



AN INITIATIVE OF

the de Beaumont Foundation + Kaiser Permanente



Ending the Sale of Flavored Tobacco

Protecting Public Health and Saving Lives



CityHealth, an initiative of the de Beaumont Foundation and Kaiser Permanente, works to advance a package of tried and tested policy solutions to ensure all people in our largest cities have access to healthy choices. Together with visionary city leaders, CityHealth helps cities adopt policies that can make their communities healthy and resolve critical health disparities – now and decades down the road. Learn more at cityhealth.org.

The **Campaign for Tobacco-Free Kids** is the leading advocacy organization working to reduce tobacco use and its deadly consequences in the United States and around the world. Through strategic communications and policy advocacy campaigns, Tobacco-Free Kids works to change public attitudes about tobacco and promote proven policies that are most effective at reducing tobacco use and save the most lives. Learn more at tobaccofreekids.org.



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Flavored tobacco products — including flavored e-cigarettes, menthol cigarettes, and flavored cigars — endanger the health of our communities. The tobacco industry uses flavored tobacco products to lure new users, especially young people, into tobacco addiction.¹ More than 30 million adults in the U.S. are current smokers, and more than 16 million Americans live with a smoking-related disease including cancer, heart disease, and respiratory diseases.^{2,3} Most adult smokers began smoking before age 18.⁴

Flavors make tobacco products more appealing to youth, and menthol flavoring can increase the addictiveness of cigarettes and make it harder to quit.^{5,6} Youth use of nicotine in any form, including e-cigarettes, is unsafe, causes addiction, and can harm adolescent brain development, which impacts attention, memory, and learning.⁷

CityHealth, an initiative of the de Beaumont Foundation and Kaiser Permanente, works with cities to advance a package of tried and tested policies to ensure all people have access to healthy choices. Cities that adopt Flavored Tobacco Restrictions policies can reduce the use of dangerous and addictive tobacco products and support the well-being of everyone — especially young people and communities of color, who suffer disproportionately from the related health impacts of tobacco use.⁸⁻¹⁰

Flavored Tobacco Products Target Youth

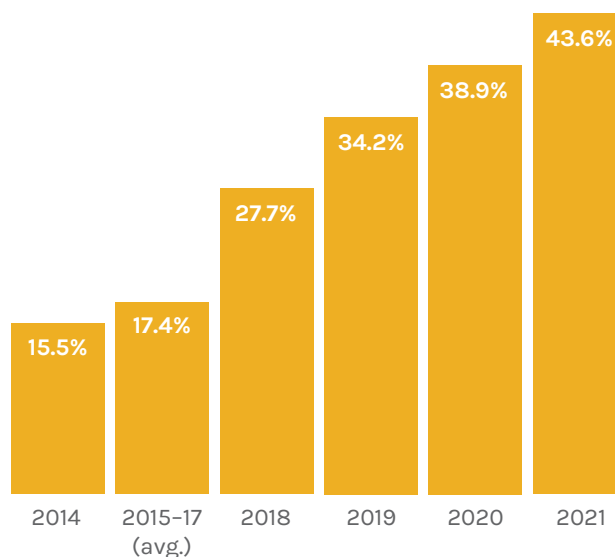
Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under age 18.¹¹ Eight out of 10 young people who have ever used tobacco started with a flavored product.¹² As the 2020 Surgeon General Report on Smoking Cessation succinctly stated, “the role of flavors in promoting initiation of tobacco product use among youth is well established.”¹³

