

U.S. SALES RESTRICTIONS ON FLAVORED TOBACCO PRODUCTS



This chart provides select examples* of U.S. cities and counties that restrict the sale of flavored tobacco products. The chart captures variations among these flavor restrictions by noting when (1) flavors are prohibited generally or only within certain “buffer” zones, (2) menthol is prohibited, (3) flavors are restricted in e-cigarettes, and (4) exemptions are provided for certain retailers. This chart also provides links to each jurisdiction’s laws and summarizes relevant legal challenges. Beneath this chart is a supplemental list showing these select flavored tobacco restrictions organized by type rather than by state.

A state or local government considering whether to adapt any language from the following policies should take care to ensure that the language is appropriate, practical, and legal for its jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. We have included these examples to illustrate how various jurisdictions regulate the sale of flavored tobacco products and related electronic nicotine delivery devices.

This chart is not comprehensive. Feel free to contact the Public Health Law Center for more information about flavored tobacco restrictions where you live.



Jurisdiction / Berkeley, California

Flavor prohibited?

Yes — within buffer zone
“Effective January 1, 2017, no person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products **within six hundred (600) feet of any school**”

BERKELEY, CAL. CODE § 9.80.035(D) (2017) (emphasis added).³

Menthol prohibited?

Yes
“‘Characterizing flavor’ means a distinguishable taste or aroma, other than the taste or aroma of tobacco, that is imparted either prior to or during consumption of a tobacco product, **including but not limited to tastes or aromas of menthol**”

BERKELEY, CAL. CODE § 9.80.020(A) (2017) (emphasis added).

“‘Flavored tobacco product’ means **any tobacco product** containing, made of, or derived from tobacco or nicotine that contains a constituent **that imparts a characterizing flavor.**”

BERKELEY, CAL. CODE § 9.80.020(F) (2017) (emphasis added).

E-cigs included?

Yes
“‘Tobacco product’ means:
1. any substance containing, made of, or derived from tobacco or nicotine including but not limited to cigarettes, cigars, cigarillos, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, and shisha;
2. any **e-liquid**;
3. any **electronic nicotine delivery system**; and
4. any tobacco paraphernalia.”

BERKELEY, CAL. CODE § 9.80.020(K) (2017).

Exemption for certain retailers?

No

Case law

No

Jurisdiction / Contra Costa County, California

Flavored sales restriction not enforced until January 1, 2018, although ordinance is effective August 17, 2017.

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes—within buffer zone</p> <p>“It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product or menthol cigarettes within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.”</p> <p><u>Contra Costa County, Cal., Ordinance 2017-01 (July 18, 2017) (to be codified at CONTRA COSTA COUNTY, CAL., CODE § 445-6.006) (emphasis added).</u></p>	<p>Yes</p> <p>“It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product or menthol cigarettes within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.”</p> <p><u>Contra Costa County, Cal., Ordinance 2017-01 (July 18, 2017) (to be codified at CONTRA COSTA COUNTY, CAL., CODE § 445-6.006) (emphasis added).</u></p>	<p>Yes</p> <p>“Flavored tobacco product’ means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor.”</p> <p><u>Contra Costa County, Cal., Ordinance 2017-01 (July 18, 2017) (to be codified at CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(g)).</u></p> <p>“Tobacco product’ means ... (1) [a]ny product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means ... (2) [a]ny electronic smoking device . . .”</p> <p><u>Contra Costa County, Cal., Ordinance 2017-01 (July 18, 2017) (to be codified at CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(t)) (emphasis added).</u></p>	<p>No</p>	<p>No. Note that this ordinance only applies to unincorporated parts of the county.</p>

Jurisdiction / Contra Costa County, California

Flavored sales restriction not enforced until January 1, 2018, although ordinance is effective August 17, 2017.

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Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
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		<p>“Menthol cigarettes’ means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint or wintergreen”</p> <p><u>Contra Costa County, Cal., Ordinance 2017-01 (July 18, 2017) (to be codified at CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(j)).</u></p>		
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Jurisdiction / El Cerrito, California

Note: Existing retailers in good standing have until January 1, 2018, to come into compliance.

