



STATE AND LOCAL POLICIES

TO REDUCE FLAVORED TOBACCO USE:

Reversing the Tobacco Tipping Point
Among Hispanic Youth

EXECUTIVE SUMMARY

Issue

Brain mapping studies have shown that adding menthol to tobacco products increases the number of nicotinic receptors in the brain.

6.6% of Hispanic middle school students report current use of e-cigarettes

Opportunity

State and local policies limiting environmental exposure and flavored tobacco access, when adopted at jurisdictional levels based on regulatory authority, can combat health inequity drivers that particularly impact Hispanic youth and offer crucial tobacco-related harm protections.

Policy Intervention At The State And Community Level



Non-Punitive Smoke-Free School Policies

A smoke-free school policy engages the school community to address vaping harms, connect tobacco users with cessation services.



Buffer Zones Prohibiting Flavored Product Sales Near Youth-Sensitive Areas

Youth frequent areas with tobacco promotion; research links proximity of tobacco retailers to schools with increased youth smoking.



Point-of-Sale Licensing and Restrictions

Local governments can consider a key strategy: prohibiting flavored tobacco sales via licensing ordinances, linking retailers' sales privileges to specific compliance criteria.



Ban the Sale of Flavored Products

A comprehensive flavor policy bans all flavored tobacco products without exceptions, as seen in ordinances in San Francisco, California, Portland, Maine, and Multnomah County, Oregon.

INTRODUCTION

Hispanic middle schoolers show higher e-cigarette and tobacco use rates since the rise of e-cigarettes. This trend, labeled a "tobacco tipping point," demands focused policy solutions. Key actions targeting demand reduction and underage access are crucial, addressing health equity and legal considerations. Menthol and flavored products contribute significantly to nicotine addiction among Hispanic youth, with flavored e-cigarettes being highly preferred. Without intervention, these trends may shift historic low smoking rates among Hispanic adults.



\$1 million

per hour is roughly spent by the tobacco industry on retailer advertising and discounts.



7 states

375 localities

have adopted policies to restrict the sale of flavored tobacco products.

Overview of Key Policies

KEY POLICY 1

Non-Punitive Smoke-Free School Policies

Schools are pivotal in combating tobacco use among Hispanic youth. A smoke-free school policy can engage stakeholders and provide cessation support. This approach is especially crucial for areas limited in enacting flavored tobacco policies. The Public Health Law Center's model policy advocates for non-exclusionary enforcement, aiming to reduce disparities in discipline.





KEY POLICY 2

Buffer Zones Prohibiting Flavored Product Sales Near Youth-Sensitive Areas

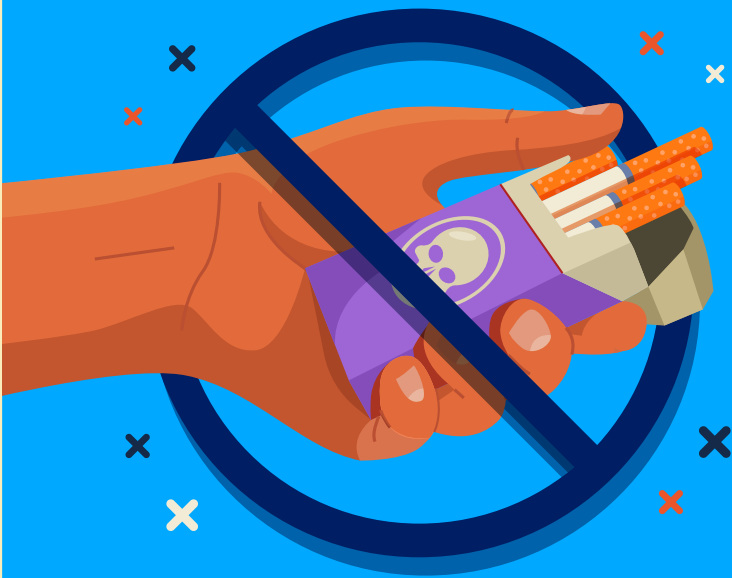
Research shows a strong link between youth smoking and the density of tobacco retailers near schools. Buffer zone policies, restricting flavored tobacco sales near places frequented by youth, such as schools and parks, offer a flexible solution adaptable to state and local land use regulations where licensing limitations aren't viable.

5 times

more tobacco retailers per sq. mile in the lowest-income neighborhoods.

70%

of all residents in cities studied live within a ten minute walk of a tobacco retailer.