In recent years, tobacco companies have significantly stepped up the introduction and marketing of flavored tobacco products, especially e-cigarettes, which have been the most popular tobacco product among youth



since 2014.¹⁴ In 2018, the Surgeon General and the U.S. Food and Drug Administration (FDA) declared youth e-cigarette use an “epidemic.”¹⁵ E-cigarettes are hooking a new generation on nicotine — putting millions of young people at risk. The surge in youth e-cigarette use was driven by kid-friendly products like Juul, with its appealing flavors, massive doses of nicotine, and slick, youth-oriented marketing campaigns.¹⁶ E-cigarettes have been marketed in more than 15,000 flavors — including mint, mango, orange soda and cotton candy — that are widely popular among youth.¹⁷ They are sold in devices that deliver potent doses of nicotine,¹⁸ and are often packaged as sleek, high-tech devices that enable youth to use them without being discovered by parents or teachers.¹⁹ Additionally, they are marketed on social media websites popular with young people, using images identical to those used by the cigarette industry to attract generations of kids.²⁰

Frequent E-Cigarette Use Among High School Users 2014–2021 (20+ days/month)



* 2021 data is not comparable to previous years due to methodology change.
Source: CDC, National Youth Tobacco Survey (NYTS), frequent use=20+ days/month

Today, youth e-cigarette use remains a public health crisis. Over 2 million young people, including 11.3% of U.S. high schoolers, reported current e-cigarette use in 2021 during the COVID-19 pandemic when many schools were closed, possibly reducing youth access to e-cigarettes since social sources are the most common way that youth get e-cigarettes.²¹ Although the data are not comparable to previous survey years due to methodology changes, just prior to the pandemic in 2020, 19.6% of US high schoolers reported current e-cigarette use. School and public health officials worry that with students now back in school, there is a

real risk of a resurgence in youth tobacco use, especially e-cigarette use.

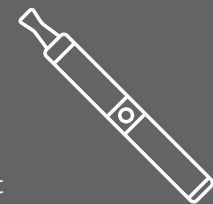
Flavors continue to drive tobacco use among young people, with 85% of youth e-cigarette users reporting that they use flavored products and seven out of 10 youth saying they use e-cigarettes “because they come in flavors I like.”^{22, 23} An increasing number of youth e-cigarette users are not just experimenting, but are using these products frequently, with many young people becoming rapidly and seriously addicted. The proportion of youth who are using e-cigarettes frequently has steadily increased over the past several years.^{24, 25}

Why Cities Shouldn't Wait for the FDA to Act on Flavored E-Cigarettes

While the FDA has removed some flavored e-cigarettes from the market, many others remain widely available, and young people have shifted to products that remain on the market. Cities can close the gaps in FDA policy by eliminating the sale of all flavored e-cigarettes.

In response to the youth e-cigarette epidemic, the FDA implemented an enforcement policy in February 2020 that prohibited flavored pod- or cartridge-based e-cigarettes (like Juul), except for tobacco and menthol flavors. However, this policy left thousands of youth-appealing e-cigarettes on the market, including flavored disposable e-cigarettes, flavored e-liquids that can be used in refillable devices, and menthol-flavored pod-based products. As a result, sales and youth use of menthol-flavored products and disposable e-cigarettes (like Puff Bar) skyrocketed.²⁶ In 2021, 55.8% of high school e-cigarette users reported using disposable e-cigarettes and 30% of high school users of flavored e-cigarettes reported using menthol-flavored products.²⁷

The FDA also has the opportunity to clear the market of flavored e-cigarettes through its premarket review process. Under a federal court order, by September 9, 2020, all e-cigarette manufacturers were required to submit a premarket tobacco product application to the FDA to stay on the market. The FDA faced a deadline of September 9, 2021, to rule on these applications. While the FDA has issued marketing denial orders for more than one million flavored e-cigarette products, it has yet to issue decisions on e-cigarette products that have the largest market shares or are most popular with kids – including Juul, Vuse Alto, SMOK, and Suorin – which the FDA is allowing to remain on the market until it issues a decision. The FDA is also still considering whether to authorize the sale of any menthol-flavored e-cigarettes, despite the popularity of these products with young people. In addition, more than 40 companies have filed lawsuits challenging their marketing denial orders and the outcomes of these cases are uncertain.²⁸



