



SAN FRANCISCO'S FLAVORED TOBACCO PRODUCTS POLICY

A Case Study



In June of 2017, the San Francisco Board of Supervisors unanimously passed the City's first law prohibiting the sale of menthol and all flavored commercial tobacco¹ products.²

This law grew out of fervent advocacy and organizing from both local and national partners.³ Before the law took effect as scheduled in 2018, R.J. Reynolds Tobacco Company forced a referendum on the law, suspending its implementation, and at the same time funding a significant campaign urging San Francisco residents to vote it down.⁴ Defying the odds,



however, San Francisco voters upheld the flavor ban, with 68 percent of voters supporting the law.⁵ Formal enforcement of the law began in 2019.⁶

Laying the Groundwork for Action

A study completed in 2016, prior to the passage of San Francisco's flavored tobacco ban, found that 11.6 percent of adults in California and 10.11 percent of adults in San Francisco smoked.⁷ Additionally, 5.8 percent of California residents reported using e-cigarettes, a number significantly higher than the national average at the time of 3.7 percent.⁸ Studies also found that, in 2016, 34.9 percent of California residents who smoked typically smoked menthol cigarettes, again higher than the then national average of 25 to 30 percent of adults who used menthol products.⁹ Adolescent, Black, and LGBTQ+ Californians, populations often targeted in tobacco marketing campaigns, disproportionately smoked menthol products. As a result, over 55 percent of Black California residents who smoked used menthol cigarettes.¹⁰ Based on the prevalence of menthol smokers, it was estimated that 35 percent of the packs of cigarettes sold within the City of San Francisco are menthol cigarettes.¹¹

The move to restrict the sale of all flavored tobacco products in San Francisco was a community-driven effort. The San Francisco Tobacco-Free Coalition, for instance, included San Francisco community members and local, state, and national organizations, including the San Francisco Community Health Center, American Lung Association, Breathe California, the African American Tobacco Control Leadership Council, California LGBTQ Tobacco Partnership, and the University of San Francisco Center for Tobacco Control Research and Education, and many other groups. This coalition united to foster community engagement and raise awareness about the menthol tobacco product problem.¹² The coalition also collaborated in drafting the language that would become the flavor restriction ordinance.¹³

In building support for San Francisco's flavor ban, the coalition employed the Community Action Model of community engagement (CAM).¹⁴ CAM uses a **five-step framework** to empower community members to become effective agents of change.¹⁵ The first step is to **train** community advocates on the history of tobacco control and to identify the problem the group is working to resolve, which — in this case — was the sale and use of flavored tobacco products.¹⁶ Then community advocates conduct qualitative and quantitative research to **diagnose** the community's strengths and needs.¹⁷ The next step is to **analyze** the research to narrow the focus of the selected issue and to develop possible actions and activities to address that issue.¹⁸ Fourth, the community **implements** the selected action, which was the adoption of a city ordinance.¹⁹ Finally, the community advocates seek to **enforce** the action to ensure the longevity of the change.²⁰

Applying the CAM methodology, the coalition reached out to local community-based organizations and held meetings with predominantly Black, Asian Pacific Islander, and other communities disproportionately impacted by flavored tobacco use. The coalition's goal was to provide information about the harmful impacts of menthol and flavored tobacco products and to generate ideas about what could be done to mitigate those harms.²¹ Surveys, assessments, data analysis, and talking points were used to further engage the community to generate support for the ordinance.²²

This type of outreach continued even after the ordinance was passed with the coalition continuing to provide community education about the health impact of tobacco and the flavor ban.²³ One way that the coalition, in combination with the broader San Francisco Tobacco-Free Project organization, provides ongoing support to flavored tobacco product users is by offering tobacco cessation services. Between 2018 and 2021, two media campaigns were developed and implemented: "SF Quits!" and "Connect to Quit."²⁴ The Connect to Quit campaign consisted of online, print, and television ads along with a website and a hotline, all of which were informed by focus groups comprised of individuals from populations most affected by flavored products (Black, Asian and Pacific Islander, LGBTQ+, and Latinx populations).²⁵ Although the SF Quits! and Connect to Quit campaigns have since ended, cessation resources are still available for San Francisco residents through Kick It California.

