Health & Human Services and Public Safety Committee

Tuesday, October 12, 2021, 5:30 PM
Remote Meeting

Councilor Tae Chong, District 3, Chair
Councilor Belinda Ray, District 1
Councilor Mark Dion, District 5

1. Announcements

   a. Zoom information:
   Please click the link below to join the webinar:
   https://us06web.zoom.us/j/85195482055?pwd=cTBKQWYrd25yYkNLYTJORzd1blpKZz09
   Passcode: 590857
   Or One tap mobile :
   US: +19292056099,,85195482055#,,,,*590857# or +13017158592,,85195482055#,,,,*590857#
   Or Telephone:
   Dial(for higher quality, dial a number based on your current location):
   US: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799
   Webinar ID: 851 9548 2055
   Passcode: 590857
   International numbers available: https://us06web.zoom.us/u/kc323qHcPB

2. Review and Approval of Minutes from September 28, 2021

   a. September 28, 2021 Draft Minutes

3. Updates

   a. HHS Updates
   b. Fire Department Update

4. Flavored Tobacco Ban

   a. Staff Presentation

b. Public Comment

c. Committee Questions and Discussion

5. Next Meeting: November 9, 2021

NOTE: While there are no action items on the agenda, there will be opportunity for public comment on the Flavored Tobacco Ban agenda item at this meeting. Please feel free to send comments to members of the committee on any issue at any time via email. Councilors email addresses are available on the city website: www.portlandmaine.gov

The meeting can be watched online via livestream: www.portlandmaine.gov/livestream

Keep up to date with the new shelter design and planning process at the City's website

www.portlandmaine.gov/shelterplanning

Health & Human Services and Public Safety Committee Minutes

Tuesday, September 29, 2021, 5:30pm, Remote Meeting

Committee Attendance:

Tae Chong, Chair (District 3), Mark Dion (District 5).

City Staff:

Kristen Dow, Director of HHS; Anne Torregrossa, Associate Corporation Counsel; Aaron Geyer, Director of Social Services; Adam Harr, Executive Assistant for Social Services. Keith Gautreau, Fire Chief.

Meeting called to order at 5:40 PM.

AGENDA ITEM 1 – Announcements

- July 13, 2021 draft workshop minutes.
    - Councilor Dion moved to accept the minutes; Councilor Chong seconded and the minutes were accepted 2-0 (Ray absent).

AGENDA ITEM 2 – August Updates

- 39 Forest Avenue Update
    - Moves for the various locations have been scheduled for the following dates:
        - City Hall HHS staff- Today, September 28th
        - Lancaster St staff & GA operations- October 18th
        - India Street staff, clinic & exchange operations- October 28th
    - Held a community update/ Q&A on September 21st from 4-5pm via zoom.
- General Assistance Program
        - Total Applications: 1,232
        - Number of denials: 85
        - Denial rate: 7%
- Oxford Street Shelter and contract hotel:
    - OSS average nightly census: 57
    - Contract hotel average nightly census: 125
        - Funding extended through December 31, 2021.
- Overview of the Family Shelter:
    - Number of on-site at the family shelter: 32 families/ 97 individuals
    - Number of families at local hotels for shelter overflow: 91 families/ 293 individuals
- August totals for the Needle Exchange Program (NEP) are as follows:
    - Total number of exchanges: 769 (261 onsite, 508 outreach)
    - Total number of needles collected: 28,149
    - Total number of needles distributed: 43,237
    - Total number of Narcan doses distributed: 247 kits (494 doses)

    - Community needles collected: 1,629
        - Collected from community sharps containers: 978 (60% of total)
    - Executive order allowing more than a 1:1 exchange ended on August 31st; all syringe services programs must go back to a 1:1 exchange. This affects all programs across the state.
- Clinic Numbers:
    - STD Clinic: Patients seen: 106, new patients: 34
    - PCFC: Patients seen: 46, new patients: 7

Committee questions and discussion

- Councilor Chong requested an executive forecast of what asylum seeker resettlement need looks like in the coming weeks and months.
- The August total needles distributed: 43,237 is high.
    - The shift in increase in numbers appears to be from going from 1:1 to 1:10, then up to 1:50; at that increase to 1:50 is when we saw the numbers distributed jump.
        - There is speculation that people stocked up before the executive order ended but the September numbers will show if the demand goes back down.
- Did we see more calls for services for overdoses during this time?
    - We have not seen a significant jump in overdose.
    - We are 4-5% above in total EMS calls compared to last year.
- Chief Gautreau will start giving regular Fire Department updates starting at the next meeting.
- HHS reports weekly numbers on the website.
    - The week ending September 18th distributed: 8,650 syringes were collects and 7,949 syringes were distributed
- When are people coming for exchanges?
    - Parks and Rec have software tracking locations where syringe litter is collected.
    - Overdose deaths are tracked.
- Councilor Dion received complaints of people living in vehicles in Morrill's Corner and thanked HHS Staff for their quick outreach response.
    - He is concerned people in the colder months may face danger attempting to get warm.
    - Outreach positions have been posted to respond to this need.

AGENDA ITEM 2 – Shelter Licensing

- Associate Corporation Counsel Anne Torregrossa made requested change:
    - Added "solely" to DV shelters.
- Overview:
    - Chapter 15 changes set up a yearly fee of 250 dollars (1-40 beds) and $500 (41+ beds)
    - Licensing fees are based on the cost of enforcement and review.

        - Actual cost is slightly larger than the fees to make it more affordable to shelters.
- Definitions
    - Defines Emergency Shelter: A facility providing temporary overnight shelter to individuals experiencing homelessness in a dormitory-style or per-bed arrangement.
        - For overnight dormitory-style emergency shelter and does impact apartment style shelters.
- Licensing Requirements
    - Must have a license and must meet the standards of the license ordinance to keep the license.
- Licensing Authority
    - The council can issue licenses with additions or limitations to provide for health and welfare.
- Review Procedures
    - All new licenses would be reviewed by the City Council for the initial license.
    - Renewals for the City Council would also go before the City Council.
    - Renewals for all other shelters would go through business licensing.
        - The exception is if a councilor, the Mayor, or the City Manager received complaints and requested it come back before the Council for review.
    - City Departments will give feedback to the council on the applications.
- Application Submission Requirements
    - The applications must include information on the people involved and must have the name and contact information of a community relations liaison who is responsive to the public and for an emergency contact.
    - There are performance standards.
    - On-site supervision.
    - Did not prescribe proximity to METRO but shelters must strategize access.
    - Day space is required for new shelters.
    - Cap of 300 beds in a one-mile radius.
    - Shelters cannot be within 1,000 feet from each other.
- Performance Standards
    - Shelter management holds a monthly meeting with neighbors and the Police Chief to respond to concerns.
    - Domestic Violence shelters are exempted from certain reporting requirements to not avoid revealing their location. This is done by waiver.
- Enforcement and Penalties
    - Monitoring Reports sent to HHS with input from PD.
        - The City Shelter's monitoring reports will be sent to the HHS&PS Committee.
        - A lot of the information is already reported to Maine Housing.
        - Neighborhood concerns and Criminal Trespass Order information collected.

        - A notice of violation will be issued before enforcement action unless it is a repeat violation or immediate risk to health and safety.
        - Enforcement consistent with city ordinances.
            - Penalties and court action are rare.
    - Appeals
        - There is an Appeals process.
    - Pre-existing Shelters
        - We don't want these new provisions to shut down existing shelters.
        - "pre-existing emergency shelter" shall mean (i) an emergency shelter that, as of January 31, 2021, is lawfully operating with all required permits and approvals; (ii) an emergency shelter that, as of January 31, 2021, has received conditional use approval that has not expired, or (iii) the consolidation of the operations of the Joe Kreisler Teen Shelter at 38 Preble Street and the Preble Street Teen Center at 343 Cumberland into one 24/7 emergency shelter facility for teens at 343 Cumberland Avenue provided that there is no expansion of the number of individuals served or beds currently provided between the two existing locations.
        - Pre-existing shelters are exempt from the 300-bed density requirement and 1,000-foot buffer.
    - Severability
        - It is possible to make reasonable accommodations to these requirements.
- Councilor Chong overviewed the process, including two public comments and provider input over nine months.
- Councilor Dion moved to recommend the shelter licensing to the full City Council, Councilor Chong Seconded and the motion was approved unanimously 2 – 0 (Ray absent).

AGENDA ITEM 5 – Next Meeting, October 12, 2021

The meeting adjourned at approximately 6:30 PM

Health & Human Services Department
Kristen Dow, Director

MEMORANDUM

To: Members of the Health & Human Services & Public Safety Committee
From: Kristen Dow, Director of Health & Human Services
Date: October 8, 2021
Re: September Health and Human Services Department Updates

The following data and information is to serve as the monthly update from the Health & Human Services Department to the HHS & PS Committee:

39 Forest Ave relocation update:

- HHS Administrative staff and Public Health staff located at City Hall moved on September 28th.
- Lancaster St staff & GA operations move on October 18th
- India Street staff, clinic & exchange operations move on October 28th
- As a result of recommendations from our September 21st committee meeting, an interested parties email list has been created. The link to sign up can be found on the HHS relocation page: https://portland.civilspace.io/en/projects/the-unification-of-portland-s-health-human-services

The totals for the City's General Assistance Program are as follows:

- Total Applications:1267
- Denials: 116
- Denial rate: 9%

Overview of Oxford Street Shelter and contract hotel:

- OSS average nightly census 65
- Contract hotel average nightly census 129

Overview of the Family Shelter:

- Average number of Families/individuals on site in shelter 28 families/83 individuals
- Average number of families/individuals in hotel overflow 95 families/ 310 individuals

Totals for the Needle Exchange Program (NEP) are as follows:

- Total number of exchanges: 613 (286 onsite, 327 outreach)
- Total number of needles collected: 40,228
- Total number of needles distributed: 38,151
- Total number of Narcan doses distributed: 267 kits (534 doses)
- Community Needles collected: 1,350
    - Collected from community sharps containers: 848 (63%)

Clinic Numbers:

- **STD Clinic:** Patients seen: 97, new patients: 38
- **PCFC:** Patients seen: 52, new patients: 8

