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As California communities take the lead on restricting the sale of flavored tobacco products, they are facing significant skepticism and opposition. The tobacco industry, along with the retail industry groups they frequently fund, is actively engaged in local-level opposition to policies, especially when the policies seek to restrict menthol products along with other flavors. Below are some common questions and beliefs, which have arisen during local flavored tobacco campaigns. The suggested answers are meant to help effectively address opponents' arguments against prohibiting the sale of flavored tobacco products. Coupling these responses with personal stories from community members is the most effective way to counter these arguments. The Center has additional resources on prohibiting flavored tobacco product sales and tobacco retailers licensing ordinances available at [www.Center4TobaccoPolicy.org](http://www.Center4TobaccoPolicy.org).

## Prohibiting the sale of flavored tobacco products is not effective and will not keep tobacco out of the hands of minors.

- More than 80% of youth who have used a tobacco product started with a flavored tobacco product. 82% of teens report flavors as being the reason they use electronic cigarettes.<sup>1</sup>
- Flavors, including menthol, reduce or mask the natural harshness and taste of tobacco, making it easier for youth to initiate and sustain tobacco use.<sup>2</sup>
- Menthol users in the U.S. that are below 18 years of age have already indicated that 66% of them would stop using these products if a ban was placed.<sup>3</sup>
- In 2013, New York City adopted a ban on the sale of flavored tobacco products that showed positive results. After the policy went into effect, a study found that teens in the city had lower odds of trying a flavored tobacco product and of using any type of tobacco product.<sup>4</sup>

## Flavors are not just for kids; adults also like flavors in electronic cigarettes and it helps adults quit smoking cigarettes.

- E-cigarettes are not approved by the Federal Food and Drug Administration as a smoking cessation device and not a single company that manufactures e-cigarettes has applied to be an approved and effective smoking cessation treatment.<sup>4</sup>
- 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.<sup>4</sup>
- While flavors can appeal to people of all ages, children and adolescents have a higher preference for sweet flavors and use flavored e-cigarettes more than adults.<sup>5</sup>
- Studies show that candy, fruit, and menthol flavored e-cigarettes appeal to adolescents more than tobacco flavored or alcohol flavored e-cigarettes.<sup>6</sup>

- 80% of youth in middle and high school who have used flavored tobacco products ended up using tobacco later in life.<sup>7</sup>
- Allowing harmful flavored tobacco products, which are proven to encourage initiation of youth tobacco use, to stay on the market in the hope that adults will use them to quit smoking cigarettes is not a defensible public health strategy.
- Adult e-cigarette users will still have access to non-flavored e-liquids, and those wishing to quit have a range of FDA-approved cessation therapies to choose.<sup>7</sup>

**There are already laws in place that prevent youth from having access to tobacco products, such as the statewide law that increased the minimum sale age to 21 and local laws that prohibited tobacco sales near schools. We do not need to ban more products; we just need to do a better job enforcing existing laws.**

- Our existing laws are effective; however, public health threats are far-reaching and entrenched, as tobacco prevention requires using multiple approaches to save lives.<sup>8</sup>
- While raising the age to purchase tobacco is expected to significantly reduce youth access to tobacco, the reality is that enforcement varies and can be particularly difficult in the low-income urban and rural areas where youth tobacco use is highest.<sup>8</sup>
- Enforcement is difficult to measure. It is widely reported that youth purchase surveys underestimate youth access because retailers will sell to youth they personally know, which shows that the minimum sales age is not enough enforcement.<sup>8</sup>
- Data from the county-level tobacco youth purchase surveys shows that illegal tobacco sales to minors still occurs at high rates.<sup>8</sup>
- The restriction of sales in menthol and flavored tobacco in conjunction with other tobacco control policies is the best approach to save lives.

**Many of these convenience stores only sell snacks to the youth; the adults are mostly the ones buying tobacco products.**

- The best way for local communities to reduce underage purchases of flavored and e-cigarette products is to specifically include these products in retail licensing ordinances.

- 152 cities and counties throughout the state have taken steps to regulate these products through local tobacco retail law. These jurisdictions have seen reductions in youth purchase rates as high as 58%.<sup>12</sup>
- For example, many African American and low-income neighborhoods tend to have more tobacco retailers. A 2010 research study even found that there were more tobacco stores near schools, attracting youth to experiment with tobacco.<sup>8</sup>
- The 2015 rate of illegal sales to minors across the state was 14.8% at tobacco-only stores. Convenience stores that sell gasoline sold to minors 8.8% of the time and convenience stores without gasoline sold tobacco to minors nearly 10% of the time. These are numbers we can change.<sup>8</sup>
- The best way for local communities to reduce underage purchases of flavored tobacco products is to specifically include these products in their local retail licensing ordinances.

**Youth are more likely to access tobacco products through a “social source” or the internet instead of at local stores.**

- The tobacco industry has a history of shifting the attention from retailers profiting off sales to youth by framing the issue of youth access as a “social” problem of youth sharing tobacco products, careless parents, and unconcerned bystanders buying cigarettes for minors.<sup>9</sup>
- Many of these tobacco products are now being promoted on social media and shared among friends, increasing the use of these e-cigarettes.<sup>9</sup>
- By restricting the sale of flavored tobacco products, this makes these products less enticing to youth and fewer youth will be interested in purchasing these products. Illegal sales to minors are not the only source minors use to obtain tobacco, but are still the highest—this is a public health issue, and tobacco retailers can be a part of the solution.

