

## Flavored Tobacco Product Myths: Responses & Context

**Bottom Line:** Flavored tobacco products are a marketing ploy. Flavors attract new users, hooking them to a lifetime of nicotine addiction. Flavors interfere with cessation and drive health disparities, too. There are solutions: State and local governments may regulate sales of flavored tobacco products to protect public health.

### 1. Policy Effectiveness

**The MYTH:** Local flavor restrictions don't work. Tobacco users will just go to the next town over, the illicit market, or the internet to get their flavored tobacco products.

**The TRUTH:** Policies that restrict the sale of flavored tobacco have proven effective at reducing tobacco use.

#### Additional Information

A local restriction on the sale of flavored tobacco products is effective even when flavored products remain available elsewhere. Restricting product availability increases the time and expense for a consumer to obtain tobacco, helping to deter tobacco use especially among youth and those trying to quit.<sup>1</sup>

Many communities have implemented restrictions on the sale of flavored tobacco products.<sup>2</sup> These policies work! They reduce the availability of flavored tobacco products, sales of flavored tobacco products, and the likelihood of tobacco use, especially among youth.<sup>3</sup>

Moreover, local sales restrictions are effective because they reduce community members' exposure to tobacco marketing—and consequently, reduce their interest in tobacco products. Marketing is especially prevalent in socioeconomically vulnerable communities and is shown to be a significant cause of youth tobacco use. Therefore, local restrictions on the sale of flavored tobacco products not only reduce long-term tobacco prevalence, but also improve health equity.

**The MYTH:** Flavor restrictions won't reduce youth tobacco use, because flavors are not the reason that youth experiment with tobacco.

**The TRUTH:** Flavors are known to attract kids.

#### Additional Information

There is clear and robust evidence that flavors attract youth to tobacco products.<sup>4</sup> Youth tobacco users consistently cite flavors as a top reason for their interest in tobacco, and are far more likely than adults to use flavored tobacco products.<sup>5</sup> Among tobacco users who began using as a kid, more than four in five report to have started with a flavored product.<sup>6</sup> By no coincidence, flavors alter how young people gauge the risk of using a tobacco product.<sup>7</sup> For instance, adolescents perceive less risk from flavored e-cigarettes—especially fruity and spice flavors—and these misperceptions are linked to willingness to try these products.<sup>8</sup> Indeed, the

*February 2020*

current youth vaping epidemic is largely driven by the proliferation of kid-friendly flavors, to the point that federal, state, and local governments are moving to clear or severely limit the marketplace of flavored e-cigarettes.<sup>9</sup>

Tobacco companies claim that flavors are not what draw youth to e-cigarettes. While curiosity is reported as the leading reason for youth trying e-cigarettes, survey questions do not tease out what aspects of the products intrigue youth and invite this curiosity.<sup>10</sup> In fact, tobacco companies have a well-documented history of using flavors to target youth experimenters, compiling rich evidence along the way on how flavors in products and marketing drive youth interest and use.



## 2. Economic Concerns

**The MYTH: Regulating sales of flavored tobacco product will harm small businesses.**

**The TRUTH:** The long-term health benefits of fewer people using tobacco vastly outweigh any short-term losses endured by tobacco outlets, and tobacco controls are highly cost-effective in the long run.

### Additional Information

The long-term interest in preventing a lifetime of addiction, tobacco-related disease, and deaths far outweighs any potential short-term disruption to retailers' businesses. Convenience stores sell a wide variety of goods and are not dependent on flavored tobacco products for survival. Storeowners are aware that tobacco products, in particular flavored products, pose extreme risk and are a clear candidate for government regulation. Even specialty tobacco stores do not have to depend on flavored products for survival, as they may continue to sell unflavored tobacco, devices, accessories and other goods. Many local decisionmakers acknowledge that a store reliant on sales of flavored tobacco products offers little value to the community. In general, retailers regularly adapt to changes in the marketplace and will substitute retail space dedicated to flavored tobacco products with alternative profitable inventory.