While e-cigarettes are the tobacco industry’s newest youth-appealing products, the industry has used menthol cigarettes for decades to hook new users.²⁹ As the only flavored cigarette left on the market, it is no surprise that menthol cigarettes remain popular among young people. Half of youth who have ever smoked started with menthol cigarettes.³⁰ Menthol is a chemical compound that cools and numbs the throat, masking the harshness of tobacco smoke and making it easier for beginners — primarily young people — to experiment with cigarettes and ultimately become addicted. Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking. In addition, young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.^{31,32}

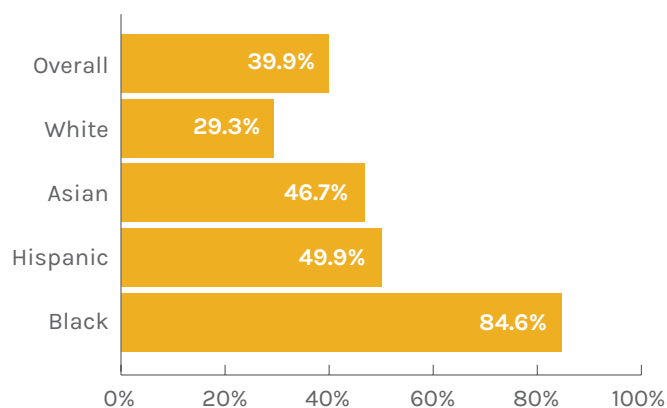
Other tobacco products, including flavored cigars, smokeless tobacco, and hookah, also appeal to young people. Many of today’s cigar smokers are youth or young adults, and cigars are about as popular as cigarettes among high schoolers.³³ Cigar use, especially small cigars and cigarillos, among young people is driven by a wide variety of available flavors, like tropical twist, cherry dynamite, and chocolate. Three quarters of youth cigar smokers said they smoke cigars “because they come in flavors I like.”³⁴

Flavored Tobacco Products Exacerbate Health Disparities

Menthol cigarettes and other flavored tobacco products have also long been a favorite tobacco industry strategy for targeting Black Americans, Latinos, LGBTQ+ people, and other communities.

Since the 1950s, the tobacco industry has targeted Black Americans with pervasive marketing of menthol cigarettes through sponsorship of community and music events, free sampling, magazine advertising, and retail promotions. In the 1950s, less than 10% of Black smokers used menthol cigarettes.³⁵ Today, after decades of predatory tobacco industry targeting, 85% of Black smokers use menthol cigarettes, compared to just 29% of White smokers.³⁶ Menthol cigarettes continue to be heavily advertised, widely available, and

Menthol Preference Among Cigarette Smokers (ages 12+)



Source: Delnevo, et al. Nicotine & Tobacco Research, 2020 (data from 2018 National Survey on Drug Use & Health)

priced more cheaply in Black communities, making them especially appealing to price-sensitive young people.³⁷⁻⁴¹

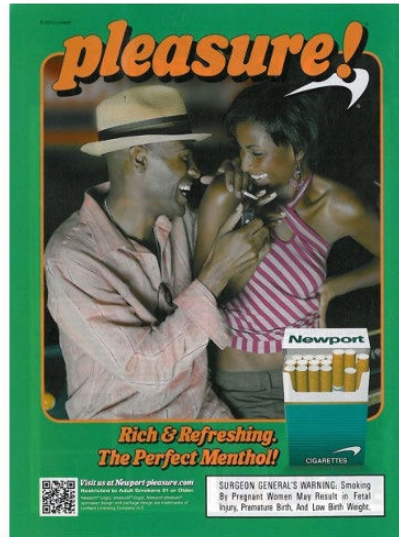
The tobacco industry’s predatory marketing has had a devastating impact on the health of Black Americans. Tobacco use is the number one cause of preventable death in the Black community, claiming 45,000 Black lives every year.⁴²⁻⁴⁴ Tobacco use is also a major contributor to three of the leading causes of death among Black people in the U.S. — heart disease, cancer, and stroke — and Black Americans die from these conditions at far higher rates than other racial groups.⁴⁵ Lung cancer is the leading cause of cancer death in the Black community.⁴⁶

Most Black smokers report wanting to quit smoking, and while Black smokers are more likely than White smokers to try to quit, they are less likely to succeed.