KEY POLICY 3

Point-of-Sale Licensing and Restrictions



Local governments can effectively curb youth tobacco use by implementing flavored tobacco sales bans through retailer licensing ordinances. These regulations ensure retailers comply with specific requirements, offering a comprehensive approach to monitoring and enforcing tobacco policies. Licensing programs cover administration costs and encompass both physical retailers and local delivery services to monitor retailer density and age restrictions effectively.





KEY POLICY 4

Ban the Sale of Flavored Products

A comprehensive flavor policy bans all flavored tobacco products without exceptions, as seen in ordinances in San Francisco, California, Portland, Maine, and Multnomah County, Oregon.

28.8%

of middle and high school students using e-cigarettes in 2021 had someone else purchase the products for them.

Comprehensive flavor policies are crucial for effectively limiting youth access to flavored tobacco products. Exempting age-restricted retailers won't achieve this goal. Policymakers should define "flavored tobacco product" carefully to prevent tobacco companies from circumventing the law through marketing adjustments. The Public Health Law Center recommends a model definition based on taste or smell discernible by an ordinary consumer, aiding enforcement feasibility and implementation cost-effectiveness.



Evidence Base and Health Benefits of Key Policies

The U.S. Food and Drug Administration conducted a literature review of research on the efficacy of flavored tobacco policies, and found that as of April 2022, nine studies had evaluated the impact of such policies on youth tobacco use. Following the 2009 federal ban on flavored cigarette products (except menthol), studies found

the likelihood of a youth becoming a cigarette smoker fell by

17%



3.1% ↘ **1.6%**

drop of cigarette smoking among high school students after the 2019 San Francisco comprehensive menthol ban

An evaluation of New York City's 2010 law, which restricted the sale of all non-menthol flavored tobacco products, found that it lowered the odds of youth ever trying flavored tobacco products and ever using any type of tobacco.



10.9% ↘ **8.2%**

drop of e-cigarette use among high school students following the San Francisco comprehensive menthol ban



37%

the odds of youth ever trying flavored tobacco product



28%

the odds of youth ever trying any type of tobacco

Data show that Chicago's 2013 comprehensive approach to reducing tobacco use, which included restricting the sale of flavored tobacco products and regulating electronic smoking devices, has successfully reduced smoking.

6%

of Chicago high school students reported current cigarette smoking in 2017, an all-time low



56%

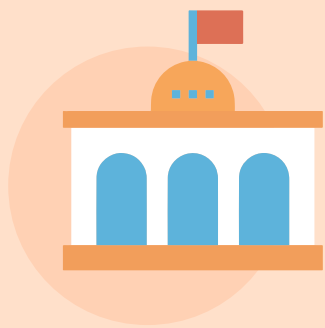
decrease in cigarette smoking among youth since 2011

36%

decline in smoking of cigarettes and ESDs (Electronic Smoking Devices) among 18-to-20 year olds in Chicago in 2015-2016



LEGAL RESTRICTIONS, POLICY DESIGN, AND POLICY DEVELOPMENT CONSIDERATIONS



1

Federal Preemption

Federal law does not override state or local flavored tobacco policies. The Tobacco Control Act (TCA) preserves state and local authority in this regard, a stance affirmed by federal courts. Recent cases upheld flavored tobacco restrictions in various jurisdictions, including New York City, Providence, RI, and Los Angeles County. Requests to overturn such bans, including one in California, were denied by the U.S. Supreme Court.



2

State Preemption

State preemption laws can hinder local tobacco regulation efforts. Before enacting flavored tobacco policies, jurisdictions should research their authority and understand their state's preemption's existence, scope, and applicability. Such laws, present in twenty-five states, restrict local governments' ability to enact tobacco-related laws, potentially reversing progress and limiting community input. Understanding whether a state follows Dillon's Rule or Home Rule is crucial, as it dictates the extent of local authority.

**3**

Assessment Considerations

Policy impacts, such as those of tobacco retailer licensing laws and buffer zones, vary depending on factors like retailer density and the presence of youth-sensitive areas. To assess potential impacts effectively, jurisdictions can utilize geographic information systems (GIS) mapping, which visually presents relevant data. GIS mapping helps illustrate the current tobacco retailer landscape and measure retailer density in different neighborhoods. Community-embedded assessments complement this approach by providing insights into the practical, financial, cultural, and health implications of local retailer policies.