This myth is typical of tobacco companies preying on fears of economic hardship resulting from government regulation. Companies have historically "cried wolf" at every opportunity, claiming that smoke-free laws would cause bars and restaurants to go out of business, or that tobacco controls would cause job losses.<sup>11</sup> These concerns have not borne out.<sup>12</sup>

Moreover, local governments are charged with governing in the interest of the public, which considers all aspects of the local economy and long-term sustainability, not just certain short-term sales losses. Tobacco use is an undisputed drag on the economy due to the high costs of health care and productivity losses.<sup>13</sup>

### 3. Authority

**The MYTH:** State and local governments are not allowed to regulate flavored tobacco products; only the federal government may.

**The TRUTH:** State and local governments may regulate the sale of tobacco products, including flavored tobacco products.

#### Additional Information

New York City has been restricting the sale of flavored tobacco products since 2013, Communities nationwide quickly followed, with the pace of policy adoption accelerating in recent years after widespread reporting on the problem in 2016. Tobacco companies' early legal challenges failed, emboldening increasingly comprehensive local restrictions on the sale of flavored products. The federal government may go further and disallow manufacturers from *making* flavored products—and did just that in the 2009 Tobacco Control Act by stopping the manufacture of cigarettes with noticeable flavors other than menthol. Regardless, states and communities may (and do!) concurrently address the problem of flavored tobacco products with comprehensive sales regulations. Public health lawyers have learned from the tobacco Industry's unsuccessful challenges to these laws and can advise local governments crafting a sales policy.



### 4. Wait for State or Local Government

**The MYTH:** The FDA or state will take care of regulating flavors in tobacco products.

**The TRUTH:** Meaningful federal or state action on flavors is uncertain; local governments are far nimbler and able to quickly and fully respond to community concerns.

#### Additional Information

States and the FDA have identified flavored tobacco products as a problem, yet subsequent policy proposals have been overwhelmingly narrow and their traction is tenuous. Any meaningful proposal that does advance will be inevitably challenged by the tobacco industry or its affiliates, which are notorious for using the legal process to delay implementation of impactful public health laws.

In contrast, local governments may quickly enact broad restrictions on the sale of flavored tobacco products. More than 230 local governments have acted to date, and in 2019 Massachusetts became the first state to enact a comprehensive restriction on the sale of flavored tobacco products. These local policies have more recently extended to all tobacco product categories and all flavors, continuing the tradition of local government paving the way for meaningful public health policies.

**The MYTH:** A “patchwork of regulations” is burdensome and confusing to tobacco and vapor product distributors, retailers, and consumers. Local governments should wait for state or federal action.

**The TRUTH:** Many business regulations vary by community, and policies may be crafted to reflect local priorities, including benefitting the health and safety of the community.

### Additional Information

Business owners anticipate having to comply with regulations, even when they vary across jurisdictions. Businesses distributing and selling tobacco products deal deadly products and



therefore anticipate regulation by every authorized level of government. This includes businesses distributing and selling vapor products—a category of tobacco products for which regulations are long overdue.<sup>14</sup>

More importantly, local laws and policies reflect local priorities. A community’s desire for a healthier, tobacco-free environment is often ahead of state and national readiness for change. Federal and New York law acknowledge as much

through explicit preservation of local authority to regulate tobacco sales, thus preserving the community’s voice and ability to shape its environment in accordance with local desires.

## 5. Policy Scope

**The MYTH:** Restrictions, if any, should be limited to e-cigarettes because of the youth vaping epidemic—leave cigarettes and other tobacco products out of it.

**The TRUTH:** Applying restrictions to the sale of *all* tobacco products is the most effective way to deter youth use, promote cessation, and narrow tobacco-related health disparities.

### Additional Information

Tobacco companies invariably exploit loopholes in order to undermine incomplete policies and maintain addicted users. For instance, after the FDA banned characterizing flavors (other than menthol) in cigarettes, tobacco companies increased their marketing of flavored little cigars and menthol cigarettes, undermining the success of the policy.<sup>15</sup> Exempting some types of products or flavors from the restriction only increases the likelihood that youth and addicted users will switch to using the unregulated product or flavor, undermining the intended public health impacts of the policy.

