

5-19-2021

ITEM 4

Genevieve Yip

From: Amaya Wooding <amayawooding@gmail.com>
Sent: Friday, May 14, 2021 12:25 PM
To: Mayor and Council
Subject: Tobacco retail license - 5/19/21 Item 4 comment

Follow Up Flag: Follow up
Flag Status: Flagged

Dear members of the Economic Development, Communications, and Marketing Committee:

Strong tobacco retail licensing (TRL) ordinances are an effective way to reduce youth access to tobacco in the retail environment. 74% of underage e-cigarette users reported obtaining their product from a physical store, versus only 6% who reported ordering online. High schoolers in jurisdictions with well-enforced laws at point-of-sale are less likely to try electronic or combustible cigarettes. TRLs may, and in the Bay Area often do, include provisions restricting the sale of flavored tobacco products and e-cigarettes, both of which are especially popular among underage users.

Over 85% of high school tobacco users in California use a flavored product, including 86% of e-cigarette users, 87% of little cigar or cigarillo users, and 88% of hookah smokers. While state-level action is underway via the SB 793 referendum, it will be late 2022 before any vote occurs, and the tobacco industry is likely to litigate to delay even if the referendum is successful. Meanwhile at the local level, over 100 cities and counties in California have not waited to act on flavored tobacco and have adopted their own ordinances restricting those products.

E-cigarette devices are the most popular tobacco product among California youth, with nearly 11% of high schoolers reporting using one in the past 30 days in the 2017-18 school year. As reported in the New York Times, the form of nicotine in these products is engineered to be "less harsh" to users. The result is that young people can go through up to 90 cigarettes' worth (4.5 packs) of nicotine by vaping a few milliliters of e-liquid. Youth users of this new generation of e-cigarette products are 7 to 8 times more likely to try cigarettes and become regular smokers one year later relative to their peers who do not try them. At the same time, no e-cigarette has been approved as a cessation device by the FDA and many adult e-cigarette users continue to use combustible products.

Policies that reduce young people's ability to access tobacco are of particular benefit to LGBTQ+ youth. Due to the stresses of homophobia, biphobia, and transphobia, LGBTQ+ young people seek out tobacco as a coping mechanism, trying it earlier than their peers and being subsequently more likely to remain users through adulthood.

Per the most recent California Healthy Kids Survey data, 46% of SCUSD 11th graders say it is “fairly easy” or “very easy” to obtain cigarettes. 59% said the same about obtaining e-cigarettes or vaping devices. The share of students who reported using cigarettes or e-cigarettes is higher among lesbian, gay and bisexual students relative to straight/heterosexual students.

Especially as San Jose is moving forward to eliminate the youth appeal of flavored tobacco products and e-cigarettes in its stores, a regional response to tobacco industry tactics is crucial, more so in a region as crowded with municipalities as the Bay Area.

Wishing wisdom and health,

Amaya Wooding (she/her)
Co-chair, Proudly Against Tobacco
Member, Tobacco-Free Coalition of Santa Clara County

Genevieve Yip

From: Tim Gibbs <tim@timgibbsconsulting.com>
Sent: Tuesday, May 18, 2021 10:33 AM
To: Mayor and Council
Subject: Tobacco Policy
Attachments: Santa Clara TFK Flavored Tobacco Letter 5.19.21.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Chairperson Watanabe,

Please find a letter attached expressing the Campaign for Tobacco Free Kids' disappointment that the Economic Development, Communications, and Marketing Committee does not plan to consider a policy to prohibit the sale of all flavored tobacco products in the city of Santa Clara tomorrow. We urge the committee to reconsider and put the kids of Santa Clara above the interests of the tobacco industry.

Also, [here](#) is an editorial from yesterday in the San Jose Mercury News urging action to prohibit the sale of menthol cigarettes. While mostly focused on federal efforts, it mentions local efforts in the Bay Area as well. Please don't hesitate to reach out if you have any questions.

Sincerely,

Tim Gibbs
Campaign for Tobacco Free Kids

Tim Gibbs
[Tim Gibbs Consulting](#)
916-995-1998



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005
PHONE (202) 296-5469 • FAX (202) 296-5427

The Honorable Kathy Watanabe (Chair)
Economic Development, Communications, and Marketing Committee
Santa Clara City Council
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Tobacco-Free Kids Urges a Comprehensive Flavored Tobacco Ban

May 19, 2021

Dear Chairperson Watanabe and Members of the Santa Clara City Council:

The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, and help smokers quit. **We are disappointed that the Economic Development, Communications and Marketing Committee is not considering a comprehensive prohibition on the sale of flavored tobacco products.**

While California has made great strides in reducing tobacco use, tobacco use remains the number one preventable cause of premature death and disease in Santa Clara County and the nation, killing 480,000 Americans annually. **As you discuss policy options, we stand with dozens of other national health organizations to urge you to end the sale of *all* flavored tobacco products including *candy-flavored e-cigarettes, sweet-flavored cigarillos, and menthol cigarettes.***