**Flavored tobacco users will simply order products online or visit neighboring communities that have not prohibited the sale of flavored tobacco.**

- Online sales are only a part of the issue, and we have to start by fixing these issues in our own backyard.
- Although many users have accessibility to making

e-cigarette purchases online, the 2018 National Youth Tobacco Survey states that, 14.8% of middle and high school e-cigarette users under 18 report obtaining e-cigarettes from a vape shop in the past month and 8.4% from a gas station or convenience store.<sup>10</sup>

### **Clerks should not be punished if they sell to minors.**

- Storeowners claim that mistakes are made because clerks are busy and cannot check everyone's ID. This is an argument that would be unacceptable for illegal alcohol or gun sales and should be just as unacceptable for illegal tobacco sales.<sup>10</sup>
- The fact is that storeowners, not clerks, are responsible for what happens in their stores. Everybody is accountable for selling to underage patrons and storeowners must train clerks to ask for ID and must enforce minimum age requirements, even during busy times. By limiting product access, it limits the opportunity for youth to attain these products.<sup>10</sup>
- Clerks must have the proper training to ensure they do not sell to minors.

### **Tobacco products, especially flavored tobacco products, are a key source of income for many convenience stores who risk going out of business if they lose this revenue.**

- According to the National Association of Convenience Stores, sale from tobacco accounted for the highest percentage of sales, but the products only accounted for a small percentage of actual profits compared to other products.<sup>11</sup>
- Foodservice accounted for 33.9% of gross profits, which show that these retailers do not have rely entirely on tobacco.<sup>11</sup>
- While tobacco products were 34.1% of instore sales, they only account for 17.1% of gross profit.<sup>11</sup>
- Many of these purchases made in-store are for food and drinks, and more than 65% of the food bought is consumed right after purchase.<sup>11</sup>
- Tobacco retailers and communities should work together to build partnerships that support healthy retail environments from relying on harmful tobacco products as well as properly enforcing the minimum age for acquiring tobacco products.<sup>11</sup>

### **Banning flavors is really a federal or state issue and should be left up to the FDA or the State Legislature.**

- The federal government cannot regulate the manufacturing of tobacco products, but the states and local governments can govern tobacco retail practices.
- Local elected officials can and should take action to reduce sales of these deadly products.
- In 2009, the FDA banned flavored cigarettes, excluding menthol, which still left a large number of flavored products on the market, such as cigarillos and e-cigarettes. Now, nine years later, the FDA announced intentions to take further steps in reducing the death and disease caused by flavored tobacco use in our nation. Many cities and counties in California have already taken initiative in adopting flavor bans due to a strong need and other places should follow to ensure safety for minors and others.<sup>12</sup>
- It took the legislature 20 years and dozens of attempts before it was able to move any significant tobacco control legislation prior to 2016. We cannot wait, as more youth get addicted to tobacco, for the legislature to act.<sup>12</sup>

### **People have the right to use these products regardless of their health impacts, and it should not be up to the government to tell people what to do. If someone wants to kill themselves by using these products, that is their right.**

- According to the 2014 Surgeon General Report, over 90% of smokers started smoking before the age of 21.<sup>4</sup> We are not talking about adults; we are talking about youth who may not fully recognize the consequences of their actions.
- The industry uses deceptive marketing to lure new users, especially youth, to use these products.

### **It should be left up to parents, not stores and storeowners, to ensure that kids are not accessing these products. Where are parents in all of this?**

- In 2016, the tobacco industry spent \$9.5 billion dollars marketing their products.<sup>13</sup> Parents are doing the best they can, but they cannot single handedly push back against a billion dollar industry that seeks to hook their kids.

## If the sale of flavored tobacco products is prohibited, local black markets will emerge to fulfill demand via illegal sales of flavored tobacco.

- There is no evidence of black markets forming in communities that have adopted these policies.
- The argument that black markets will form is one that is consistently used against tobacco control policies, but is often very overstated. History shows us that this just doesn't pan out.<sup>14</sup>
- Evidence shows that smuggling and other tax evasion only reduces the total amount of net new additional revenues the state receives from cigarette tax increases—they do not come close to eliminating revenue gains or making tax increases unproductive.<sup>14</sup>
- The National Research Council and Institute of Medicine's (NRC-IOM) 2015 report found that the vast majority of states with lower actual or proposed cigarette tax rates have little to worry with smuggling infrastructures or tax evasions patterns.<sup>14</sup>

## African American tobacco users overwhelmingly prefer menthol. Prohibiting these products unfairly singles out African American tobacco users.

- The tobacco industry has been using menthol to target the African American community for decades. They sponsor events, lower tobacco prices, and increase point of sale advertising in communities with larger African American populations.<sup>15</sup>
- Many African American smokers are addicted to menthol products, which have been associated with increased health risks and a greater difficulty quitting.<sup>15</sup>
- Support for prohibition of menthol products is strongest among the populations who used menthol the most.<sup>16</sup>
- Tobacco companies have also used these tactics to target other communities such as the Lesbian, Gay, Bisexual, Transgender and Queer Hispanic/Latino, and Asian Pacific Islander communities.<sup>16</sup>

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