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
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<p>Yes</p> <p>“No tobacco retailer, nor any of the retailer’s agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale, any imitation tobacco products or flavored tobacco product.”</p> <p><u>EL CERRITO, CAL., CODE § 6.100.160 (2017).</u></p>	<p>Yes</p> <p>“Characterizing flavor’ means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including ... menthol, mint, wintergreen, herb, or spice.”</p>	<p>Yes (note that traditional cigarettes not included)</p> <p>“Flavored tobacco product’ means any tobacco product (other than cigarettes as defined by the U.S. Food and Drug Administration) that contains a constituent that imparts a characterizing flavor. This includes ... electronic smoking devices containing nicotine.”</p>	<p>No</p> <p>“No tobacco retailer, nor any of the retailer’s agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale, any imitation tobacco products or flavored tobacco product.”</p> <p><u>EL CERRITO, CAL., CODE § 6.100.160 (2017).</u></p>	<p>No</p>
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Jurisdiction / El Cerrito, California

Note: Existing retailers in good standing have until January 1, 2018, to come into compliance.

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Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
	<u>EL CERRITO, CAL., CODE § 6.100.020 (2017) (emphasis added).</u>	<u>EL CERRITO, CAL., CODE § 6.100.020 (2017) (emphasis added).</u>	<p>“‘Tobacco retailer’ or ‘retailer’ means any person that sells tobacco, tobacco products, electronic smoking devices, smoking paraphernalia. ... This definition is without regard to the quantity of tobacco, tobacco products or smoking paraphernalia sold, offers for sale, exchanged, or offered for exchange.”</p> <p><u>EL CERRITO, CAL., CODE § 6.100.020 (2017) (emphasis added).</u></p>	No

Jurisdiction / Hayward, California

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes—within buffer zone</p> <p>“With the exception of Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of this Article, it shall be a violation of these regulations for any</p>	<p>Yes</p> <p>“‘Characterizing Flavor’ means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including, but not</p>	<p>Yes (note that traditional cigarettes not included)</p> <p>“‘Tobacco product’ includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine).”</p>	<p>Yes</p> <p>Exception for “Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of [the flavored tobacco regulation].”</p> <p><u>HAYWARD, CAL. CODE § 10-1.2783(c) (2017).</u></p>	No

Jurisdiction / Hayward, California

continued

Flavor prohibited?

Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product **within a 500 foot radius of any private or public kindergarten, elementary, middle, junior high, or high school.** The burden of proof to establish that sales of flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer."

HAYWARD, CAL. CODE § 10-1.2783(c) (2017) (emphasis added).

Menthol prohibited?

limited to, tastes or aromas relating to ... menthol"

HAYWARD, CAL. CODE § 10-1.2782(b) (2017) (emphasis added).

"'Flavored Tobacco Product' means **any tobacco product** (other than cigarettes as defined by federal law) that contains a constituent that **imparts a characterizing flavor.**"

HAYWARD, CAL. CODE § 10-1.2782(f) (2017).

E-cigs included?

HAYWARD, CAL. CODE § 10-1.2782(t) (2017) (emphasis added).

"'Flavored Tobacco Product' means **any tobacco product (other than cigarettes as defined by federal law)** that contains a constituent that imparts a characterizing flavor."

HAYWARD, CAL. CODE § 10-1.2782(f) (2017) (emphasis added).

Exemption for certain retailers?

Case law

Jurisdiction / Manhattan Beach, California

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No retailer shall sell a tobacco product, or any product used in an electronic smoking device, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice (with the exception of mint, menthol, spearmint or wintergreen), including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product.”</p> <p><u>MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2017).</u></p>	<p>No</p> <p>“No retailer shall sell a tobacco product, or any product used in an electronic smoking device, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice (with the exception of mint, menthol, spearmint or wintergreen) ... that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product.”</p> <p><u>MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2017) (emphasis added).</u></p>	<p>Yes</p> <p>“‘Tobacco product’ means any product containing tobacco leaf, including but not limited to cigarettes”</p> <p><u>MANHATTAN BEACH, CAL., CODE § 4.118.020 (2017).</u></p> <p>“No retailer shall sell a tobacco product, or any product used in an electronic smoking device, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice ... that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product.”</p> <p><u>MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2017) (emphasis added).</u></p>	<p>Yes</p> <p>“The prohibition [on flavored tobacco sales] shall not apply to a retailer that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the tobacco product is sold.”</p> <p><u>MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2017) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / San Francisco, California

Takes effect April 1, 2018.