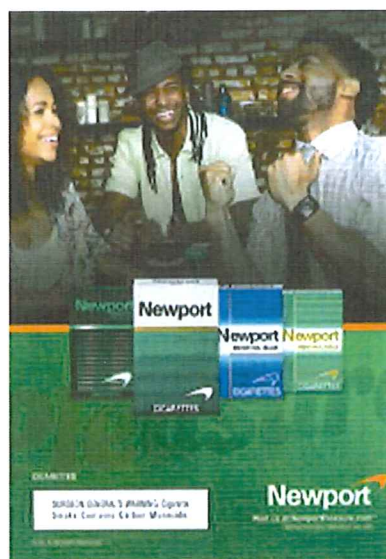
Prohibiting the sale of all flavored tobacco products in all tobacco retailers is a critical step that will help protect children living in Santa Clara from the unrelenting efforts by the tobacco industry to hook them to a deadly addiction. Flavored tobacco products are designed to alter the taste and reduce the harshness of tobacco products so they are more appealing and easy for beginners, who are almost always kids. These products are pervasive and are marketed and sold in a variety of kid-friendly flavors. With their colorful packaging and sweet flavors, flavored tobacco products are often hard to distinguish from the candy displays near

which they are frequently placed in retail outlets. **Nationally**, seven out of ten of current youth tobacco users have used a flavored tobacco product in the past month.¹

Menthol Cigarettes Increase Smoking Among Youth

No other flavored product contributes more to the death and disease caused by tobacco use than menthol cigarettes. We applaud your decision not to exempt menthol cigarettes from your ordinance. Menthol delivers a pleasant minty taste and imparts a cooling and soothing sensation. These characteristics successfully mask the harshness of tobacco, making it easier for beginner smokers and kids to tolerate smoking. The FDA's Tobacco Product Scientific Advisory Committee (TPSAC) has reported that:

- 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 in some populations, especially among Black Americans, and increases the overall prevalence of smoking among Black Americans.
- Menthol cigarettes are marketed disproportionately to younger smokers and are disproportionately marketed per capita to Black Americans.



After a thorough review of the evidence, TPSAC concluded that "Removal of menthol cigarettes from the marketplace would benefit public health in the United States."²

Flavored Tobacco Products Are Pervasive

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors. While overall cigarette sales have been declining since the 2009 law, the proportion of smokers using *menthol* cigarettes (the only remaining flavored cigarette) has been increasing.³ Menthol cigarettes comprised 36 percent of the market in 2018.⁴

The Tobacco Control Act's prohibition on characterizing flavors did not apply to other tobacco products, and as a result, tobacco companies have significantly stepped up the introduction and

marketing of flavored non-cigarette tobacco products. In fact, the overall market for flavored tobacco products is actually growing. In recent years, there has been an explosion of sweet-flavored tobacco products, especially e-cigarettes and cigars. These products are available in a wide assortment of flavors – like gummy bear, cotton candy, peanut butter cup, cookies ‘n cream and pop rocks for e-cigarettes and chocolate, watermelon, lemonade and cherry dynamite for cigars. Tobacco companies are making and marketing deadly and addictive products that look and taste like a new line of flavors from a Ben and Jerry’s ice cream store.

As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.⁵ 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, “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.”⁶ 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.⁷



Sales of cigars (i.e., large cigars, cigarillos, and small cigars) have more than doubled between 2000 and 2019, and much of the growth is attributable to smaller types of cigars, many of which are flavored and inexpensive.⁸ The number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.⁹ The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Black & Mild, Swisher Sweets, White Owl, Backwoods, and Dutch Masters – all come in flavor varieties.¹⁰ These products are often sold singly or can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth. Note that cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke.¹¹



Although tobacco companies claim to be responding to adult tobacco users’ demand for variety, it’s clear that flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. This growing market of flavored tobacco products is undermining progress in reducing youth tobacco use.

Flavored Tobacco Products Are Popular Among Youth

These sweet products have fueled the popularity of e-cigarettes and cigars among youth. A government study found that **81 percent of kids who have ever used tobacco products started with a flavored product.** Across all tobacco products, the data is clear: flavored tobacco products are overwhelmingly used by youth as a starter product, and preference for flavors declines with age.

The 2020 National Youth Tobacco Survey shows that among high school students, e-cigarette use declined to 19.6% in 2020, after increasing by an alarming 135 percent from 2017 to 2019 (from 11.7% to 27.5%).¹² 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 still use e-cigarettes – the same number as when the U.S. Surgeon General called youth e-cigarette use an “epidemic.”¹³

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). 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 (37.0%), and candy, desserts, or other sweets (36.4%).¹⁴ Data from an earlier survey found that youth cite flavors as a major reason for their current use of non-cigarette tobacco products, with 70.3% say they use e-cigarettes “because they come in flavors I like.”¹⁵

Almost all e-cigarettes contain nicotine, a highly addictive drug. Young people are especially vulnerable to nicotine addiction.¹⁶ The Surgeon General has concluded that, “The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”¹⁷ The manufacturer of JUUL, a popular e-cigarette among youth, claims that each JUUL pod contains as much nicotine as a pack of twenty cigarettes. Since the introduction of Juul, many youth are now using products that effectively deliver massive doses of nicotine and it is clear that large numbers of teen e-cigarette users are struggling with nicotine addiction.

Youth e-cigarette users are also at risk of smoking cigarettes. A 2018 report from the National Academies of Science, Engineering & Medicine found that “There is substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”¹⁸ More recent research confirms this finding.¹⁹ Therefore, it is critical for any policy restricting sales of flavored tobacco products to include e-cigarettes.

In January 2020, the FDA restricted some flavors in cartridge-based e-cigarettes, but exempted all menthol-flavored e-cigarettes and left flavored e-liquids and disposable e-cigarettes widely available in every imaginable flavor. New data show that the market share of these products has grown substantially and that youth quickly migrated to the flavored products that were exempt from the FDA’s policy.²⁰ In addition, 80% of 10th and 12th grade e-cigarette users

report that they can still easily obtain nicotine solutions in flavors other than tobacco or menthol.²¹ Only the elimination of all flavored e-cigarettes can end the youth e-cigarette epidemic.

