



CITY COUNCIL WORKSHOP

Flavored Tobacco

February 2, 2022

5:00 PM

ZOOM INFORMATION:

This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Portland City Council and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the committee to meet by remote methods. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available in the [Agenda Center](#) following the meeting.

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AGENDA ITEMS:

- Presentation of Ordinance (Staff, 10 minutes)
Background Information on Ordinance
- Council Q&A (45 minutes)

ADJOURNMENT:

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 17**

Re: SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Sections 17-71 and 17-98 of the Portland City Code are hereby amended to read as follows:*

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

Art. I. In General, §§ 17-1--17-14

...

Art. V. Regulation of Tobacco, §§ 17-70--17-98

Div. 1. Generally, §§ 17-70--17-80

...

Div. 6. Smoking Prohibited in City Parks and Public Grounds
§§17-96-17-98

Div. 7. Sale of Flavored Tobacco Products Prohibited, Sec.
17-98.

...

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Flavored tobacco products means any tobacco product that

imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. Specifically excluded from this definition are any product(s) containing cannabis, as defined by Chapter [], of this Code, unless these products contain, are made of, or are derived from tobacco or nicotine.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

~~*Tobacco or tobacco product* means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.~~

Tobacco product means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic

smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

...

DIVISION 7

Sec. 17-98. Sale of Flavored Tobacco Products Prohibited.

(a) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City of Portland, or display, market, or advertise for sale in the City of Portland, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any individual, corporation, partnership, or other entity that sells tobacco in the City of Portland, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

(c) The City of Portland's Public Health Division Director or his/her/their 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.

(e) This section shall become effective on June 1, 2022.

~~Sec. 17-98. Reserved.~~



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
Bridget Rauscher, Chronic Disease Prevention Manager
FROM: Kirsten Goodrich, Public Health Division, Tobacco Prevention Program
DATE: 11/3/2021
SUBJECT: Outline of Education and Outreach Strategy for Retailers

This memo addresses the questions posed by the Health and Human Services and Public Safety Committee (HHS&PS Committee) on October 12, 2021.

Outreach & Education Strategies:

As of September 2021, there are 90 licensed tobacco retailers in the City of Portland. The tobacco prevention team has a previously established partnership with local retailers for retailer education and technical assistance. In the past, the tobacco prevention team has had success surveying retailers to identify needs of appropriate educational materials. The tobacco prevention program will continue with this approach and will survey licensed retailers in the City of Portland to get a better sense of the materials that retail establishments would prefer to display. The survey will be conducted and evaluated prior to developing materials.

As a current grant recipient and partner, the tobacco prevention team anticipates continuing partnerships with MaineHealth's Center for Tobacco Independence (CTI) to improve and support consistent messaging. The tobacco prevention team will expand the current retailer initiatives such as promoting the NO BUTS! training program, a free training to reduce underage tobacco sales, and the Maine QuitLink program, a tobacco quitting program free to Maine residents. Additionally, the tobacco prevention team will update the current retailer toolkits to reflect the flavor ban, if adopted. The purpose of the toolkit will be to provide education and support to retailers around the specifics of the full flavor ban. It will also provide materials to educate customers by providing resources to display with language that informs customers of the change. These resources will be designed to alleviate the burden placed on retailers to educate customers. The toolkit will be mailed to retailers at least 30 days before the law goes into effect.

A retailer toolkit will include:

- Signage stating new ordinance changes and the effective date (various sizes and styles)
- Educational rack cards,
- Maine Quitlink resources,
- No Buts! one pager,
- FAQ one pager.

In addition, the tobacco prevention program will draft communication that will go out to all licensed retailers in the Portland area that will comprehensively detail the changes to the current retail tobacco ordinance. The tobacco prevention program will record educational trainings for retailers. The tobacco prevention team will create social media posts to share on virtual platforms to expand reach. All resources will be uploaded to the City's website in order to be accessible to retailers and residents. All materials will be translated into the top five most spoken languages here in Portland. The top five languages spoken in Portland are Somali, Arabic, Spanish, French, Portuguese. Translated materials will be printed and distributed and electronic versions will be available on the City's website. We anticipate that the retailer outreach process will take approximately four to six months.

Updates to LD1190 & LD1550:

LD 1190, passed as amended in the 129th Legislature

When LD 1190 was introduced at the start of the 129th Legislature (January 2019), the FDA was considering action on flavored tobacco products. The Legislature's Health & Human Services Committee decided they wanted to wait and see what actions the FDA would take. As a result, LD 1190 was amended significantly by the Committee, stripping out all references to flavored tobacco products and simply aligning statutory enforcement provisions for furnishing tobacco products with those for furnishing alcohol in Maine, thereby leaving the continued proliferation of flavored tobacco products unaddressed. Unfortunately, the FDA has taken extremely limited action, likely taking years to fully implement, which is why LD 1550 (see below) was introduced in the 130th.

LD 1550, carried over to the 2nd Regular Session of the 130th Legislature

Two years later, with inadequate action taken by the FDA and an explosion of flavored tobacco products on the market, LD 1550 was introduced at the start of the 130th Legislature (January 2021) with strong bipartisan sponsorship, including members of Democratic leadership, Democratic House chairs of both the HHS and Appropriations Committees and Republican Senate and House Appropriations Committee leads. The bill was supported by Governor Mills, who included the proposal in her Supplemental Budget proposal, and was voted with a majority "ought to pass" out of the HHS committee. The Governor and Appropriations Committee agreed to advance a budget that could garner the support of 2/3 of legislators. Ultimately, Republican leadership requested the flavors proposal come out of the budget in order to reach 2/3 support, and this was agreed to by the Appropriations Committee. With only a few days remaining in the legislative session, LD 1550 was carried over to the 2nd Regular Session of the 130th (starting January 2022), where it will be considered for passage and funding.