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.”</p> <p><u>S.F., Cal., Ordinance 140-17 (July 7, 2017) (to be codified at S.F., CAL., HEALTH CODE § 19Q.3(a)).</u></p> <p>“The sale or distribution by an Establishment of any Flavored Cigarette is prohibited.”</p> <p><u>S.F., Cal., Ordinance 140-17 (July 7, 2017) (to be codified at S.F., CAL., HEALTH CODE § 19Q.4(a)).</u></p>	<p>Yes</p> <p>“‘Characterizing Flavor’ means a Distinguishable taste or aroma or both, other than the taste or aroma of tobacco Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.”</p> <p><u>S.F., Cal., Ordinance 140-17 (July 7, 2017) (to be codified at S.F., CAL., HEALTH CODE § 19Q.2) (emphasis added).</u></p>	<p>Yes</p> <p>“‘Tobacco Product’ has the meaning set forth in Health Code Section 19H.2.”</p> <p><u>S.F., Cal., Ordinance 140-17 (July 7, 2017) (to be codified at S.F., CAL., HEALTH CODE § 19Q.2).</u></p> <p>“‘Tobacco Product’ means (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... ; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including but not limited to electronic cigarettes, cigars, or pipes”</p> <p><u>S.F., CAL., HEALTH CODE § 19H.2 (2017) (emphasis added).</u></p> <p>“‘Flavored Tobacco Product’ means any Tobacco Product, other than a Cigarette, that contains a Constituent that imparts a Characterizing Flavor.”</p>	<p>No</p>	<p>No</p>

Jurisdiction / San Francisco, California

Takes effect April 1, 2018.

continued

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

S.F., Cal., Ordinance 140-17 (July 7, 2017) (to be codified at S.F., CAL., HEALTH CODE § 19Q.2) (emphasis added).

Jurisdiction / Santa Clara County, California

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

Yes

"Flavored tobacco products. (1) Except as permitted in paragraph (3) of this subsection (i), no retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including strawberry, grape ... that is a characterizing flavor or aroma of the tobacco product, smoke or vapor produced by the tobacco product. (2) A tobacco product

Yes

"Flavored tobacco products. . . . Except as permitted in paragraph (3) of this subsection (i), **no retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco)** or an herb or spice ... that is a characterizing flavor or aroma of the tobacco product, smoke or vapor produced by the tobacco product."
Santa Clara County, Cal., Ordinance 300.903 (Oct.

Yes

"Tobacco product[s] ... include, but are not limited to, cigarettes, cigarette tobacco, roll-your-own tobacco, ... and electronic nicotine delivery systems (such as, but not limited to, electronic cigarettes, electronic cigars, electronic hookahs, vape pens, personal vaporizers, and electronic pipes)."
Santa Clara County, Cal., Ordinance 300.903 (Oct. 18, 2016) (codified at SANTA CLARA COUNTY, CAL., CODE § A18-367(e)) (emphasis added).

Yes

"Paragraph (1) of this subsection (i) **shall not apply to any retailer that meets all of the following criteria:** (i) Primarily sells tobacco products; (ii) Generates more than 60 percent of its gross revenue annually from the sale of tobacco products; (iii) Does not permit any person under 21 ... to be present or enter the premises ... unless accompanied by ... parent or legal guardian ... ; (iv) Does not sell alcoholic beverages or food for consumption on the premises; and (v) Posts a sign ... that ... informs the public that persons

No. Note that this ordinance only applies to unincorporated parts of the county. However, one town in Santa Clara County—Los Gatos—passed an almost identical flavored tobacco restriction in May 2017.

Jurisdiction / Santa Clara County, California

continued

Flavor prohibited?

shall be subject to a rebuttable presumption that the product is prohibited by paragraph (1) ... if: (i) the product's manufacturer [or an associated person] . . . makes or disseminates public statements or claims ... that the product has or produces a characterizing flavor or aroma, other than tobacco; or (ii) [t]he product's label, labeling, or packaging includes a statement or claim ... that the product has or produces a characterizing flavor or aroma, other than tobacco."

Santa Clara County, Cal., Ordinance 300.903 (Oct. 18, 2016) (codified at Santa Clara County, Cal., Code § A18-369(i)).

Menthol prohibited?

18, 2016) (codified at SANTA CLARA COUNTY, CAL., CODE § A18-369(i)) (emphasis added).

E-cigs included?