As the only flavored cigarette left on the market, it's also 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 smoking. About half of youth smokers use menthol cigarettes.²² The popularity of menthol flavored cigarettes is also evidenced by brand preference among youth. According to data from the 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 percent) because of targeted marketing by the tobacco industry.²³ As noted previously, young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.²⁴

Tobacco companies have a long history of targeting and marketing flavored tobacco products to Black Americans and youth. Tobacco industry marketing, often targeted at minority communities, has been instrumental in increasing the use of menthol products and in the disproportionate use of menthol products by minority groups and youth. TPSAC concluded that menthol cigarettes are marketed disproportionately to younger smokers and Black Americans.²⁵ 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. This targeting continues today: Black neighborhoods have more tobacco retailers and Newport cigarettes are priced cheaper in those neighborhoods.²⁶ As a result of this targeting, 85 percent of Black American smokers smoke menthol cigarettes, compared to 29 percent of white smokers.²⁷

Menthol cigarettes are a major reason why Black Americans suffer disproportionately from tobacco use. Tobacco use is the number one cause of preventable death among Black Americans, claiming 45,000 Black lives every year.²⁸ Tobacco use is a major contributor to three of the leading causes of death among Black Americans - heart disease, cancer and stroke.²⁹ The higher rates of some tobacco-caused diseases among Black Americans result, in part, from their greater use of menthol cigarettes, which are associated with reduced cessation.³⁰ TPSAC estimated that by 2020, 4,700 excess deaths in the Black community will be attributable to menthol cigarettes, and over 460,000 Black Americans will have started smoking because of menthol in cigarettes.

Advancing tobacco retail policies has *not* led to an uptick in arrests related to possession of cigarettes. The ordinance would prohibit the sale of flavored tobacco products, not prohibit

the possession of these products. Adoption of the proposed ordinance will not lead to police having any greater interaction with youth. Cities across California with similar policies such as Compton, Oakland, Beverly Hills, and Sacramento have passed and implemented these ordinances without incidents.

The scientific evidence leaves no doubt that menthol cigarettes and other flavored tobacco products increase the number of people, particularly kids, who try the product, become addicted and die a premature death as a result. Prohibiting the sale of menthol cigarettes and other flavored tobacco products is an important step toward protecting our children from the tobacco industry's aggressive efforts to hook children to a deadly, addictive product.

This issue is about protecting our kids and vulnerable populations. By prohibiting the sale of all flavored tobacco products, Santa Clara would join over one hundred cities and counties in California, including four within Santa Clara County, that have already enacted these flavored tobacco policies. In addition, the California legislature passed a bill to prohibit the sale of flavored tobacco products, including menthol cigarettes. The bill passed with extremely strong support and was signed into law immediately. However, the tobacco industry is now effectively delaying implementation by referring it to the ballot for voter approval. While the industry forces us to wait for that vote to occur, local youth in Santa Clara continue to have access to these deadly and addictive products. For this reason, we cannot wait to act.

We urge you to consider a strong and comprehensive policy without exemptions. This ordinance will save lives in Santa Clara.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsey Freitas". The signature is fluid and cursive, with a stylized "L" and "F".

Lindsey Freitas, MPA
Regional Advocacy Director
Campaign for Tobacco-Free Kids
lfreitas@tobaccofreekids.org

Appendix

A1: Examples of Flavored Tobacco Products



A2: Examples of Menthol Marketing

Source: TrinketsandTrash.org, CounterTobacco.Org

¹ Rose, S, et al., "Flavour types used by youth and adult tobacco users in wave 2 of the Population Assessment of Tobacco and Health (PATH) Study 2014-2015," *Tobacco Control*, published online September 21, 2019.

² Tobacco Products Scientific Advisory Committee (TPSAC), *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011

<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>

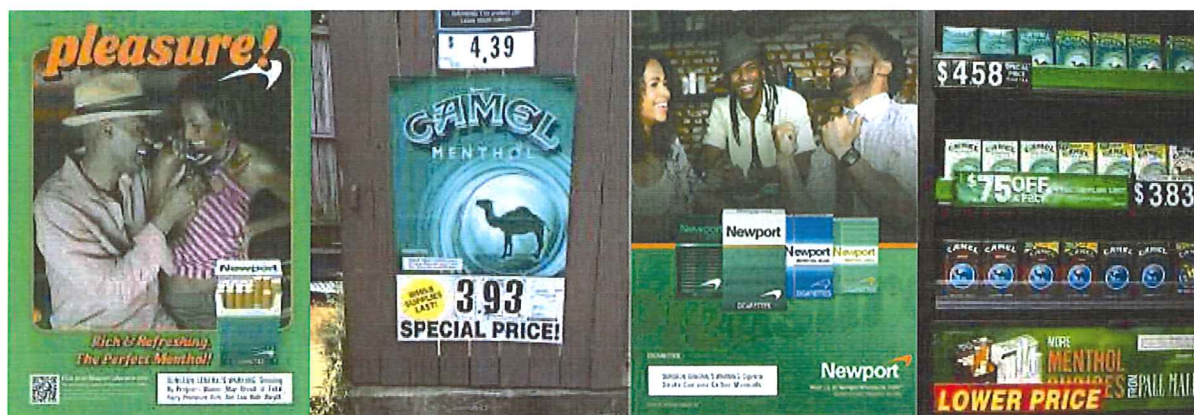
³ Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, 25(Suppl 2):ii14-ii20, 2016.

⁴ U.S. Federal Trade Commission (FTC), *Cigarette Report for 2018, 2019*, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2018-smokeless-tobacco-report-2018/p114508cigarettereport2018.pdf> [data for top 5 manufacturers only].

