90 days for a second violation within five years of the first violation The revocation of the license for a third violation within five years of the first violation 	<p>No</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>El Cerrito Ordinance No. 2015-08 Municipal Code 6.100.160</p>	Prohibits the sale of all flavored, non-cigarette tobacco products, including menthol flavored non-cigarette tobacco products, within the city limits	All flavored non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: October 2015 Effective: January 1, 2016 Enforced: October 2017	Menthol cigarettes are not included in the restrictions	<p>No new licenses may be issued to authorize tobacco retailing within 500 feet of schools, youth sensitive locations (parks and playgrounds, libraries), residential zones, or other tobacco retailers (tobacco retailers already in operation are exempt)</p> <p>No new licenses may be issued to authorize tobacco retailing within 1,000 feet of another tobacco retailer (tobacco retailers already in operation are exempt)</p> <p>Single cigar sales prohibited (except single cigars over \$5), a package of cigars must have at least five cigars</p> <p>Tobacco samples & coupons prohibited (except as allowed in adult-only businesses per state and federal law)</p> <p>Hookah lounges, cigar lounges, vape shops, or similar establishments are prohibited within the city limits</p> <p>New tobacco retailers may not operate as a “Significant Tobacco Retail Establishment” (use over 20% of the store display area for or derive over 50% of gross sales receipts from tobacco products or smoking paraphernalia) (existing tobacco retailers may seek an exception)</p> <p>Imitation tobacco products also included in prohibition</p>	<p>Compliance is monitored and enforced by the City’s Community Development Department, in conjunction with the El Cerrito Police Department</p> <p>A violation of the provisions of this chapter within a five year period will result in the suspension of a license for:</p> <ol style="list-style-type: none"> 1. 10 days for first violation 2. 30 days for second violation 3. 60 days for third violation 4. Upon the fourth or more violations the license shall be revoked 	Existing establishments within a certain distance of schools, youth sensitive areas and other tobacco retailers are allowed to continue to sell flavored tobacco products until January 1, 2018 but they must comply with all other TRL requirements
<p>Fairfax Ordinance No Municipal Code Chapter 8.44</p>	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: December 6, 2017 Effective: December 6, 2018 Enforced: January 1, 2019 Updated: September 4, 2019 Effective: September 1, 2020	None	<p>It shall be a violation to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none"> 1. Any single cigar, whether or not packaged for individual sale 2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer 3. Any package of cigars containing fewer than five cigars <p>*(This does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5)</p> <p>Prohibits the sale of tobacco products in pharmacies</p>	<p>Regulations shall be monitored by the Town Manger and the Marin County Tobacco Program</p> <p>A violation of the provisions of this chapter within any 60-month period may result in:</p> <ol style="list-style-type: none"> 1. A 30 day suspension of a license for a first violation of this article 2. A 90 day suspension of a license for a second violation of this article 3. A one-year suspension for a third violation of this article 4. The revocation of a license for five years for a fourth violation of this article 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Fremont Ordinance No	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: October 8, 2019 Effective: November 7, 2019	None	Prohibits the sale of cigar packages containing fewer than 5 cigars or a single cigar (unless the retail price exceeds \$5) Requires a pack of cigars to be sold for a minimum price of \$8 Prohibits the sale of cigarette packages containing fewer than 20 cigarettes or a single cigarette Requires cigarettes to be sold for a minimum price of \$8 per pack (including tax and fees)	This ordinance will be enforced by a designee named by the city manager or a peace officer A violation of the provisions of this chapter within a 60 month period shall result in the issuance of a notice of violation and no new license may be issued to the violator for: 1. 30 days for a first violation 2. 90 days for a second violation 3. 12 months for a third violation 4. Revocation of the license for four or more violations	No
Half Moon Bay Municipal Code Section 7.60.120	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: October 2018 Effective: April 1, 2019	None	No tobacco retail permits may be issued to new or existing pharmacies (this provision effective April 1, 2019) No tobacco may be sold from a vending machine No person shall distribute free tobacco products or coupons for tobacco products	The ordinance will be enforced by the county of San Mateo, its officers, employees and agents A violation of the provisions of this chapter may result in: 1. A suspension of the license for up to 30 days for the first violation 2. A suspension of the license for no less than 30 days and up to 90 days for the second violation of the ordinance within 24 months of the first determination 3. A suspension of the license for no less than 90 days and up to one year for the third and each subsequent violation of the ordinance within 24 months of a prior determination	No
Hayward Municipal Code Sec. 10-1.2780	Prohibits the sale of flavored tobacco products with the exception of menthol flavored cigarettes within a 500-foot radius of schools (public and private kindergarten, elementary, middle, junior high or high school) for <i>new</i> tobacco retailers (established after the passage of this policy) within the city limits	All flavored non-cigarette tobacco products, (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: July 1, 2014 Effective: August 1, 2014	Menthol cigarettes are not included in restrictions Retailers that sold products before provisions took effect are exempt Restrictions only apply to retailers within 500 feet of schools	Prohibits the sale of cigar packages containing fewer than 5 cigars or a single cigar (unless the retail price exceeds \$5) No new tobacco retailers or new sales of flavored tobacco within 500 feet of a public or private K-12 school Vapor bars, lounges, smoking device bars, electronic smoking device lounges, and hookah bars and lounges are prohibited in all zoning districts Imitation tobacco products also included in prohibition	Regulations are enforced by the City's Planning Director, in conjunction with the City's Code Enforcement Division and the Hayward Police Department Any Tobacco Retail Sales Establishment that violates regulations in ordinance three times within a three-year period shall be subject to revocation of its tobacco retail license and/or its conditional use permit	Retailers selling flavored tobacco products prior to the ordinance effective date are exempt