## 6. Policy Necessity

**The MYTH: Flavor restrictions are unnecessary. Enhancing enforcement of existing laws and educating youth and parents are sufficient to prevent tobacco use.**

**The TRUTH:** Youth tobacco use is an urgent public health crisis, and flavors play an outsize role in driving youth use. State and local governments need to address this issue head on with evidence-based policies.

### Additional Information

This myth is a tried-and-true strategy to distract policymakers from enacting meaningful public health laws. Tobacco use is a leading cause of death and disease; research demonstrates a need for meaningful policy interventions and that education and existing laws are insufficient. Evidence shows that interventions that keep flavored tobacco products out of stores are effective in preventing youth tobacco use. These policies work by reducing youth exposure to harmful products and associated marketing known to pique their interest in tobacco use. Widespread availability in local stores incorrectly signals community acceptance of a low-risk product, while accompanying pervasive marketing portrays products as appealing and reasonable. Reducing the availability of harmful flavored tobacco products decreases both initial interest and cues to use tobacco, promoting cessation among addicted consumers. *Successful strategies will address the root of the problem*, which is exposure to the tobacco industry's pervasive, youth-appealing marketing, principally in the retail environment. Implementing proven strategies like restrictions on the sale of flavored tobacco products is necessary to combat Industry's persistent campaign in the retail environment.

To learn about options for local governments, read our technical report, [Regulating Sales of Flavored Tobacco Products](#).

**February 2020**

---

<sup>1</sup> John E. Schneider et al., *Tobacco Outlet Density and Demographics at the Tract Level of Analysis in Iowa: Implications for Environmentally Based Prevention Initiatives*, 6 PREV. SCI. 319, 322 (2005); see Anna Pulakka et al., *Association Between Distance From Home to Tobacco Outlet and Smoking Cessation and Relapse*, 176 JAMA INTERN. MED. 1515, 1512 (October 2016) (reporting that increasing the distance from the home to the nearest retailer may increase cessation); see also Jennifer Cantrell et al., *The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty*, 110 ADDICTION 152, 152 (2015) (finding a negative association between tobacco retail density and both smoking abstinence and pro-cessation attitudes).

<sup>2</sup> See, e.g., PUBLIC HEALTH LAW CTR., *U.S. Sales Restrictions on Flavored Tobacco Products*, (June 2019), available at <https://www.publichealthlawcenter.org/sites/default/files/resources/US-Sales-Restrictions-Flavored-Tobacco-Products-2019.pdf> (last visited Feb 21, 2020); S.F., CAL., HEALTH CODE §19Q.3 (2019); BEVERLY HILLS, CAL., CITY CODE § 4-2-2109(H) (2019); BROOKLINE, MASS., MUN. CODE § 8.23 (Tobacco Control Bylaws) (2019); BOULDER, COLO., ORDINANCE 8340 (2019); Mass. Ch. 133 of the Acts of 2019 (effective June 1, 2020).

<sup>3</sup> Charles J. Courtemanche, Makayla K. Palmer & Michael F. Pesko, *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, 52 AM. J. PREV. MED. e139–e146 (2017); Melody Kingsley et al., *Impact of flavoured tobacco restriction policies on flavoured product availability in Massachusetts*, 29 TOB. CONTROL 175–182 (2020); Todd Rogers et al., *Changes in cigar sales following implementation of a local policy restricting sales of flavoured non-cigarette tobacco products*, TOB. CONTROL tobaccocontrol-2019-055004 (2019); Betsy Brock et al., *A tale of two cities: exploring the retail impact of flavoured tobacco restrictions in the twin cities of Minneapolis and Saint Paul, Minnesota*, 28 TOB. CONTROL 176–180 (2019);

Shannon M. Farley & Michael Johns, *New York City flavoured tobacco product sales ban evaluation*, 26 TOB. CONTROL 78–84 (2017) (finding 37% lower odds for youth trying flavored products and 28% lower odds for youth trying any product after the New York City restricted sale of some flavored products).