Menthol cigarettes are a major reason why Black Americans suffer unfairly and disproportionately from tobacco use. Menthol cigarettes are more addictive and harder to quit, magnifying the public health impact on Black communities.⁴⁷ Most Black smokers report wanting to quit smoking, and while Black smokers are more



1966



2015

Images Courtesy of: Stanford Research Into the impact of Advertising and TrinketsandTrash.org

likely than White smokers to try to quit, they are less likely to succeed.⁴⁸ The difficulty that Black Americans experience in quitting smoking, and consequently their higher rates of tobacco-related disease and death are due, in part, to their greater use of menthol cigarettes.

The tobacco industry is using the same strategies it used to hook generations of Black Americans on menthol cigarettes to target young Black people with marketing for inexpensive flavored cigars,⁴⁹⁻⁵² which can be smoked like cigarettes and cause many of the same devastating health consequences as cigarettes.⁵³⁻⁵⁶ Black youth have the highest rates of cigar smoking compared to other races and ethnicities.⁵⁷

Why Cities Shouldn't Wait for FDA to Act on Menthol Cigarettes and Flavored Cigars



Local efforts to end the sale of flavored tobacco products, including menthol cigarettes and flavored cigars, remain critical, despite recently proposed rules to ban these products. On April 28, 2022, the FDA issued proposed rules to ban menthol cigarettes and flavored cigars. This is an important step forward, but it is the first step of a lengthy rulemaking process. Until any FDA rule is implemented, cities should continue their growing efforts to end the sale of menthol cigarettes, flavored cigars, and other flavored tobacco products. It will take time for the FDA to finalize and implement the necessary regulations to prohibit menthol cigarettes and flavored cigars, and tobacco industry efforts to block or postpone FDA actions could cause further delays. Cities can act more quickly to protect public health and to stop tobacco companies from targeting kids, Black Americans, and other groups with

menthol cigarettes and other flavored products.

The FDA's proposed rule shows there is overwhelming scientific evidence to support eliminating menthol cigarettes and flavored cigars. The FDA and its Tobacco Products Scientific Advisory Committee have both concluded that eliminating menthol cigarettes would benefit public health in the U.S., especially among Black Americans. The FDA's own scientific analysis concluded that menthol cigarettes increase smoking initiation and progression to regular smoking among youth and young adults, increase nicotine dependence (addiction), and reduce success in quitting, especially among Black menthol smokers.^{58, 59} For these same reasons, cities should end the sale of menthol cigarettes and other flavored tobacco products.

Black Leaders Voice Strong Support for Prohibiting Menthol Cigarettes

Recognizing the devastating impact that tobacco has taken on Black health and lives, leading Black organizations, researchers, public officials, and community leaders have voiced strong support for prohibiting flavored tobacco products, including menthol cigarettes. These individuals and groups recognize the urgent need to protect public health and young people, especially young Black people, from tobacco addiction. Organizations that support prohibiting the sale of menthol cigarettes and all flavored tobacco products include the African American Tobacco Control Leadership Council, the Association of Black Cardiologists, Black Women's Health Imperative, the Center for Black Health & Equity, NAACP, the National Black Nurses Association, and the National Medical Association.

In California, the Black Leaders Against Tobacco Injustice (BLATI) coalition is urging political leaders to support a ban on the sale of menthol cigarettes and other flavored tobacco products — recognizing a ban as the first step towards reducing health disparities and ending the tobacco industry's profiteering from Black lives. BLATI is raising awareness about the tobacco industry's long history of systematically targeting young people, Black Americans, and other communities of color with menthol cigarettes and other flavored tobacco products. The coalition's membership includes a wide-ranging group of community and religious leaders from throughout California, elected officials at the state and local level, and several public health and medical organizations.⁶⁰

As Paulette Gipson, president of the Compton NAACP, said at BLATI's launch event, "Big Tobacco has been profiting off Black bodies for decades, and it's time we finally said enough. Black communities being systematically targeted by massive tobacco corporations for nicotine addiction that causes generations of disease and death is not freedom — it is among the sickest forms of racist oppression. I am proud to help lead the Black Leaders Against Tobacco Injustice in the fight to end Big Tobacco's racist and destructive reign by taking minty-menthol cigarettes and candy-flavored tobacco off the shelves once and for all."