CITY OF PORTLAND
Social Services Division
Aaron Geyer, Director

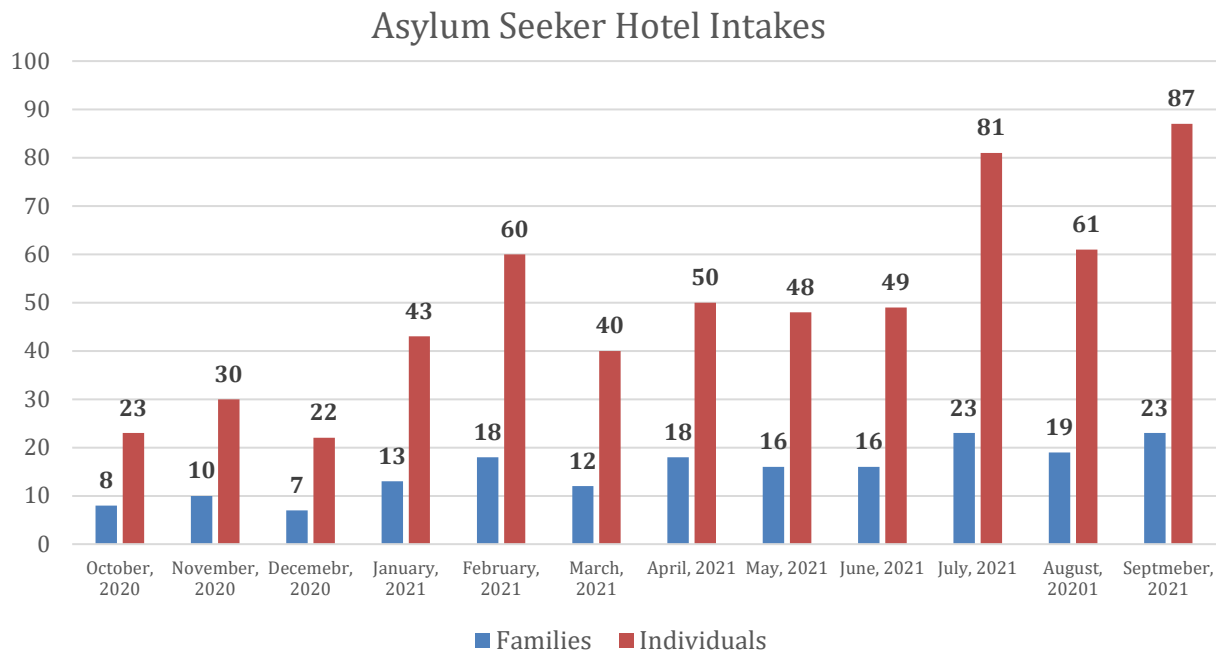
MEMORANDUM

TO: The members of the Health & Human Services and Public Safety Committee
FROM: Aaron Geyer, Social Services Division Director
DATE: October 4, 2021
RE: Asylum Seeker and Resettlement Update

At the September 28th Health & Human Services and Public Safety meeting, Councilor Dion requested an update on asylum seekers, the current landscape at the hotels sheltering families and the number of new arrivals the City is seeing.

Currently, we have 31 families for 88 individuals on-site at the family shelter with four rooms open to absorb after-hours arrivals. Hotels, which are paid and processed through Portland's General Assistance, have a census of 119 families for 390 people. The 478 individuals in families sheltered by the City exceeds the total number of individuals assisted in the summer of 2019, when the City opened the Expo. The families are being served across three hotels and as of last week, these hotels have reached capacity. With capacity at both the shelter and area hotels being reached, we continue to connect with hotel owners in an attempt to locate additional rooms to shelter families. We have reached out to hotels in Westbrook, Portland, Scarborough, Auburn as well as the Old Orchard Beach Chamber of Commerce to gauge membership interest with regard to potential winter rentals. Capacity remains our greatest challenge; as we've seen contracted hotels in other municipalities across the State close, we've seen a corresponding uptick in the number of individuals and families requesting shelter in the form of hotel rooms in Portland. Just last week we received an email from a neighboring municipality because they had three families requesting shelter and all the hotels were full. An additional related concern is that municipal officials in other towns have expressed and outlined concerns that the use of hotels for sheltering could put the hotel in violation. The specific concern was to ensure that all hotels are fully compliant with their licensing requirement, ensure none become in violation of the Disorderly House ordinance, and ensure that properties with land use approval for temporary lodging do not become de facto long term housing units i.e. dwellings, in violation of their site plan approval.

The chart below shows monthly asylum seeker intakes at hotels going back one year:



In the summer of 2019, we established connections with organizations at the Southern border who have kept us apprised of the situation there to better help us anticipate arrivals and trends. These connections include Refugee and Immigrant Center for Education and Legal Services (Raices), the International Rescue Committee in Arizona, and Casa Marianella, an Austin, TX nonprofit. In addition to families coming from the Southern border, other families enter the US on a visa by plane or travelling to Portland after having initially settled in another location where services and housing options were more limited. Val Verde Border Humanitarian Coalition connected with our new Resettlement Coordinator, Chelsea Hoskins, in August 2021 to send a family to Portland. During this conversation, they reported that on one August day they had 400 people come through their program in Del Rio, TX. They serve people who cross the border, primarily from Central America, however they continue to see and accept families from Haiti who traditionally ask to be relocated to FL, and Central Africans, primarily DRC, who request to be sent to Portland, ME. Most of our arrivals are from the Democratic Republic of Congo (DRC).

Funded with Cumberland County CDBG dollars, the new Resettlement Coordinator position works to coordinate services, orientation, and long-term placements for newly arriving homeless families who present to the City for assistance. Immediate goals of the position are to streamline and organize services and resources, coordinate referrals, and partner with external community providers and municipal programs to determine feasible housing options for resettlement with wraparound support options while families are working toward securing housing. Currently, families are averaging about a five-month stay in hotels before admission to the shelter; it then takes an average of four months to secure housing and exit the shelter. Initial efforts toward the position goals began with a meeting held on 9/24/21, with approximately 52 attendees who joined the call. Attendees represented a variety of providers including not only formalized agencies and programs, but also church pastors and community leaders. The goal of this meeting was to determine the capacity of current providers on the ground, reduce duplication of services, streamline immediate needs through collaboration efforts, and identify long term planning goals.

Attendees formed subcommittees across the most immediate and basic needs such as: food access and distribution efforts, planning and preparing a winter clothing drive, and

streamlining medical access. They identified immediate gaps and developed processes on a trial basis to meet those needs which could be resolved creatively. These include developing a process to access emergency medical care while residing at a hotel, identifying and creating a schedule for triage case management for new families entering the hotel, and developing a tool that families and providers can utilize to reduce duplication efforts as families connect with numerous providers over the course of their stay. Long term goals for future subcommittees were identified, as well as many gaps in care. Future subcommittees include the large topics of transportation and housing, which are concerns for all providers and families.

Families and individuals not having consistent access to reliable transportation has far reaching impacts, greatly impeding the path to self-sufficiency. Having little to no transportation limits the ability to go to appointments, grocery stores, immigration check-ins, the doctor and pharmacies, and attend ESL classes to name a few. Housing is a critical need as the vast majority of these families do not qualify for subsidized housing, vouchers, or most apartments housed under property management companies. Quality Housing Coalition is working hard to lift these barriers by partnering with private landlords and housing agencies, however the housing availability and placements through this program, and through other private landlords not affiliated with QHC, continue to fall short of the overall housing need. City staff members in the Social Services Division are inundated with work. The General Assistance office has a line of new families waiting to be assisted for hotel placement daily, including weekends, in addition to the 30-40 existing scheduled appointments, and on top of double digit existing hotel reservations to renew. Family Shelter staff members are constantly pulled from their work as caseworkers, to accept and process the continuous flow of new arrivals. With hotels at capacity oftentimes new arriving families are in overflow rooms at the shelter for several days. These trends are cause for concern regarding overflow space, particularly when 4 or more families arrive on the same day.

While community subcommittees meet to address immediate needs, more support and continuity across the named areas above would be hugely beneficial. With the pace of weekly arrivals, additional case management triage is needed by way of community partners, to help ensure that all families receive orientation to area resources and facilitate more expedient enrollment. Although we are streamlining food distribution efforts, the most efficient food process would be pre-cooked meals similar to the format of the Expo, as most hotels do not offer full kitchens for families to prepare meals, relying solely on microwaves for cooking. The amount or availability of food may not be the barrier; many partner agencies are experiencing staffing shortages which impact their ability to cook and deliver hot meals to all the local hotels daily. Greater Portland Health, Maine Medical Center, and the Local Health Officer in South Portland visit hotels on site to enroll families into medical care each week and face similar human resource limitations. The pace of arrivals often surpasses their available time, resulting in families waiting for healthcare enrollment or access.

Health homes are triaging emergent medical needs at this time of contact and support with time sensitive medical intervention. For example, individuals present who have little to no medication left to manage a chronic condition like diabetes, or children who present suffering malnourishment or dehydration from their travels and need to access emergency care upon arrival. Several agency providers identified legal clinics and Immigration attorneys as a large need they are witnessing. ILAP, and other pro bono legal services, provide many resources, and guidance to families and individuals about the asylum process, however as has been the case for many years, the amount of those seeking legal representation simply cannot be met with the resources available. Families and individuals are in need of instruction related to their ICE check-in process, as well as language support to complete proper check-ins, and guidance related to their immigration documents and status, as processes change quickly.

In the time of COVID we are all keenly aware of the importance of being able to conduct business virtually, or by phone. Many families do not have phones or phone plans which allow for unlimited data or minutes for calls. Few resources are available which can fill this need. Families and individuals are in need of working phones to ensure they can receive phone calls from their medical providers, complete immigration phone check-ins, connect with their child's school, or even access virtual resources such as self-help materials on ILAP's website, or online ESL classes.

Since the community partner meeting convened on September 24th, efforts are underway to attempt to fill gaps in service, with a renewed appreciation for everyone working in this space. However, even with all of the combined efforts the sheer number of individuals in need of support continue to stretch available resources. City staff members working closely with families continue to be informed that families are en route to Portland on a weekly basis. Over the past three weeks alone, we have received 28 families. Many of those who arrive in Maine have identified Portland's Family Shelter as their final destination, even before they cross the border into the United States. Additionally, many asylum seekers also report their intention is to relocate to Canada once they feel confident they will be accepted at the border.

CITY OF PORTLAND
Health and Human Services

MEMORANDUM

TO:	**Kristen Dow, Director of Health and Human Services** **Tina Pettingill, Deputy Director of Health and Human Services** **Bob Fowler, Public Health Director** **Bridget Rauscher, Chronic Disease Prevention Manager**
FROM:	**Kirsten Goodrich, Public Health Division, Tobacco Prevention Program**
DATE:	**October 7, 2021**
SUBJECT:	**Full Ban of All Flavored Tobacco Products**

Introduction
The information contained in this memo is in response to the request for information pertaining to a full ban of flavored tobacco products, including e-cigarettes, in the City of Portland.

Background:
According to the National Youth Tobacco Survey released in September 2021, nearly 85% of young people using e-cigarettes are using flavored products. In 2009, all cigarette flavors, except for menthol, were banned across the United States, as part of the Family Smoking Prevention and Tobacco Control Act. Effective July, 2010, Maine banned the sale of flavored cigars. The Centers for Disease Control and Prevention (CDC) reported between 2011-2020, after the cigarette flavor ban, youth smoking rates declined at a steady rate, indicating that flavor bans have been a successful public health strategy.

Since 2009, laws banning all flavored tobacco products, with the inclusion of menthol, have been heavily on the rise as such restrictions have been shown to reduce the risk of nicotine addiction among youth. In April 2021, the FDA announced its intention to ban menthol flavoring in cigarettes, addressing health impacts to communities of color and LGBTQ+ individuals of all ages who are more likely to use these products. According to the CDC, African American adults have the highest percentage of menthol cigarette use compared to other racial and ethnic groups. Additionally, a report from the National LGBTQ Young Adult Tobacco Project, 71% of LGBTQ youth who smoke cigarettes use menthol cigarettes.