Exemption for certain retailers?

under 21 ... are prohibited from entering"

Santa Clara County, Cal., Ordinance 300.903 (Oct. 18, 2016) (codified at SANTA CLARA COUNTY, CAL., CODE § A18-369(i)(3)) (emphasis added).

"Retailer means any person who sells, exchanges, or offers to sell or exchange tobacco products for any form of consideration."

Santa Clara County, Cal., Ordinance 300.903 (Oct. 18, 2016) (codified at SANTA CLARA COUNTY, CAL., CODE § A18-367(f)) (emphasis added).

Case law

Jurisdiction / Yolo County, California

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“[I]t shall be a violation of this Chapter for any licensee or any of the licensee’s agents or employees to sell, offer for sale, or exchange for any form of consideration:</p> <p>(1) Any Flavored Tobacco Product.”</p> <p><u>YOLO COUNTY, CAL., CODE § 6-15.10(e) (2017).</u></p>	<p>Yes</p> <p>“‘Flavored Tobacco Product’ means any Tobacco Product that contains a constituent that imparts a characterizing flavor to the tobacco product or smoke produced by the tobacco product, either by the addition of artificial or natural flavors or an herb or space, including menthol ...”</p> <p><u>YOLO COUNTY, CAL., CODE § 6-15.02(f) (2017) (emphasis added).</u></p>	<p>Yes</p> <p>“‘Tobacco Product’ means: (1) any substance containing tobacco leaf, including but not limited to cigarettes ... (3) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, pipe, or hookah;”</p> <p><u>YOLO COUNTY, CAL., CODE § 6-15.02(m) (2017) (emphasis added).</u></p>	<p>No</p> <p>“[I]t shall be a violation of this Chapter for any licensee or any of the licensee’s agents or employees to sell, offer for sale, or exchange for any form of consideration:</p> <p>(1) Any Flavored Tobacco Product.”</p> <p><u>YOLO COUNTY, CAL., CODE § 6-15.10(e) (2017) (emphasis added).</u></p>	<p>No. Note that this ordinance only applies to unincorporated parts of the county.</p>

Jurisdiction / Chicago, Illinois

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes—within buffer zone</p> <p>“No person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products, samples of such products, or accessories for such products at any location within 500 feet of the</p>	<p>Yes</p> <p>“‘Flavored tobacco product’ means any tobacco product that contains a constituent that imparts a characterizing flavor . . . ‘[C]haracterizing flavor’ means a distinguishable taste or aroma, other than the taste or aroma of</p>	<p>Yes</p> <p>“‘Tobacco product’ means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from tobacco, which product is intended to enable human consumption of the tobacco or nicotine, whether chewed, smoked, absorbed,</p>	<p>Yes</p> <p>“No person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products, samples of such products, or accessories for such products at any location that has a property line within 500 feet of the property line of any public,</p>	<p>Yes</p> <p>Gas station association and Quick Pick Food Mart challenged law, arguing it was preempted by the Family Smoking Prevention Tobacco</p>

Jurisdiction / Chicago, Illinois

continued

Flavor prohibited?

property line of any public, private, or parochial secondary school located in the City of Chicago.”

CHICAGO, ILL., CODE § 4-64-180(b) (2017) (emphasis added).

Menthol prohibited?

tobacco, imparted either prior to or during consumption of a tobacco product, including, but not limited to, tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, and any spice”

CHICAGO, ILL., CODE § 4-64-098 (2017) (emphasis added).

E-cigs included?

dissolved, inhaled, snorted, sniffed, or ingested by any other means.”

CHICAGO, ILL., CODE § 4-64-091 (2017) (emphasis added).

Exemption for certain retailers?

private, or parochial secondary school located in the City of Chicago. **This subsection does not apply to retail tobacco stores.** For purposes of this subsection, ‘retail tobacco store’ has the meaning ascribed to the term in Section 7-32-010.”

CHICAGO, ILL., CODE § 4-64-180(b) (2017) (emphasis added).

“‘Retail tobacco store’ means a **retail establishment that derives more than 80% of its gross revenue** from the sale of loose tobacco, cigarettes, cigarillos, cigars, pipes, other smoking devices and accessories, hookahs and related products, and/or electronic cigarettes and related products, and in which the sale of other products is merely incidental. ‘Retail tobacco store’ does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.”