Some Black leaders are finding it particularly important to speak out on this issue because the tobacco industry and organizations funded by the tobacco industry are opposing restrictions on menthol cigarettes and spreading misinformation about the impact of these policies. The tobacco industry and its allies are trying to spread fear by suggesting that these policies will give police an excuse for racial profiling and exacerbate tensions between law enforcement and the Black community.⁶¹ This scare tactic is meant to sow doubt within the Black community and increase opposition to these policies, which in fact only penalize retailers, not individual consumers.

As Carol McGruder, co-chairperson of the African American Tobacco Control Leadership Council, noted during a conversation on the impact of intergenerational tobacco use on Black communities, "This is not about the criminalization of our community. The criminals are the tobacco industry. And so we're not going to let the industry who's [preyed on] us and used racist profiling to addict us to now flip the script and say, 'Oh no, to take these products offline is racist against black people and they're going to have more officer-involved profiling and killings.'"⁶²

Following the FDA's announcement that it intended to produce a rule banning menthol cigarettes, the Center for Black Health and Equity stated, "We do not want to see law enforcement use this ban as an excuse to increase interactions with the Black community. The industry has used the threat of black markets [as a] scare tactic to prevent regulation for decades, and in some parts of the world has participated in them. This is not a reason to allow them to continue to prey on Black communities."⁶³

Efforts to prohibit the sale of flavored tobacco products should not create a need for increased interaction with the police. These laws should be written so that enforcement does not criminalize people who possess, use, or purchase flavored products. Enforcement should be conducted by non-police agencies, such as the health department, with enforcement targeted at tobacco retailers.

How COVID-19 Makes Flavored Tobacco Restrictions Even More Essential



According to the CDC, “Being a current or former cigarette smoker can make you more likely to get severely ill from COVID-19.”⁶⁴ There is also mounting concern among leading public health organizations and experts that e-cigarette users may be at a higher risk of severe illness from COVID-19.⁶⁵ The coronavirus attacks the lungs, and behaviors that weaken the lungs put individuals at greater risk. The harmful impact of smoking on the lungs is well documented, and there is growing evidence that e-cigarette

use can also harm lung health.⁶⁶⁻⁶⁸ In addition, smoking and e-cigarette use harm the body’s immune response, making it less successful at fighting disease.^{69,70} As cities work to limit the impact of COVID-19, there has never been a better or more urgent time for people to quit smoking and vaping, and restricting the sale of flavored tobacco products is an important strategy to help users quit and prevent young people from ever starting to use tobacco products.

How Cities Can Take Action to Ban Flavored Tobacco

More than 345 localities across the country have passed restrictions on the sale of flavored tobacco products, although laws differ in their application to specific products and store types.⁷¹ Of these, more than 110 cities have comprehensive restrictions that apply to all flavors, all tobacco products, and all retailers. Comprehensive restrictions on the sale of flavored tobacco products are the most effective since product and retailer exemptions create loopholes for the tobacco industry to continue to target youth, communities of color, and other populations.

Starting in December 2022, CityHealth will annually assess Flavored Tobacco Restrictions policies in America’s 75 largest cities. CityHealth’s assessment criteria were developed with input from national experts, are backed by evidence, and work to reduce or remove systemic barriers to health equity. Medals are awarded to cities that meet the elements necessary for a high-quality policy (gold), a good-quality policy (silver), and a passable-quality policy (bronze). Cities with no policy, or that don’t meet the minimum threshold for a bronze medal, receive no medal.