⁵ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.

⁶ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

⁷ Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.



⁸ U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), *Tobacco Statistics*.

⁹ Delnevo, CD, et al., "Changes in the mass-merchandise cigar market since the Tobacco Control Act," *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017.

¹⁰ SAMHSA's public online data analysis system (PDAS). National Survey on Drug Use and Health, 2015.

https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CGR30BR2&column=CATAG2&weight=ANAL.WT_C&results_received=true.

¹¹ National Cancer Institute (NCI), *Cigars: Health Effects and Trends. Smoking and Tobacco Control Monograph No. 9*, 1998, http://cancercontrol.cancer.gov/Brp/trcb/monographs/9/m9_complete.pdf. Chang, CM, et al., "Systematic review of cigar smoking and all cause and smoking related mortality," *BMC Public Health*, 2015.

¹² Wang, TW, et al., "E-cigarette Use Among Middle and High School Students – United States, 2020," *MMWR*, Volume 69, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.

¹³ Office of the Surgeon General, "Surgeon General's Advisory on E-Cigarette Use Among Youth," December 18, 2018, <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

¹⁴ Wang, TW, et al., "E-cigarette Use Among Middle and High School Students – United States, 2020," *MMWR*, Volume 69, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.

¹⁵ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM633281.pdf>.

¹⁶ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*.

¹⁷ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*.

¹⁸ National Academies of Sciences, Engineering, and Medicine (NASEM), *Public Health Consequences of E-Cigarettes*, 2018, <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

- ¹⁹ Berry, KM, et al., "Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco Cigarettes in US Youths," *JAMA Network Open*, 2(2), published online February 1, 2019; Pierce, JP, et al., "Use of E-Cigarettes and Other Tobacco Products and Progression to Daily Cigarette Smoking," *Pediatrics*, 147(2), published online January 11, 2021.
- ²⁰ CDC Foundation, *Monitoring U.S. E-Cigarette Sales: National Trends*, November 2020, <https://www.cdcfoundation.org/E-CigaretteSales-DataBrief-Nov2020?inline>; Wang, TW, et al., "E-Cigarette Use Among Middle and High School Students – United States, 2020," *MMWR ePub*, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.
- ²² Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR* 68(12), December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ²³ SAMHSA's public online data analysis system (PDAS), National Survey on Drug Use and Health, 2015. http://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CIG30BR2&column=CATAG3&control=NEWACE2&weight=ANALWT_C&results_received=true and https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?column=CATAG3&results_received=true&row=CIG30BR2&weight=ANALWT_C.
- ²³ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013, <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.
- ²⁴ TPSAC, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011.
- ²⁵ TPSAC, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011.
- ²⁶ See e.g., Rodriguez, D, et al., "Predictors of tobacco outlet density nationwide: a geographic analysis," *Tobacco Control* 22(5):349-55, 2013. Lee, JG, et al., "Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study," *Journal of Epidemiology and Community Health* 71(5):487-492, 2017. Henriksen, L, et al., "Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods," *Nicotine & Tobacco Research* 14(1):116-21, 2012. Moreland-Russell, S, et al., "Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies," *International Journal of Environmental Research and Public Health*, 10: 4571-4583, 2013.
- ²⁷ Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- ²⁸ American Cancer Society, "Cancer Facts & Figures for African Americans, 2016-2018," 2016, <http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-047403.pdf>. American Heart Association, "African Americans and Cardiovascular Diseases: Statistical Fact Sheet, 2012 Update," http://www.heart.org/idc/groups/heart-public/@wcm/@sop/@smd/documents/downloadable/ucm_319568.pdf. HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998, http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.
- ²⁹ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998; CDC, National Vital Statistics Report, Vol. 68, No. 9. Table 10, 2019 https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_09-508.pdf.
- ³⁰ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998; HHS, *Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General*, 2014. See also Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," *Nicotine & Tobacco Research*, 18(S1): S91-S101, 2016.

5-19-2021

ITEM 4

Genevieve Yip

From: Margo Sidener <margo@lungsrus.org>
Sent: Tuesday, May 18, 2021 2:51 PM
To: Mayor and Council
Subject: Input for Economic Development, Communications, and Marketing Committee
Attachments: City Santa Clara TRL 2021 let.pdf

Dear Santa Clara City Councilmembers and Staff: Please find attached our agency's letter of input for the Economic Development, Communications, and Marketing Committee meeting tomorrow. Thank You for Your Consideration,
Margo

Margo Leathers Sidener, MS, CHES

Chief Executive Officer



of the Bay Area, Golden Gate, and Central Coast

[1469 Park Avenue, San Jose, CA 95126](#)

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Breathe California is dedicated to fighting lung disease, advocating for clean air, and promoting public health for *all* its communities.

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May 18, 2021

The Honorable Councilmember Kathy Watanabe, Chair,
Councilmember Kevin Park, and Councilmember Anthony J. Becker,
Members of the Economic Development, Communications, and
Marketing Committee,
City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050
Via: mayorandcouncil@santaclaraca.gov

Dear Committee Members:

We commend you for exploring the establishment of a Tobacco Retail License (TRL) for the City of Santa Clara. When it includes the necessary components, this is an extremely effective tool to keep tobacco out of the hands of more kids, and to thwart tobacco industry targeting of our most vulnerable communities. License fees can also provide money for monitoring and enforcement.

However, it is our understanding that a major component of most current TRLs is lacking in your proposed plan: banning flavored tobacco. Flavored tobacco, including literally thousands of fruity and candy flavors, is the latest and most successful strategy of the tobacco industry to addict our youth.