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	/products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Hermosa Beach Ordinance No. 18-1389	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: January 8, 2019 Effective: June 1, 2019	None	Tobacco retailers must be located at least 500 feet from a youth-populated area No license may be issued to authorize tobacco retail licensing at farmers' markets, special temporary events, or mobile carts A TRL may not be issued to a pharmacy No TRL may be issued for businesses licensed to serve alcohol Minimum pack size requirement of 20 for little cigars	Compliance checks shall be conducted by any member of the Hermosa Beach Code Enforcement Department, Police Department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County Sheriff's Department, or their designees Tobacco Retailer's license shall be suspended or revoked for a violation of any provision of this chapter	No
Lafayette Ordinance No. 675	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: May 28, 2019 Effective: August 26, 2019	None	No tobacco retailer shall: <ol style="list-style-type: none"> honor a redeem a coupon to allow a consumer to purchase tobacco for less than full price sell a tobacco product through a multiple-package discount or for less than the full retail price provide free or discounted items to a consumer Prohibits the sale of tobacco products in pharmacies The total number of tobacco retailer licenses within the city is limited to 1 for each 2,500 inhabitants of the city All tobacco sales shall be conducted in-person and tobacco products may not be delivered to the consumer	Compliance will be monitored by an agency or department designated by the city manager, or a peace officer Any violation of the TRL within a 5-year period may result in: <ol style="list-style-type: none"> The suspension of a license for 30 days for a first violation The suspension of a license for 90 days for a second violation The suspension of a license for up to one year without the possibility for renewal for a year for a third violation The revocation of a license for the fourth or more violations 	Some tobacco retailers operating lawfully at the date of this chapter may apply for an additional 180 days before terminating sale of flavored tobacco products
Larkspur Ordinance No. 1037	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 3, 2019 Effective: May 3, 2019 Enforced: January 1, 2020	None	Establishes a minimum pack size of five for cigars, little cigars and cigarillos and prohibits the sale of a single cigar or any number of cigars fewer than the number contained in the original packaging (this does not apply to the sale of a single cigar for over \$5) Prohibits the sale of tobacco products in pharmacies	Compliance will be monitored by the City Manager and the Marin County Tobacco Program Any violation of the TRL within a 60-month period may result in: <ol style="list-style-type: none"> A warning for a first violation The suspension of a license for 30 days for a second violation The suspension of a license for 90 days for a third violation The suspension of a license for one year for a fourth violation The revocation of a license for the fifth or more violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Livermore Ordinance No. 2088	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: July 8, 2019 Effective: August 7, 2019 Enforced: January 1, 2020	None	The sale of electronic smoking devices or electronic smoking device fluid is prohibited No tobacco retailing license shall be issued or existing license renewed within 1,000 feet of a youth populated area	Compliance shall be monitored by the Livermore Police Department or any other City designee Any violation of the TRL within a 5-year period may result in: <ol style="list-style-type: none"> The suspension of a license for 30 days for a first violation The suspension of a license for one year for a second violation The revocation of a license for a third or more violations The licensee may request an alternative to these penalties for a first or second violation of this chapter, which includes: <ol style="list-style-type: none"> The cessation of all tobacco retailing and removal of all tobacco products from public view for one day, a payment of \$1,000, and the admission that the violation occurred for the first violation The cessation of all tobacco retailing and removal of all tobacco products from public view for 10 days, a payment of at least \$5,000, and the admission that the violation occurred for the second violation 	No
Los Angeles County Ordinance No.	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: October 1, 2019 Effective: November 1, 2019 Enforced: May 4, 2020	None	Establishes a minimum pack size of 20 for little cigars or cigarillos, and these products may not be sold individually Prohibits the sale of tobacco products in pharmacies Tobacco shops are required to have a tobacco retail license and a tobacco business license to sell tobacco products	Compliance shall be monitored by the Los Angeles County Department of Public Health or any law enforcement officer Any violation of the TRL within a 5-year period may result in: <ol style="list-style-type: none"> The suspension of the license for up to 30 days for a first violation The suspension of the license for up to 90 days for a second violation The suspension of the license for up to 120 days for a third violation The revocation of the license for a fourth violation 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Los Gatos Ordinance No. 2259	Limits the sale of flavored tobacco products, including menthol flavored tobacco, to adult-only tobacco stores within the city limits	All flavored tobacco products	Yes	Adopted: May 16, 2017 Effective: January 1, 2018	Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited	TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer Limits storefront advertising to no more than 15% of the window and clear doors	Compliance will be monitored by the Town or its Designee; a peace officer may enforce the provisions in this policy Any violation of the TRL within a 12-month period may result in: <ol style="list-style-type: none"> 1. A fine not to exceed \$100 for a first violation 2. A fine not to exceed \$200 for a second violation 3. A fine not to exceed \$500 for each additional violation For any violation of the TRL within a 24-month period, permit suspension includes: <ol style="list-style-type: none"> 1. Permit suspension for up to 30 calendar days for a first violation 2. Permit suspension for up to 90 calendar days for a second violation 3. Permit suspension for up to one year for each additional violation 	No
Manhattan Beach Ordinance No. 19-0016-U Municipal Code 4.118.030	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: December 2015 Effective: January 1, 2016 Updated to Include Menthol: November 5, 2019	None	No tobacco retailer permit may be issued within 500 feet of a school or an existing retailer	The retail permit may be revoked or suspended for two or more violations within a 36-month period	No