Fiscal Note:

The cost of implementing a full ban on flavored tobacco products will not exceed \$50,000. Any costs incurred would be minimal and will be paid from existing grant funds by the Tobacco Prevention Program, in collaboration with the Center for Tobacco Independence and the Maine CDC.

Ordinance Language:
See Attached

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

*Cross reference(s)--Alarm systems, Ch. 2.5; rules of conduct in
cemeteries, § 7-123 et seq.; police, Ch. 20; traffic and motor vehicles, Ch. 28.

Art. I. In General, §§ 17-1--17-14

Art. II. Offenses Against Public Peace, §§ 17-15--17-30

Art. III. Offenses Against Public Safety, §§ 17-31--17-60

Div. 1. Generally, §§ 17-31--17-40

Div. 2. Weapons, §§ 17-41--17-43

Art. III-A. Trigger Locking Devices, §§ 17-44--17-60

Art. IV. Obscenity, §§ 17-61--17-69

Art. V. Regulation of Tobacco, §§ 17-70--17-98

Div. 1. Generally, §§ 17-70--17-80

Div. 2. Miscellaneous Provisions, §§ 17-81--17-85

Div. 3. Nonsmoking on Designated City Trails, §§ 17-86--17-89

Div. 4. Secondhand Smoke on Playgrounds, Beaches, and Athletic
Facilities, §§17-90--17-93

Div. 5. Secondhand Smoke in Indoor and Outdoor Eating Areas,
§§17-94--17-95

Div. 6. Smoking Prohibited in City Parks and Public Grounds
§§17-96--17-98

[Div. 7. Sale of Flavored Tobacco Products Prohibited, Sec.
17-98.](#)

Art. VI. Mercury Thermometers, §§ 17-99--17-107

Div. 1. Generally, §§ 17-99--17-100

Div. 2. Restrictions, §§ 17-101--17-107

Art. VII. Reserved, §§ 17-108--17-112

**Art. VIII. Recreational Use of Marijuana by Adults 21 Years of
Age or Older, §§ 17-113--17-119**

**Art. IX. Moratorium on Retail Marijuana Establishments and
Retail Marijuana Social Clubs, §§ 17-120--17-123**

**Art. X. Moratorium on Marijuana Caregiver Retail Stores, Testing
Facilities, Manufacturing Facilities, and Grow Facilities, §§
17-124--17-128**

Art. XI. Facial Recognition Technology, , §§ 17-130--17-133

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Sec. 17-68. Reserved.

Sec. 17-69. Reserved.

ARTICLE V. REGULATION OF TOBACCO*

***Editor's note**--Ord. No. 241-98, § 1, adopted Apr. 7, 1998, amended this chapter by adding provisions as herein set out; such ordinance was approved at referendum on Nov. 3, 1998, with an effective date of Dec. 5, 1998.

***Editor's note**—Pursuant to Council Order 39-12/13, passed by City Council on 2/4/13 repealed Article V in its entirety and replaced it with a new Article V.

DIVISION 1. GENERALLY

Sec. 17-70. Findings; purposes.

(a) The city council hereby finds as follows:

- (1) There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health;
- (2) Secondhand smoke contains over 4,000 chemicals, more than 60 of which are known to cause cancer;
- (3) The smoking of other substances may also cause serious health problems and risks to those who smoke; and
- (4) The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(b) The city council hereby finds that it is in the public health, safety and welfare to supplement state regulation of the use of tobacco, tobacco products and other substances that emit smoke that is used and intended customarily for inhalation into the lungs in outdoor locations and the free distribution and self-service displays of tobacco and tobacco products.
(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Flavored tobacco products means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. Specifically excluded from this definition are any product(s) containing cannabis, as defined by Chapter [_____], of this Code, unless these products contain, are made of, or are derived from tobacco or nicotine.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

~~*Tobacco or tobacco product* means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including~~

~~but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.~~

"Tobacco product" means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

(Ord. No.39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-72. Reserved.

Sec. 17-73. Reserved.

Sec. 17-74. Reserved.

Sec. 17-75. Reserved.

Sec. 17-76. Reserved.

Sec. 17-77. Reserved.

Sec. 17-78. Reserved.

Sec. 17-79. Reserved.

Sec. 17-80. Reserved.

DIVISION 2. MISCELLANEOUS PROVISIONS

Sec. 17-81.Free distribution; sampling.

The free distribution or sampling of tobacco is prohibited in the City of Portland. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 241-98, § 1, 4-7-98; Ord. No. 39-12/13, 2-4-13)

Sec. 17-82. Self-service displays.

(a) Self-service displays of tobacco products, from which individual packages, cartons, or items may be selected by the customer, are prohibited in the City of Portland.

(b) The foregoing shall not apply in a retail tobacco store which specializes in the sale of tobacco and tobacco products only.

(c) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-83. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to smoke-free environment afforded by this article. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-84. Sale of tobacco products to people under 21 prohibited.