In Cumberland county, the 2019 Maine Integrated Youth Health Survey (MIYHS) reported that 45% of high school students have tried an e-cigarette at least once and 29% of high school students reported having used an electronic vapor product at least once in the past 30 days.* While youth use of combustible tobacco products (cigarettes) has declined for nearly two

decades, schools around the state have seen and reported a dramatic increase in youth electronic cigarette use. This is demonstrated by MIYHS data that shows youth e-cigarette use nearly doubling from 15.3% in 2017 to 28.7% in 2019. *Portland specific data not available.

As of February 2020, the majority of flavored e-cigarettes (including JUUL) are no longer legally sold in the United States due to FDA guidance that prohibits all sales of cartridge-based e-cigarettes not flavored with menthol or tobacco. Unfortunately, the guidance continues to permit the sale of menthol-flavored cartridges, and fails to restrict reusable cartridges and disposable devices.

Recommendations
We recommend a full flavor ban for all tobacco products, inclusive of mint and menthol, for the City of Portland.

Failure to adopt a full flavor ban by the FDA has resulted in a wave of states and municipalities taking action. States and localities across the country are taking appropriate steps to restrict the sale of flavored tobacco products. Bangor, Maine is currently considering this ban for all flavored tobacco products with the ordinance unanimously passing through committee.In recent years, while youth smoking rates have decreased, tobacco companies have begun enticing a new generation of young consumers with candy-flavored e-cigarette products. There are currently more than 15,000 flavors of e-cigarettes on the market today. The FDA recently estimated that more than two million U.S. middle and high school students reported currently using e-cigarettes in 2021, with more than 8 in 10 of those youth using flavored e-cigarettes.

Five states and over 310 localities have moved forward with full flavor tobacco bans. A ban on all flavored tobacco products would exceed the current restrictions on all other tobacco and combustible products. Tobacco use remains the leading cause of death and disease in this country with over 480,000 deaths per year. Previous studies have shown flavors play a major role in youth initiation and continued use of tobacco products. Banning the sale of all flavored tobacco products, including mint and menthol, within the City of Portland is a key step in reducing youth use and promoting health equity.

Enforcement
An ordinance would ban the sale, display, marketing, and advertising of flavored tobacco products. Such a ban would apply to all retailers within the City of Portland. In looking at Bangor and around the country, most ordinances impose a progressive fine on retailers. Bangor proposes a fine of up to $100 for the first violation within a twenty-four month period and a fine of up to $1,000 for each subsequent offense within that twenty-four month period. The Public Health Division recommends a progressive fine that would align with similar municipal bans.

Enforcement would be the responsibility of Portland's Public Health Director, similar to our Tobacco 21 ordinance (Chapter 17) which states "The City of Portland's Public Health Division Director or his or her designee(s) shall have the primary responsibility for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance. (d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this

Code." Under that section, each violation is punishable by a minimum fine of $100 and a maximum fine of $500.

Efficacy-Related Sources

Bach, L. (December, 2019). *Flavored Tobacco Products Attract Kids*. Tobacco Free Kids. https://www.tobaccofreekids.org/assets/factsheets/0383.pdf

Bach, L. (January, 2020). *States and Localities That Have Restricted The Sale of Flavored Tobacco Products*. Campaign for Tobacco Free Kids. https://www.tobaccofreekids.org/assets/factsheets/0398.pdf

Caccamo, S. (January, 2020). *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-based E-cigarettes that Appeal to Children, Including Fruit and Mint*. U.S. Food and Drug Administration. https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children

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The Centers for Disease Control and Prevention. (2018). https://www.cdc.gov/tobacco/disparities/african-americans/index.htm

FDA Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers. (2021). U.S. Food and Drug Administration. https://www.fda.gov/news-events/press-announcements/fda-commits-evidence-based-actions-aimed-saving-lives-and-preventing-future-generations-smokers

Jamal et al. (2017). *Tobacco Use Among Middle and High School Students - United States, 2011-2016.* MMWR Morb Mortal Wkly Rpt.; 66:597–603. DOI: http://dx.doi.org/10.15585/mmwr.mm6623a1

Levy et al. (2011). *Modeling the Future Effects of a Menthol Ban on Smoking Prevalence and Smoking-Attributable Deaths in the United States American Journal of Public Health* 101, 1236_1240, https://doi.org/10.2105/AJPH.2011.300179

Prieur, N. (December, 2018). *National Adolescent Drug Trends in 2018. Vaping Surges: Largest Year-to-Year Increase in Substance Use Ever Recorded in the U.S. for 10th and 12th Grade Students.* Institute for Social Research. https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018

Results from the Annual National Youth Tobacco Survey. (September 2021.) https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey

Youth E-cigarette Use Remains Serious Public Health Concern amid Covid-19 Pandemic. (September, 2021). U.S. Food and Drug Administration. www.fda.gov/news-events/press-announcements/youth-e-cigarette-use-remains-serious-public-health-concern-amid-covid-19-pandemic.

FDA NEWS RELEASE

FDA Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers

Efforts to ban menthol cigarettes, ban flavored cigars build on previous flavor ban and mark significant steps to reduce addiction and youth experimentation, improve quitting, and address health disparities

For Immediate Release:

April 29, 2021

Español (/news-events/press-announcements/la-fda-se-compromete-tomar-medidas-basadas-en-la-evidencia-dirigidas-salvar-vidas-y-prevenir-futuras)

Today, the U.S. Food and Drug Administration announced it is committing to advancing two tobacco product standards to significantly reduce disease and death from using combusted tobacco products, the leading cause of preventable death in the U.S. The FDA is working toward issuing proposed product standards within the next year to ban menthol as a characterizing flavor in cigarettes and ban all characterizing flavors (including menthol) in cigars; the authority to adopt product standards is one of the most powerful tobacco regulatory tools Congress gave the agency. This decision is based on clear science and evidence establishing the addictiveness and harm of these products and builds on important, previous actions that banned other flavored cigarettes in 2009.

"Banning menthol—the last allowable flavor—in cigarettes and banning all flavors in cigars will help save lives, particularly among those disproportionately affected by these deadly products. With these actions, the FDA will help significantly reduce youth initiation, increase the chances of smoking cessation among current smokers, and address health disparities experienced by communities of color, low-income populations, and LGBTQ+ individuals, all of whom are far more likely to use these tobacco products," said Acting FDA Commissioner Janet Woodcock, M.D. "Together, these actions represent powerful, science-based approaches that will have an extraordinary public health impact. Armed with strong scientific evidence, and with full support from the Administration (https://www.hhs.gov/about/news/2021/04/29/statement-hhs-secretary-xavier-becerra-fda-tobacco-actions-menthol-cigarettes-flavored-cigars.html), we believe these actions will launch us on a trajectory toward ending tobacco-related disease and death in the U.S."

The agency is taking urgent action to reduce tobacco addiction and curb deaths. There is strong evidence that a menthol ban will help people quit. Studies show that menthol increases the appeal of tobacco and facilitates progression to regular smoking, particularly among youth and young adults. Menthol masks unpleasant flavors and harshness of tobacco products, making them easier to start using. Tobacco products with menthol can also be more addictive and harder to quit by enhancing the effects of nicotine. One study (https://tobaccocontrol.bmj.com/content/early/2021/03/31/tobaccocontrol-2020-056259) (http://www.fda.gov/about-fda/website-policies/website-disclaimer) suggests that banning menthol cigarettes in the U.S. would lead an additional 923,000 smokers to quit, including 230,000 African Americans in the first 13 to 17 months after a ban goes into effect. An earlier study (https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2011.300179) (http://www.fda.gov/about-fda/website-policies/website-disclaimer) projected that about 633,000 deaths would be averted, including about 237,000 deaths averted for African Americans.

"For far too long, certain populations, including African Americans, have been targeted, and disproportionately impacted by tobacco use. Despite the tremendous progress we've made in getting people to stop smoking over the past 55 years, that progress hasn't been experienced by everyone equally," said Mitch Zeller, J.D., director of the FDA's Center for Tobacco Products. "These flavor standards would reduce cigarette and cigar initiation and use, reduce health disparities, and promote health equity by addressing a significant and disparate source of harm. Taken together, these policies will help save lives and improve the public health of our country as we confront the leading cause of preventable disease and death."

If implemented, the FDA's enforcement of any ban on menthol cigarettes and all flavored cigars will only address manufacturers, distributors, wholesalers, importers and retailers. The FDA cannot and will not enforce against individual consumer possession or use of menthol cigarettes or any tobacco product. The FDA will work to make sure that any unlawful tobacco products do not make their way onto the market.

These actions are an important opportunity to achieve significant, meaningful public health gains and advance health equity. The FDA is working expeditiously on the two issues, and the next step will be for the agency to publish proposed rules in the Federal Register allowing an opportunity for public comment.

The agency also recognizes the importance of ensuring broad and equitable access to all the tools and resources that can help currently addicted smokers seeking to quit, including those who smoke menthol cigarettes and would be impacted by these public health measures. The FDA will work with partners in other federal agencies to make sure the support is there for those who are trying to quit. Smokers interested in quitting today should visit smokefree.gov (https://smokefree.gov/) or call 1-800-QUIT-NOW to learn about cessation services available in their state.

The FDA also remains focused on its regulatory oversight of e-cigarettes and other electronic nicotine delivery systems (ENDS). The Center for Tobacco Products recently provided an update (/tobacco-products/ctp-newsroom/perspective-fdas-progress-review-tobacco-product-applications-submitted-sept-9-2020-deadline) on its ongoing work of conducting the premarket review of ENDS and other tobacco product applications, and has issued warning letters to ENDS product manufacturers and retailers who continue to sell products that are illegally on the market. The FDA has also made a significant investment in a multimedia e-cigarette public education campaign. The campaign targets nearly 10.7 million youth aged 12-17 who have ever used e-cigarettes or are open to trying them, and highlights information about the potential risks of e-cigarette use.

Background on Today's Actions

Menthol Product Standard

Today, the FDA granted a citizen petition requesting that the agency pursue rulemaking to prohibit menthol in cigarettes, affirming its commitment to proposing such a product standard.

The 2009 Tobacco Control Act (TCA) did not include menthol in its ban on characterizing flavors in cigarettes, leaving menthol cigarettes as the only flavored combusted cigarettes still marketed in the U.S. The law instructed the FDA to further consider the issue of menthol in cigarettes.

Since then, the FDA sought input from an independent advisory committee as required by the TCA (https://wayback.archive-it.org/7993/20170404143901/https:/www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/u (http://www.fda.gov/about-fda/website-policies/website-disclaimer), and further demonstrated its interest by issuing an Advance Notice of Proposed Rulemaking (https://www.federalregister.gov/documents/2013/07/24/2013-17805/menthol-in-cigarettes-tobacco-products-request-for-comments), undertaking an independent evaluation (https://www.fda.gov/media/86497/download) and supporting broader research efforts—all to better understand the differences between menthol and non-menthol cigarettes and the impact of menthol on population health.