Consider that 82.3% of Santa Clara County teens currently using tobacco report using a flavored product! Flavors cut the harshness of tobacco, making it easier to take up the habit and become addicted. Tobacco use had dropped to less than 2% among our youth and now has grown to over 13% in a few years!

Please re-consider the components of the proposed ordinance, to include a ban on the sale of all flavored tobacco products, including menthol cigarettes, electronic cigarettes (vapes), and hookah with no exemptions.

If so amended, the ordinance would be a significant step in improving the health of Santa Clara residents, especially those vulnerable populations with health inequities that are targeted by the tobacco industry.

Sincerely,

Margo Sidener, MS CHES
Chief Executive Officer

PS It is critical that local jurisdictions act now, as SB 793 is on hold for two

Genevieve Yip

From: Vanessa Marvin <vmarvin@me.com>
Sent: Tuesday, May 18, 2021 4:36 PM
To: Mayor and Council
Cc: Caroline Baker
Subject: Letter re May 19 Agenda Item 21-675
Attachments: Tobacco Free Coalition Letter Santa Clara City May 2021.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mayor and Councilmembers,

I am the co-chair of the Tobacco-Free Coalition of Santa Clara County, along with Carol Baker (cc-ed). On behalf of the coalition, here is a letter on the tobacco retail issues that will be discussed at your Economic Development, Communications, and Marketing Committee on May 19 (Agenda Item 21-675).

We urge you to move forward with a strong and comprehensive tobacco retail policy that will protect the residents and youth of the city.

Thank you for your consideration.

Sincerely,
Vanessa Marvin & Carol Baker



1775 Story Road, Suite 120
San Jose, CA 95122

Santa Clara City Council
1500 Warburton Avenue
Santa Clara, CA 95050

May 4, 2021

Dear Council Members Watanabe, Park and Becker,

The Tobacco-Free Coalition of Santa Clara County, which consists organizations and individuals interested in promoting the health of our citizens, is urging you to move forward with a strong tobacco retailer licensing law in the City of Santa Clara.

Our coalition members were excited to participate in the Virtual Community Meetings your city held in March. We urge you to move forward on the strong, comprehensive policies that were proposed by staff during these meetings and outlined on your website.

During this challenging time, it is even more important to take action on the pressing public health issue of tobacco. There is growing evidence that smokers are at a greater risk of hospitalization and severe illness due to COVID-19. In addition, there is evidence that vaping can also harm lung health. These factors put smokers and vapers at greater risk when confronted with coronavirus.

In November 2018, the U.S. Food and Drug Administration (FDA) and the U.S. Centers for Disease Control and Prevention (CDC) reported a dramatic increase in youth nicotine use, leading the Surgeon General and the FDA to declare youth e-cigarette use an epidemic in the United States.

Tobacco companies are using candy-flavored products to hook kids into a dangerous addiction to nicotine. Most young people who have ever used tobacco started with a flavored product. These products often mimic popular candies, drinks, or snacks in both packaging and flavor, making them particularly appealing to youth.

To protect the health of City of Santa Clara residents a strong retail tobacco ordinance should include:

- **Ban on ALL flavored tobacco products, including hookah, in all locations**
 - 82.3 percent of Santa Clara County teens currently using tobacco report using a flavored product.

- Menthol - Menthol flavor makes cigarettes easier to start and is disproportionately used to hook African-Americans, LGBTQ individuals and youth. Among Santa Clara County youth who smoke, 63% smoke menthol cigarettes.
- Hookah - Hookah is a flavored tobacco and hookah use is linked to many of the same health risks as cigarette use.
- Adult-only stores - Other cities such as Oakland have encountered implementation challenges by exempting adult-only stores, leading to an extreme proliferation of these stores.
- **Restriction of all e-cigarette and vape product sales**
 - In a survey, 13.2 percent of Santa Clara County teens reported using e-cigarettes in the past month, double the amount reported in the previous survey.
- **Restriction of the density of tobacco retailers near schools and existing retailers**
 - Almost a quarter (23.9%) of City of Santa Clara tobacco retailers are located within 1,000 feet of a school.
- **A licensing program with regular and ongoing enforcement and compliance checks of retailers**
- **Prohibiting tobacco sales in pharmacies**

Other communities across our county have already stepped up to protect their residents from these harmful products. Santa Clara County, Cupertino, Los Altos, Los Gatos, Palo Alto, and Sunnyvale have restricted flavored tobacco. And seven cities in the county have banned the sale of all vaping products in their city.

For these reasons, we urge you to pass a strong tobacco retailer licensing law, including a flavored tobacco provision with no exemptions, in Santa Clara.

Sincerely,

Vanessa Marvin, Co-Chair
vmarvin@me.com

Carol Baker, Co-Chair
carol@carolandcharliebaker.com

Genevieve Yip

From: Erica Costa <Erica.Costa@lung.org>
Sent: Wednesday, May 19, 2021 11:42 AM
To: Mayor and Council
Subject: Santa Clara Tobacco Control
Attachments: Santa Clara City - Flavors 05.18.21.docx

Categories:

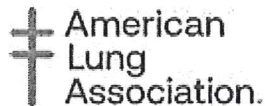
Hello Mayor and City Councilmembers,

Please see the attached letter regarding today's city council meeting and flavored tobacco being included in the TRL for the City of Santa Clara.

