
INTERNAL AFFAIRS COMMITTEE AGENDA

A Committee of the Chico City Council: Councilmembers Huber, Ory, and Chair Brown

Meeting of November 4, 2019 – 4:00 p.m. to 6:00 p.m.

Council Chamber Building, 421 Main Street, Conference Room 1

REGULAR AGENDA

A. FLAVORED TOBACCO SALES

On February 19, 2019, the City Council referred flavored tobacco sales to the Internal Affairs Committee to discuss. The Internal Affairs Committee was requested to review the topic of flavored tobacco sales within the City limits and report back to the Council. On May 6, 2019 the Internal Affairs Committee met and requested additional information regarding sample ordinances that other cities have passed regarding flavored tobacco.

B. ENHANCED PUBLIC SAFETY TECHNOLOGY

The Chief of Police will present to the Internal Affairs Committee the need to enhance public safety technology, due to the devastating impacts of the Camp Fire. The cost of this technological upgrade will be supported by the anticipated reimbursement of police department mutual aid response for both the Carr and Camp Fires.

C. BUSINESS FROM THE FLOOR

Members of the public may address the Committee at this time on any matter not already listed on the agenda, with comments being limited to three minutes. The Committee cannot take any action at this meeting on requests made under this section of the agenda.

D. ADJOURNMENT AND NEXT MEETING

The meeting will adjourn no later than 6:00 p.m. The next regular Internal Affairs Committee meeting is scheduled for Monday, December 2, 2019, at 4:00 p.m. in Conference Rm. No. 1.

SPEAKER ANNOUNCEMENT

NOTE: Citizens and other interested parties are encouraged to participate in the public process and will be invited to address the Committee regarding each item on the agenda. In order to maintain an accurate and complete record, the following procedural guidelines have been implemented:

1. Speaker Cards – speakers will be asked to print his/her name on a speaker card to address the Committee and provide card to the Clerk prior to the completion of the Staff Report.
2. The Clerk will call speakers in the order the cards are received.
3. Speakers may address the Committee one time per agenda item.
4. Speakers will have three minutes to address the Committee.

Distribution available in the office of the City Clerk

Posted: 10-29-19 prior to 5:00 p.m. at 421 Main St. Chico, CA 95928 and www.ci.chico.ca.us

Copies of the agenda packet are available for review at:

City Clerk's Office, 411 Main St. Chico, CA 95928



Please contact the City Clerk at 896-7250 should you require an agenda in an alternative format or if you need to request a disability-related modification or accommodation in order to participate in a meeting. This request should be received at least three working days prior to the meeting in order to accommodate your request.

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

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

Updated 10/7/19

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	<p>Adopted: September 2015 Effective: January 1, 2017 Enforced: January 1, 2020 Updated: July 23, 2019</p>	None	<p>No new TRL may be issued to a pharmacy or renewed by a pharmacy</p> <p>No new TRL may be issued within 600 feet of school</p> <p>Little cigars must be sold in packages of at least 20 and cigars must be sold in packages of at least 6</p> <p>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)</p> <p>Tobacco retailers may not honor or redeem coupons, sell tobacco products through a multi-package discount, or provide free or discounted tobacco products</p>	<p>Environmental Health staff is responsible for enforcement</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. 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”
<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	<p>Adopted: August 21, 2018 Effective: September 21, 2018 Enforced: December 21, 2018</p>	None	The flavors policy is enforced through a TRL that must be paid annually	<p>A violation of the provisions of this chapter will result in:</p> <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>Capitola Ordinance No. 1031 Municipal Code Section 8.38.130</p>	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	<p>Adopted: July 25, 2019 Enforced: January 1, 2020</p>	None	No new TRL may be issued within 1,000 feet of a school and/or a public library	<p>A violation of the provisions of this chapter within six months of the first violation will result in:</p> <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 <p>This policy will be enforced by the Chief of Police or designee</p>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Cloverdale Municipal Code Chapter 8.08</p>	<p>Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits</p>	<p>All flavored tobacco products (excluding menthol flavored tobacco products)</p>	<p>No</p>	<p>Adopted: December 12, 2017</p>	<p>Menthol tobacco products, including cigarettes, are not included in the restrictions</p>	<p>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</p> <p>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)</p> <p>Pharmacies may not sell tobacco products</p>	<p>Any person or business that violates the provisions of this chapter shall be guilty of an infraction, punishable by:</p> <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 	<p>No</p>
<p>Contra Costa County Ordinance No. 2017-01 Municipal Code Chapter 445-2</p>	<p>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</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: July 18, 2017 Effective: August 1, 2017 Enforced: January 1, 2018</p>	<p>Only applies to retailers within 1,000 feet of schools, parks, playgrounds and libraries</p>	<p>No new tobacco retail licenses may be issued in pharmacies</p> <p>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</p> <p>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</p> <p>Sets a cap on the total number of tobacco retailers</p> <p>Prohibits the redemption of coupons or redemptions</p> <p>Smoking is prohibited in specified enclosed and unenclosed areas and in all multi-unit residence areas, with some exceptions</p>	<p>A violation of the provisions of this chapter will result in:</p> <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 	<p>No</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