In advocating for the ordinance's passage, the coalition paid particular attention to San Francisco's youth population through coalition partner Breathe CA, which engaged youth in conversations about access to tobacco products and product use.²⁶ This component of the community engagement strategy was particularly important given that, in 2016, 70–80 percent of middle and high school students who used tobacco products were found to have used at least one flavored product within 30 days of being surveyed.²⁷ More than that, coalition's commitment to amplifying the voices of youth and marginalized community members most heavily impacted by menthol and flavored tobacco products illustrated how the flavored tobacco problem was framed during the campaign: as a social justice issue.²⁸

San Francisco's Menthol Ban

In June of 2017, the San Francisco Board of Supervisors voted unanimously to pass the flavor ban ordinance,²⁹ a clear payoff for the coalition- and community-led efforts to curb flavored tobacco use in the City. The ordinance prohibited the sale of any flavored "tobacco product."³⁰ The City's definition of "tobacco product" includes any product made or derived from tobacco or nicotine that is designed for consumption by any means, meaning that cigarettes, cigars, smokeless tobacco, and e-cigarettes (ENDS or "electronic nicotine devices") are all included.³¹

The ordinance was originally scheduled to take effect in January 2018, but the effective date was pushed back to April of that year to allow for store owners to sell down their flavored product inventory and to provide the City with time to implement programs to assist retailers with compliance.³²

Putting it to a Vote

Before the ordinance could take effect, R.J. Reynolds did its best to squash the ordinance. The tobacco company launched a ballot campaign to overturn the law, relying on the residents of San Francisco to reject it in a referendum.³³ R.J. Reynolds paid individuals \$5 each to sign a petition, which required 5,000 signatures for the proposed referendum to be placed on the ballot.³⁴ Yet that was just the beginning of R.J. Reynolds' spending to oppose the ordinance. In total, R.J. Reynolds invested over \$11.6 million in the San Francisco ballot campaign.³⁵ As the manufacturer of Newport cigarettes, the best-selling menthol brand, and the second most popular cigarette brand at the time among young people who smoked,³⁶ R.J. Reynolds had a clear motive for promoting and bankrolling such a costly campaign: to ensure youth could continue to access menthol and other flavored products.³⁷ One study found that 81 percent of youth who have ever tried tobacco started with a flavored product, meaning that flavored tobacco is often what hooks the next generation of smokers.³⁸ R. J. Reynolds, on the other hand, unsuccessfully argued that a flavored tobacco ban was analogous to prohibition or the "War on Drugs," claiming a ban would fail to curb usage and only foster a black market for flavored products.³⁹ R.J. Reynolds also relied on California's recent passage of a T21 law, a measure which raised the legal age to purchase tobacco products within the state to 21, stating that under the new law a flavor ban was not needed to keep tobacco products out of the hands of children.⁴⁰

Tobacco control advocates rallied in support of the flavor ordinance and launched a campaign of their own to encourage San Franciscans to vote to uphold the law. Notably, the Tobacco-Free Kids Action Fund, the American Cancer Society, the American Heart Association, and New York City Mayor Michael Bloomberg all contributed funds to support efforts to keep the ordinance in place (amounting to about \$5 million⁴¹) and the now-established coalition continued its community engagement efforts.⁴² History was made on June 5, 2018, when, despite R.J. Reynolds' significantly expensive opposition, 68 percent of San Francisco residents voted to uphold the ordinance.⁴³

Implementation

From September to December in 2018, the San Francisco Department of Public Health (SFPDH) collaborated with the coalition in a volunteer-run outreach program for tobacco



retailers that educated them about the law and gave them an opportunity to ask questions or have their concerns addressed.⁴⁴ In addition, the coalition mailed informational flyers to each affected retailer and made online training materials available.⁴⁵ If retailers were uncertain about whether a product was prohibited under the ordinance, volunteer trainers photographed the item in question and sent the photos to the Department of Public Health for follow-up.⁴⁶

After the training period in December of 2018 and continuing through March of 2019, the Department of Public Health conducted compliance checks in retail locations around the City.