**4**

Health Equity Impacts

Policies restricting flavored tobacco products can disproportionately benefit youth, racial and ethnic communities, low-income individuals, and LGBTQ+ populations due to their disparate harm from such products. Including menthol cigarettes and flavored little cigars in these policies can lead to significant equity benefits, potentially saving lives, particularly in Black communities. Excluding menthol cigarettes and flavored little cigars may worsen tobacco-related disparities, especially among Hispanic youth and other underserved groups targeted by the tobacco industry. Thus, equitable tobacco control policies should not carve out exceptions for these products, as they are major contributors to health inequities.

**5**

Community Partnerships

Engaging underserved communities directly in all stages of policy development is vital. By collaborating with impacted community members and local groups, policymakers and public health professionals can ensure that new policies align with community strengths and goals. This approach fosters trust, enhances policy effectiveness, and prevents harm against racial and ethnic communities, countering industry tactics. Strong community partnerships are intentional, respectful, reciprocal, and sustained, providing opportunities to address concerns and tailor solutions to specific needs. Examples like Smoke-Free Oregon and *Sabores Que Enganchan* Phoenix illustrate the benefits of community engagement in policymaking. Early identification and addressing of community concerns lead to more equitable and effective policies benefiting all stakeholders.



6 Comprehensive Policies Without Exemptions

While passing comprehensive flavored tobacco sales bans may face challenges due to political pressures and industry lobbying, exempting certain products like menthol could weaken the policy's potential health equity impact and exacerbate existing disparities. These exemptions also create opportunities for the tobacco industry to exploit. For instance, exempting menthol cigarettes could lead to youth transitioning from newly banned mentholated e-cigarettes to menthol combustible ones, worsening inequalities. Additionally, lobbyists have pushed for exemptions for products approved through the FDA's Premarket Tobacco Application process, potentially allowing the sale of approved flavored e-cigarettes in the future.



7 Equitable Enforcement

Enforcement of flavored tobacco policies significantly impacts their fairness and effectiveness. Jurisdictions must carefully craft and implement enforcement mechanisms to avoid creating or worsening inequalities. Equitable policies focus on restricting sales by retailers rather than penalizing individuals for possession or use. Moreover, utilizing criminal penalties for enforcement may perpetuate harm to racial and ethnic communities, warranting reconsideration.

CONCLUSION

State and local policies restricting flavored tobacco access can help Hispanic youth combat tobacco use. These policies are not federally preempted and can be tailored at the local level. Strategies include ending flavored tobacco sales and implementing tobacco-free school policies through various legal avenues. Early community engagement is crucial for effective policy design and implementation. Prohibiting all flavored tobacco products is urgent for public health, given the industry's targeting of vulnerable populations. Banning flavors will reduce smoking initiation and improve overall community health, necessitating immediate action by policymakers.



RESOURCES FOR FURTHER ACTION AND LEARNING

General Resources

- ▶ Flavored Tobacco Products
- ▶ Addressing Tobacco-Related Health Inequities
- ▶ Blueprint for Changemakers
- ▶ Equitable Enforcement to Achieve Health Equity
- ▶ Point of Sale Playbook
- ▶ Point-of-Sale Tobacco Pricing Policies
- ▶ PUP in Smoke
- ▶ Decriminalizing Commercial Tobacco: Addressing systemic racism in the enforcement of commercial tobacco control
- ▶ FDA Menthol Timeline
- ▶ E-cigarette use among Hispanics: Reducing risk or recruiting new tobacco users?

Preemption Resources

- ▶ CDC Fact Sheet: Preemption
- ▶ Point-of-Sale Preemption Playbook

Hispanic Community Cessation

- ▶ Decidetexto Cessation Interactive Mobile Support
- ▶ Workplace Cessation Support for Hispanic Construction Workers

Model Policy Language

Policy #1: — Ban the Sale of Flavored Products

- ▶ California Comprehensive Tobacco Retailer Licensing: Model ordinance, checklist & supplemental plug-ins
- ▶ Flavored Tobacco Sales Prohibitions, Enforcement Options

Policy #2: — Buffer Zones Prohibiting Flavored Product Sales Near Youth-Sensitive Areas

- ▶ California Comprehensive Tobacco Retailer Licensing: Model ordinance, checklist & supplemental plug-ins

Policy #3 — Non-Punitive Smoke-Free School Policies

- ▶ Commercial Tobacco-Free K-12 School Model Policy.

Policy #4 — Point-of-Sale Licensing and Restrictions

- ▶ Point-of-Sale Playbook



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