FLAVORED TOBACCO RESTRICTIONS MEDAL CRITERIA



	Bronze	Silver	Gold
1. City has a flavored tobacco law that prohibits the sale, by all retailers, of at least one category of flavored tobacco products.	✓	✓	✓
2. The law does not contain any penalties for youth use, purchase, or possession.	✗	✓	✓
3. Penalties are levied against the owner/operator or the business license holder not the store clerk.	✗	✓	✓

NOTES:

- For a bronze, a city must prohibit the sale of at least one product category
- For a silver, a city must prohibit the sale of at least two product categories
- For a gold, a city must prohibit the sale of all three product categories (all flavored tobacco products, with no exceptions)

PRODUCT CATEGORIES:

- Menthol cigarettes
- All flavored e-cigarettes and vaping devices
- All 'Other Tobacco Products' to include cigars, cigarillos, dipping tobacco, snuff, chew, hookah, etc.

A comprehensive flavored tobacco product restriction should apply to:

ALL FLAVORS: No exemptions for any non-tobacco-flavored products, including mint, menthol, wintergreen, and concept flavors such as “Blue” and “Jazz.” The evidence is clear that mint, menthol, wintergreen, and concept flavors should not be given special treatment since they appeal to kids and reduce the harshness of tobacco products.⁷² In recent years, the industry has rebranded some flavored tobacco products with names like “Royale” and “Summer Twist” to disguise the fact to regulators that their products are flavored.⁷³⁻⁷⁵ A strong definition of a flavored tobacco product will help ensure that the policy covers all flavored products, regardless of whether their name reflects the flavor.

Sample language:

“Flavored tobacco product” means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

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 taste or smell other than the taste or smell of tobacco;
2. Used text or images, or both, on the tobacco product’s labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or
3. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

ALL TOBACCO PRODUCTS: No exemptions for any type of tobacco product (e.g., premium cigars or hookah). Strong definitions can help prevent loopholes for certain tobacco products and ensure that the policy covers products regardless of whether they are made from tobacco-derived or synthetic nicotine as well as components or accessories that may be used to add flavor to an unflavored tobacco product. For example,



some e-cigarette companies have marketed non-nicotine flavor enhancers that can be attached to an e-cigarette device to add flavor.

Sample language:

“Tobacco product” means:

1. Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. Any electronic smoking device and any substance that may be aerosolized or vaporized by such

device, whether or not the substance contains nicotine; or

3. Any component, part, or accessory of 1) or 2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

What is Synthetic Nicotine?

Synthetic nicotine is nicotine that is not derived from tobacco. It is a man-made chemical copy of the nicotine that is extracted from tobacco plants. Regardless of whether nicotine is derived from tobacco plants or synthetically developed in a laboratory, nicotine is an addictive drug with known adverse health consequences.

Until recently, products containing synthetic nicotine were not regulated by the FDA as either tobacco products or drugs. As a result, a growing number of e-cigarette and e-liquid manufacturers switched to using synthetic

nicotine (sometimes marketed as “tobacco-free”) to evade regulation. For example, Puff Bar, the most popular e-cigarette brand among youth, switched to using synthetic nicotine in 2021.⁷⁶ In March 2022, Congress passed legislation requiring manufacturers of synthetic nicotine products to obtain FDA authorization to keep a product on the market.

To ensure that tobacco control policies, including flavor restrictions, cover synthetic nicotine products, cities should not limit their tobacco product definition to products containing tobacco-derived nicotine.

ALL RETAILERS: No exemptions for any type of retailer (e.g., adult-only retailers, vape shops, tobacco shops, hookah bars, cigar bars). Retailer exemptions create opportunities for youth to continue to access flavored tobacco products. If flavored tobacco products remain available for sale, youth will find ways to access them and will not be protected. Retailer exemptions can also exacerbate disparities if exempted retailers are disproportionately located in certain neighborhoods.