(a) Notwithstanding the provisions of 22 M.R.S. §1555-B(2) and in accordance with 22 M.R.S. 1556, in the City of Portland, no individual, corporation, partnership, unincorporated association or other entity may sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any individual under 21 years of age.

(b) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of tobacco products in the City of Portland unless a clearly visible notice is posted at the location where tobacco products are available for purchase. The City of Portland shall provide this notice, which shall state "No person under the age of 21 may purchase tobacco products," legibly printed in letters at least one-half inch high.

(c) 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.

(Ord. No. 303-15/16, 7-20-2016)

Sec. 17-85. Reserved.

DIVISION 3. NONSMOKING ON DESIGNATED CITY TRAILS

Sec. 17-86. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, and quality of life of the children and other people that use designated city trails.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-87. Smoking prohibited.

It shall be unlawful for any person to smoke on a designated city trail at any time.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-88. Enforcement.

The parks and recreation department shall place signs at the beginning and end point of any city trail as well as in such other locations that, in its sole discretion, the parks and recreation department deems necessary to notify the public of this ordinance. Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to immediately comply after one warning, individual shall be given a citation.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-89. Reserved.

DIVISION 4. SECONDHAND SMOKE ON
PLAYGROUNDS, BEACHES, AND ATHLETIC FACILITIES

Sec. 17-90. Purposes.

The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-91. Smoking prohibited at playgrounds, beaches and outdoor athletic facilities.

(a) Smoking is prohibited both at, or within, twenty (20) feet of the following outdoor areas: playgrounds, beaches and outdoor athletic facilities owned and maintained by the city where members of the general public of any age assemble to engage in physical exercise, participate in athletic competition, play or recreational activity, or to witness sports, or other outdoor recreational events.

(b) The foregoing prohibition shall not apply in an area which has been designated prior to passage of this ordinance as a designated smoking area at Hadlock Field, but such area shall not be expanded.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-92. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(Ord. No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

Sec. 17-93.Reserved.

**DIVISION 5. SECONDHAND SMOKE IN
INDOOR AND OUTDOOR EATING AREAS**

Sec. 17-94. Smoking Prohibited in Indoor and Outdoor Eating Areas.

(a) Smoking is prohibited within the indoor and outdoor eating areas provided by restaurants and bars while such indoor or outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) *Indoor eating areas* shall mean indoor areas permitted for dining that are under the control of a restaurant or bar for the use of its patrons.

(c) *Outdoor eating areas* shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.
(Ord. 207-14/15, 4-27-2015)

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord. 207-14/15, 4-27-2015)

DIVISION 6. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

Sec. 17-96. Smoking prohibited in all city-owned or maintained parks.

(a) Smoking is prohibited in the City's public parks, squares and grounds and temporary parks requiring a permit.

(b) The Council shall define by order the City-owned or maintained public parks and grounds to which this requirement shall apply and such order shall be kept on file in the Department of Public Works.

(c) Smoking is prohibited in any temporary or "pop-up" park operated or maintained by a private person or entity, into which the public is invited and that requires an event permit under Chapter 18 for the duration of the event so approved. (Ord. No. 39-12/13, 2-4-13; Ord. 80-15/16, 10-19-2015, Ord. 108-15/16, 11-16-2015)

***Editor's Note:** Pursuant to Council Order 38-12/13, passed on 2/4/13, and Order 76-15/16, passed on 10/19/2015, the following is the list of public parks to which 17-96(b) applies:

ORDERED, that smoking shall be prohibited in the following parks and public grounds as described in Section 17-96 of the Portland City Code:

Back Cove Park	Lobsterman Park
Baxter Woods	Longfellow Square
Bayside Park	Marginal Way Field
Bedford Park	Monument Square
Bell Buoy Park	Oatnuts Park
Belmeade Park	Payson Park
Boothby Square	Pleasant Street Park
Capisic Pond Park	Post Office Park
Compass Park/Maine State Pier	Presumpscot Park
Congress Square	Presumpscot River Preserve
Deering Oaks Park	Quarry Run Dog Park
Dougherty Field	Riverton Park
Eastern Promenade	Stroudwater Park
Fessenden Park	Tommy's Park
Fort Allen Park	University Park
Fort Sumner Park	Valley Street Dog Park
Ganley Plaza	Western Promenade
Harbor View Park	
Heseltine Park	
Lincoln Park	

Sec. 17-97. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

DIVISION 7

Sec. 17-98. Sale of Flavored Tobacco Products Prohibited.

(a) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City of Portland, or display, market, or advertise for sale in the City of Portland, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any individual, corporation, partnership, or other entity that sells tobacco in the City of Portland, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

(c) The City of Portland's Public Health Division Director or his/her/their 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.

(e) This section shall become effective on [_____].