Marin County Ordinance No. 3698	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: November 6, 2018 Effective: December 5, 2018 Enforced: July 1, 2019 (Non-Tobacco Stores) July 1, 2020 (Tobacco Stores)	None	It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from the County of Marin for each location where these sales are conducted	Enforcement shall be conducted by the Marin County Dept. of Health and Human Services A violation of the provisions of this chapter may result in: <ol style="list-style-type: none"> 1. An administrative citation and fine not less than \$200 for a first violation 2. An administrative citation and fine not less than \$500/violation for subsequent violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Mono County Ordinance No. 18-03 Municipal Code 7.92.070</p>	Prohibits the sale of all flavored e-liquids, including menthol flavored e-liquids, within the unincorporated areas of the county	All flavored e-liquids (excludes all other flavored tobacco products)	Yes (only for menthol-flavored e-liquids)	Adopted: April 17, 2018 Effective: May 17, 2018	Does not include flavored tobacco products other than e-liquids	<p>Prohibits smoking in all areas where smoking is prohibited by state or federal law, as well as county vehicles, public parks recreational areas, service areas, dining areas and public places when used for a public event</p> <p>Smoking may not occur closer than 20 feet outside any enclosed area and from entrances, windows, or ventilation systems</p> <p>* Limited flavored e-liquid sales policy is set to sunset in October 2019 and a complete ban on all flavored tobacco and menthol products will become effective</p> <p>Policy is not attached to a TRL</p>	<p>The Mono County Public Health Director or his/her designee is authorized to enforce this ordinance and to refer enforcement to the Mono County Code Compliance Division</p> <p>Any person or business found in violation of any provision of this Chapter shall be guilty of an infraction and subject to a fine of:</p> <ol style="list-style-type: none"> 1. \$100 for the first violation 2. \$200 for the second violation 3. \$500 for any subsequent violation 	No
<p>Novato Ordinance No. 1615 Municipal Code 7-8</p>	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including marijuana (excludes menthol flavored tobacco products)	No	Adopted: January 31, 2017 Effective: January 1, 2018 Enforced: January 1, 2019	<p>Menthol tobacco products are not included in the prohibition</p> <p>Flavored tobacco products may be sold if the product is:</p> <ol style="list-style-type: none"> 1. a package of cigars containing at least five cigars 2. a single cigar for which the retail price exceeds five dollars 3. pipe tobacco 4. a package of chewing tobacco or snuff containing at least five units or more 	<p>Minimum pack size requirements prohibit the sale of:</p> <ol style="list-style-type: none"> 1. A single cigar (unless the price of the single cigar exceeds \$5) 2. A package of cigars containing fewer than five cigars, or any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer <p>No pharmacies may sell tobacco products</p> <p>Policy includes flavored marijuana</p>	<p>Compliance will be monitored by the Department or other designated agency</p> <p>Any violation of this chapter within a 60-month period may result in:</p> <ol style="list-style-type: none"> 1. A warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Oakland Municipal Code 5.91</p>	<p>Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: September 19, 2017 Effective: July 1, 2018</p>	<p>Flavored tobacco products may still be sold in adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors under the age of 18 unless accompanied by a parent or legal guardian, and do not sell food or alcoholic beverages</p>	<p>An amendment allows clerks aged 18 and older to sell tobacco Tobacco retailers may not sell tobacco products at a discount less than full retail price, including honoring or redeeming coupons</p>	<p>The City designates the Oakland Police Department to enforce this Ordinance A violation of this Chapter at a location within any 60-month period may result in:</p> <ol style="list-style-type: none"> 1. An agreement to stop acting as a Tobacco Retailer for at least one day and a settlement payment to the City of at least \$1,000 for a first violation 2. An agreement to stop acting as a Tobacco Retailer for at least ten days and a settlement payment to the City of at least \$5,000 for a second violation 3. No new license may be issued until five years have passed from the date of the violation for a third or subsequent violation 	<p>No</p>
<p>Palo Alto Ordinance No. 5418 Municipal Code 4.64.030</p>	<p>Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: October 2, 2017 Effective: January 1, 2019</p>	<p>Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited</p>	<p>TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer</p>	<p>Compliance will be monitored by the City or its Designee, and any peace officer may enforce the penal provisions of the ordinance A violation of the provisions of this chapter may result in:</p> <ol style="list-style-type: none"> 1. A fine not to exceed \$100 (within a 12-month period) and a suspension up to 30 days (within any 24-month period) for a first violation 2. A fine not to exceed \$200 (within a 12-month period) and a suspension of the retailer permit for up to 90 days (within any 24-month period) for a second violation 3. A fine not to exceed \$500 (within a 12-month period) and the suspension of the retailer permit for up to one year (within any 24-month period) for each additional violation 	<p>No</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Portola Valley Ordinance No. 2018-425	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: September 12, 2018 Effective: October 11, 2018 Enforced: January 1, 2019	None	No existing or new pharmacies may sell tobacco products	Compliance monitored will be conducted through the Environmental Health Division of San Mateo County Health Department Penalties for violation of this ordinance include: 1. The suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation 2. The suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation 3. The suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations	No
Redondo Beach Ordinance No. O-3194-19	Prohibits the sale of all flavored tobacco products, with the exception of hookah sold in licensed hookah businesses, within the city limits	All flavored tobacco products	Yes	Adopted: October 15, 2019 Effective: November 14, 2019	The ordinance exempts licensed hookah business that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location	To meet the qualifications for the exemption, a licensed hookah business must only permit patrons 21 years of age or older, or active duty military personnel who are 18 years of age or older, to enter the location where the tobacco product may be consumed or purchased	Compliance will be monitored by the Chief of Police and other designated enforcement officials Penalties for violation of this ordinance include: 1. The suspension of the license for 60 days for the first violation 2. The suspension of the license for 90 days for the second violation 3. The revocation of the license for the third violation	No
Richmond Ordinance No. 20-18 N.S. Municipal Code 7.106	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits	All electronic smoking devices* and other flavored tobacco products *until approved by the FDA	Yes	Adopted: July 17, 2018 Effective: April 17, 2019 E-cigarette ban adopted: September 10, 2019 E-cigarette ban Enforced: January 1, 2020	None	No e-cigarettes may be sold in stores and online with the city The ordinance establishes a minimum pack-size of 20 cigars and cigarillos, except for single cigars that sell for more than \$5 each, and prohibits the sale of any single little cigar or cigar Prohibits new tobacco retailers from opening within 500 feet of existing tobacco retailers and 1,000 feet from a school, park, playground or library	Compliance will be monitored by the Richmond Police Department A tobacco retail license shall be revoked if the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions in the municipal code. The enforcement agency may also enforce through administrative fines	Existing tobacco retailers not in line with the distance requirement for tobacco retailers from schools and other tobacco retailers are grandfathered in unless the business changes ownership