ENFORCEMENT CONCERNS: Cities should carefully craft penalty language to ensure that Flavored Tobacco Restrictions are fairly and equitably enforced. Specifically, cities should consider the following:

- **The law should not contain any penalties for youth purchase, use, or possession (PUP).** Flavored Tobacco Restrictions should focus penalties on the retailer who profits from the illegal sale rather than the youth who is likely addicted to the product. Youth PUP penalties have not been proven to reduce youth use and they relieve the tobacco industry of responsibility for its marketing practices. Additionally, some communities are concerned that PUP provisions may be enforced inconsistently with respect to youth from certain racial and ethnic groups, resulting in their introduction into the criminal justice system.
- **Penalties should be levied against the owner/operator or the business license holder not the store clerk.** The primary burden for sales to underage purchasers should fall on the retailer who is profiting from the sales of the product and not non-management employees.
- **Enforcement actions should be led by local health departments, not police.** Designating police as the enforcing agency can yield unnecessary interactions with law enforcement in communities that already mistrust police due to inequities in the criminal justice system.⁷⁷

Benefits of Flavored Tobacco Restrictions Policies

Ending the sale of flavored tobacco products will prevent young people from using tobacco, lead more users to quit, improve health, save lives, enhance health equity, and reduce health care spending.

PROTECT YOUTH: Although tobacco companies claim to be responding to adult tobacco users' demand for variety, flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. Most tobacco users start before age 18 and 80.8% of young people who have ever used tobacco started with a flavored product.⁷⁸ Prohibiting the sale of flavored e-cigarettes removes the products that are most attractive to young people and the products that young people use most often, which may prevent youth from ever trying tobacco.

REDUCE MEDICAL COSTS: Eliminating the sale of flavored tobacco products can improve public health and save money by reducing tobacco-related diseases and their associated medical costs. Total smoking-caused health expenditures in the U.S. currently add up to more than \$225 billion per year.^{79,80} For every smoker who quits because of Flavored Tobacco Restrictions policies, at least \$11,000 in long-term health care costs will be saved — and preventing a single young person from smoking saves at least \$21,000 in long-term health care costs.^{81,82} Reducing these smoking-caused costs and shifting the savings to more productive purposes and expenditures will help to reduce business costs and further strengthen local economies.

PROMOTE EQUITY: Flavored tobacco endangers the health of all our communities. Menthol cigarettes in particular are disproportionately marketed to Black Americans, Latinos, LGBTQ+ people, and other communities. Among the Black community, menthol cigarettes were responsible for 1.5 million extra smokers, 157,000 smoking-related premature deaths, and 1.5 million excess life-years lost between 1980 and 2018.⁸³ Ending the sale of flavored tobacco will help everyone live longer, healthier lives.

CITY SPOTLIGHT



September 2017

Original Policy
Adopted

July 2018

Original Policy
Effective

May 2020

Council came back and unanimously voted to close loophole and further strengthen retail policy, including prohibiting pharmacies from selling tobacco, establishing a minimum price of \$8/pack, and minimum pack size of 20 cigarillos

Oakland, CA – Strengthened post passage to remove major loophole

Oakland was one of the first cities in the nation to pass a flavored tobacco restriction. Oakland’s city council initially adopted a flavored tobacco restriction policy that ended the sale of all flavored tobacco products — including menthol cigarettes — in September of 2017; however, the policy included an exemption for adult-only tobacco stores. The exemption language led to a larger than expected loophole. To meet the definition for an adult-only store, a retailer needed to primarily sell tobacco (60% of total sales), limit access to those 18 and older, and sell no alcoholic beverages or food for consumption on the premises. An adult-only tobacco retailer could qualify simply by signing an affidavit stating they met the requirements.

After the law was implemented, local retailers in Oakland began to shift the make-up of their products to focus on selling more tobacco products. Other retailers began to build walls to create adult-only stores within their existing convenience stores, and display tobacco in those sections. According to Vice Mayor Larry Reid, “People have gone to great efforts to continue selling flavored and menthol tobacco. I only wish they would put in equal effort to sell healthier products and join us to prevent a new generation of smokers.”⁸⁴ These

stores did not contain separate licenses and operated on the same premises where food other products were being sold. Prior to implementation of the law, Oakland had fewer than five adult-only tobacco retailers, but post-implementation there were approximately 56 stores, mostly located in low-income areas of the city.