Thank you,

Erica Costa

Erica Costa, MPPA
Advocacy Director | California
American Lung Association
1531 "I" Street, Suite 201 | Sacramento, CA 95814
O: 916-585-7677 | C: 916-801-0730
Lung HelpLine: 1-800-LUNGUSA
Lung.org | Erica.Costa@lung.org
Preferred Pronouns: She/Her/Hers





May 19th, 2021

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear City of Santa Clara Council Members:

On behalf of the American Lung Association in California, the leading public health organization fighting to reduce and prevent the harmful effects of tobacco use, I am writing to express support for a strong tobacco retailer licensing (TRL) ordinance that includes prohibiting the sale of flavored tobacco.

Each year in California, nearly 40,000 adults die from smoking-related causes, and over 12,000 kids become new daily smokers. According to the U.S. Surgeon General, tobacco companies have a long history of using flavored products to entice new, younger customers. Eight out of ten youth smokers report that they initiated tobacco use with a flavored tobacco product, and the younger a person is, the more likely they will be to use a flavored tobacco product.

A report completed by the Santa Clara County Public Health Department in 2019 demonstrates the usage of flavored tobacco in youth. A third of high school students, 31.5%, reported using an e-cigarette in the county. Furthermore, the report finds more than 45% of teens reported purchasing their own e-cigarettes, in which 25% of teens bought from a local store. Currently, about 82% of these teens are using flavored tobacco products.

As such, we urge the Board of Supervisors to enact a strong and effective TRL policy and amend to include the flavored tobacco sales restriction policy.

An effective TRL program includes an annual license fee high enough to recover the cost of administration and enforcement, annual compliance checks, and escalating penalties on the owner/operator for violations. These elements are critical to ensuring retailers of tobacco products and e-cigarettes are not selling to minors. Results from local communities that have adopted well-enforced TRL policies with these elements demonstrate significant decreases in illegal tobacco sales to minors and youth tobacco use. A strong TRL and comprehensive flavored tobacco sales restriction policy will help protect the City of Santa Clara youth from nicotine addiction and tobacco-related death and disease.

For these reasons, we urge the City of Santa Clara Council to move forward with adopting a strong tobacco retailer license ordinance.

Sincerely,

A handwritten signature in black ink that reads "Erica Costa".

Erica Costa

5-19-2021

ITEM 4

Genevieve Yip

From: Lori Bremner <lori@parentsagainstvaping.org>
Sent: Wednesday, May 19, 2021 12:42 PM
To: Anthony Becker; Kevin Park; Kathy Watanabe
Cc: Mayor and Council
Subject: Comment Letter for Today's Economic Development, Communications, and Marketing Committee Meeting
Attachments: PAVe Santa Clara Support Letter to EDCMC Committee.pdf

Dear Chair Watanabe and Council Members Park and Becker

Attached please find a letter from PAVe - Parents Against Vaping e-Cigarettes in support of strengthening the proposed Tobacco Retail License to include a provision that will protect kids by ending the sale of all flavored tobacco products.

Thank you for your consideration.



Lori Greenstein Bremner
Parents Against Vaping E-Cigarettes
707.363.1263
<https://www.parentsagainstvaping.org/>



May 19, 2021

Re: Flavored Tobacco Products and OUR KIDS

Dear Honorable Council Members Watanabe, Park and Becker,,

As two cofounders of Parents Against Vaping E-cigarettes (PAVe), a national organization founded in 2018 by three moms as a grassroots response to the youth vaping crisis, we write today to express our strong support for **ending the sale all flavored tobacco products in Santa Clara, with no exemptions, as part of a strong Tobacco Retail Licensing ordinance (TRL).**

PAVe's passionate parent volunteers have been advocating for flavor-ban legislation not only in Santa Clara but across California, participating in successful legislative campaigns in San Francisco (Proposition C); in Sacramento and the County of Los Angeles (a ban on all flavored tobacco products); and at the state level where we helped pass SB 793. We are grateful to serve as important partners for California's county, city, and state anti-tobacco coalitions.

According to the 2020 National Youth Tobacco Survey (NYTS), 3.6 million young people are regularly vaping, and the research has proven that flavors are hooking our kids. The latest figures show that 8 out of 10 teens who vape choose flavors. With 40% of high-school users using an e-cigarette on 20 or more days out of the month, we must take action immediately to protect these teens from becoming an entire generation of nicotine addicts. This issue is made even more urgent in light of COVID; a recent Stanford-led study reports that teens who vape are 5-to-7 times more likely to contract the virus.

And that's why it is essential that the Santa Clara **end the sale of all flavored tobacco, with no exemptions, as part of a strong TRL**, to protect all kids from the predatory behavior of Big Tobacco, an industry that has historically used flavors to target young people.

Meanwhile, SB 793 was challenged by a tobacco-industry-funded ballot initiative and is delayed in its implementation by one or two years, if it gets implemented at all. We need cities like Santa Clara to take strong action to prevent California's kids not only from dangerous flavored products but from becoming Big Tobacco's next generation of lifetime customers. That's why we urge you to immediately **end the sale of all flavored tobacco products with no exemptions** by matching the strong protections already passed in the unincorporated County of Santa Clara and likely soon to be passed in the City of San Jose. SB 793 provides a floor, but not a ceiling, for a local ordinance. You can, and should, go further.

The 2020 federal guidance, which banned flavors for POD based systems (like JUUL) but left menthol POD based systems on the market and allowed flavored liquids for refillable systems to stay, created an enormous loophole for flavored **disposable** e-cigarettes. Use of disposable products, the teen favorite, has increased by 1000% among teens who vape. And, among teens who vape, almost 40% use menthol flavor, a figure made more disturbing by the fact that it does **not** include teens who use mentholated "iced" flavors.