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Sacramento Ordinance No. 2019-0012	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 16, 2019 Effective: January 1, 2020	None	No new tobacco retail licenses shall be issued or existing licenses renewed to authorize tobacco retailing within 1,000 feet of another tobacco retailer	Penalties for violation of ordinance within a 5 year period include: <ol style="list-style-type: none"> 1. The suspension of a license for 30 days for a first violation 2. The suspension of a license for 90 days for a second violation 3. The revocation of a license for a third violation Any person violating the provisions of this chapter shall also be liable for civil penalties of not less than \$250 or more than \$25,000 for each day the violation continues	No
San Anselmo Ordinance No.	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: March 26, 2019 Effective: April 25, 2019 Enforced: January 1, 2020	None	The ordinance establishes a minimum pack-size of 5 cigars, little cigars and cigarillos, except for single cigars that sell for more than \$5 each, and prohibits the sale of any single cigar, little cigar or cigar No existing or new pharmacies may sell tobacco products	Compliance will be monitored by the Finance Department, a designee or a peace officer Penalties for violation of this ordinance within a 60-month period include: <ol style="list-style-type: none"> 1. The issuance of a warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations 	No
San Carlos Ordinance No. 1544	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 8, 2019 Effective: May 8, 2019	None	No existing or new pharmacies may sell tobacco products Flavor Policy is not tied to a TRL	The City Manager or designee may enforce this chapter.	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered	Menthol Included	Effective date	Exemptions	Notes	Enforcement	Grandfathering
San Francisco Ordinance No. 140-17	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the county limits	All electronic smoking devices* and other flavored tobacco products *until approved by the FDA	Yes	Adopted: June 27, 2017 Referendum Vote: June 5, 2018 Effective: July 20, 2018 Enforced: January 1, 2019	None	No e-cigarettes may be sold in stores and online with the county No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a school No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing tobacco retailer No existing or new pharmacies may sell tobacco products	Compliance will be monitored through the Director of Health or his or her designee For a violation of the ordinance, the Director of Health may suspend a Tobacco Sales Permit: 1. For a maximum of 90 days of the first violation 2. For a maximum of six months for a second violation that occurs within the first 12 months of the first violation 3. For a maximum of one year for a third violation if within 12 months of the prior violation	No
San Leandro Municipal Code 4-36	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits (including flavored products that do not contain nicotine)	All flavored tobacco products (excluding menthol tobacco products)	No	Adopted: October 16, 2017 Effective: August 15, 2018	Menthol tobacco products are not included in the prohibition Wholesale companies are excluded from the ordinance if the tobacco products made or distributed in San Leandro are sold by retailers outside the city	No tobacco retailer shall sell, offer for sale, or exchange any 1. Single cigar 2. Any pack of cigars at a price that is less than \$7.00 per five cigars (does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either five dollars or the dollar amount adopted by resolution of the City Council and adjusted from time to time, whichever is higher)	Compliance will be monitored by the San Leandro Police Department Penalties for violation of this ordinance within a 36 month period include: 1. A written warning and 30 days to correct violation for the first violation 2. A \$2,500 fine for a second violation 3. A 20 day license suspension for a third violation 4. After four or more violations, the license shall be revoked and no new license may issue for the location or tobacco retailer until three years have passed from the date of revocation	No
San Mateo County Ordinance No. 4799 Municipal Code 7.41	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: June 19, 2018 Effective: July 19, 2018 Enforcement: January 1, 2019	None	No existing or future pharmacies may sell tobacco products	Compliance will be monitored through the Environmental Health Division of San Mateo County Health Department Penalties for violation of ordinance include: 1. A suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation 2. A suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation 3. A suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>San Pablo Ordinance No. 2018-006 Municipal Code 5.06</p>	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: December 17, 2018 Effective: March 2019	None	<p>Requires a minimum pack size for cigars (6 per pack), cigarillos (25 per pack) and little cigars (20 per pack)</p> <p>Requires a minimum price of \$10.00 per cigar</p>	<p>Penalties for violation of ordinance within any 60-month period include:</p> <ol style="list-style-type: none"> 1. A suspension of the license for up to 30 days for a first violation. At the election of the tobacco retailer, the tobacco retailer may pay a penalty of \$1000 in lieu of such suspension 2. A suspended of the license for one year for a second violation 3. The revocation of the license for and the proprietor or proprietors who had been issued the license shall never again be issued a tobacco retailer’s license pursuant to this chapter for the third and subsequent violations 	No
<p>San Rafael Ordinance No. 1970 Municipal Code Chapter 8.15</p>	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: June 3, 2019 Effective: January 1, 2021	None	<p>No person shall place any advertisement or promotion of tobacco products within 500 feet of an elementary, secondary or high school, public playground or public park unless the tobacco product is located inside a commercial establishment, on a vehicle, on a sign located inside or immediately outside a commercial establishment, or on tobacco packaging</p> <p>No existing or future pharmacies may sell tobacco products</p>	<p>Compliance will be monitored through the Director of Community Development or designee</p> <p>Penalties for violation of ordinance within any 12-month period include:</p> <ol style="list-style-type: none"> 1. The suspension of a license for 90 days unless the permittee submits a training plan for the training of all sales employees in the law pertaining to the sale, advertising, and display of tobacco products to minor, and the permittee files satisfactory evidence that the training in the training plan has been completed for a first violation 2. The suspension of a license for 120 days for a second violation 3. The suspension of a license for one year upon each subsequent violation <p>A license shall be revoked