In the U.S., it is estimated that there are nearly 18.6 million current smokers of menthol cigarettes. But use of menthol cigarettes among smokers is not uniform: out of all Black smokers, nearly 85% smoke menthol cigarettes, compared to 30% of White smokers who smoke menthols. In addition, among youth, from 2011 to 2018, declines in menthol cigarette use were observed among non-Hispanic White youth but not among non-Hispanic Black or Hispanic youth.

Cigar Flavor Product Standard

After the 2009 statutory ban on flavors in cigarettes other than menthol, use of flavored cigars increased dramatically, suggesting that the public health goals of the flavored cigarette ban may have been undermined by continued availability of these flavored cigars.

Flavored mass-produced cigars and cigarillos are combusted tobacco products that can closely resemble cigarettes, pose many of the same public health problems, and are disproportionately popular among youth and other populations. In 2020, non-Hispanic Black high school students reported past 30-day cigar smoking at levels twice as high as their White counterparts.

Nearly 74% of youth aged 12-17 who use cigars say they smoke cigars because they come in flavors they enjoy. Among youth who have ever tried a cigar, 68% of cigarillo users and 56% of filtered cigar users report that their first cigar was a flavored product. Moreover, in 2020, more young people tried a cigar every day than tried a cigarette.

Related Information

- Statement by HHS Secretary Xavier Becerra on FDA Tobacco Actions on Menthol Cigarettes and Flavored Cigars (https://www.hhs.gov/about/news/2021/04/29/statement-hhs-secretary-xavier-becerra-fda-tobacco-actions-menthol-cigarettes-flavored-cigars.html)

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The FDA, an agency within the U.S. Department of Health and Human Services, protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices. The agency also is responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, products that give off electronic radiation, and for regulating tobacco products.

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STATES & LOCALITIES THAT HAVE RESTRICTED THE SALE OF FLAVORED TOBACCO PRODUCTS

Cigarettes with specific characterizing flavors, other than menthol, were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products. In addition to the federal ban on flavored cigarettes, states and localities can implement additional sales restrictions to address menthol cigarettes and flavored non-cigarette tobacco products and their appeal to youth and young adults.

States

In November 2019, Massachusetts became the first state to restrict the sale of all flavored tobacco products, including menthol cigarettes. In 2020, New Jersey, New York and Rhode Island enacted bans on the sale of flavored e-cigarettes and California became the second state to prohibit the sale of both flavored e-cigarettes and menthol cigarettes.

1. **Massachusetts**[2] (effective 11/27/19 for e-cigarettes; 6/1/20 for all other products)
2. New Jersey[4] (effective 4/20/20)
3. New York[4,7] (effective 5/18/20)
4. Rhode Island[4] (effective 3/26/20)
5. **California**[6,8,9] (implementation pending referendum vote)

In 2019, eight states—Massachusetts, Michigan, Montana, New York, Oregon, Rhode Island, Utah and Washington—issued emergency rules to temporarily ban the sale of flavored e-cigarettes. As a result of legal challenges, these orders were blocked in Michigan, New York, Oregon and Utah. The Montana and Washington state orders have expired. Massachusetts, New York and Rhode Island later enacted permanent bans. Utah later enacted regulations restricting the sale of flavored e-cigarettes (except mint/menthol) to adult-only retail tobacco specialty businesses

Prior to the enactment of the Tobacco Control Act, New Jersey had already restricted the sale of flavored cigarettes, excluding menthol and clove flavors. Maine prohibits the sale of flavored non-premium cigars.

Localities

At least 310 localities have passed restrictions* on the sale of flavored tobacco products, although laws differ in their application to specific products and store types (see endnotes). At least 120 of these communities—those listed in **bold**—restrict the sale of menthol cigarettes, in addition to other flavored tobacco products.

California (109)

1. **Adelanto**
2. **Alameda**
3. **Alameda County**[3]
4. **Albany**
5. **Alturas**
6. Anderson[2,4]
7. Arroyo Grande[4,7]
8. Auburn
9. **Benicia**
10. **Berkeley**
11. **Beverly Hills**
12. **Burbank**[2]
13. **Burlingame**

California (cont'd)

14. Calabasas[2]
15. **Capitola**
16. **Carpinteria**
17. **Carson**
18. Cerritos[4]
19. Cloverdale
20. **Compton**[2]
21. **Contra Costa County**[3]
22. **Corte Madera**
23. **Cudahy**
24. **Culver City**[2]
25. **Cupertino**
26. Danville[4,7]

California (cont'd)

27. **Davis**
28. **Delano**
29. **Dublin**
30. **East Palo Alto**
31. El Cerrito
32. **El Monte**
33. **Encinitas**[6]
34. **Fairfax**
35. **Fremont**
36. **Glendale**[6,8,9]
37. **Guadalupe**
38. **Half Moon Bay**
39. **Hayward**

California (cont'd)

40. **Hermosa Beach**
41. **Imperial Beach**
42. **Lafayette**
43. **Laguna Niguel**
44. **Larkspur**
45. **Livermore**
46. **Long Beach**[6,8,9]
47. Loomis[4]
48. **Los Altos**[2]
49. **Los Angeles County**[3]
50. **Los Gatos**
51. **Mammoth Lakes**
52. **Manhattan Beach**
53. **Marin County**[3]
54. **Maywood**
55. **Mendocino County**[3]
56. **Menlo Park**
57. **Mill Valley**
58. **Mono County**[3]
59. **Morgan Hill**
60. Morro Bay[5]
61. Novato
62. **Oakland**
63. **Oroville**
64. **Oxnard**
65. **Napa**[6,8,9]
66. **Pacific Grove**
67. Palmdale[4]
68. **Palo Alto**
69. **Paradise**
70. Pinole
71. **Pleasanton**
72. **Portola Valley**
73. **Redondo Beach**[2]
74. **Richmond**
75. **Ross**
76. **Sacramento**
77. **San Anselmo**
78. **San Carlos**
79. **San Diego County**[3,6,8,9]
80. **San Francisco**
81. San Leandro
82. San Luis Obispo[4,7]
83. San Luis Obispo County[3,4,7]
84. **San Mateo**
85. **San Mateo County**[3]
86. **San Pablo**
87. **San Rafael**
88. **Santa Barbara County**[3]
89. **Santa Clara County**[3]
90. **Santa Clarita**
91. **Santa Cruz**
92. **Santa Cruz County**[3]
93. **Santa Maria**
94. Saratoga

California (cont'd)

95. **Sausalito**
96. **Sebastopol**
97. **Solana Beach**
98. Sonoma[4]
99. **South San Francisco**
100. **Sunnyvale**
101. **Tiburon**
102. **Ventura**
103. Ventura County[3,4]
104. **Watsonville**
105. **West Hollywood**[6]
106. **West Sacramento**
107. Windsor
108. **Woodland**
109. **Yolo County**[3]

Colorado (5)

1. **Aspen**
2. Boulder[4]
3. **Carbondale**
4. **Glenwood Springs**
5. **Snowmass Village**

Illinois (1)

1. **Chicago**[1]

Massachusetts (168)

1. **Acton**[2]
2. Adams[2]
3. Agawam[2]
4. Andover[2]
5. Amherst[2]
6. Arlington[2]
7. Ashburnham[2]
8. Ashby[2]
9. **Ashland**[2]
10. Athol[2]
11. Attleboro[2]
12. Avon[2]
13. Ayer[2]
14. **Barnstable**[2]
15. Bedford[2]
16. Belmont[2]
17. Beverly[2]
18. Billerica[2]
19. Bolton[2]
20. **Boston**[2]
21. Braintree[2]
22. Brewster[2]
23. Brockton[2]
24. **Brookline**
25. Buckland[2]
26. Cambridge[2]
27. Canton[2]
28. Carver[2]
29. Charlemont[2]
30. Charlton[2]
31. **Chatham**[2]

Massachusetts (cont'd)

32. Chelsea[2]
33. Chelmsford[2]
34. Clinton[2]
35. Cohasset[2]
36. Concord[2]
37. Conway[2]
38. Danvers[2]
39. Dedham[2]
40. Deerfield[2]
41. Dracut[2]
42. Duxbury[2]
43. Easthampton[2]
44. E. Longmeadow[2]
45. Easton[2]
46. Edgartown[2]
47. Essex[2]
48. Everett[2]
49. Fairhaven[2]
50. Fitchburg[2]
51. **Framingham**[2]
52. Franklin[2]
53. Gardner[2]
54. Gill[2]
55. Gloucester[2]
56. Grafton[2]
57. Granby[2]
58. Greenfield[2]
59. Groton[2]
60. Hadley[2]
61. Halifax[2]
62. Hamilton[2]
63. **Harvard**[2]
64. **Harwich**[2]
65. Hatfield[2]
66. Haverhill[2]
67. Holbrook[2]
68. Holden[2]
69. Holyoke[2]
70. Hopkinton[2]
71. Ipswich[2]
72. Lancaster[2]
73. Lanesboro[2]
74. Lawrence[2]
75. Leominster[2]
76. Lee[2]
77. Lenox[2]
78. Leverett[2]
79. Littleton[2]
80. Lowell[2]
81. Ludlow[2]
82. Lynn[2]
83. Lynnfield[2]
84. **Malden**[2]
85. Marblehead[2]
86. Marion[2]
87. Marlboro[2]
88. Marshfield[2]

Massachusetts (cont'd)
89. Mashpee[2]
90. Maynard[2]
91. Medfield[2]
92. Medford[2]
93. Melrose[2]
94. Methuen[2]
95. **Middleboro[2]**
96. Middleton[2]
97. Millis[2]
98. Milton[2]
99. Montague[2]
100. Natick[2]
101. **Needham**[2]
102. Newburyport[2]
103. Newton[2]
104. **Norfolk[2]**
105. North Adams[2]
106. **North Andover[2]**
107. North Attleboro[2]
108. Northampton[2]
109. North Reading[2]
110. Norton[2]
111. Norwell[2]
112. **Norwood**[2]
113. Oak Bluffs[2]
114. Orange[2]
115. Orleans[2]
116. Palmer[2]
117. Peabody[2]
118. Pittsfield[2]
119. Provincetown[2]
120. Reading[2]
121. Rockport[2]
122. Royalston[2]
123. Salem[2]
124. Sandwich[2]
125. Saugus[2]
126. **Sharon**[2]
127. Shelburne[2]
128. Sherborn[2]
129. Shrewsbury[2]
130. **Somerville**[2]
131. Southampton[2]
132. **South Hadley[2]**
133. Spencer[2]

Massachusetts (cont'd)
134. Stockbridge[2]
135. Stoneham[2]
136. **Stoughton[2]**
137. Stow[2]
138. Sudbury[2]
139. Sunderland[2]
140. **Swampscott**[2]
141. Templeton[2]
142. Tewksbury[2]
143. Topsfield[2]
144. Townsend[2]
145. Tyngsboro[2]
146. Upton[2]
147. Uxbridge[2]
148. Wakefield[2]
149. **Walpole[2]**
150. Wareham[2]
151. Watertown[2]
152. Webster[2]
153. Wellfleet[2]
154. West Boylston[2]
155. Westboro[2]
156. Westford[2]
157. Westminster[2]
158. Westwood[2]
159. Whately
160. Wilbraham[2]
161. Williamstown[2]
162. Wilmington[2]
163. Winchendon[2]
164. Winchester[2]
165. Winthrop[2]
166. Worcester[2]
167. Wrentham[2]
168. Yarmouth[2]

Minnesota (19)
1. **Arden Hills**
2. **Bloomington**
3. **Duluth[2]**
4. **Edina**
5. **Falcon Heights[2]**
6. **Fridley[2]**
7. **Golden Valley**
8. **Hennepin County[2,3]**

Minnesota (cont'd)
9. **Lauderdale**
10. **Lilydale**
11. **Mendota Heights**
12. **Minneapolis[2]**
13. New Hope
14. Robbinsdale[2]
15. **Roseville[2]**
16. Rushford[2]
17. St. Louis Park[2]
18. **St. Paul[2]**
19. Shoreview[2]

Montana (1)
1. Missoula[4]

New Jersey (1)
1. Jersey City[4]

New York (3)
1. New York City[2]
2. **Manheim**
3. Yonkers[4]

Pennsylvania (1)
1. Philadelphia[2,5,6]

Rhode Island (6)
1. Barrington[2]
2. Central Falls[2]
3. Johnston[2]
4. Middletown[2]
5. Providence[2]
6. Woonsocket[2]

MA localities courtesy of the Municipal Tobacco Control Technical Assistance Program.