Case law

Control Act (FSPTCA). *Indeps. Gas & Serv. Stations Associations, Inc. v. City of Chicago*, 112 F. Supp. 3d 749, 751 (N.D. Ill. 2015). But the FSPTCA deals with how tobacco products are manufactured, and the law only deals with the final product and whether it has a flavor. *Id.* at 754. The Court found *Smokeless Tobacco* persuasive: “Even if the ordinance has “some effect on manufacturers’ production decisions,” it is not a command to implement particular manufacturing standards and, accordingly, is exempt from the FSPTCA’s

Jurisdiction / Chicago, Illinois

continued

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

CHICAGO, ILL., CODE § 7-32-010 (2017).

preemption clause." *Indeps. Gas & Serv. Stations Associations, Inc. v. City of Chicago*, 112 F. Supp. 3d 749, 754 (N.D. Ill. 2015) (quoting *U.S. Smokeless Tobacco Mfg. Co. LLC v. City of N.Y.*, 708 F.3d 428, 434 (2d Cir. 2013)).

In the same case, the law also survived vagueness and vested rights challenges. *Id.* at 756, 757-58.

Although elementary and middle schools were originally part of this restriction, the buffer zone near those sites was lifted in 2016 due to the financial concerns of business owners.

Jurisdiction / Boston, Massachusetts

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco product to a consumer. This provision shall not apply to a retail tobacco store or smoking bar as defined by this regulation.”</p> <p><u>Boston Public Health Commission, Youth Access Regulation § III(E)(1) (2016).</u></p>	<p>No</p> <p>“Characterizing Flavor — A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen”</p> <p><u>Boston Public Health Commission, Youth Access Regulation § II(4) (2016) (emphasis added).</u></p> <p>“Flavored Tobacco Product — Any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor.”</p> <p><u>Boston Public Health Commission, Youth Access Regulation § II(13) (2016) (emphasis added).</u></p>	<p>Yes</p> <p>“Nicotine delivery products include ... e-cigarettes”</p> <p><u>Boston Public Health Commission, Youth Access Regulation § II(14) (2016) (emphasis added).</u></p> <p>“Tobacco Product – A cigarette, cigar, chewing tobacco, pipe tobacco, bidi, snuff, other tobacco or nicotine delivery product in any form.”</p> <p><u>Id. § II(20) (emphasis added).</u></p> <p>“Flavored Tobacco Product – Any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor.”</p> <p><u>Id. § II(13) (emphasis added).</u></p>	<p>Yes</p> <p>“No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco product to a consumer. This provision shall not apply to a retail tobacco store or smoking bar as defined by this regulation.”</p> <p><u>Boston Public Health Commission, Youth Access Regulation § III(E)(1) (2016) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / Cambridge, Massachusetts

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco to a consumer. This provision shall not apply to a retail tobacco store.”</p> <p><u>CAMBRIDGE, MASS., CODE § 8.28.030(K) (2017) (emphasis added).</u></p>	<p>No</p> <p>“Characterizing Flavor. A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product”</p> <p><u>CAMBRIDGE, MASS., CODE § 8.28.020 (2017) (emphasis added).</u></p>	<p>Yes</p> <p>“Nicotine Delivery Product. Any manufactured article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption Nicotine delivery products include, but are not limited to, e-cigarettes.”</p> <p><u>CAMBRIDGE, MASS., CODE § 8.28.020 (2017) (emphasis added).</u></p> <p>“Tobacco Product. Cigarettes, cigars, chewing tobacco, pipe tobacco, nicotine delivery product, snuff or tobacco in any of its forms.”</p> <p><u>Id. (emphasis added).</u></p> <p>“Flavored Tobacco Product. Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor.”</p> <p><u>Id. (emphasis added).</u></p>	<p>Yes</p> <p>“No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco to a consumer. This provision shall not apply to a retail tobacco store.”</p> <p><u>CAMBRIDGE, MASS., CODE § 8.28.030(K) (2017) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / Minneapolis, Minnesota