For these reasons we are proud to advocate for a strong TRL that includes a **comprehensive flavor ordinance** in Santa Clara. Please provide the kids of Santa Clara the same protections enjoyed by the kids of the unincorporated county. Should you have any questions about our position, please do not hesitate to contact PAVE Co-Founders Dorian Fuhrman and Meredith Berkman at (646) 838-7718.

Sincerely,

Dorian Fuhrman and Meredith Berkman

Co Founders PAVE 105 West 86th St. NY NY 10024 www.parentsagainstvaping.org



Economic Development Communications and Marketing Committee

Item 4 -

Report and Direction on Tobacco Policies Reducing Youth Access to Tobacco Products

May 19, 2021



City of Santa Clara
The Center of What's Possible

Healthy Cities Program

10/2020: Tobacco-Free Communities - Policies Across Santa Clara County Jurisdictions

| Jurisdiction | Reducing Exposure to Secondhand Smoke | | | | | | | Reducing Youth Access & Exposure to Tobacco Products | | | | | |
|--|---------------------------------------|----------------------|-----------|---------------|---------------|--------------------|------------------------------------|--|-----------------------------------|--------------------------|-------------------------------|--------------------------------|--|
| | Parks & Trails | Outdoor Dining Areas | Entryways | Service Areas | Public Events | Multi-Unit Housing | Common Areas of Multi-Unit Housing | Tobacco Retail Permit | Reduce Density of Tobacco Outlets | Limit Sales Near Schools | Flavored Tobacco Restrictions | No Tobacco Sales in Pharmacies | Restricts Sale of all Tobacco (T) and/or Vaping (V) Products |
| % of County population covered by policy | 92.6% | 57.2% | 39.3% | 85.9% | 31.6% | 24.3% | 79.9% | 77.4% | 14.7% | 17.5% | 18.5% | 14.7% | 13.30% |
| County of Santa Clara | 2010 | 2010 | 2010 | 2010 | | 2010 | 2010 | 2010 | 2010 | 2010 | 2010 | 2010 | 2019 (V) |
| Campbell | 2011 | 2011 | 2011 | 2011 | 2011 | | | 2012 | | | | | |
| Cupertino | 2011 | 2014 | 2014 | | | | | 2019 | 2019 | 2019 | 2019 | 2019 | 2020 (V) |
| Gilroy | | | | | | | | 2014 | | 2014 | | | |
| Los Altos | 2011 | 2018 | 2018 | 2018 | 2018 | | | 2020 | | | 2020 | | 2020 (V) |
| Los Altos Hills | | n/a* | | n/a* | n/a* | n/a* | n/a* | n/a* | n/a* | n/a* | n/a* | n/a* | n/a* |
| Los Gatos | 2013 | pre-2010 | 2016 | 2016 | 2016 | 2016 | 2016 | 2017 | 2017 | 2017 | 2017 | 2017 | 2019 (V) |
| Milpitas | 2012 | 2017 | | | | | | | | | | | |
| Monte Sereno | n/a* | n/a* | n/a* | n/a* | n/a* | 2020 | 2020 | n/a* | n/a* | n/a* | n/a* | n/a* | n/a* |
| Morgan Hill | 2012 | 2012 | 2012 | 2012 | 2012 | | | 2014 | | | 2019*** | | 2019 (V) |
| Mountain View | | 2012 | 2012 | | 2012 | | | | | | | | |
| Palo Alto | 2013 | 2014 | 2014 | 2014 | 2014 | 2016 | 2016 | 2017 | 2017 | 2017 | 2017 | 2017 | 2020 (V) |
| San Jose | pre-2010 | 2012 | | 2012 | | | 2012 | 2011 | | | | | |
| Santa Clara | 2019 | 2019 | 2019 | 2019 | 2019 | 2019 | 2019 | | | | | | |
| Saratoga | pre-2010 | 2016 | 2016 | 2016 | 2016 | | 2016 | 2015 | 2016 | 2016 | 2018** | 2018 | 2020 (V) |
| Sunnyvale | 2012 | 2016 | 2016 | 2016 | 2016 | 2016 | 2016 | | | | | | |



Background

- On April 7, 2020, Council authorized execution of a grant agreement with the Santa Clara County Public Health Department to explore tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products
- The City executed the grant agreement on July 20, 2020, in the amount of \$48,944 for FY 2020/21



Background

- On November 18, 2020, the Economic Development Marketing and Communications Committee directed staff to proceed with grant implementation through a community outreach process, research, and policy recommendations for future Council consideration



Community Outreach

- Staff embarked on a community outreach process in February 2021 to seek input on proposed tobacco policies:
 - Prohibiting the sale of flavored tobacco products
 - Prohibiting the sale of all electronic smoking devices
 - Reducing the availability of tobacco
 - Distance from schools and retailers
 - Sales in pharmacies

5



Current Federal Law

- Prohibits the sale of candy and fruit-flavored cigarettes
- ***Does not*** prohibit the sale of menthol cigarettes or flavored, non-cigarette tobacco products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, electronic smoking devices, and the e-liquid used in these devices

6



California Law

- SB 793 would prohibit the sale of most flavored tobacco products. State law contains three exemptions:
 - 1) Hookah and shisha products (if sold by an adult-only hookah tobacco retailer);
 - 2) Premium cigars with a wholesale price of no less than \$12; and
 - 3) Loose leaf tobacco (other than tobacco for roll-your-own cigarettes).
- *Law NOT in effect: suspended until a referendum vote

7



Local Policies

- As of May 2020, 54 communities in California have passed laws to restrict the sale of flavored tobacco products
- In Santa Clara County, the cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, and County of Santa Clara prohibit the sale of flavored tobacco products