*****The above list may not be comprehensive. It includes communities that have passed restrictions, but some have future implementation dates and/or are the subject of litigation.

Campaign for Tobacco-Free Kids, June 8, 2021 / Laura Bach

[1] Chicago's e-cigarette flavor ban is comprehensive, but restrictions on other tobacco products apply only to retailers within 500 feet of high schools and exempt adult-only tobacco retailers
[2] Exempts certain types of retailers, such as tobacco retailers (stores that receive a certain proportion of their revenue from tobacco), tobacco/smoking bars, hookah bars, e-cigarette establishments, adult-only retailers and/or liquor stores.
[3] Applies only to retailers in unincorporated areas of the County.
[4] Flavor restrictions only apply to e-cigarettes.
[5] Exempts smokeless tobacco.
[6] Exempts hookah tobacco
[7] Exempts products that have received a marketing order from the FDA. Currently, no e-cigarettes have received a marketing order.
[8] Exempts pipe tobacco
[9] Exempts premium cigars

Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products.[1] However, before that, tobacco companies marketed cigarettes with flavors, images, and names that appealed to a young audience. Despite the FDA's ban on flavored cigarettes, the overall market for flavored tobacco products is growing. Continuing a long tradition of designing products that appeal explicitly to new users, tobacco companies in recent years have significantly stepped up the introduction and marketing of flavored other tobacco products (OTPs), particularly e-cigarettes and cigars, as well as smokeless tobacco and hookah. With their colorful packaging and sweet flavors, today's flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets. Although tobacco companies claim to be responding to adult tobacco users' demand for variety, flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. This growing market for flavored tobacco products is undermining the nation's overall progress in reducing youth tobacco use.

Flavored Tobacco Products are on the Rise

Tobacco companies market products in many kid-friendly flavors such as gummy bear, berry blend, chocolate, peach, cotton candy, strawberry, and grape, and more seem inevitable. "Candy-flavored" is, in fact, an appropriate way to describe these products since a recent chemical analysis has shown that the same flavor chemicals used in sweet-flavored cigars of various sizes and smokeless tobacco products are also used in popular candy and drink products such as LifeSavers, Jolly Ranchers, and Kool-Aid.[2] A 2013 survey of internet tobacco retailers found that more than 40% of cigarette-sized cigars, machine-made cigars, moist snuff, and dry snuff tobacco products were flavored, including fruit, sweet, and mint/menthol.[3] An article in *Convenience Store News* stated, "flavored tobacco is offering a bright spot in the category," referring to the increased tobacco sales – and number of consumers – in stores that sell such products.[4]

***Cigars*.** Historically, cigar manufacturers designed flavored cigars to serve as "starter" smokes for youth and young adults because the flavors helped mask the harshness, making the products easier to smoke.[5] Recently, there has been an explosion of cheap, flavored cigars. Sales of cigars (i.e., large cigars, cigarillos, and small cigars) have more than doubled between 2000 and 2019, from 6.1 billion cigars to 13.4 billion cigars, and sales have been generally increasing at a time when cigarette smoking has been declining.[6]

Much of the growth in cigar sales is attributable to smaller types of cigars, many of them flavored. An industry publication stated, "While different cigars target a variety of markets, all flavored tobacco products tend to appeal primarily to younger consumers."[7] These products are often colorfully packaged and much cheaper than cigarettes; for instance, cigarillos can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth.

- There has been an explosive growth in flavor options for cigars, such as candy, fruit, chocolate, and various other kid-attracting tastes. The vice president of one distributor commented, "For a while it felt as if we were operating a Baskin-Robbins ice cream store" in reference to the huge variety of cigar flavors available – and, no doubt, an allusion to flavors that would appeal to kids.[8]
- Flavored cigars have made a substantial contribution to the overall growth of the cigar market. 2015 Nielsen convenience store market scanner data show that sales of flavored cigars increased by nearly 50% since 2008. As a proportion of all cigar sales in these stores, the share of flavored cigars rose from 43.6% in 2008 to 52.1% in 2015. Among flavored cigars sold in these stores in 2015, the most popular flavors were fruit (38.8%), sweet or candy (21.2%), and wine (17.0%). Further, the number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.[9]

Including additional store types, Nielsen data showed that flavored cigars made up 43% of cigar sales in 2015, an increase from 2011.[10]

- The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Swisher Sweets, Black & Mild, Backwoods, White Owl, and Dutch Masters – all come in flavor varieties.[11] For example, Black & Mild cigars come in flavors such as apple and cherry; Swisher Sweets comes in a huge variety of flavors such as tropical fusion, Maui pineapple, twisted berry, cherry dynamite and banana smash; and White Owl has flavors such as mango, tropical twist, strawberry kiwi and peach. Altria, the nation's largest tobacco manufacturer and parent company of Philip Morris USA, expanded its business to the cigar category in 2007 by acquiring John Middleton, Inc., which sells Black & Mild.
- Nielsen convenience store market scanner data also show an increasing number of products with names that do not explicitly identify a flavor, such as Swisher's "Wild Rush" and Altria's "Jazz," even though they are flavored. From 2012 to 2016, the proportion of all cigar sales comprised by these products (which researchers call "concept flavors") increased from 9% to 15%. The increase was greatest among cigarillos, among which the number of unique concept flavors more than doubled, from 17 to 46.[12] This strategy could be an attempt by cigar manufacturers to circumvent or complicate enforcement of local sales restrictions on characterizing flavors, some of which rely on definitions that describe flavors.

Since the Tobacco Control Act prohibited flavored cigarettes in 2009, cigarette makers have manipulated their products to qualify as "little" or "filtered" cigars.[13] For instance, the 2012 Surgeon General's report, *Preventing Tobacco Use Among Youth and Young Adults*, noted that flavored cigarettes such as Sweet Dreams re-emerged as Sweet Dreams flavored cigars after the federal restriction on flavored cigarettes went into effect.[14] In October 2009, U.S. Representatives Henry Waxman and Bart Stupak sent letters to two flavored cigarette companies, Cheyenne International and Kretek International, that began making little cigars shortly after the federal flavored cigarette ban went into effect.[15] Rep. Waxman discovered that Kretek International intentionally changed their cigarettes to cigars to exploit a loophole in the TCA.[16] In December 2016, the FDA issued warning letters to four tobacco manufacturers – Swisher International, Inc., Cheyenne International LLC, Prime Time International Co. and Southern Cross Tobacco Company Inc. – for marketing and selling fruit-flavored cigarettes labeled as cigars, in violation of the 2009 Tobacco Control Act.[17]

***Electronic Cigarettes*.** Although these products are relatively new to the market, the variety of flavors available for use in e-cigarettes has grown exponentially. E-cigarette marketing employs many of the same strategies used for years by cigarette manufacturers that proved so effective in reaching kids, such as celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships. Another strategy has been the widespread marketing of e-cigarettes and nicotine "e-juice" with a wild assortment of candy, fruit and other flavors. Flavors are not just a critical part of the product design, but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded that, **"E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults."**[18]

- As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.[19] An earlier study of e-cigarette flavors found that among the more than 400 brands available online in 2014, 84% offered fruit flavors and 80% offered candy and dessert flavors.[20]
- In addition to the more traditional candy and fruit flavors like cherry and chocolate, the liquid nicotine solutions are sold in such kid-friendly options as cotton candy, root beer float, and banana split. One study even uncovered over twenty different types of unicorn-flavored e-liquid, often paired with cartoon imagery, undoubtedly appealing to kids.[21]
- "Vape shops," which are specialty e-cigarette retail stores, offer an even wider assortment of flavors. In addition to the pre-made options, these stores allow patrons to mix their own preferred flavor combinations.[22]

In January 2020, the FDA issued guidance restricting some flavors in cartridge-based e-cigarettes, but exempted menthol-flavored e-cigarettes and left flavored e-liquids and disposable e-cigarettes widely available in every imaginable flavor. As a result, sales of these products have grown substantially:

- From February 2020 to June 2021, sales of disposable e-cigarettes increased by over 200% (from 2.8 million units to 8.5 million units). During this time period, the proportion of total e-cigarette sales that were disposable devices nearly doubled, from 18.8% to 38%. Disposables are widely sold in kid-friendly flavors like fruit and candy. 80% of disposable sales are of flavors other than tobacco, mint and menthol.[23]
- From February 2020 to June 2021, menthol flavored e-cigarette sales increased by 42.5% (from 6.4 million units to 9.1 million units), and they are now the top selling e-cigarette flavor, comprising 40.4% of the market. Sales of menthol-flavored cartridge-based products (like JUUL) increased by 47% over this same time.[24]

The use of flavors in e-cigarette products is of even greater concern because e-cigarettes are the subject of extensive advertising campaigns, and there is evidence that young people are exposed to significant amounts of e-cigarette advertising. The 2019 National Youth Tobacco Survey found that 69.3% of middle and high school students—over 18.2 million youth—had been exposed to e-cigarette advertisements from at least one source.[25]

***Smokeless Tobacco*.** The variety of flavored smokeless tobacco products has grown over time and continues to grow.

- U.S. Smokeless Tobacco Company (UST, owned by Philip Morris USA's parent company, Altria) increased the number of its sub-brands—including flavored products—by 140% from 2000 to 2006 in order to "cast a wide net" and appeal to as many potential users as possible.[26] In 2011, more than 80% of Skoal smokeless tobacco sold in convenience stores was flavored; and more than one out of five (21.1%) were fruit-flavored.[27] Current Skoal flavors include kid-friendly peach, citrus, cherry, berry, and apple.
- Between 2011 and 2019, the portion of flavored moist snuff products grew such that these products accounted for two-thirds of moist snuff products sold in 2019. Mint-type flavors (e.g., wintergreen, mint, spearmint) are by far the most popular.[28]
- In 2019, nearly 90% of snus products sold were flavored as wintergreen, spearmint, and mint. All newer non-tobacco nicotine pouches are flavored, with wintergreen/spearmint/mint making up nearly 80% of the market, followed by cinnamon, coffee, and fruit flavors.[29]
- A trade publication for convenience stores quoted one retailer stating, "In the case of smokeless tobacco, you get a new flavor once every quarter."[30]