Menthol ban will be enforced Aug. 1, 2018

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell, offer for sale, give away, barter, exchange, or otherwise deal in flavored tobacco products or samples of such products.”</p> <p><u>Minneapolis, Minn., Ordinance 17-00749 (passed Aug. 4, 2017) (to be codified at MINNEAPOLIS, MINN., CODE § 281.45(f)).</u></p>	<p>Yes</p> <p>“<i>Flavored tobacco product</i> means any tobacco product that contains a taste or aroma, other than the taste or aroma of tobacco ... including, but not limited to, tastes or aromas of menthol, mint, wintergreen”</p> <p><u>Minneapolis, Minn., Ordinance 17-00749 (passed Aug. 4, 2017) (to be codified at MINNEAPOLIS, MINN., CODE § 281.15) (emphasis added).</u></p>	<p>Yes</p> <p>“<i>Tobacco products</i> means tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products as those terms are defined in this section.”</p> <p><u>Minneapolis, Minn., Ordinance 17-00749 (passed Aug. 4, 2017) (to be codified at MINNEAPOLIS, MINN., CODE § 281.15) (emphasis added).</u></p> <p>“Electronic delivery device includes, but is not limited to ... e-cigarettes”</p> <p><u>Minneapolis, Minn., Ordinance 17-00749 (passed Aug. 4, 2017) (to be codified at MINNEAPOLIS, MINN., CODE § 281.15) (emphasis added).</u></p> <p>“<i>Tobacco</i> means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption”</p> <p><u>Minneapolis, Minn., Ordinance 17-00749 (passed Aug. 4, 2017) (to be codified at MINNEAPOLIS, MINN., CODE § 281.15).</u></p>	<p>Yes</p> <p>“No person shall sell, offer for sale, give away, barter, exchange, or otherwise deal in flavored tobacco products or samples of such products. This subsection does not apply to tobacco products shops or to a licensed tobacco dealer [under certain conditions]. This subsection does not apply to licensed off sale liquor stores with regard to menthol, mint or wintergreen flavored tobacco products provided that such an establishment does not permit any persons under the age of twenty-one (21) to be present within the establishment unaccompanied by a parent or guardian.”</p> <p><u>Minneapolis, Minn., Ordinance 17-00749 (passed Aug. 4, 2017) (to be codified at MINNEAPOLIS, MINN., CODE § 281.45(f)).</u></p>	<p>No</p>

Jurisdiction / Shoreview, Minnesota

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell, offer for sale, or otherwise distribute any flavored products.”</p> <p><u>Shoreview, Minn., Ordinance 946 (Nov. 21, 2016) (codified at SHOREVIEW, MINN., CODE § 706.065).</u></p>	<p>No</p> <p>“<i>Flavored Product</i>. Any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen, that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery device including, but not limited to, any taste or smell relating to chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice.”</p> <p><u>Shoreview, Minn., Ordinance 946 (Nov. 21, 2016) (codified at SHOREVIEW, MINN., CODE § 706.020(C)) (emphasis added).</u></p>	<p>Yes</p> <p>“<i>Flavored Product</i>. Any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product”</p> <p><u>Shoreview, Minn., Ordinance 946 (Nov. 21, 2016) (codified at SHOREVIEW, MINN., CODE § 706.020(C)) (emphasis added).</u></p> <p>“Tobacco or Tobacco Products. Tobacco or tobacco products includes cigarettes”</p> <p><u>Shoreview, Minn., Ordinance 946 (Nov. 21, 2016) (codified at SHOREVIEW, MINN., CODE § 706.020(M)).</u></p>	<p>Yes</p> <p>“No person shall sell, offer for sale, or otherwise distribute any flavored products. This restriction does not apply to retail establishments that:</p> <p>(1) Prohibit minors from entering at all times; and</p> <p>(2) Derive at least ninety (90) percent of their revenues from the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.”</p> <p><u>Shoreview, Minn., Ordinance 946 (Nov. 21, 2016) (codified at SHOREVIEW, MINN., CODE § 706.065) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / St. Paul, Minnesota

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell, offer for sale, or otherwise distribute any flavored products.”</p> <p><u>ST. PAUL, MINN., CODE § 324.07(f) (2017).</u></p>	<p>No</p> <p>“<i>Flavored product</i> means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen”</p> <p><u>ST. PAUL, MINN., CODE § 324.03(3) (2017) (emphasis added).</u></p>	<p>Yes</p> <p>“<i>Electronic delivery device</i> means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product.”</p> <p><u>ST. PAUL, MINN., CODE § 324.03(2) (2017) (emphasis added).</u></p> <p>“<i>Tobacco or tobacco product</i> means any product containing, made, or derived from tobacco ... including, but not limited to cigarettes”</p> <p><u>ST. PAUL, MINN., CODE § 324.03(7) (2017).</u></p> <p>“<i>Flavored product</i> means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen”</p>	<p>Yes</p> <p>“This restriction shall not apply to retail stores that derive at least ninety (90) percent of their revenue from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person under eighteen (18) years of age is permitted to enter, at any time.”</p> <p><u>ST. PAUL, MINN., CODE § 324.07(f) (2017) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / St. Paul, Minnesota

continued

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

ST. PAUL, MINN., CODE § 324.03(3)
(2017) (emphasis added).