after not less than 10 days’ notice if one or more of the bases for denial of a permit exists</p>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Santa Clara County Ordinance No. NS-300.883	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores in the unincorporated areas of the County	All flavored tobacco products	Yes (revised in 2016 to include menthol)	Adopted: June 2010 Effective: February 2015 Amended: October 2016 Amended version effective: July 2017	Revised ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors, do not sell food or beverages, and post a sign outside saying that minors are prohibited	No TRLs may be issued to a retailer containing a pharmacy No TRLs may be issued to a retailer within 1,000 feet of a school (existing retailers exempt) No TRLs may be issued to a retailer located within 500 feet of another retailer (existing retailers exempt)	Compliance shall be monitored by the Department of Environmental Health Penalties for violations of this ordinance within a 12-month period include: <ol style="list-style-type: none"> 1. A fine not to exceed \$100 for the first violation within a 12-month period and a license suspension for up to 30 days within any 24-month period 2. A fine not to exceed \$200 for a second violation within a 12-month period and a license suspension for up to 90 days within any 24-month period 3. A fine not to exceed \$500 for each additional violation within a 12-month period and a license suspension for up to one year for each additional violation within any 24-month period 	No
Santa Cruz Ordinance No. 2018-19 Municipal Code 6.07	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: November 27, 2018 Effective: June 11, 2019 Enforced: January 1, 2020	None	No license shall be issued to authorize tobacco retailing that is within six hundred feet of a high-risk alcohol outlet No license shall be issued to authorize tobacco retailing that is within that is within one thousand feet of a school *This prohibition shall not apply to a license applicant whose application seeks authorization to conduct tobacco retailing at a location where such retailing was taking place as of January 1, 2014, and has continued without interruption at that location since May 8, 2014	Every violation of this chapter determined to be an infraction is punishable by: <ol style="list-style-type: none"> 1. A fine not exceeding \$100 for a first violation and a license suspension for up to 60 days 2. A fine not exceeding \$200 for a second violation and the suspension of a license for 120 days 3. A fine not exceeding \$500 for a third and each additional violation and the suspension of a license for 180 days 4. The tobacco retailer's license shall be revoked, and no new license may be issued for the location until five years have passed from the date of revocation upon the fourth and each subsequent violation 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Santa Cruz County Ordinance No.5300 Municipal Code Chapter 5.60	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: June 11, 2019 Effective: January 1, 2020	None	No new license shall be issued to authorize tobacco retailing that is within six hundred feet of a youth-populated area (private or public kindergarten, elementary, middle, junior high, or high school)	Compliance shall be monitored by the Santa Cruz County Health Services Agency or any law enforcement officer Penalties for violations of this ordinance within any 60-month period include: <ol style="list-style-type: none"> 1. The suspension of a license for 60 days for a first violation 2. The suspension of a license for 120 days for a second violation 3. The suspension of a license for 180 days for a third violation 4. The revocation of a license for a fourth violation, and no new license shall be issued for five years 	No
Saratoga Municipal Code 4-90	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: October 3, 2018 Effective: November 17, 2018	Menthol flavored tobacco products are not included in the policy	No tobacco retailer permit tobacco may be issued to a licensed pharmacy No tobacco retailers established after September 16, 2016 shall be granted a tobacco retailer license for a location which is within 500 feet of another retailer or within 1000 feet of an elementary, middle, or high school or a City park No tobacco product or paraphernalia may be sold from a vending machines	Penalties for violations of this ordinance within a 24 month period include: <ol style="list-style-type: none"> 1. The suspension of an existing license for up to 60 days from the date of the citation issuance for a first violation 2. The revocation of any existing license shall for up to 24months from the date of the administrative citation issuance for a second or subsequent citation 	No
Sausalito Ordinance No. 1264	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: July 2018 Effective: November 1, 2018	None	Ordinance amends city’s current “Clean Indoor Air and Health Protection” municipal code chapter to add “Tobacco Retail License Requirement and Prohibit the Sale of Flavored Tobacco Products” Smoking is prohibited in all enclosed places of employment, public places, recreational areas, common areas Smoking is prohibited in all unenclosed places of employment, recreational areas, services areas, dining areas, common areas that meet certain requirements Smoking restrictions included for multi-unit housing complexes and rental units	Anyone who violates a provision in this chapter will be deemed guilty of an infraction The City may seek the revocation or suspension of a tobacco retailer’s license	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Sonoma Ordinance No. 04-2015 Municipal Code 7.25</p>	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: June 1, 2015 Effective: September 1, 2015 Enforced: September 1, 2015	<p>Menthol flavored tobacco products are not included in the policy</p> <p>Flavored tobacco products may still be sold if</p> <ol style="list-style-type: none"> the tobacco product consists of a package of cigars that contains at least five cigars a single cigar for which the retail price exceeds \$5 the tobacco product consists of pipe tobacco the package of chewing tobacco or snuff contains at least five units or more 	<p>It is a violation to sell any single cigar (unless the retail price of the cigar exceeds \$5) and a package of cigars containing fewer than five cigars or the number of cigars contained in the manufacture’s original consumer packaging</p> <p>Limits the eligibility of retailers permitted to apply for a tobacco retail license</p>	<p>Decoy enforcement operations conducted annually by Sonoma Police Department</p> <p>Penalties for violations of this ordinance within a 60-month period include:</p> <ol style="list-style-type: none"> The suspension of a license for 30 days for a first violation The suspension of a license for 90 days for a second violation The suspension of a license for one year for a third violation The revocation of a license for a fourth or subsequent violations <p>Violations of this chapter are subject to a civil action punishable by a fine not less than \$250 and not exceeding \$1,000 per violation</p>	No