~~Sec. 17-98. Reserved.~~



FLAVORED TOBACCO PRODUCTS ATTRACT KIDS

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 puffs⁶⁷, 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

¹ See U.S. Food and Drug Administration's (FDA) Flavored Tobacco webpage at

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IMPACT OF MENTHOL CIGARETTES ON YOUTH SMOKING INITIATION AND HEALTH DISPARITIES

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 1, 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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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 Jersey⁴ (effective 4/20/20)
3. New York^{4,7} (effective 5/18/20)
4. Rhode Island⁴ (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. Calabasas²
15. **Capitola**
16. **Carpinteria**
17. **Carson**
18. Cerritos⁴
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. Mashpee²
90. Maynard²
91. Medfield²
92. Medford²
93. Melrose²
94. Methuen²
95. **Middleboro**²
96. Middleton²
97. Millis²
98. Milton²
99. Montague²
100. Natick²
101. **Needham**²
102. Newburyport²
103. Newton²
104. **Norfolk**²
105. North Adams²
106. **North Andover**²
107. North Attleboro²
108. Northampton²
109. North Reading²
110. Norton²
111. Norwell²
112. **Norwood**²
113. Oak Bluffs²
114. Orange²
115. Orleans²
116. Palmer²
117. Peabody²
118. Pittsfield²
119. Provincetown²
120. Reading²
121. Rockport²
122. Royalston²
123. Salem²
124. Sandwich²
125. Saugus²
126. **Sharon**²
127. Shelburne²
128. Sherborn²
129. Shrewsbury²
130. **Somerville**²
131. Southampton²
132. **South Hadley**²
133. Spencer²

Massachusetts (cont'd)

134. Stockbridge²
135. Stoneham²
136. **Stoughton**²
137. Stow²
138. Sudbury²
139. Sunderland²
140. **Swampscott**²
141. Templeton²
142. Tewksbury²
143. Topsfield²
144. Townsend²
145. Tyngsboro²
146. Upton²
147. Uxbridge²
148. Wakefield²
149. **Walpole**²
150. Wareham²
151. Watertown²
152. Webster²
153. Wellfleet²
154. West Boylston²
155. Westboro²
156. Westford²
157. Westminster²
158. Westwood²
159. Whately
160. Wilbraham²
161. Williamstown²
162. Wilmington²
163. Winchendon²
164. Winchester²
165. Winthrop²
166. Worcester²
167. Wrentham²
168. Yarmouth²

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. Robbinsdale²
15. **Roseville**²
16. Rushford²
17. St. Louis Park²
18. **St. Paul**²
19. Shoreview²

Montana (1)

1. Missoula⁴

New Jersey (1)

1. Jersey City⁴

New York (3)

1. New York City²
2. **Manheim**
3. Yonkers⁴

Pennsylvania (1)

1. Philadelphia^{2,5,6}

Rhode Island (6)

1. Barrington²
2. Central Falls²
3. Johnston²
4. Middletown²
5. Providence²
6. Woonsocket²

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

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](https://www.fda.gov/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) (<https://tobaccocontrol.bmj.com/content/early/2021/03/31/tobaccocontrol-2020-056259>) [↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<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) (<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2011.300179>) [↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<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.

Background on Today's Actions

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.

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/ucm591421.htm>) (<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.

Cigar Flavor Product Standard

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>)

###

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.

Inquiries

✉ [Alison Hunt \(mailto:alison.hunt@fda.hhs.gov\)](mailto:alison.hunt@fda.hhs.gov).

Consumer:

📞 888-INFO-FDA

[More Press Announcements \(/news-events/newsroom/press-announcements\)](#)



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

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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.

City of Portland | Health & Human Services Department

Tina Pettingill, MPH

Deputy Director



To: Kristen Dow, Dena Libner

CC: Bridget Rauscher, Kirsten Faucher

From: Tina Pettingill

Date: 02/02/2022

Re: Current tobacco products

As requested by Councilor Ali, below is a comprehensive list of tobacco products on the market that are currently sold, their descriptions, youth use data and current regulations.

Cigarettes

A combustible tobacco product. Tobacco leaves are thinly cut and rolled into paper for smoking. Since 2009, the only available cigarette flavors on the market are tobacco and menthol.

E-cigarettes

Any Electronic Nicotine Delivery System (ENDS) that electronically heats up nicotine in liquid form to be inhaled. Types: Closed-pod cartridge, disposable, refillable, synthetic.

1. Closed-Pod Cartridge

- a. Description: Products where cartridges/pods come prefilled with e-liquid and cannot be altered, but they can be replaced. In 2020, there was a national ban on closed-pod e-cigarettes with the exception of menthol and tobacco flavors. Youth have shifted dramatically to disposable and refillable products and menthol flavored e-cigarettes, the two categories still left on the market under current federal restrictions.
- b. Juul still markets tobacco and menthol flavors. Despite the 2020 ban specifically designed with Juul in mind, many young people still use menthol flavored Juul Pods. [In NYTS 2021 data, 5.7% of high school students and 12.5% of middle school students cited this as their usual brand.](#)

2. Disposable e-cigarettes

- a. Description: Products pre-filled with e-liquid but there is no replaceable cartridge. When the product has been fully used the entire product, including the battery is discarded, unlike the Juul where only the pods are replaced.
- b. Disposable E-Cigarette Brands:
 - i. Vuse products (solo, vibe, crico, alto): FDA approved menthol and tobacco flavors to stay on the market in 2021. [In NYTS 2021 data, 10.8% of high school students cited this as their usual brand.](#)
 - ii. CaliPod products (Cali Boxx, Cali Ultra, Cali Mesh, Cali Plus, Cali Plus 3%, Cali Maxx, Cali XXL, Palm Plus). Flavors: Pineapple lemonade, frozen rainbow,

