

# Policy Options for Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products



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*This fact sheet outlines local policy options to restrict the sale of menthol cigarettes and other flavored tobacco products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, and electronic smoking devices.*

Due to tobacco companies' marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use menthol cigarettes and other flavored tobacco products. These groups disproportionately bear the burden of tobacco-related harm.

Restrictions on Flavored Tobacco Products	Federal Law	California Law
Flavored Cigarettes & Components <sup>1</sup> (excluding menthol)	Prohibited	No restrictions
Flavored Roll-your-own Tobacco (excluding menthol)	Prohibited	No restrictions
Menthol Cigarettes & Roll-your-own Tobacco	No restrictions	No restrictions
Flavored Cigars & Little Cigars		
Flavored Smokeless Tobacco		
Flavored Electronic Smoking Devices		
Flavored Non-cigarette Components, Parts, & Accessories <sup>2</sup>		

<sup>1</sup>eg, flavored rolling papers and filters intended for use with roll-your-own tobacco

<sup>2</sup>eg, flavored blunt wraps and additives for e-liquids

## What can communities do?

Local governments in California and across the country have enacted laws restricting the sale of flavored tobacco, and initial evidence shows reductions in youth tobacco use in these communities.<sup>1</sup> Your community can pursue similar sales restrictions. The federal Family Smoking Prevention and Tobacco Control Act allows local governments to regulate tobacco product sales,<sup>2</sup> and multiple courts have upheld local laws restricting the sale of flavored tobacco.<sup>3</sup>

## Policy Solution

A comprehensive prohibition on the sale of all flavored tobacco products provides a significant public health benefit. It may counter the tobacco industry's marketing tactics and reduce tobacco use, especially among vulnerable populations. ChangeLab Solutions' *Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products* (Model Ordinance) provides a comprehensive approach by prohibiting all tobacco retailers from selling any tobacco product that has a taste or aroma other than tobacco. The Model Ordinance's definition of tobacco products includes flavored accessories such as cigarette rolling papers and blunt wraps.

Jurisdictions with local tobacco retailer licensing (TRL) can implement and enforce these sales restrictions through licensing. The Model Ordinance recommends a 6-month delay between the day a jurisdiction adopts the ordinance and the day the prohibition goes into effect. This delay provides tobacco retailers time to sell their existing inventory of flavored tobacco and provides local government time to plan for implementation and enforcement.<sup>4</sup> Importantly, the Model Ordinance does not prohibit or penalize the purchase, use, or possession of flavored tobacco products. Only tobacco retailers who sell flavored tobacco products are subject to penalty.

<sup>4</sup> The Model Ordinance includes an optional provision to temporarily grandfather certain businesses, which exempts those businesses from complying with the flavored tobacco prohibition for an additional 6 months. Thus, certain businesses have 12 months to comply with the law following its adoption. The optional exemption applies only to tobacco retailers that primarily sell tobacco products or tobacco paraphernalia.



Communities can consider non-comprehensive restrictions, too. However, because these restrictions may not apply to all stores, they may have a smaller public health benefit and cost more to implement and enforce. For example, a jurisdiction can prohibit sales within a certain distance of youth-populated areas, such as schools (creating a “buffer zone”), or allow sales only in certain types of stores, such as those *primarily* selling tobacco. However, buffer zones require additional resources to develop and keep maps of youth-populated areas and tobacco retailers up to date. Moreover, communities must ensure the local government, business community, and general public know which retailers are restricted from selling flavored tobacco. Communities considering approaches like these should consider increased implementation costs and potential enforcement challenges.

## Conclusion

Menthol cigarettes and other flavored tobacco products pose a significant threat to health, especially for populations targeted by the tobacco industry, such as youth, low-income communities, communities of color, and the LGBTQ community. Local governments can promote health and equity by prohibiting the sale of menthol cigarettes and other flavored tobacco products. They can use ChangeLab Solutions' *Model Ordinance* and request *technical assistance* from ChangeLab Solutions.

*ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

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<sup>1</sup> Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. February 2016;tobaccocontrol-2015-052418. doi:10.1136/tobaccocontrol-2015-052418.

<sup>2</sup> 21 U.S.C. § 387p(a)(1).

<sup>3</sup> U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428 (2d Cir. 2013); Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013); Indep. Gas & Serv. Stations Ass'ns, Inc. v. City of Chi., 112 F.Supp.3d 749 (N.D. Ill. 2015).