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 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 within a 60-month period The suspension of the license for 90 days for a third violation within a 60-month period The suspension of the license for one year for a fourth violation within a 60-month period The revocation of a license for five or more violations within a 60-month period 	<p>No</p>
<p>El Cerrito Ordinance No. 2015-08 Municipal Code 6.100.160</p>	<p>Prohibits the sale of all flavored, non-cigarette tobacco products, including menthol flavored non-cigarette tobacco products, within the city limits</p>	<p>All flavored non-cigarette tobacco products (excludes menthol cigarettes)</p>	<p>Yes (only for non-cigarette tobacco products)</p>	<p>Adopted: October 2015 Effective: January 1, 2016 Enforced: October 2017</p>	<p>Menthol cigarettes are not included in the restrictions</p>	<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"> 10 days for first violation 30 days for second violation 60 days for third violation Upon the fourth or more violations the license shall be revoked 	<p>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>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Fairfax Ordinance Municipal Code 8.44.210</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	It shall be a violation to sell, offer for sale, or exchange for any form of consideration: <ol style="list-style-type: none"> Any single cigar, whether or not packaged for individual sale Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer Any package of cigars containing fewer than five cigars *(This does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5) Prohibits the sale of tobacco products in pharmacies	Regulations shall be monitored by the Town Manger and the Marin County Tobacco Program A violation of the provisions of this chapter within any 60-month period may result in: <ol style="list-style-type: none"> A 30 day suspension of a license for a first violation of this article A 90 day suspension of a license for a second violation of this article A one year suspension for a third violation of this article 	No
<p>Half Moon Bay Municipal Code Section 7.60.120</p>	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: <ol style="list-style-type: none"> A suspension of the license for up to 30 days for the first violation 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 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
<p>Hayward Municipal Code Sec. 10-1.2780</p>	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

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
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	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
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

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Livermore Ordinance No. 2088</p>	<p>Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits</p>	<p>All electronic smoking devices and other flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: July 8, 2019 Referendum Vote: March 3, 2020</p>	<p>None</p>	<p>The sale of electronic smoking devices or electronic smoking device fluid is prohibited</p> <p>No tobacco retailing license shall be issued or existing license renewed within 1,000 feet of a youth populated area</p>	<p>Compliance shall be monitored by the Livermore Police Department or any other City designee</p> <p>Any violation of the TRL within a 5-year period may result in:</p> <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 one year for a second violation 3. The revocation of a license for a third or more violations <p>The licensee may request an alternative to these penalties for a first or second violation of this chapter, which includes:</p> <ol style="list-style-type: none"> 1. 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 2. 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 3. 	<p>No</p>
<p>Los Angeles County Ordinance No.</p>	<p>Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: October 1, 2019 Effective: November 1, 2019 Enforced: May 4, 2020</p>	<p>None</p>	<p>Tobacco sales are restricted to licensed tobacco only shops</p> <p>Establishes a minimum pack size of 20 for little cigars or cigarillos, and these products may not be sold individually</p> <p>Prohibits the sale of tobacco products in pharmacies</p>	<p>Compliance shall be monitored by the Los Angeles County Department of Public Health or any law enforcement officer</p> <p>Any violation of the TRL within a 5-year period may result in:</p> <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 3. The suspension of the license for up to 120 days for a third violation 4. The revocation of the license for a fourth violation 	<p>No</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