City of Portland | Health & Human Services Department

Tina Pettingill, MPH

Deputy Director



To: Kristen Dow, Dena Libner

CC: Bridget Rauscher, Kirsten Faucher

From: Tina Pettingill

Date: 02/02/2022

Re: Current tobacco products

frozen mint, frozen strawberry kiwi, frozen watermelon raspberry, frozen blackberry, rainbow blast, apple, rainbow, blueberry, frozen grape, frozen banana, etc. Full list [here](#)

3. *Disposable Synthetic E-cigarettes Brands:*

- a. Puffbar. Flavors: Tobacco, Cool Mint, O.M.G (Orange, Mango, Grapefruit), Strawberry, Mango, Lychee ICE, Lush ICE, Mango, Blue Raz, Blueberry, Watermelon, Cucumber, Grape, Pomegranate, Tobacco, Peach, Cafe Latte, Peach Ice, Pineapple Lemonade, Pink Lemonade, Banana Ice (Limited Edition) and Blueberry Ice. Law would allow tobacco. [In NYTS 2021 data, 26.1% of highschool students and 30.3% of middle school students cited this as their usual brand.](#)
- b. Bidi Stick. Flavors by old name/new name: mint freeze/arctic, classic tobacco/classic, jungle juice/zest, lush ice/winter, blazing vibe/tropic, fruity mango/gold, icy mango/marigold, dragon venom/regal, kick start/summer, berry blast/solar, champion juice/dawn.

4. *Refillable e-cigarette:*

- a. Description: Open systems that can be refilled with e-liquids. Products include tanks/mods/boxes and pod-mods. Tanks/mods/boxes have parts that can be modified (wicks, coils), have longer battery life, and emit large plumes/clouds of aerosol. Pod-mods are smaller/stealthier devices, no coils, and are often used by people beginning and youth, as they are inconspicuous.
- b. Refillable E-cigarette Brands:
 - i. Suorin Drop (and it's variations). [In NYTS 2021 data, 2.3% of high school students cited this as their usual brand.](#)
 - ii. Smok (available as pod, vape pen, tank). [In NYTS 2021 data, 9.6% of high school students cited this as their usual brand.](#)
 - iii. Refillable E-Liquids Brands:
 1. Woosh; Coffee, Fruit Loops, Mint, Strawberry Banana, Blueberry, Watermelon, French Vanilla, Peach, Pineapple, Honeydew, Tobacco, Apple Pie, Red Apple, Banana, and Red Licorice. [Full list here.](#)
 - iv. Refillable Synthetic E-Liquid Brands:

City of Portland | Health & Human Services Department

Tina Pettingill, MPH

Deputy Director



To: Kristen Dow, Dena Libner

CC: Bridget Rauscher, Kirsten Faucher

From: Tina Pettingill

Date: 02/02/2022

Re: Current tobacco products

1. Air Factory. Aloha strawberry, peach passion, kookie krunch.
2. Salty Man. Creamy tobacco, spearmint, kacti cooler.
3. NicTech. Users can customize their own vape juice by choosing more than 100,000 DIY e-liquid flavor combinations.
4. Pachamama. Mango tango, lychee, pink lemonade, etc.

5. *Synthetic Products:*

- a. Description: Synthetic nicotine products are developed in a lab and are not derived from tobacco leaf.

b. Synthetic E-Cigarette Brands:

- i. Puffbar. Flavors: Tobacco, Cool Mint, O.M.G (Orange, Mango, Grapefruit), Strawberry, Mango, Lychee ICE, Lush ICE, Mango, Blue Raz, Blueberry, Watermelon, Cucumber, Grape, Pomegranate, Tobacco, Peach, Cafe Latte, Peach Ice, Pineapple Lemonade, Pink Lemonade, Banana Ice (Limited Edition) and Blueberry Ice. Law would allow tobacco. [In NYTS 2021 data, 26.1% of high school students and 30.3% of middle school students cited this as their usual brand.](#)
- ii. Bidi Stick. Flavors by old name/new name: mint freeze/arctic, classic tobacco/classic, jungle juice/zest, lush ice/winter, blazing vibe/tropic, fruity mango/gold, icy mango/marigold, dragon venom/regal, kick start/summer, berry blast/solar, champion juice/dawn.

- c. Explanation for including synthetic language under “tobacco products”:

- i. Puff Bar [announced in February](#) 2021 that it has switched to using synthetic nicotine in its products, a step that a growing number of e-cigarette makers are taking to evade FDA regulation as tobacco products. The FDA’s inaction on synthetic nicotine will allow e-cigarette manufacturers to widen this loophole further and continue marketing flavored e-cigarettes to kids

City of Portland | Health & Human Services Department

Tina Pettingill, MPH

Deputy Director



To: Kristen Dow, Dena Libner

CC: Bridget Rauscher, Kirsten Faucher

From: Tina Pettingill

Date: 02/02/2022

Re: Current tobacco products

Hookah products

A tobacco pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled.