<sup>4</sup> U.S. DEP'T HEALTH & HUMAN SERVS., *E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL* 11 (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_508.pdf); U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *THE HEALTH CONSEQUENCES OF SMOKING--50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL* 782 (2014); U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL* 541 (2012) (concluding tobacco companies historically manipulated product design, including through addition of flavors at specific levels, to attract new customers and promote a graduation strategy to unflavored cigarettes, “a practice which the industry has continued”).

<sup>5</sup> Sarah D. Kowitz et al., *Perceptions and Experiences with Flavored Non-Menthol Tobacco Products: A Systematic Review of Qualitative Studies*, 14 INT. J. ENVIRON. RES. PUBLIC. HEALTH, 14 (2017), (“Regardless of product type, common reasons for the appeal of flavored tobacco products included the availability and novelty of flavors”); see Deesha Patel et al., *Reasons for current E-cigarette use among U.S. adults*, 93 PREV. MED. 14–20 (2016) (finding “trying something new” was a factor for adult e-cigarette use, and that young adults were more likely to cite flavor as a reason for use compared to older adults).

<sup>6</sup> Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871–1873 (2015).

<sup>7</sup> Allison Ford et al., *Adolescents’ responses to the promotion and flavouring of e-cigarettes*, 61 INT. J. PUB. HEALTH 215–224 (2016); J. K. Pepper, K. M. Ribisl & N. T. Brewer, *Adolescents’ interest in trying flavoured e-cigarettes*, 25 TOB. CONTROL ii62–ii66 (2016); Sarah E Adkison et al., *Impact of smokeless tobacco packaging on perceptions and beliefs among youth, young adults, and adults in the U.S: findings from an internet-based cross-sectional survey*, 11 HARM. REDUCT. J. 2 (2014); but see Amy M. Cohn et al., *Menthol Smoking Patterns and Smoking Perceptions Among Youth: Findings From the Population Assessment of Tobacco and Health Study*, 56 AM. J. PREV. MED. e107–e116 (2019) (finding that youth perceive menthol cigarettes to be more risky than unflavored cigarettes).

<sup>8</sup> Amy Henes, et al., *Evaluation Findings: 2019 E-cigarette Studies*, RESEARCH TRIANGLE INTERNATIONAL [presentation] (November 19, 2019), on file with author.

<sup>9</sup> FOOD AND DRUG ADMINISTRATION, “FDA advances investigation into whether more than 40 e-cigarette products are being illegally marketed and outside agency’s compliance policy,” October 12, 2018, available at <https://www.fda.gov/news-events/press-announcements/fda-advances-investigation-whether-more-40-e-cigarette-products-are-being-illegally-marketed-and> (last visited Feb 21, 2020).

<sup>10</sup> Teresa W. Wang et al., *Tobacco Product Use and Associated Factors Among Middle and High School Students - United States, 2019*, 68 MORB. MORT. WKLY REP. SURVEILL SUMM 1–22 (2019).

<sup>11</sup> PUBLIC HEALTH AND TOBACCO POLICY CTR, “Oh Snap: Countering Tobacco Industry Opposition to Local Tobacco Controls,” November 2016, available at <https://tobaccopolicycenter.org/documents/OhSnap.pdf> (last visited Feb 21, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> Teresa Leão, Anton E Kunst & Julian Perelman, *Cost-effectiveness of tobacco control policies and programmes targeting adolescents: a systematic review*, 28 EUR. J. PUBLIC HEALTH 39–43 (2018).

<sup>14</sup> *Am. Acad. of Pediatrics v. Food & Drug Admin.*, 399 F. Supp. 3d 479 (D. Md. 2019).

<sup>15</sup> Charles J. Courtemanche, Makayla K. Palmer & Michael F. Pesko, *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, 52 AM. J. PREV. MED. e139–e146 (2017).