Hookah. Hookahs (water pipes) originate from Middle Eastern countries, but their use has rapidly increased in the U.S. The tobacco used in hookah often has flavorings or sweeteners added to enhance the taste and aroma. In the U.S., even more kid-friendly flavors are available, such as watermelon, tropical fruit, orange cream, caramel, chocolate, tutti frutti, vanilla and strawberry.[31]

***Cigarettes*.** Menthol cigarettes, the only remaining flavored cigarette, maintain a significant market share. While overall cigarette sales have been declining, the proportion of smokers using *menthol* cigarettes has been increasing.[32]

- Data from the Federal Trade Commission (FTC) show that in 2019 (the most recent year for which data are available), menthol cigarettes comprised 37% of the market, the highest proportion on record since FTC began collecting this data in 1963.[33] Between 2009 and 2018, sales of non-menthol cigarettes have declined by 33.1% nationally while sales of menthol cigarettes have declined by only 8.2% during the same period. 91% of the decline in cigarette sales between 2009 and 2018 is attributable to nonmenthol cigarettes.[34]
- Before cigarettes with specific characterizing flavors were prohibited by the Tobacco Control Act, R.J. Reynolds' "Camel Exotic Blends" came in flavors such as Twista Lime, Kauai Kolada, Warm Winter Toffee and Winter Mocha Mint, among others. Bright, colorful and alluring ads for these cigarettes have appeared in magazines popular with kids, including *Rolling Stone*, *Cosmopolitan* and *Sports Illustrated*.
- Using data from the 1999-2013 Youth Tobacco Surveys, a 2017 study analyzed the impact of the 2009 ban on characterizing flavors in cigarettes on youth tobacco use. The researchers found that cigarette use declined significantly after the ban, whereas cigar and pipe tobacco use significantly

increased. Further, use of menthol cigarettes, the only remaining flavored cigarette, increased significantly after the ban.[35]

Flavored Products Appeal to Youth and Young Adults

Research shows that flavored products – no matter what the tobacco product – appeal to youth and young adults. Data from the 2013-2014 Population Assessment of Tobacco and Health (PATH) study found that 80.8% of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product and that for each tobacco product, at least two-thirds of youth reported using these products "because they come in flavors I like."[36] Data from the 2014-2015 wave of the PATH study found that 72.3% of current tobacco users had used a flavored tobacco product in the past month.[37]

Another national study found that 18.5% of young adult tobacco users (18-34 years old) currently use a flavored tobacco product, with younger age being a predictor of flavored tobacco product use. In fact, the study found that those aged 18-24 years old had an 89% increased odds of using a flavored tobacco product compared to those aged 25-34 years old.[38]

According to the 2012 Surgeon General Report, "Much of the growing popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years) and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be expected to be attractive to youth."[39] The 2016 Surgeon General Report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.[40]

Cigars. More than 1,400 kids under age 18 try cigar smoking for the first time every day.[41] Research shows that flavored cigars are driving much of this usage. Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.

- 43.2% of current youth high school cigar smokers report using a flavored product in the last month.[42]
- The 2016-2017 wave of the PATH study found that 56.8% of 12-17 year olds who had ever smoked cigarillos started with a flavored product.[43] In 2013-2014, 73.8% of youth cigar smokers reported that they smoked cigars "because they come in flavors I like."[44]
- National data suggest that flavored cigar products are driving cigar use among adults, particularly young adults. With few exceptions, use of flavored cigars among adult cigar smokers is highest among those groups with the highest overall cigar use rates, including young adults aged 18-24 (57.1%), income below $20,000 (51.7%), and non-Hispanic others (62.4%).[45]
- Data from the National Adult Tobacco Survey indicate that use of flavored cigars decreases with age. Flavored cigar use among cigar smokers was 57.1% among 18-24 year olds, 43.2% among 25-44 year olds, 28.9% among 45-64 year olds and 13.4% among those ages 65 and older.[46]
- Youth and young adults prefer brands that come in a variety of flavors, and that preference declines significantly with age – in one study, 95% of 12-17 year old cigar smokers reported a usual brand that makes flavored cigars compared with 63% of cigar smokers aged 35 and older.[47]

E-Cigarettes. Given the dramatic growth in the availability and marketing of flavored e-cigarettes, it's no surprise that e-cigarettes have been the most popular tobacco product among youth since 2014. Among high school students, e-cigarette use declined to 19.6% in 2020, after increasing an alarming 135% from 2017 to 2019 (from 11.7% to 27.5%).[48] While the significant decline in youth users since 2019 is a sign of progress, youth e-cigarette use remains a public health crisis. 3.6 million kids use e-cigarettes, about the same as in 2018 when the U.S. Surgeon General first called youth e-cigarette use an "epidemic."[49]

One tobacco company has even acknowledged that youth are attracted to sweet flavored products. Lorillard Inc.'s Youth Smoking Prevention Program posted a page on e-cigarettes on its "Real Parents Real Questions" website that stated: "Kids may be particularly vulnerable to trying e-cigarettes due to an abundance of fun flavors such as cherry, vanilla, piña-colada and berry."[50]

- The 2020 NYTS found that an increasing proportion of youth e-cigarette users reported using flavored products in 2020 (82.9%, up from 68.8% in 2019).[51] Nearly 3 million youth use flavored e-cigarettes.[52]

Among high school students who currently used any type of flavored e-cigarette, the most commonly used flavor types were fruit (73.1%), mint (55.8%), menthol (37%), and candy, desserts, or other sweets (36.4%).[53]

- Earlier data from the 2016-2017 wave of the PATH study found that 96.1% of 12-17 year olds who had initiated e-cigarette use since the last survey wave started with a flavored product. Additionally, it found that 97% of current youth e-cigarette users had used a flavored e-cigarette in the past month and 70.3% say they use e-cigarettes "because they come in flavors I like."[54]
- While fruit and mint flavors are now prohibited in cartridge-based e-cigarettes, disposable e-cigarettes come in a wide array of kid-friendly flavors, like cotton candy, strawberry, and mint, which have become increasingly popular among kids. Among high school current e-cigarette users, use of disposable e-cigarettes increased by 1,000% from 2019 to 2020 (from 2.4% to 26.5%).[55] Among current youth users of disposable e-cigarettes, the most commonly used flavor type is fruit (82.7%), followed by mint (51.9%).[56]
- The 2013-2014 National Adult Tobacco Survey found that use of flavored e-cigarettes was highest among young adults (ages 18-24), compared to those over age 25, and that flavored e-cigarettes were most popular among adults who were never cigarette smokers.[57]
- A national phone survey found that youth (ages 13-17) were more likely to report interest in trying an e-cigarette offered by a friend if it were flavored like fruit, candy or menthol, compared to tobacco. This study also found that youth believed that fruit-flavored e-cigarettes were less harmful than tobacco-flavored e-cigarettes.[58]
- Another study found that compared to college students, high school students were more likely to report experimenting with e-cigarettes because of appealing flavors (47% vs. 33%).[59]

Smokeless Tobacco. As with cigarettes, characterizing flavors in other tobacco products (OTPs) mask the tobacco flavor, and can make the products appealing to youth. Smokeless (or spit) tobacco companies, particularly the U.S. Smokeless Tobacco Company (UST), have a long history of creating new products that appeal to kids and marketing them aggressively to children in order to "graduate" them to more potent smokeless tobacco varieties.[60]

- Although cigarette smoking among youth in the U.S. has declined rapidly since the Tobacco Control Act went into effect, use of smokeless tobacco among youth has not followed that same trend, and among high school boys, the prevalence of smokeless tobacco use is about the same as that of cigarettes (4.8 vs. 5.4%).[61]
- The 2019 NYTS found that about half (49.8%) of current high school smokeless tobacco users report using flavored products. [62]
- The 2013-2014 PATH study found that 68.9% of 12-17 year olds who had ever used smokeless tobacco reported using flavored smokeless tobacco the first time they tried the product. [63]
- Among youth smokeless tobacco users, mint and menthol are the most popular flavors.[64]

Hookah. Research shows that many youth and young adults perceive hookah to be safer than other combustible tobacco products.[65] However, according to the CDC, using a hookah to smoke tobacco poses serious health risks to smokers and others exposed to the smoke from the hookah.[66] Because the flavors and the smoking technique create a more soothing ("smooth") experience, hookah smokers can inhale more deeply and spend more time in a "hookah session," which typically lasts for 40 to 45 minutes (three to four times longer than it takes to smoke a cigarette). While a typical cigarette requires about 20 puffs, an hour-long hookah session may involve 100 to 200 puffs[67], potentially exposing the user to more smoke over a greater period of time than what occurs when smoking a regular cigarette.[68] The appeal of flavored hookah undoubtedly contributes to its popularity among youth and young adults.

- The 2019 NYTS found that one-third of current high school hookah users reported using a flavored product in the last month. [69]

- The 2013-2014 PATH study found that 88.7% of 12-17 year olds who had ever smoked hookah used flavored hookah the first time they tried the product and more than three-quarters (78.9%) of youth hookah users reported that they use hookah "because they come in flavors I like."[70]

Cigarettes. As the only flavored cigarette left on the market, it is no surprise that menthol cigarettes are popular among youth. Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use. [71]

- About half of all high school smokers use menthol cigarettes. Over half a million (530,000) middle and high schoolers use menthol cigarettes. [72]

- The popularity of menthol flavored cigarettes is also evidenced by brand preference among youth. According to data from the 2016 National Survey on Drug Use and Health, about one in five (18.9%) smokers ages 12-17 prefers Newport cigarettes, a heavily marketed menthol cigarette brand. Preference for Newport is even higher among African-American youth smokers (70.9%) because of targeted marketing by the tobacco industry. [73]

According to FDA's Tobacco Product Scientific Advisory Committee (TPSAC):[74]

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.
- The availability of menthol cigarettes reduces smoking cessation, especially among African-Americans, and increases the overall prevalence of smoking among African Americans.

FDA's own scientific analysis concluded that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.[75] Although they are no longer on the market, older studies on flavored cigarettes other than menthol are still relevant to reinforce the general appeal of flavors to youth and young adults. When they were available, flavored cigarettes were being tried and used primarily by the young.[76] Candy-flavored cigarettes clearly had their greatest appeal to new smokers, 90% of whom were teens or younger. Research indicated that youth and young adults were more likely to notice flavored tobacco products and their ads, and this awareness translated into higher use rates among young smokers.