According to the California Department of Public Health, 36% of tobacco stores sold tobacco to underage young people in 2018, the highest rate of any type of store statewide.⁸⁵ Because of this huge loophole in the law, the Oakland City Council revisited this issue in May 2020 to remove the exemption, making the policy comprehensive.

Taking action to remove all flavored tobacco products at all retail locations is a critical strategy to addressing health disparities, as noted by Councilmember Loren Taylor (Millsmont, Eastmont, and Maxwell Park): “In East Oakland and District 6, we do have significant health disparities. Those plague our black and brown communities and it is important that we look at ways at cutting those off early because we know prevention is much more affordable and creates greater life outcomes than dealing with problems after the fact.”⁸⁶

CITY SPOTLIGHT



December 2015

Original Policy
Adopted

February 2016

Original Policy
Effective

November 2019

Council voted unanimously
to close the mint, menthol,
and wintergreen loophole

June 2020

Revised policy effective

Boston, Massachusetts – Local leads the way

Starting in 2014, cities across Massachusetts were trailblazers in their efforts to address the impact that flavored tobacco was having on youth. From July of that year until the fall of 2019, more than 160 cities and towns across the state passed policies to restrict the sales of flavored tobacco products in their communities, though many had loopholes for adult-only locations, mint, menthol, and wintergreen products, or both. Boston was similar, having initially passed a policy effective February 2016 with both exemptions. However, as local health officers and public health boards realized that youth were just shifting to the products that remained on the market, many cities were working to close those exemptions in 2018 and 2019. At the same time, state legislators began seriously considering a law that would ban the sale of all flavored tobacco products statewide without exemptions.

In 2019, local advocates mobilized to support closing the loophole that had allowed mint, menthol, and wintergreen tobacco products to be sold in the city. Health Resources in Action (HRiA), a local non-profit organization, led efforts to mobilize the community in support. Dozens of community forums and events highlighted the predatory actions of tobacco companies in targeting and addicting communities of color with menthol-flavored tobacco products, which

prodded the Boston Public Health Commission to consider the policy change.

In September 2019, then Mayor of Boston Marty Walsh announced his support for amendments to the city health laws that would close the loophole and that had allowed mint, menthol, and wintergreen flavors to be sold at stores throughout the city. “We know that nicotine use at a young age can have the power to lead to a lifelong dependency. The data is undeniable in showing that these amendments would save lives,” Walsh said in a statement at the time. “I believe that now is the time to act.”

The campaign culminated in an early November hearing where young people, parents, educators, clergy, and medical professionals all testified in support of the ordinance. On November 25, 2019, the Boston Public Health Commission voted unanimously to adopt the proposed amendment to strengthen its flavored tobacco policy. While dozens of other cities in the state had already taken similar action to protect youth in their communities, local action in Boston was instrumental in moving the state legislature to follow suit. With Governor Charlie Baker’s signature later that month, Massachusetts became the first state in the nation to adopt a comprehensive ban on the sale of all flavored tobacco products.



Conclusion

Tobacco use remains the leading cause of preventable death in the U.S.⁸⁷ Flavored tobacco products, including e-cigarettes, menthol cigarettes, and flavored cigars, have long been a tobacco industry strategy for attracting young users and certain populations, particularly the Black community.^{88,89} Cities that prohibit the sale of flavored tobacco products can help reduce the

appeal of these products and help current users quit, which in turn can reduce medical costs and promote health equity.⁹⁰⁻⁹² Comprehensive restrictions on the sale of flavored tobacco products should include all flavors, all tobacco products, and all retailers to fully protect everyone. While the FDA pursues rulemaking to ban certain flavored tobacco products, cities can lead the way by passing restrictions on the sale of flavored tobacco products.

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