Jurisdiction / New York City, New York

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

Yes

"It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product except in a tobacco bar."

N.Y.C., N.Y., ADMIN. CODE § 17-715(a) (2017).

No

"'Characterizing flavor' means a distinguishable taste or aroma, **other than the taste or aroma of tobacco, menthol**, mint or winter-green, imparted either prior to or during consumption of a tobacco product or component part thereof"

N.Y.C., N.Y., ADMIN. CODE § 17-713(b) (2017) (emphasis added).

"'Flavored tobacco product' means any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor."

N.Y.C., N.Y., ADMIN. CODE § 17-713(e) (2017).

No (note that traditional cigarettes not included)

"'Tobacco product' means **any product which contains tobacco that is intended for human consumption**, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco-containing shisha, or dissolvable tobacco product. **Tobacco product shall not include cigarettes**"

N.Y.C., N.Y., ADMIN. CODE § 17-713(j) (2017) (emphasis added).

Yes

"It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product except in a tobacco bar."

N.Y.C., N.Y., ADMIN. CODE § 17-715(a) (2017) (emphasis added).

"Only the following entities may sell or offer for sale flavored tobacco products:

(1) Tobacco bars; and

(2) Tobacco wholesalers, but only where the sale or offer of sale is made to a tobacco bar or to an entity located outside the City of New York."

N.Y.C., N.Y., R. § 28-02(a) (2017) (emphasis added).

Yes

Manufacturers and distributors alleged that the Family Smoking Prevention Tobacco Control Act (FSPTCA) preempted NYC's flavor restrictions. *U.S. Smokeless Tobacco Mfg. Co. LLC v. City of N.Y.*, 708 F.3d 428, 430 (2d Cir. 2013). The court held that it didn't. Id. at 436 ("[W]e conclude that Administrative Code § 17-715 is a regulation of sale and not a veiled attempt to

Jurisdiction / New York City, New York

continued

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

“Tobacco products that impart a distinguishable taste or aroma of menthol, mint, wintergreen or tobacco, and do not also impart a characterizing flavor, are **not subject to the restriction** on sale set forth in § 17-715 of the Administrative Code or these rules.”

N.Y.C., N.Y., R. § 28-02(b) (2017) (emphasis added).

regulate the manufacture of tobacco products.”) This is because the FSPTCA deals with product manufacturing standards—the flavor restrictions only focus on whether the final product has flavoring (not how the flavor got there). *Id.* at 434.

Jurisdiction / Central Falls, Rhode Island

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

Yes

“No licensee, or employee or agent of such licensee, shall sell **any flavored tobacco product** to a consumer.”

CENTRAL FALLS, R.I., CODE § 12-421(e) (2017) (emphasis added).

No

“*Characterizing flavor* means a distinguishable taste or aroma, **other than the taste or aroma of tobacco, menthol, mint, or wintergreen**”

CENTRAL FALLS, R.I., CODE § 12-417 (2017) (emphasis added).

Yes (note that traditional cigarettes not included)

“*Tobacco product* means: ... (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an **electronic cigarette**, cigar, pipe, or hookah.”

Yes

“This subsection (e) shall not apply to a **smoking bar** as defined in Section 23-20.10-2(15) of the Rhode Island General Laws[.]”

CENTRAL FALLS, R.I., CODE § 12-421(e) (2017) (emphasis added).

No

Jurisdiction / Central Falls, Rhode Island

continued

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
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CENTRAL FALLS, R.I., CODE § 12-417 (2017) (emphasis added).

*“Flavored tobacco product means any tobacco product, **other than a cigarette**, that contains a constituent that imparts a characterizing flavor.”*

CENTRAL FALLS, R.I., CODE § 12-417 (2017) (emphasis added).

Jurisdiction / Providence, Rhode Island

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
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Yes

“It shall be unlawful for any person to sell or offer for sale any flavored tobacco product to a consumer, except in a smoking bar.”

PROVIDENCE, R.I., CODE § 14-309 (2016).