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. 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
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

Updated 10/7/19

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"> \$100 for the first violation \$200 for the second violation \$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"> a package of cigars containing at least five cigars a single cigar for which the retail price exceeds five dollars pipe tobacco 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"> A single cigar (unless the price of the single cigar exceeds \$5) 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"> 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

Updated 10/7/19

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

Updated 10/7/19

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 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. 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 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
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: 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

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
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
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	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: <ol style="list-style-type: none"> 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

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
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
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	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: 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

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<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
<p>Santa Clara County Ordinance No. NS-300.883</p>	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	<p>No TRLs may be issued to a retailer containing a pharmacy</p> <p>No TRLs may be issued to a retailer within 1,000 feet of a school (existing retailers exempt)</p> <p>No TRLs may be issued to a retailer located within 500 feet of another retailer (existing retailers exempt)</p>	<p>Compliance shall be monitored by the Department of Environmental Health</p> <p>Penalties for violations of this ordinance within a 12-month period include:</p> <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

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Santa Cruz Ordinance No. 2018-19 Municipal Code 6.07</p>	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	<p>No license shall be issued to authorize tobacco retailing that is within six hundred feet of a high-risk alcohol outlet</p> <p>No license shall be issued to authorize tobacco retailing that is within that is within one thousand feet of a school</p> <p>*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</p>	<p>Every violation of this chapter determined to be an infraction is punishable by:</p> <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
<p>Santa Cruz County Ordinance No.5300 Municipal Code Chapter 5.60</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 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)	<p>Compliance shall be monitored by the Santa Cruz County Health Services Agency or any law enforcement officer</p> <p>Penalties for violations of this ordinance within any 60-month period include:</p> <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
<p>Saratoga Municipal Code 4-90</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: October 3, 2018	Menthol flavored tobacco products are not included in the policy	<p>No tobacco retailer permit tobacco may be issued to a licensed pharmacy</p> <p>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</p> <p>No tobacco product or paraphernalia may be sold from a vending machines</p>	<p>Penalties for violations of this ordinance within a 24 month period include:</p> <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

Updated 10/7/19

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	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 (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

Updated 10/7/19

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>	<p>Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits</p>	<p>All flavored tobacco products (excludes menthol tobacco products)</p>	<p>No</p>	<p>Adopted: March 7, 2018 Effective: April 6, 2018 Enforcement: July 30, 2018</p>	<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 	<p>No</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Updated 10/7/19

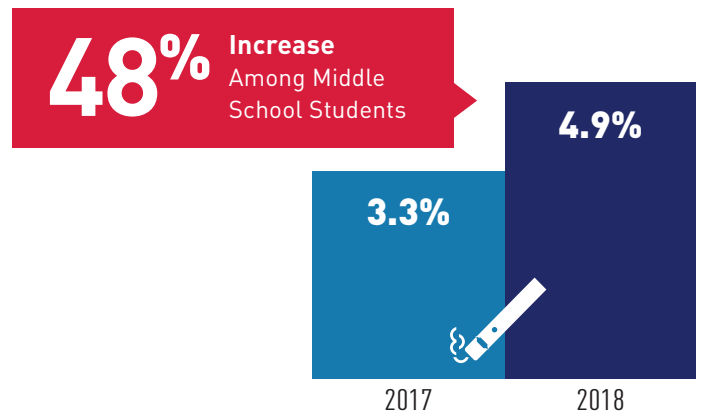
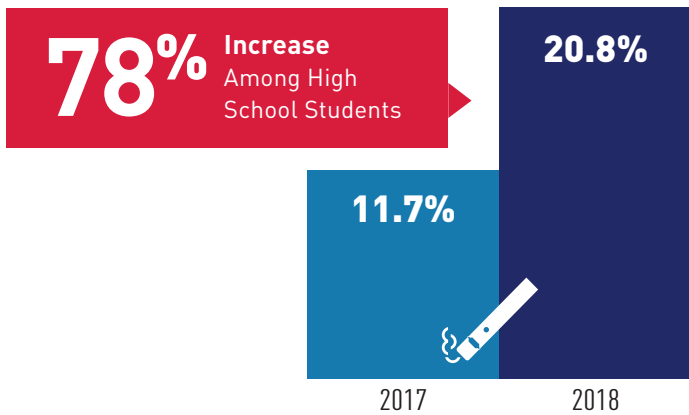
Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
<p>Yolo County Ordinance No. 1474 Municipal Code 6-15.10</p>	<p>Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the County</p>	<p>All flavored tobacco products</p>	<p>Yes</p>	<p>Adopted: October 2016 Effective: May 1, 2017</p>	<p>None</p>	<p>Only existing tobacco retailers are eligible for a tobacco license</p>	<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>	<p>No</p>