1. Hookah pipes, disposable hookah pens, refillable hookah pens, and the electronic hookah heads.
2. Flavored hookah products do not hold cultural significance and are aimed toward hooking youth. Flavored hookah products are different from traditional hookah, which use unflavored tobacco.
3. Hookah Products:
 - a. Electronic hookah heads: heads attach to the top of a real hookah pipe and smoke similar to a coal burning hookah. This product is refillable and rechargeable. E-hookah heads can be very techy with digital displays showing puff counters, inhale timers and letting you adjust the voltage.
 - i. Starbuzz E-Hookah
 - ii. Square E-Hookah
 - iii. Aspire E-Hookah
 - b. Refillable hookah pens: Similar to vape pens, refillable hookah pens are battery-operated devices that people use to inhale an aerosol, which typically contains nicotine, flavorings, and other chemicals.
 - i. eGo-T
 - ii. Smok Starter
 - iii. Tsunami
 - c. Disposable hookah pens: Similar to vape pens, disposable hookah pens are battery-operated devices that people use to inhale an aerosol, which typically contains nicotine, flavorings, and other chemicals.
 - i. EverydayHookah Pen V2
 - ii. Fantasia Diamond

Smokeless tobacco products- *aka chewing tobacco, dip, snus, snuff, loose leaf*

1. Most smokeless tobacco use involves placing the product between the gum and the cheek or lip. Smokeless tobacco is a noncombustible tobacco product. There are two main types of smokeless tobacco: chewing tobacco and snuff
 - a. Smokeless Tobacco Brands:

City of Portland | Health & Human Services Department

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To: Kristen Dow, Dena Libner

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From: Tina Pettingill

Date: 02/02/2022

Re: Current tobacco products

- i. Grizzly. Flavors: wintergreen, mint, tobacco
- ii. Kodiak. Flavors: wintergreen, mint, tobacco
- iii. Hawken. Flavors: wintergreen
- iv. Skoal (wintergreen, mint, tobacco)
- b. Synthetic Smokeless Brands:
 - i. NIIN. Flavors: Citrus Chill, Wintergreen, Cool Mint, Spearmint, Cinnamon.
 - ii. Rush. Flavors: Wintergreen, mint, citrus, cinnamon
 - iii. Bidi Pouch. Flavors old name/recent rebrand: lush ice/winter, mint freeze/arctic, kick start/summer, berry blast/solar, dragon venom/regal, ?/haze.

Cigars

- 1. Cigars are wrapped in a tobacco leaf or a material containing tobacco
- 2. Note: In July 2010, Maine banned the sale of flavored cigars.
 - a. Cigar Brands -
 - i. Al Capone, Backwoods smokes, Black & Mild, Dutch Master, Garcia Y Vega, Game, Splitarillos, Good Times, Phillies, Swisher sweets, White Owl



HOOKAH IS NOT HARMLESS

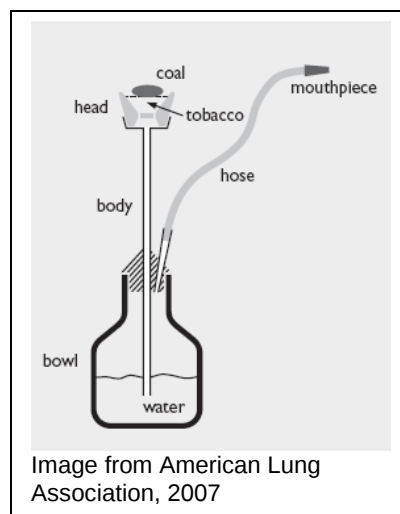
Hookah use is especially among youth and college students. Despite the different way of smoking, hookahs (also called waterpipe, shisha, narghile, argileh, hubble-bubble, goza) still use tobacco, expose users to nicotine, and increase health risks. The social aspect of hookah use attracts younger users, and the wide variety of kid-friendly hookah tobacco flavors makes it even more appealing.

Hookah has been used for centuries in African and Asian countries, but in recognition of the health hazards posed by hookah, at least ten countries in African and Asia have banned the sale of hookah.¹ In the U.S., use has rapidly increased in the U.S. in recent decades, coinciding with the proliferation of flavored hookah tobacco.

How Hookahs Work

Traditionally, raw tobacco was used in the hookah waterpipe, but in the 1990s, flavored hookah tobacco was introduced, leading to increased popularity among young people around the world.² In the U.S., hookah is available in kid-friendly flavors like watermelon, tropical fruit, orange cream, caramel, chocolate, tutti frutti, vanilla, and strawberry.³

The hookah waterpipe consists of a head, body, water bowl, and hose, although they can vary in size and shape. The smoke aerosol generation process in hookahs is different than in cigarettes.⁴ While the dried tobacco itself burns in a cigarette, a hookah, or waterpipe, uses an external heat source, charcoal, to devolatilize the tobacco at lower temperatures than a cigarette. Thus, the tobacco itself does not burn in hookahs, but is heated. The smoke carrying charcoal combustion particles passes through the tobacco to the water, which bubbles into a vapor that users inhale.



Rise of Hookah Use Among Youth and Young Adults

According to the 2020 National Youth Tobacco Survey (NYTS), 580,000 youth have used hookah in the past month.⁵ Unlike use of other tobacco products, rates of use are similar for boys and girls.

Hookah is popular among young adults. The Spring 2019 National College Health Assessment found that 15.1 percent of undergraduates had ever tried hookah and 2.1 percent had used it in the past month.⁶

While more research is needed, by exposing youth and young adults to addictive nicotine and the behavior of smoking, hookah use may play a role in cigarette initiation.