<p>South San Francisco Ordinance No. 1455</p>	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores in the city limits	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: October 9, 2019 Effective: January 1, 2020	Ordinance exempts adult-only retailer stores, significant tobacco retailers lawfully established before the effective date of the ordinance, and hookah bars and smoking lounges	<p>No tobacco retailer permit tobacco may be issued to a licensed pharmacy or renewed by an existing pharmacy</p> <p>Significant tobacco retailers are prohibited in all zones throughout the city</p>	The City Manager or his or her designee may enforce the provisions of this ordinance	No
<p>Watsonville</p>	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: October 22, 2019 Effective: November 23, 2019	None	No tobacco retailer permit tobacco may be issued to a licensed pharmacy or renewed by an existing pharmacy	<p>Penalties for violations of this ordinance include:</p> <ol style="list-style-type: none"> The suspension of a license for up to 60 days for a first violation The suspension of a license for 120 days for a second violation within 60 months of the first determination The suspension of a license for 180 days for a third violation within 60 months of the prior determination The revocation of a license for a fourth or subsequent violations within 60 months of the prior determination 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>West Hollywood Ordinance No. 16-991 Municipal Code 5.114</p>	Prohibits the sale of all tobacco products within 600 feet of a youth-populated area (school, youth center, child-care facility, etc.) within the city limits	All tobacco products	Yes	Adopted: October 2016 Effective: November 2016	Tobacco retailers operating prior to May 1, 2016, adult-only facilities, and hotels that sell tobacco products as part of incidental sales on the premises may still sell all tobacco products regardless of location	<p>Policy includes a ban on the sale of all tobacco products within 600 feet of youth populated areas</p> <p>No new tobacco retailer licenses may be issued for tobacco retailers within 600 feet of a school</p> <p>No new licenses may be issued for tobacco product shops within 1000 feet of a youth-populated area</p> <p>Little cigars must be sold in pack size of at least 20</p>	Any member of the West Hollywood Code Compliance Division, Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees are authorized to monitor and enforce the provision	Yes, existing retailers operating prior to May 1, 2016 are grandfathered regardless of any change or transfer of ownership of the business
<p>Windsor Ordinance No. 2018-323 Municipal Code 3-11-115</p>	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excludes menthol tobacco products)	No	Adopted: March 7, 2018 Effective: April 6, 2018 Enforcement: July 30, 2018	<p>Menthol flavored tobacco products are not included in the policy</p> <p>Tobacco retailers may sell flavored tobacco products if:</p> <ol style="list-style-type: none"> The tobacco product consists of a package of cigars containing at least five cigars or little cigars The tobacco product is a single cigar for which the retail price exceeds \$5.00 The tobacco product consists of pipe tobacco The package of chewing tobacco or snuff contains at least five units 	<p>No tobacco retailer shall sell to a consumer:</p> <ol style="list-style-type: none"> A package of cigarettes at a price that is less than \$7.00 per package of twenty 20 cigarettes, including all applicable taxes and fees A package of little cigars that is less than \$7.00 per package of five little cigars, including all applicable taxes and fees A package of cigars that is less than \$7.00 per five cigars, including all applicable taxes and fee. A package of chewing tobacco or snuff that is less than \$7.00 per package of five units <p>It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none"> Any single cigar or little cigar, whether or not packaged for individual sale; Any number of cigars or little cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; Any package of cigars or little cigars containing fewer than five cigars. Any package of chewing tobacco or snuff containing fewer than five units. <p>*This section shall not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5.00</p> <p>No license may be issued to authorize tobacco retailing within 1,000 feet of a school (unless the retailer was operating before the date of the ordinance codified in this chapter)</p> <p>Limits the eligibility of retailers permitted to apply for a tobacco retail license</p>	<p>The policy will be enforced by the County of Sonoma Department of Health Services</p> <p>Penalties for violations of this ordinance within a 60-month period include:</p> <ol style="list-style-type: none"> The suspension of a license for 30 days for a first violation The suspension of a license for 90 days for a second violation The suspension of a license for one year for a third violation 4. The revocation of a license for four or more violations 	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Woodland Ordinance No. 1652	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All tobacco products	Yes	Adopted: November 5, 2019 Effective: April 1, 2020	None	Only existing tobacco retailers are eligible for a tobacco license	A tobacco retail license shall be revoked for a violation of this ordinance. After a license is revoked, a new permit may be issued <ol style="list-style-type: none"> 1. After 10 days have passed from the date of the revocation for a first violation within any 60 month period 2. After 90 days have passed from the date of the revocation for a second violation within any 60 month period 3. After a year has passed from the date of the revocation for a third violation within any 60 month period 4. After 5 years have passed from the date of the revocation for the fourth or more violations within any 60 month period 	No
Yolo County Ordinance No. 1474 Municipal Code 6-15.10	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the County	All flavored tobacco products	Yes	Adopted: October 2016 Effective: May 1, 2017	None	Only existing tobacco retailers are eligible for a tobacco license	Yolo County District Attorney is authorized to perform stings for any violations of the TRL A tobacco retail license shall be revoked for a violation of this ordinance. After a license is revoked, a new permit may be issued <ol style="list-style-type: none"> 1. After 10 days have passed from the date of the revocation for a first violation within any 60 month period 2. After 90 days have passed from the date of the revocation for a second violation within any 60 month period 3. After a year has passed from the date of the revocation for a third violation within any 60 month period 4. After 5 years have passed from the date of the revocation for the fourth or more violations within any 60 month period 	No