2018 NATIONAL YOUTH TOBACCO SURVEY FINDS CAUSE FOR CONCERN

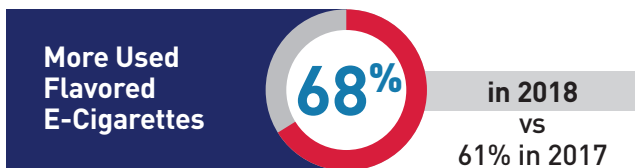
Current e-cigarette use among middle and high school students **increased alarmingly** between 2017 and 2018.

Here is a breakdown of the recent findings:

SURGE IN YOUTH CURRENT E-CIGARETTE USE — 1.5 Million More Students Used E-Cigarettes in 2018 vs 2017

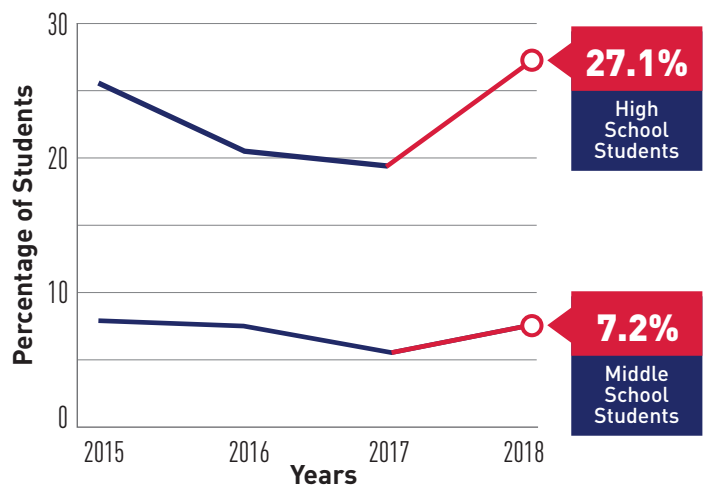


AMONG HIGH SCHOOL CURRENT E-CIGARETTE USERS — Rise in Frequency and Use of Flavors



E-CIGARETTE USE SURGE LED TO UPTICK IN OVERALL TOBACCO USE — Reversing Previous Declines

Current Use of Any Tobacco Product



Note: All numbers in this document are estimates.

Sources: [1] Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Increase in use of electronic cigarettes and any tobacco product among middle and high school students — United States, 2011–2018. *MMWR Morbid Mortal Wkly Rep.* 2018;67(45). [2] Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. Tobacco product use among middle and high school students — United States, 2011–2017. *MMWR Morb Mortal Wkly Rep.* 2018;67(22).



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Law & policy innovation for the common good.

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

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Developed by ChangeLab Solutions

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Table of Contents

1. Introduction and Report.....	3
Background	3
Menthol Cigarettes.....	4
Other Flavored Tobacco Products	5
Considerations When Regulating Flavored Tobacco Products	7
Legal Issues.....	8
i. Federal Preemption	8
ii. First Amendment.....	9
Conclusion.....	10
2. Model Ordinance Provisions	13
3. Appendix A: Findings.	22

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.