No

*“Characterizing flavor means a distinguishable taste or aroma, **other than the taste or aroma of tobacco, menthol**, mint or wintergreen, imparted either prior to or during consumption of a tobacco product”*

PROVIDENCE, R.I., CODE § 14-308 (2016) (emphasis added).

“Flavored tobacco product

Yes (note that traditional cigarettes not included)

*“Tobacco product means **any product containing tobacco or nicotine**, including, but not limited to, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and **electronic cigarette cartridges**; provided, however, that **such term shall not include**: (1) **Cigarettes**, including those cigarettes subject to the special rule for cigarettes relating*

Exemption for certain retailers?

Yes

*“It shall be unlawful for any person to sell or offer for sale any flavored tobacco product to a consumer, **except in a smoking bar.**”*

PROVIDENCE, R.I., CODE § 14-309 (2016) (emphasis added).

Case law

Yes

In regards to flavoring, the ordinance survived First Amendment and preemption challenges.

See Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence, No. CA 12-96-ML, 2012 WL 6128707, at

Jurisdiction / Providence, Rhode Island

continued

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
	means any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor. <u>PROVIDENCE, R.I., CODE § 14-308 (2016) (emphasis added).</u>	to characterizing flavors of the Federal Family Smoking and Tobacco Prevention Act ..." <u>PROVIDENCE, R.I., CODE § 14-308 (2016) (emphasis added).</u>		*13 (D.R.I. 2012), <i>aff'd. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I.</i> , 731 F.3d 71 (1st Cir. 2013).

Addendum: Flavored Tobacco Restrictions by Type

This categorized list organizes the cities and counties mentioned in the chart above by restriction type rather than by state. Please note that this list is not intended to be comprehensive and that other types of flavored tobacco policies exist outside of those mentioned here.

Comprehensive

(jurisdiction-wide ban, menthol prohibited, e-cigarettes included, no retailer exemption)

- El Cerrito, CA (traditional cigarettes excluded)
- San Francisco, CA
- Yolo County, CA (only in unincorporated parts of the county)

Comprehensive with retailer exemption

(jurisdiction-wide ban, menthol prohibited, e-cigarettes included, certain retailers exempt)

- Santa Clara County, CA (applies only to unincorporated parts of the county, but see also Los Gatos, CA, noted in the Santa Clara County chart)
- Minneapolis, MN

Buffer zone restriction

(flavor sales prohibited around buffer zone, menthol prohibited, e-cigarettes included)

- Berkeley, CA (no exemption for retailers)
- Hayward, CA (traditional cigarettes excluded, exemption for certain retailers)
- Contra Costa County, CA (only in unincorporated parts of the county, no exemption for retailers)
- Chicago, IL (exemption for certain retailers)

Flavor restriction excluding menthol, with retailer exemption

(jurisdiction-wide ban, menthol allowed, e-cigarettes included, exemption for retailers)

- Manhattan Beach, CA
- St. Paul, MN
- Boston, MA
- Central Falls, RI (traditional cigarettes excluded)
- Cambridge, MA
- Providence, RI (traditional cigarettes excluded)
- Shoreview, MN

Other

- New York City (city-wide ban, menthol allowed, e-cigarettes and traditional cigarettes not included, certain retailers exempt)

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Endnotes

- * Due to the large number of jurisdictions in which flavored tobacco products are prohibited, this chart does not include every city or county with flavored tobacco restrictions, even in the states listed. For example, South Miami, Florida, has an interesting flavored tobacco sales law outside of a licensing section, South Miami, Fla., Code § 12-16 (2017), and almost 100 municipalities in Massachusetts also have sales restrictions on flavored cigarettes. See LOCAL POLICIES RESTRICTING FLAVORED “OTHER TOBACCO PRODUCTS” (OTP) TO ADULT-ONLY RETAILERS, MUNICIPAL TOBACCO CONTROL TECHNICAL ASSISTANCE PROGRAM, MASS. MUNICIPAL ASSOC., <https://static1.squarespace.com/static/528681f8e4b021ccf6d3c997/t/5903c670cd-0f68a2400c03ab/1493419633486/muni+list+Flavored+OTP+Restriction+.pdf> (last updated April 21, 2017). These jurisdictions have policies that may differ from those listed in this chart. For more information about jurisdictions in your state in which flavored tobacco sales are restricted, feel free to contact the Public Health Law Center.