acscan.org

October 24, 2019

Oroville City Hall
1735 Montgomery Street
Oroville, CA 95965

Re: Support—Ordinance to prohibit the sale of all flavored tobacco products

Dear Chairperson Robinson and Members of the Oroville Planning Commission:

The American Cancer Society Cancer Action Network is committed to protecting the health and well-being of the citizens of Oroville through evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As such, we are writing to support the effort to prohibit the sale of menthol and other flavored tobacco products citywide. This is an effort to protect the young people in Oroville from a deadly lifelong addiction. While the proposal would prohibit the sale of flavored tobacco products in Oroville, there is **NO prohibition** on using or possessing those deadly products in the city.

The 2014 Surgeon General's Report found that more than 43 million Americans still smoke, and tobacco will cause an estimated 480,000 deaths this year in the U.S. Of the 9 million youth currently living in our state, nearly 1.4 million of them will become smokers, and approximately 440,000 of those kids will die prematurely as a result of tobacco use.

In 2009, Congress, prohibited the sale of cigarettes with flavors other than tobacco or menthol. Tobacco companies responded by expanding the types of non-cigarette flavored tobacco products they offer, and now make most of those products available in a growing array of kid-friendly flavors. Little cigars, smokeless tobacco, and e-cigarettes are marketed in a wide array of sweet flavors and colorful packaging that appeals to youth. According to the California Department of Public Health, young people are much more likely to use candy and fruit flavored products than adults. Prohibiting the sale of flavored tobacco products, including menthol cigarettes, helps to remove some of the appeal of these products to beginning smokers.

Adolescents are still going through critical periods of brain growth and development, and they are especially vulnerable to the toxic effects of nicotine. Both opponents of smoking and purveyors of cigarettes have long recognized the significance of adolescence as the period during which smoking behaviors are typically developed. The anesthetizing effect of menthol masks the harshness of tobacco, making menthol cigarettes more appealing to beginning smokers, and menthol smokers demonstrate greater dependence, and are less likely to quit.

California Office

1029 J Street, Suite 450 • Sacramento, CA 95814
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acscan.org

While cigarette smoking has declined in the U.S., sales of menthol cigarettes have steadily increased in recent years, especially among young people and new smokers. Prohibiting the sale of flavored tobacco products can help to keep kids from ever starting to smoke, and can encourage those who do smoke to quit. We should be doing everything we can to protect young people from ever establishing this deadly addiction, and the cancer it causes, as well as supporting those who are trying to quit. ACS CAN appreciates Oroville's leadership in bringing these issues forward, and we encourage the planning commission to send this critical proposal back to the city council with a support recommendation.

Sincerely,

Tim Gibbs
Senior Director, Government Relations

Cc: Members, Oroville Planning Commission

California Office

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November 12, 2019

RE: City of Oroville Proposed Flavored Tobacco Ban

Dear Mr. Ervin,

Thank you for meeting APCA representatives concerning the City of Oroville's proposed flavored tobacco ban ordinance. As you saw at the meeting the Commissioners, Retailers and customers are opposed to this Ordinance. We write on behalf of the American Petroleum and Convenience Store Association (APCA). APCA represents several licensed tobacco retailers in Oroville. Our members include convenience stores, gas stations and liquor stores located throughout the City.