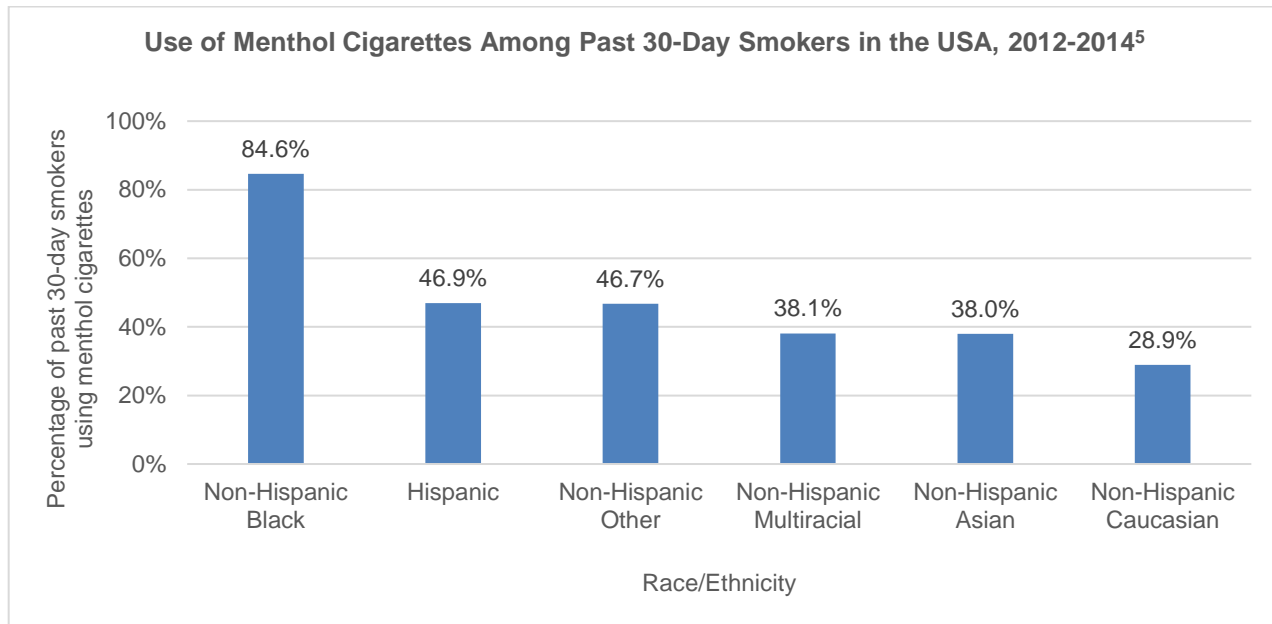
Menthol Cigarettes

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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 47. Indep. Gas & Serv. Stations Ass'ns, Inc. v. City of Chi., 112 F.Supp.3d 749 (N.D. Ill. 2015).

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 drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

COMMENT: This definition of Tobacco Product is designed to cover a wide variety of products, including cigarettes, cigars, little cigars, smokeless tobacco, shisha (hookah tobacco), nicotine gel, nicotine lollipops, other nonconventional tobacco and nicotine products, 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 (eg, rolling papers). There is an exception for FDA-approved products intended for medical use (eg, nicotine patches and other nicotine cessation products).

- (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

1. 21 U.S.C. § 387g(a)(1)(A).

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4. 21 U.S.C. § 387g(a)(1)(A).
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6. *Id.*
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8. *Id.*
9. California Department of Public Health California Tobacco Control Program. *Healthy Stores for a Healthy Community: Alameda County.* 2014. [www.healthystoreshealthycommunity.com/documents/counties/Alameda County Data \(English\).pdf](http://www.healthystoreshealthycommunity.com/documents/counties/Alameda%20County%20Data%20(English).pdf).
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ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO
AMENDING CHAPTER 15 OF TITLE 6 OF THE YOLO COUNTY CODE
REGARDING TOBACCO RETAILER PERMITTING

The Board of Supervisors of the County of Yolo hereby ordains as follows:

SECTION 1. Background and Findings.