Recent studies have associated hookah use with subsequent cigarette initiation, increased intensity of cigarette smoking, and reduced cessation success:

- A longitudinal study of over 1,000 15-23 year olds who were never cigarette smokers at baseline found that ever use of hookah at baseline was associated with increased odds of cigarette initiation, current cigarette smoking, and higher intensity of cigarette smoking at two-year follow-up.⁷
- A longitudinal study of 256 college students who were current smokers found that dual cigarette and hookah use at baseline was associated with increased frequency and intensity of cigarette smoking at 6 month follow up.⁸

- According to the 2012-2013 Adult Tobacco Survey (ATS), 15.7 percent of young adults aged 18-24 who were not established cigarette smokers were hookah users, and were two times as susceptible to cigarette smoking as those who were not current hookah users.⁹
- Several studies have found a significant prevalence of dual use of hookah and cigarettes.¹⁰
- A study of over 1,000 college students enrolled in a smoking cessation trial found that those who were dual cigarette smokers and hookah users at baseline had significantly lower odds of successfully quitting all tobacco use at 6 months.¹¹

Flavors, Social Appeal and Inaccurate Risk Perceptions Attract Youth and Young Adults

Like other tobacco products, there is strong evidence that flavored hookah appeals to youth and may play an important role in initiation of hookah use. The government-sponsored 2013-2014 Population Assessment on Tobacco and Health (PATH) survey 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.”¹² The 2019 NYTS found that one-third of current high school hookah users reported using a flavored product in the last month.¹³

It is common practice for hookah to be used in social settings. In fact, according to PATH, 79.6% of current hookah users aged 12-17 say that they use hookah because they like socializing while using the product.¹⁴ Hookah bars and cafes have grown in popularity, particularly in urban areas and around college campuses.¹⁵ These establishments explicitly market a social, fun and relaxing environment to young adults.¹⁶ They often have additional appeal, offering musical performances, food, and alcohol. A 2009 review of 144 websites advertising hookah establishments found that 79% served food and 41% served alcohol.¹⁷ These establishments are often exempt from state and local smoke-free laws.

Many hookah users are unaware of its health harms. This is due in part to misleading claims on hookah packaging. Researchers who examined over 100 popular hookah products found that over half contained misleading claims, such as that the product was “tar free,” and that only 38% of analyzed products disclosed that the product contained nicotine, despite the fact that all hookah tobacco contains nicotine.¹⁸ In addition, the social patterns of hookah use, which differs from that for other tobacco products, means that many hookah users do not participate in the preparation of the tobacco and therefore never come in contact with the package of tobacco mixture. This leads to a high degree of unfamiliarity among users about the contents of the mixture in the waterpipe bowl. In fact, studies show that youth and young adults consistently underestimate the health risks of hookah:

- The government-sponsored 2013-2014 Population Assessment on Tobacco and Health (PATH) study found that 60.6% of current hookah users aged 12-17 use hookah because they think it might be less harmful than cigarettes.¹⁹ The same survey found that almost a quarter of 12-17 year old hookah users use hookah because they think it helps in quitting smoking.
- The 2011 National Young Adult Health Survey, found that about a quarter of young adults aged 18-34 believe that hookah use is “less risky” than cigarettes, with higher agreement among younger adults and current hookah users.²⁰
- Many smaller studies of college students have consistently found that young adults view hookah use as less harmful, less addictive, and more socially acceptable than cigarette smoking.²¹
- A 2011 study of high school students in San Diego found that nearly half of students (46.3%) thought that hookah use was safer or less addictive than cigarettes, and among those students, one-third thought this because they presumed hookah to have no or less nicotine and one-quarter thought that it had fewer chemicals and was cleaner.²²

- Not only is the perception that hookah is less harmful more common among current hookah users, but a longitudinal study of 18-24 year olds found that this belief is a significant predictor of future hookah trial.²³

Hookah Use is Linked to Serious Health Harms

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.²⁴ 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 puffs²⁵, potentially exposing the user to more smoke over a greater period of time than what occurs when smoking a regular cigarette.²⁶

Although the smoke passes through water, this does *not* eliminate the hazardous, addictive chemicals released from the tobacco. At least 82 toxicants and carcinogens have been identified in hookah smoke, including tobacco-specific nitrosamines (TSNAs), polycyclic aromatic hydrocarbons (PAHs), and heavy metals.²⁷ Further, the combustion of charcoal used to heat hookah tobacco may pose additional health risks, since the combustion process produces dangerous substances such as carbon monoxide, metals, and other chemicals.²⁸

Hookah smoking also delivers nicotine, the same highly addictive drug found in other tobacco products. Studies have found that in a typical hookah smoking session, smokers attain the up to 1.7 times the nicotine exposure and up to nine times the carbon monoxide exposure as a single cigarette.²⁹ A review of the evidence indicates that hookah smoking is associated with nicotine dependence, including experiences of withdrawal and difficulty quitting, at least among some users.³⁰ Nicotine is an addictive drug that can have lasting damaging effects on adolescent brain development and has been linked to a variety of adverse health outcomes for the developing fetus.³¹ Nicotine also impacts the cardiovascular system.³²

Research indicates that hookah smoking is linked to many of the same adverse health effects as cigarette smoking, such as lung, bladder and oral cancers and heart disease.³³ Other documented long-term effects include impaired pulmonary function, chronic obstructive pulmonary disease, esophageal cancer and gastric cancer.³⁴ Studies have shown that hookah smoke contains many of the same harmful components found in cigarette smoke, such as nicotine, tar and heavy metals.³⁵ As a result of exposure to the dangerous chemicals in hookah smoke, research shows that even short-term hookah use is associated with acute health effects, including increased heart rate, blood pressure, reduced pulmonary function and carbon monoxide intoxication.³⁶

Policy Solutions to Reduce Hookah Use Among Youth and Young Adults

In states or localities with smoke-free laws, hookah bars often receive an exemption. Some laws even allow minors in these establishments. A 2015 study found exemptions for hookah establishments in the smoke-free laws for 24 states, and loopholes that exempt establishments that receive a set percentage of sales from tobacco products in another 14 states.³⁷ A review of smoke-free laws in the 100 largest US cities found that 69 of the 73 cities that prohibit cigarette smoking in bars had exemptions for hookah use.³⁸ Removing these loopholes can reduce exposure to secondhand smoke and help to denormalize hookah use.