- Older adolescents and young adults aged 17 to 19 years old were more than twice as likely to report using flavored cigarettes (specifically Camel Exotic blends, Kool Smooth Fusion or Salem Silver Label brands) in the past 30 days compared to those aged 22 years or older.[77]
- A significant gradient in flavored cigarette use was seen across age, with the highest rates of utilization among 17 year old smokers (22.8%) and 18-19 year old smokers (21.7%). Nine% of 24-26 year olds reported flavored cigarette use.[78]

Tobacco Companies Have Long Recognized that Flavored Products Appeal to Youth

The tobacco companies know that almost all new tobacco users begin their addiction as kids, but they also know that to novice smokers, tobacco can be harsh and unappealing. Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under age 18.[79] By masking the harshness and soothing the irritation caused by tobacco smoke, flavors make it easier for beginners – primarily kids – to try the product and ultimately become addicted. As early as the 1970s, the tobacco companies were discussing the "benefits" of sweet flavors. Their internal documents and public statements show that the tobacco industry's use of sweet flavors goes beyond just encouraging current smokers to switch brands, but rather to attract new users, mostly kids.

- As early as 1972, advisors to Brown & Williamson reviewed new concepts for a "*youth cigarette,*" including cola and apple flavors, and a "*sweet flavor cigarette,*" stating, "*It's a well-known fact that teenagers like sweet products. Honey might be considered.*"[80]

- A 1974 summary of an RJR meeting discussed cigarettes designed for beginning smokers, noting that such a cigarette should be "*low in irritation and possibly contain added flavors to make it easier for those who never smoked before to acquire the taste of it more quickly.*"[81]
- An RJR interoffice memo revealed ideas for new products: "*Make a cigarette which is obviously youth oriented. This could involve cigarette name, blend, flavor and marketing technique....for example, a flavor which would be candy-like but give the satisfaction of a cigarette.*"[82]
- A Lorillard report summarizing the test results from new cigarette flavors, included smokers' description of "Tutti Frutti" flavored cigarettes as "*for younger people, beginner cigarette smokers, teenagers . . . when you feel like a light smoke, want to be reminded of bubblegum*."[83]
- A UST document called "The graduation theory" stated: "*New users of smokeless tobacco – attracted to the product for a variety of reasons – are most likely to begin with products that are milder tasting, more flavored, and/or easier to control in the mouth. After a period of time, there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated 'tobacco taste' than the entry brand.*"[84]
- A former UST sales representative revealed that, "*Cherry Skoal is for somebody who likes the taste of candy, if you know what I'm saying*."[85]

What States and Localities Can Do

In addition to the federal ban on flavored cigarettes, states and localities can implement additional sales restrictions to address the remaining flavored tobacco products on the market, including menthol cigarettes.

Five states—California, Massachusetts, New Jersey, New York and Rhode Island—have enacted laws or rules to prohibit the sale of flavored e-cigarettes, and both California and Massachusetts prohibit the sale of menthol cigarettes (CA implementation pending referendum vote). Maryland and Utah also restrict the sale of some flavored e-cigarettes. In addition, at least 300 localities across the country restrict the sale of flavored tobacco products, although laws differ in their application to specific products and store types.

For a list of state and localities that have passed restrictions on the sale of flavored tobacco products, visit: https://www.tobaccofreekids.org/assets/factsheets/0398.pdf.

Campaign for Tobacco-Free Kids, September 1, 2021 / Laura Bach

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Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products.[1] This provision excluded menthol cigarettes, which have subsequently increased their share of the cigarette market. Data from the Federal Trade Commission (FTC) show that in 2019, menthol cigarettes comprised 37% of the market, the highest proportion on record since FTC began collecting this data in 1963.[2] Between 2009 and 2018, sales of non-menthol cigarettes declined by 33.1% nationally while sales of menthol cigarettes declined by only 8.2% during the same period. 91% of the decline in cigarette sales between 2009 and 2018 is attributable to nonmenthol cigarettes.[3]

Menthol cigarettes pose a tremendous public health threat. A 2013 FDA report on the health impact of menthol cigarettes determined that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.[4] Further, FDA's Tobacco Products Scientific Advisory Committee's (TPSAC)* concluded, "**Removal of menthol cigarettes from the marketplace would benefit public health in the United States**."[5]

Menthol Makes it Easier for Youth to Initiate Tobacco Use

The tobacco companies know that almost all new tobacco users begin their addiction as kids, but they also know that to novice smokers, tobacco can be harsh and unappealing. Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under age 18.[6] By masking the harshness and soothing the irritation caused by tobacco smoke, flavors make it easier for beginners – primarily kids – to experiment with the product and ultimately become addicted.
Menthol has particularly appealing qualities for novice smokers. Menthol is a chemical compound that cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.[7] As TPSAC noted, "Menthol cannot be considered merely a flavoring additive to tobacco. Its pharmacological actions reduce the harshness of smoke and the irritation from nicotine."[8] According to TPSAC's conclusions:[9]

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.

As the only flavored cigarette left on the market, it is no surprise that menthol cigarettes remain popular among youth. In fact, a study analyzing the impact of the 2009 ban on characterizing flavors in cigarettes on youth tobacco use found that use of menthol cigarettes among high schoolers significantly increased after the ban.[10] Since the reports from FDA and TPSAC, research has continued to demonstrate the popularity of menthol cigarettes among youth and menthol's role in smoking initiation:

* TPSAC is a group of scientific experts charged with advising the Commissioner of Food and Drugs on safety, dependence, and health issues relating to tobacco. See https://www.fda.gov/advisoryCommittees/CommitteesMeetingMaterials/tobaccoproductsScientificAdvisoryCommittee/default.htm for more details.

- About half of all high school smokers use menthol cigarettes. Over half a million (530,000) middle and high schoolers use menthol cigarettes.[11]
- The popularity of menthol-flavored cigarettes is also evidenced by brand preference among youth. According to data from the 2015 National Survey on Drug Use and Health, one in five smokers ages 12-17 prefers Newport cigarettes, a heavily marketed menthol cigarette brand. Preference for Newport is even higher among African-American youth smokers (69.1%) because of targeted marketing by the tobacco industry. [12]
- Data from the government's Population Assessment of Tobacco and Health (PATH) study shows that youth menthol smokers are more likely to perceive menthol cigarettes as easier to smoke than regular cigarettes,[13] that youth menthol smokers have significantly higher levels of certain measures of dependence,[14] and that initiation with a menthol-flavored cigarette is associated with a higher relative risk of daily smoking.[15]
- Data from Truth Initiative's Young Adult Cohort Study, a national study of 18-34 year olds, showed that 52% of new young adult smokers initiated with menthol cigarettes. Initiation with menthol cigarettes was higher among black smokers (93.1%) compared to white smokers (43.9%).[16]
- Data from the 2017 and 2018 National Youth Tobacco Surveys shows that among middle and high school students, menthol smoking was associated with greater smoking frequency (smoking on at least 10 of the last 30 days) and intention to continue smoking, compared to non-menthol smoking.[17]

Menthol Increases Addiction and Makes it Harder for Smokers to Quit

While the tobacco industry initially marketed menthol cigarettes as safer and healthier cigarettes, because of their cooling properties and reduced throat irritability, this could not be further from the truth.[18] In fact, because menthol cigarettes are less harsh, they are associated with increased initiation and greater addiction, and FDA found that it is "**likely that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes**."[19]

Both TPSAC's and FDA's own scientific analyses conclude that menthol cigarettes are associated with increased nicotine dependence and reduced success in smoking cessation.[20] TPSAC projected that by 2020, about 17,000 premature deaths will be attributable to menthol cigarettes and about 2.3 million people will have started smoking because of menthol cigarettes.[21] Using the same model, researchers recently quantified the population harms caused by menthol cigarettes between 1980 and 2018. They estimate that during this time, menthol cigarettes were responsible for 10.1 million additional new smokers, 378,000 premature deaths and nearly 3 million life years lost. This amounts to nearly 10,000 premature deaths and over 265,000 new smokers each year over the 38-year period.[22]

Research published since FDA's and TPSAC's reports continue to demonstrate the detrimental public health impact of menthol cigarettes:

- A 2014 randomized clinical trial of FDA-approved cessation treatments among 1,500 US adult smokers found that menthol smoking was associated with reduced likelihood of quitting, compared to non-menthol smoking. African American female menthol smokers had the lowest quit rates of all groups in the study.[23]
- A meta-analysis of findings from nearly 150,000 smokers found that among African Americans, menthol smokers have a 12% lower odds of smoking cessation compared to non-menthol smokers.[24]
- Relying on these studies as well as the FDA's and TPSAC's findings, the 2020 Surgeon General Report on Smoking Cessation determined that the evidence was suggestive, but not conclusive as to the role of menthol on smoking cessation, finding the strongest evidence for reduced likelihood of smoking cessation among African American menthol smokers.[25]

- Most recently, a study analyzing four waves of data from the government's Population Assessment of Tobacco and Health (PATH) study found that among daily smokers, menthol cigarette smokers have a 24% lower odds of quitting as compared to non-menthol smokers (the study did not find a significant difference among quit rates for non-daily menthol and non-menthol smokers). Among daily smokers, African American menthol smokers had a 53% lower odds of quitting compared to African American non-menthol smokers and white menthol smokers had a 22% lower odds of quitting compared to white non-menthol smokers.[26]
- Despite the overwhelming evidence regarding the public health harms of menthol cigarettes, misperceptions still exist. A survey of African American adult smokers in Minnesota found that over half (59%) were either unsure of the relative harm of menthol cigarettes or perceived that menthol cigarettes are less harmful than non-menthol cigarettes.[27]

The difficulty that menthol smokers have in quitting continues to be reflected in national smoking prevalence trends. While smoking rates have declined overall in recent years, use of menthol cigarettes has increased significantly. Menthol smoking rates have increased among young adults and remained constant among youth and adults, while non-menthol smoking has decreased in all three age groups. [28] Overall, about 4 out of 10 (39.9%) of smokers use menthol cigarettes.[29]

In recent years, use of menthol cigarettes has increased among White, Asian, and Hispanic smokers. Use of menthol cigarettes has remained constant among African-American smokers, who continue to use menthol cigarettes more than any other racial/ethnic group.[30] Research also shows that use of menthol cigarettes has perpetuated disparities among other groups. According to the 2018 National Survey of Drug Use and Health (NSDUH):[31]

- 85% of African American smokers, 50% of Hispanic smokers and 47% of Asian American smokers use menthol cigarettes, compared to 29% of White smokers.
- 51% of lesbian/gay and 46% of bisexual smokers use menthol cigarettes, compared to 39% of heterosexual smokers.
- 45% of smokers with severe psychological distress use menthol cigarettes compared to 39% of smokers with no past month serious psychological distress.
- 47% of smokers living in poverty use menthol cigarettes, compared to 36% of smokers with an income exceeding twice the Federal Poverty Threshold.
- 60% of pregnant smokers use menthol cigarettes.