In 2009, The FDA banned the sale of flavored cigarettes primarily because of their attraction to youth. Unfortunately, this ban does not apply to the many other flavored tobacco products including cigars, cigarillos, chewing tobacco, snus, electronic cigarettes, and e-juice. Colorful packaging and sweet flavors make flavored tobacco products more appealing to youth as seen by increased rates of first time youth smokers using flavored tobacco products. Additional strategies to limit the accessibility and the appeal to youth, such as minimal packaging size and zoning laws, have successfully decreased youth cigarette use and should be applied to both unflavored and flavored tobacco products. An ordinance that places the same restrictions on all tobacco products, not just cigarettes, is a vital step toward reducing the access of tobacco to Yolo County youth. In December 2015, the Board authorized the Health and Human Services Agency and County Counsel to amend the County’s current Tobacco Retail Licensing policy to include language that eliminates the sale of flavored tobacco products, including menthol flavor, creates a minimum packaging size for little cigars, and limits the number of tobacco retailers.

SECTION 2. Section 6-15.02 is amended to read as follows:

Sec. 6-15.02. Definitions.

As used herein:

- (a) “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 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.
- (b) “Cigar” means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, “cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” or “little cigar,”
- (c) “Department” means the Yolo County Health & Human Services Agency.
- (d) “Director” shall mean the Director of Yolo County Health & Human Services or her/his written designee.

(e) “Electronic smoking device” means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic smoking device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

(f) “Flavored Tobacco Product” means any Tobacco Product that contains a constituent that imparts a characterizing flavor to the tobacco product or smoke produced by the tobacco product, either by the addition of artificial or natural flavors or an herb or spice, including menthol, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.

(g) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(h) “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 ten percent (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 can or does have or share ultimate control over the day-to-day operations of a business.

(i) “Self-Service Display” means the open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A Vending Machine is a form of Self-Service Display.

(j) “Significant Tobacco Retailer” means any Tobacco Retailer whose principal or core business is selling Tobacco Products, Tobacco Paraphernalia, or both, as evidenced by any of the following: (i) twenty percent (20%) or more of floor area and display area is devoted to the sale or exchange of Tobacco products, Tobacco Paraphernalia, or both; (ii) fifty percent (50%) or more of completed sales transactions include a Tobacco Product or Tobacco Paraphernalia; or (iii) Sixty-seven percent (67%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both.

(k) “Smoking” means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), or the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

(l) “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed for the smoking, preparation, storing, consumption or ingestion of Tobacco Products.

(m) “Tobacco Product” means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food

and Drug Administration for use in treating nicotine or tobacco product dependence; and (3) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, pipe, or hookah;

(n) “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, or who distributes free or low cost samples of Tobacco Products or Tobacco Paraphernalia, without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold or offered for sale, exchanged or offered for exchange, or distributed or offered for distribution. “Tobacco Retailing” means the doing of any of these things.

(o) “Tobacco Retailing Permit Hearing Authority“ or “Hearing Authority” means one or more persons assigned by the County Administrative Officer the responsibility of conducting a hearing pursuant to this Chapter, and may hereafter be referred to as the Hearing Authority. The County Administrative Officer shall assign hearing responsibility to any of the following: (1) County management personnel whom the County Administrative Officer finds to be qualified by training and experience to conduct such hearings; (2) Any person(s) qualified by training or experience whom the County Administrative Officer may employ or who are retained by contract to conduct such hearings; or (3) Administrative Law Judges assigned by the State Office of Administrative Hearings. The County Administrative Officer is hereby authorized to contract in the name of the County for the retention of hearing services at rates that do not exceed the financial limitations established by the County’s annual budget and contracting rules, regulations and policies.

(p) “Vending Machine” means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

SECTION 3. Section 6-15.04 is amended to read as follows:

Sec. 6-15.04. Limits on Tobacco Retailer Permits.