These checks served as an official part of each retailer's permit file.⁴⁷ Routine enforcement of the ordinance began in April 2019.⁴⁸ If retailers were found to be offering flavored products, they were given 72 hours to remove the product from their shelves.⁴⁹ If the product was not removed within that time, the Department issued a Notice of Violation, with the likelihood of a Tobacco Permit suspension.⁵⁰

Epilogue

Between January and December of 2019, approximately 80 percent of San Francisco retailers were compliant with the ordinance, a significant increase from the 17 percent of retailers who were found to be compliant before the ban.⁵¹ Beyond compliance metrics, other studies have examined the effects of the flavor ordinance, with mixed results.

In 2021, an academic article released in the *Journal of the American Medical Association* (JAMA), purported to find that the San Francisco flavor ban had caused an increase in ENDS usage among individuals aged 18 to 24 within the City. This study relied exclusively on 2011 to 2019 data from the Youth Risk Behavior Surveillance System Survey (YRBSS), presuming the 2019 data reflected the post-ban environment.⁵² This study has since been found to be flawed as the 2019 YRBSS data only includes information gathered in 2018, before the ban was implemented.⁵³ While this study has been widely discredited, the study's author has continued to attest to her findings, something that the tobacco industry is quick to support, making it incredibly important to ensure accurate information is also widely available.⁵⁴

Fortunately, additional studies on the matter have accurately reflected the ordinance's impact. One such study, which examined how the ban affected weekly tobacco retail sales, reported that, following the ban, flavored tobacco sales in San Francisco decreased by 96 percent and general tobacco sales decreased by 25 percent.⁵⁵ Another study, conducted in late 2019, looked at young people who smoked and had been living in San Francisco since at least 2018 and found that the prevalence of tobacco product use among individuals in both the 18-24 and 25 to 34 age groups decreased significantly following the flavor ban.⁵⁶ It was also found that nearly 21 percent of those sampled who had exclusively been using flavored ENDS products before the ban quit using tobacco products entirely.⁵⁷ However, it is important to note that while the use of flavored e-cigarettes was found to be significantly lower than before the ban, the prevalence of using cigarettes and cigars remained stable.⁵⁸ Moreover, it was found that the use of online retailers to obtain tobacco products increased following the ban, suggesting that more work must be done to combat the menthol and flavored tobacco problem.⁵⁹

Lessons Learned

San Francisco's flavor ban was historic both because it was the first citywide, comprehensive flavor ban, including menthol, in the nation and because San Francisco residents chose to uphold it by a wide majority when it came down to a vote.⁶⁰ With respect to flavored tobacco restrictions, San Francisco's story also offers some valuable lessons:

- **Prioritize community engagement.** Engage partners at the local, state, and national level. Focus on developing connections to organizations that represent a diverse array of perspectives and interests. Create a formal working group or coalition to encourage accountability.
- **Make use of existing knowledge and tools.** Connect with on-the-ground organizers and ask them what works in their community. Consider expanding successful, established community engagement strategies to include a tobacco control focus (if not already incorporated). If a community has no time-tested engagement methods, check out the [CAM](#) or reach out to a technical assistance provider.
- **Use community volunteers.** Offer ways for individuals to become informed and involved in advocating for a policy in which they believe. Encourage collaboration between local policy enforcement agencies and community member volunteers to facilitate communication with local retailers.
- **Use straightforward language and provide a path to clear up ambiguity.** When drafting a policy, use clear and unambiguous language, and consult with an attorney familiar with the laws of your jurisdiction or reach out to the attorneys at the Public Health Law Center. As much as possible, exclude or limit exceptions to the policy that muddy the water on what is allowed.
- **Consider a thoughtful implementation and robust enforcement process.** During policy implementation and enforcement, provide ongoing education and training opportunities and offer avenues for affected entities or individuals to ask questions and have their concerns addressed.
- **Maintain a focus on social justice.** Emphasize that the negative impacts of menthol and flavored tobacco products are disproportionately felt by youth and marginalized community members due largely to the tobacco industry's marketing strategies. Contextualize the regulation of flavored tobacco within the broader social justice policy landscape.