Use of Menthol Cigarettes Leads to Health Disparities for African Americans

Prevalence of menthol use is highest among African Americans – 85% of all African-American smokers smoke menthol cigarettes, compared to 29% of Whites.[32] The tobacco industry's "investment" in the African-American community has had a destructive impact. TPSAC's report and FDA's analysis conclude that African Americans are disproportionately burdened by the health harms of menthol cigarettes. Specifically, TPSAC concluded that the marketing and availability of menthol cigarettes increases the overall prevalence of smoking and reduces cessation among African Americans.[33]

- African Americans generally have higher levels of nicotine dependence as a consequence of their preference for mentholated cigarettes.[34] While research shows that African American smokers are highly motivated to quit smoking and are more likely than White smokers to have made a quit attempt and used counseling services in the previous year, they are less likely than White smokers to successfully quit smoking.[35]
- Due to the lower likelihood of smoking cessation among African American menthol smokers, the 2020 Surgeon General Report on Smoking Cessation concluded that, "Use of menthol cigarettes has been shown to contribute to tobacco cessation-related disparities in the United States."[36]

- TPSAC estimated that by 2020, 4,700 excess deaths in the African-American community will be attributable to menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol cigarettes.[37]
- A 2019 metaanalysis found that among African American smokers, menthol smokers had a 12% lower odds of successfully quitting smoking compared to non-menthol smokers.[38]
- African Americans suffer the greatest burden of tobacco-related mortality of any racial or ethnic group in the United States. Each year, approximately 45,000 African Americans die from a smoking-caused illness. Unless action is taken, an estimated 1.6 million African Americans alive today, who are now under the age of 18, will become regular smokers; and about 500,000 of these will die prematurely from a tobacco-related disease.[39]
- Lung cancer is the second most common cancer in both African-American men and women, but it kills more African Americans than any other type of cancer.[40] Decreased cessation success due to the popularity of menthol cigarettes among African Americans likely contributes to this mortality disparity.[41]

The Tobacco Industry Targets Minorities and Youth with Menthol Cigarette Marketing

The greater popularity of menthol cigarettes among African Americans, youth, and other minorities is a direct result of a decades-long marketing campaign by the tobacco industry. In fact, TPSAC concluded that menthol cigarettes are marketed disproportionately to younger smokers and African Americans.[42] Dating back to the 1950s, the tobacco industry has targeted these communities with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, and marketing in the retail environment.

Music and Community Event Sponsorship. Beginning in the 1970s, the major tobacco companies competed for the African American market share by sponsoring music and community events like Brown & Williamson's "Kool Jazz Festival," R.J. Reynolds' "Salem Summer Street Scenes," and Phillip Morris's "Club Benson & Hedges" promotional bar nights.[43] Kool also sponsored Latin music festivals, including the branded "Kool Latino Festival," in the 1970s and 1980s.[44]

Magazine Advertising. Expenditures for magazine advertising of mentholated cigarettes increased from 13% of total ad expenditures in 1998 to 76% in 2006.[45] During the two years after the Master Settlement Agreement (MSA) in November 1998, the average annual expenditures for Newport in magazines with high youth readership increased 13.2% (from $5.3 to $6.0 million).[46] Between 1998–2002, *Ebony,* a magazine tailored to African-American culture, was 9.8 times more likely than *People* to contain ads for menthols.[47] One study comparing the English and Spanish language versions of *Cosmopolitan* and *Glamour* from 1998-2002 found that 51% of the cigarette ads in the Spanish language versions were for menthol brands, compared to only 28% in the English language versions.[48]

Youthful Imagery. The tobacco companies commonly use youthful imagery in its advertising to appeal to young consumers. As a R.J. Reynolds document from 1981 noted, "The benefit of smoking which has most frequently and most successfully been exploited by brand families appears to be Social Interaction. For example, some brands, such as Newport, have focused on the younger adult 'peer group' aspect of social interaction."[49] Newport's "Alive with Pleasure" campaign, which continues today, portrays smokers in fun, social environments in its advertisements.[50] In 2004, Brown & Williamson started an ad campaign for their Kool brand cigarettes clearly aimed at youth—and African-American youth, in particular. The Kool Mixx campaign featured images of young rappers, disc jockeys and dancers on cigarette packs and in advertising. The campaign also included radio giveaways with cigarette purchases and a Hip-Hop disc jockey competition in major cities around the country. The themes, images, radio giveaways and music involved in the campaign all clearly have tremendous appeal to youth, especially African-American youth.

Attorneys General from several states promptly filed motions against Brown & Williamson for violating the Master Settlement Agreement.[51]

Retail Promotions. For decades, tobacco companies have specifically targeted minority communities, particularly African Americans, with intense advertising and promotional efforts. Beginning in the 1970s, the major tobacco companies used mobile van programs, like the Newport Pleasure Van, to expand their reach in urban areas through product sampling and coupon distribution.[52] The tobacco companies also developed specific strategies and specially designed product displays to adapt their point-of-sale marketing to smaller retailers that were more common in urban areas. Phillip Morris implemented promotion programs and paid retailers to exhibit product displays and grow their inventory. Brown & Williamson launched its Kool Inner City Point of Purchase Program, later the Kool Inner City Family Program, with the explicit goal, "to reach the core of Kool's franchise (young, black, relatively low income and education),"[53] with both retailer and consumer promotions.[54] Today, menthol cigarettes continue to be heavily advertised, widely available, and priced cheaper in certain African-American communities, making them more appealing, particularly to price-sensitive youth. A wealth of research indicates that African-American neighborhoods have a disproportionate number of tobacco retailers, pervasive tobacco marketing, and in particular, more marketing of menthol products.[55]

- Like many minority and low-income neighborhoods, African-American neighborhoods tend to have more tobacco retailers. Nationwide, census tracts with a greater proportion of African American residents have higher tobacco retailer density.[56]
- A 2011 study of cigarette prices in retail stores across the U.S. found that Newport cigarettes are significantly less expensive in neighborhoods with higher proportions of African Americans.[57]
- The 2011 California Tobacco Advertising Survey reports that there were significantly more menthol advertisements at stores in neighborhoods with a higher proportion of African-American residents and in low-income neighborhoods.[58]
- Another 2011 California study found that as the proportion of African-American high school students in a neighborhood rose, the proportion of menthol advertising increased, the odds of a Newport promotion were higher, and the cost of Newport cigarettes was lower.[59]
- A 2013 study of tobacco retail outlets in St. Louis found more tobacco advertising, including more menthol advertising, in areas with a greater proportion of African-American residents.[60] Another 2013 study found similar patterns in Ramsey County, Minnesota.[61]

FDA Action Needed to Prohibit Menthol Cigarettes

Despite strong evidence from the FDA and TSPAC reports and continued research on the public health harms, the FDA has yet to take action to prohibit menthol cigarettes. In 2013, the FDA issued an Advanced Notice of Proposed Rulemaking (ANPRM), soliciting additional research and comments from the public on prohibiting menthol cigarettes. In 2018, the FDA issued another ANPRM, seeking additional evidence on the public health harms of menthol cigarettes, along with other flavored tobacco products. Neither of these ANPRMs have led to the issuance of a rule to prohibit menthol cigarettes; however, in November 2018, FDA Commissioner Scott Gottlieb announced the agency's intention to ban menthol in combustible tobacco products, including cigarettes and cigars.[62] This announcement received strong support from the public health and African American communities, including the National Association for the Advancement of Colored People (NAACP), the National Urban League, the National African American Tobacco Prevention Network and the African American Tobacco Control Leadership Council.[63]

State and Local Action to Restrict the Sale of Menthol Tobacco Products

States and localities can implement additional sales restrictions on menthol cigarettes and flavored non-cigarette tobacco products.

- In November 2019, Massachusetts enacted the first statewide ban on the sale of all flavored tobacco products, including menthol cigarettes (effective 6/1/20). In August 2020, California became the second state to ban menthol cigarettes, along with flavored e-cigarettes and most other flavored tobacco products (implementation pending referendum vote).
- In 2017, the San Francisco Board of Supervisors unanimously passed an ordinance to prohibit the sale of all flavored tobacco products, including menthol cigarettes and e-cigarettes, becoming the first major U.S. city to enact a comprehensive ban.[64] This law was originally slated to go into effect on April 1, 2018. However, R.J. Reynolds, manufacturer of the top-selling menthol brand, quickly responded by gathering signatures for a referendum petition, allowing voters to decide on the June 2018 ballot whether the restriction should be implemented.[65] San Francisco residents overwhelmingly voted (68.4% to 31.6%)[66] to implement the flavored tobacco sales restriction, despite the industry spending nearly $12 million to try to defeat the initiative.[67]
- Now, over 100 localities from California to Illinois to Minnesota restrict or ban the sale of menthol cigarettes.[68]

The Canadian government banned menthol cigarettes in October 2017, although most provinces had banned menthol cigarettes prior to the nationwide law. Surveillance from Ontario, which banned menthol cigarettes on January 2017 shows promising evidence that banning menthol cigarettes increases quit attempts and cessation:

- A 1-year follow-up survey found that both daily and occasional menthol smokers were more likely to report having quit smoking (24% and 20%, vs 14%) or having made a quit attempt (63% and 62%, vs 43%), compared to non-menthol smokers.[69]
- A 2-year follow-up survey found that menthol smokers were more likely to report having quit smoking for at least the last 6 months (12% for daily menthol smokers and 10% for occasional menthol smokers), compared to non-menthol smokers (3%), with no significant differences in relapse rates. Menthol smokers also reported more quit attempts than non-menthol smokers. Daily menthol smokers reported an average of 3 quit attempts, compared to 2.6 for occasional menthol smokers and 1.2 for non-menthol smokers.[70]

Research on the impact of Canada's national ban is also starting to emerge. Data from the International Tobacco Control Policy Evaluation Project (ITC) are consistent with the findings on the impact of the Ontario ban. Specifically, ITC researchers, using longitudinal surveys of Canadian smokers in seven provinces from 2016-2018 found that following provincial bans and the national ban, menthol smokers were more likely to try to quit than non-menthol smokers (59% vs. 49%), and were twice as likely to have quit smoking for at least six months (12% vs. 6%).[71] It is important to note that menthol cigarettes comprised a much smaller proportion of the Canadian cigarette marketplace (~5%) than the US marketplace (37%), and the demographics of menthol smokers are very different between the two countries.

In May 2020, the European Union and the United Kingdom banned the sale of menthol cigarettes, but research is not yet available on the impact of these bans.

Campaign for Tobacco-Free Kids, April 14, 2021 / Laura Bach

More information on Tobacco and African Americans is available at https://www.tobaccofreekids.org/fact-sheets/tobaccos-toll-health-harms-and-cost/toll-of-tobacco-on-specific-populations-african-americans

More information on Flavored Tobacco Products is available at tfk.org/flavortrap and http://www.tobaccofreekids.org/research/factsheets/pdf/0383.pdf.

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Rules & Procedure for Public Testimony

Council committees use the City Council rules for public testimony. You can find the complete rules in the *Rules of Procedure for the City Council, Rule 31. Procedure for Addressing Council.* This document is available on the City Website:

http://www.portlandmaine.gov/DocumentCenter/View/1184

Below is a summary of the main points:

- If you wish to speak, please raise your hand or line up.
- When you are recognized by the Chair, you will have up to three (3) minutes to offer your comments. Please begin by stating your name and where you live.
- While someone is speaking, others in attendance will not interrupt.
- There should be no expressions approval or disapproval (applause, snapping, boos, hissing).
- Remarks shall be confined to the merits of the pending item.
- The Chair may limit or cut off any commentary that is not germane or that is scurrilous, abusive, or not in accord with good order and decorum.
- Any person who shall continue to violate these rules, after warning by the Chair, may be ejected for the remainder of the meeting then in progress.