Tobacco sales are an important component to the overall viability of our businesses – not because we make a lot of money selling tobacco – we don't. Tobacco sales drive ancillary sales of gas, food and other items sold at our stores and gas stations. If we lose the ability to sell flavored tobacco products, our customers will go elsewhere to buy gas, food, and snacks – everything they currently buy in our stores. Tobacco Sales should be not limited to few Tobacco stores. Tobacco sales consists of 25-35% of our ancillary sales for all convince stores and would greatly impact our businesses.

Banning legal products at licensed retail locations would undermine the city's and the state's tobacco retail licensing program which has successfully limited youth access to tobacco, protected consumers from adulterated products and given government tools for enforcement. Moreover, local bans on tobacco products creates an illicit market. In localities with flavored tobacco bans, single menthol cigarettes are being sold illegally on the street for \$1.00 - \$2.00. That is an enormous profit margin driving illegal sales in those locales.

As you see with information enclosed, the impact of flavor ban hurts retailers, decreases local tax revenue; which helps to pay for community services and creates an illegal market; granting our youth to easier access to tobacco products.

We believe that city of Oroville should wait on the state to develop and implement a comprehensive solution to this issue. It is our understanding after attending a hearing about this issue, Assembly member Adam Gray along with several of his colleagues plan to introduce a bill that will address the concerns of many cities throughout the state of California. As retailers we take our responsibility seriously and make it a point to check IDs to ensure that youth do not have access to Tobacco products. Assembly member Gray released a report stating that 94.5% of retailers have been checking IDs and not selling to minors. Given this data and the high rate of compliance by licensed tobacco retailers, we ask that any city policy related to flavored tobacco sales ban Mr. Grey is collecting data for a full state action.



As retailers with ties to the community of Oroville, we would welcome the opportunity to work with the City, local Health and Education Stakeholders about educating the youth and their families about the danger of Tobacco usage. As stakeholders it is critical that we build strong relationships to ensure that we are preventing youth from accessing Tobacco products and at the same time protecting the rights of adult (over 21) consumers. We would support the city in efforts to place a moratorium on new Tobacco licenses in the city until state mandates have been put in place and punishing retailers who violate the law with stiffer fines.

We appreciate your considerations of our comments and look forward to creating a partnership to keep our community and youth safe while protecting the local small business community.

Thank you for your continuous support.

Sincerely,

Porsche Middleton

CEO, APCA

Wes Ervin

From: kavinder chatkara <kinnychatkara@gmail.com>
Sent: Tuesday, November 12, 2019 3:18 PM
To: Kinny Chatkara; Porsche; Wes Ervin
Subject: Tobacco Flavor Ordinance nov 2019

Hello Wes, 11/12/2019
Hope all is well, it was nice meeting you yesterday with Porsche concerning the City of Oroville, Tobacco Ordinance. Here are some of the key points to keep in mind among those we spoke yesterday.

We provided 92 opposition letters for Consumers, Residents, Retailers and Visitors to City of Oroville which impacts the revenue and services to all stakeholders.

1. Since 2016, the legal age to purchase all tobacco products in California including vaping devices has been 21 (except for active military with valid ID)
2. Raising the age to purchase all tobacco products to 21 ensures that teens who may turn 18 while still in high school can no longer purchase tobacco products for their underage friends thereby cutting off the most common social source for tobacco products.
3. All tobacco products, including vape products are required to be behind the counter and not available to any customers without the assistance of a sales clerk.
4. Many of our members have invested in age verification software that provides sales clerks with an additional tool to verify the customer's identity and age.
5. Licensed tobacco retailers are subject to regular compliance and sting operations to ensure that tobacco and alcohol are not sold to minors.
6. Banning flavored tobacco products at licensed tobacco retailers will push these sales onto the Internet or into the illicit market where no one checks ID's and products may be counterfeit.
7. State wide data collected by the Department of Public Health show that teens use of combustible tobacco products have dropped to historic lows — smoking is no longer cool. Banning traditional tobacco products will do nothing to address the vaping issue and will deprive adult consumers of products they legally purchase in our stores.
8. Traditional tobacco products such as menthol cigarettes, wintergreen chewing tobacco, snus, and cigars are not being used by minors and should not be included in any sales ban that is targeted to reduce teen vaping

Thank you for all your support in listening to the concern of local retailers and helping them save their businesses and continue providing sales tax revenues to City of Oroville.

We will be sending you additional information soon. Thank you

Sincerely,

Kavinder (Kinny) K. Chatkara, Pres
Apcsa Sacramento Chapter

Impact on sales from Tobacco Flavor Ban , please protect the rights of adult consumers and help educate the youth from the danger of Tobacco use.

OAKLAND FLAVOR BAN IMPACT

Oakland Flavor Ban	Average Before	Average After	Difference	Percentage
	Ban	Ban		Drop
Fuel Sales (gallons)	72,069	63,531	(8,538)	-11.85%
Cigarettes & OTP	29,323	14,088	(15,235)	-51.96%
Total Store Sales	74,374	59,148	(15,226)	-20.47%
Lottery				
Scratchers	13,890	11,883	(2,007)	-14.45%
Online	1,977	1,219	(759)	-38.37%
Total Lottery	15,867	13,102	(2,766)	-17.43%
Store Transactions	22,775	18,930	(3,845)	-16.88%