(a) The following locations are eligible to apply for a tobacco retailer license:

RETAILER	STREET ADDRESS	CITY	ZIP
ZAMORA MINI MARKET	9920 CO RD 99 W	ZAMORA	95698
PILOT TRAVEL CENTER #168	30035 COUNTY RD #8	DUNNIGAN	95937
FARMERS MARKET	29020 COUNTY RD 6	DUNNIGAN	95937
DUNNIGAN MARKET	3660 COUNTY RD 99W	DUNNIGAN	95937
UNITED TRUCK STOP	29770 COUNTY RD # 8	DUNNIGAN	95937
DUNNIGAN CHEVRON	4040 COUNTY RD 89	DUNNIGAN	95937
EL CHINO MINI MARKET	2501 COUNTY ROAD 88	DUNNIGAN	95937

DUNNIGAN EXPRESS	29029 COUNTY RD 6	DUNNIGAN	95937
CASA RUIZ	15190 STATE HIGHWAY 113	WOODLAND	95776
WILLOW OAK GROCERY	37030 HWY. 16	WOODLAND	95695
HOLLAND MARKET	52945 NETHERLAND AVE	CLARKSBURG	95612
ESPARTO SUPERMARKET	17343 FREMONT ST	ESPARTO	95627
EL TORO FOODS - ESPARTO	16939 YOLO AVE	ESPARTO	95627
ESPARTO GRAB & GO	16814 FREMONT ST	ESPARTO	95627
M & M MINI MART	16876 YOLO AVE	ESPARTO	95627
DOLLAR GENERAL STORE #16171	26875 STATE HIGHWAY 16	ESPARTO	95627
GUY'S CORNER	17776 COUNTY ROAD #89	MADISON	95653
KNIGHTS LANDING GROCERY STORE	9518 LOCUST ST	KNIGHTS LANDING	95645
WAYSIDE MARKET	9696 LOCUST ST	KNIGHTS LANDING	95645
PLUG AND JUG MARKET	9425 LOCUST ST	KNIGHTS LANDING	95645

No License may be issued to authorize tobacco retailing except at the locations listed above where tobacco products are sold, offered for sale or exchanged.

(b) A tobacco retailer operating lawfully on the effective date of the ordinance codified in this chapter that would otherwise be eligible for a tobacco retailer license for any of the above locations 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 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, or other applicable codes.

SECTION 4. Section 6-15.10 is amended to read as follows:

Sec. 6-15.10. Other Tobacco Retailing Requirements and Prohibitions.

(a) Each Proprietor shall prominently display each Permit at the location where Tobacco-Retailing is permitted by the Permit.

(b) In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a Permit issued, it shall be a violation of this Chapter for a Proprietor or Tobacco Retailer, or any of the Proprietor's or Tobacco Retailer's agents or employees, to:

(1) Violate any Federal, State or local law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(2) Violate any Federal, State or local law regulating exterior, storefront, window, or door signage.

(c) No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

(d) No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a Self-Service Display or engage in Tobacco Retailing by means of a Self-Service Display.

(e) Notwithstanding any other provision of this Chapter, 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:

(1) Any Flavored Tobacco Product.

(2) Any single Cigar packaged for individual sale where the price does not exceed five (\$5) dollars;

(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 Tobacco Product containing fewer than five Cigars.

SECTION 5. Severability.

If any section, sub-section, sentence, clause, or phrase of this ordinance is held by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance, and each section, sub-section, sentence, clause, and phrase hereof, irrespective of the fact that one or more sections, sub-sections, sentences, clauses, and phrases be declared invalid.

SECTION 6. Effective Date.

This ordinance shall take effect and be in force thirty (30) days after its passage, and prior to expiration of fifteen (15) days after its passage thereof, shall be published by title and summary only in the Davis Enterprise together with the names of members of the Board of Supervisors voting for and against the same.

Introduced at a regular meeting of the Board of Supervisors held on the 13th day of September, 2016, and passed and adopted by the Board of Supervisors of the County of Yolo, State of California, on the 27th day of September, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTION:

Jim Provenza, Chair
Yolo County Board of Supervisors

Attest: Julie Dachtler, Deputy Clerk
Yolo County Board of Supervisors

Approved as to Form:
Philip J. Pogledich, County Counsel

By: _____
Deputy (Seal)

By: Hope P. Welton
Hope P. Welton, Senior Deputy