8



Local Policies

- City of Gilroy established a Tobacco Retailer License (TRL) program and minimum distance from schools. Campbell and San Jose both have established a TRL program
- Some cities outsource management and enforcement of their TRL program to the County, adopting an ordinance identical to the County's
- Cities of Campbell, Gilroy, Los Altos, Morgan Hill, San Jose, and Saratoga administer and enforce a TRL in-house ⁹



Community Outreach



Open City Hall Survey

- Online survey launched February 17, 2021. Survey closed n April 7, 2021, with 683 responses
- 89.5% of survey respondents live in Santa Clara, 25.5% work in Santa Clara, 3.8% go to school in Santa Clara, and 1.8% manage and/or own a tobacco retailer facility in Santa Clara



Survey Responses



Would you support or oppose a law to prohibit the sale of flavored tobacco products like menthol cigarettes and fruit-flavored electronic cigarettes in Santa Clara?

| | | Response Percent | Response Count |
|----------------------------|---|---------------------|-------------------|
| Support |  | 64.4% | 437 |
| Oppose |  | 30.0% | 204 |
| Neither Support nor Oppose |  | 5.6% | 38 |

13



Would you support or oppose a law to prohibit the sale of all electronic cigarettes and vaping devices?

| | | Response Percent | Response Count |
|----------------------------|---|---------------------|-------------------|
| Support |  | 59.1% | 402 |
| Oppose |  | 32.4% | 220 |
| Neither Support nor Oppose |  | 8.5% | 58 |

14



Would you support or oppose a law requiring store owners to purchase a local license to sell tobacco? The license fees would cover the cost of checking whether stores follow tobacco laws.

| | | Response Percent | Response Count |
|----------------------------|---|---------------------|-------------------|
| Support |  | 72.1% | 489 |
| Oppose |  | 19.8% | 134 |
| Neither Support nor Oppose |  | 8.1% | 55 |

15



Would you support or oppose a law to prevent stores near schools from selling tobacco (e.g., no new tobacco retailers within 1,000 feet of schools)?

| | | Response Percent | Response Count |
|----------------------------|---|---------------------|-------------------|
| Support |  | 73.9% | 503 |
| Oppose |  | 18.9% | 129 |
| Neither Support nor Oppose |  | 7.2% | 49 |

16



Would you support or oppose a law that limits where stores that sell tobacco can be located within a community (e.g., no new tobacco retailers within 500 feet from existing tobacco retailers)?

| | | Response Percent | Response Count |
|----------------------------|---|---------------------|-------------------|
| Support |  | 62.2% | 423 |
| Oppose |  | 25.6% | 174 |
| Neither Support nor Oppose |  | 12.2% | 83 |

17



Would you support or oppose a law that bans pharmacies from selling tobacco products?

| | | Response Percent | Response Count |
|----------------------------|---|---------------------|-------------------|
| Support |  | 61.1% | 417 |
| Oppose |  | 28.0% | 191 |
| Neither Support nor Oppose |  | 11.0% | 75 |

18



Virtual Community Meetings

- Two virtual community meetings hosted on March 17, 2021, and March 24, 2021
- Majority of attendees support a local TRL program and density regulations requiring minimum distance from schools and other retailers
- Majority oppose a ban on flavored tobacco, electronic cigarettes and vaping devices due to small business impacts

19



Virtual Community Meetings

General feedback continued:

- Concern in banning hookah and shisha products, attributing its use to cultural traditions practiced by adults
- Desire for the City to mirror exemptions in State law SB 793
- Others support a comprehensive policy to protect youth from tobacco products, attributing its use and addiction to long-term health effects

20



Virtual Business Forum

- One virtual business forum hosted on March 25, 2021
- Some attendees were supportive of a local TRL program and density regulations for new tobacco retailers, stating they comply with state and federal regulations
- Attendees expressed the need for more youth education and prevention in the community

21



Business Visits

- Staff conducted visits to some of the tobacco retailers who attended the business forum
- Flavored tobacco, electronic cigarettes, and vaping devices make up between 40-75% of their total revenues
- Some expressed support of a local TRL program, stating they comply with state and federal regulations

22



Summary of Outreach

- Open City Hall online survey
- Community Meetings, Business Forum and Business Visits
- City Hall News, Mission City News, direct mailers, City's social media channels, and NextDoor
- Outreach coordinated with the County, Breathe California, Silicon Valley Central Chamber of Commerce and disseminated via PeachJar to reach the school community

23



Policy Options

24



Policy Options

- Santa Clara County is willing to partner with the City to administer, implement and monitor its tobacco retailer license law if the City adopts a TRL that mirror's the County's requirements without modification.
- County structure does not allow for exemptions to the policies, such as those included in State law SB 793, and as expressed in the community input sessions.

25



Policy Options

- Proceed with three key elements of the proposed policies:
 - 1) establish a local tobacco retailer license (TRL) program to be administered in-house
 - 2) require that new retailers are located a minimum distance from schools (e.g., 1,000 feet)
 - 3) require that new retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet)

26



Tobacco Retailer License Program

A local TRL is generally adopted to:

- Create more comprehensive restrictions than State law on the sale or marketing of tobacco products in the retail environment;
- Allow for meaningful penalties for violation of tobacco control laws such as license suspension; and
- Help fund local enforcement of tobacco control laws through the licensing fee.

27



Recommendation

- Proceed with analysis and preparation of an ordinance for Council consideration to:
 - 1) establish a local tobacco retailer license (TRL) program to be administered in-house
 - 2) require that new retailers are located a minimum distance from schools (e.g., 1,000 feet)
 - 3) require that new retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet)

28