States and localities can also enact restrictions to limit the appeal of hookah to youth and young adults. States and localities have clear authority to restrict the sale of flavored tobacco products (or any tobacco product) to reduce tobacco use and its harms to its citizens. Several localities have already passed restrictions on sales of flavored tobacco products that affect hookah tobacco.

The tobacco used for hookah is taxed like pipe tobacco, at a rate lower than cigarettes in many states and at the federal level. High prices on tobacco products make them less affordable to youth and are an effective way to reduce youth tobacco use. Having hookah and other smoking tobacco available at lower

prices is a public health concern as it provides cigarette smokers with an alternative lower-priced tobacco product that pose many serious health risks. It also incentivizes smokers to switch products rather than quit in response to high prices.

Campaign for Tobacco-Free Kids, June 29, 2021 / Laura Bach

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**Tobacco use among Maine youth
has been skyrocketing.**
**Now, 4 out of 5 kids who have used tobacco
started with a flavored product.¹**

Tobacco companies have developed an array of menthol, mint, candy, and fruit-flavored products in colorful packaging to attract new users and keep them using tobacco. The tobacco industry knows that 95% of adult smokers start by age 21,² so these flavored products aren't for adults. Flavors hook kids!

There are now over 15,000 flavored tobacco products on the market.^{3,4}

Winter Menthol. Peppermint Mocha. Cherry Crush. Banana Blast. Pop Tart. Cotton Candy. Flavored tobacco products, including cigarettes, cigars, chewing tobacco, and e-cigarettes, undermine Maine's efforts to reduce youth tobacco use. While almost all e-cigarettes contain nicotine,⁵ more than half of Maine youth who use e-cigarettes say they think it's just harmless flavoring.⁶



Menthol cigarettes are the most dangerous flavored tobacco product. Menthol flavoring makes it easier to start and become addicted to cigarettes.⁷ Menthol masks the harsh taste of tobacco and numbs the throat, making the smoke easier to inhale more deeply.⁸ People who use menthol cigarettes show greater signs of nicotine addiction and are less likely to successfully quit smoking than other smokers.⁹

The tobacco industry has a long and lethal history of targeting kids and other communities with flavored products. Tobacco industry documents reveal aggressive marketing, including cheaper prices and more advertising of menthol cigarettes in African American neighborhoods.¹⁰ The tobacco industry has also targeted the lesbian, gay and bisexual community with predatory advertising in LGBTQ magazines and sponsorships of local Pride events and celebrations.¹¹



5 out of 10
youth (ages 12-17)
who smoke
and
8 out of 10
African American
adults who smoke
use **menthol**
cigarettes¹⁸

Maine is seeing an explosion of e-cigarette use (also known as “vaping”) among youth. This epidemic started with Juul, a high-tech device disguised as a USB drive that comes in a variety of flavors to entice kids. One Juul pod contains as much nicotine as a pack of 20 cigarettes.¹² This high concentration is a serious concern for youth, who are already uniquely susceptible to nicotine addiction.¹³ Juul is just one example of how the tobacco industry has adapted their products and their marketing tactics to attract their “replacement smokers”.¹⁴

More than
1 in 4
Maine high school
students now uses
e-cigarettes, a rate
that has nearly
doubled in the past
2 years¹⁹

8 out of 10
middle and high
school students
who use e-
cigarettes use
flavored
products.²⁰

Tobacco use puts our kids' health and futures at risk. Smoking causes disease and disability, harming nearly every organ of the body.¹⁵ There is also growing evidence that e-cigarettes can harm lung health.¹⁶ And now, the U.S. Surgeon General warns that nicotine exposure during adolescence and young adulthood can cause addiction and long-term harm to brain development, stating, “No matter how it's delivered, nicotine is harmful for youth and young adults.”¹⁷

Flavors aren't for adults. Flavors hook Maine kids.
**Help give Maine youth and young adults a fair shot at a healthy
and productive future, free from tobacco addiction.**

Ask lawmakers to end the sale of all flavored tobacco products in Maine.

For more information, visit www.flavorshookkidsmaine.org or email info@flavorshookkidsmaine.org

**FLAVORS
HOOK KIDS
MAINE**



MPHA
Maine Public Health Association



**Maine Medical
Association**



EQME
EQUALITYMAINE



Sagadahoc County
BOARD of HEALTH

MYC Midcoast Youth Center



U.S. PIRG
Standing Up
To Powerful Interests



**American
Heart
Association.**



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COVID and Tobacco Use

As the world combats the novel coronavirus (COVID-19), it has never been more important to keep our lungs healthy. One of the best ways to do this is to quit smoking and vaping – and to prevent young people from ever starting in the first place.