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, Saint Paul, Minnesota. The Center provides information and technical assistance on law and policy issues related to public health. The Center does not provide legal advice and does not enter into attorney-client relationships. This document should not be considered legal advice. The Public Health Law Center thanks research assistant Daina Strub Kabitz for her work on this publication.

This publication was supported in part by Cooperative Agreement Number 5 NU58DP006263-02-00, funded by the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention or the Department of Health and Human Services.

Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Priyanka Vyas et al., *Compliance with San Francisco’s Flavored Tobacco Sales Prohibition*, 30 TOBACCO CONTROL 227, 227 (2021); Y. Tony Yang & Stanton Glantz, *San Francisco Voters End the Sale of Flavored Tobacco Products Despite Strong Industry Opposition*, 169 ANNALS OF INTERNAL MED. 708, 708 (2018).
- 3 See Vyas et al., *supra* note 2, at 227-28.
- 4 *Id.* at 228.
- 5 *Id.*; Yang & Glantz, *supra* note 2, at 708..
- 6 Vyas et al., *supra* note 2, at 228.
- 7 S.F. OFF. OF ECON. ANALYSIS, BANNING THE SALE OF FLAVORED TOBACCO PRODUCTS: ECONOMIC IMPACT REPORT 5 (2017), https://sfcontroller.org/sites/default/files/Documents/Economic%20Analysis/170441_economic_impact_final.pdf.
- 8 *Id.* at 4.
- 9 *Id.* at 5.
- 10 *Id.*
- 11 *Id.* at 7.
- 12 Tobacco-Free Coalition, <https://sanfranciscotobaccofreeproject.org/coalition/> (last visited June 17, 2022).
- 13 *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, COUNTERTOBACCO.ORG, <https://countertobacco.org/resources-tools/stories-from-the-field/san-francisco-menthol-restriction/#:~:text=The%20San%20Francisco%20policy%20restricts%20the%20sale%20of%20menthol%20tobacco%20products%20and%20all%20other%20flavored%20tobacco%20products%20anywhere%20within%20the%20city%20of%20San%20Francisco%2C%20without%20exemption.%C2%AO> (last visited June 17, 2022).
- 14 *Id.*
- 15 *Community Action in Public Health Policy: Lessons Learned from Twenty Years of Community Capacity Building in San Francisco through the Community Action Model*, S.F. TOBACCO-FREE PROJECT (Sep. 2016), <https://sanfranciscotobaccofreeproject.org/wp-content/uploads/CAM-Case-Study-Final-9.12.16-to-TFP.pdf>.
- 16 *Id.*

- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, *supra* note 13.
- 22 *Id.*
- 23 *Id.*
- 24 VANETTA THOMAS, S.F. TOBACCO-FREE PROJECT, OBJECTIVE 1 MENTHOL AND OTHER FLAVORED TOBACCO PRODUCTS BRIEF EVALUATION REPORT 2017-2021 7 (2021), <https://sanfranciscotobaccofreeproject.org/wp-content/uploads/BER-2021-Menthol-and-Flavored-Tobacco.pdf>
- 25 *Id.*
- 26 *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, *supra* note 13.
- 27 S.F. OFF. OF ECON. ANALYSIS, *supra* note 7, at 5.
- 28 *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, *supra* note 13.
- 29 Vyas et al., *supra* note 2 at 227.
- 30 S.F., CAL., HEALTH CODE §19Q.3 (2022).
- 31 S.F., CAL., HEALTH CODE §19H.2 (2022).
- 32 Vyas et al., *supra* note 2 at 228; *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, *supra* note 13 (referencing retailer technical assistance programing by the Healthy Retail SF program).
- 33 Yang & Glantz, *supra* note 2, at 708.
- 34 *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, *supra* note 13.
- 35 Matthew L. Meyers, *Putting Profits Before Kids, R.J. Reynolds Spends Over \$11.6 Million in Effort to Overturn San Francisco Ban on Flavored Tobacco Products*, CAMPAIGN FOR TOBACCO-FREE KIDS (May 30, 2018), https://www.tobaccofreekids.org/press-releases/2018_05_30_sanfrancisco.
- 36 Siobhan N. Perks et al., *Cigarette Brand Preference and Pro-Tobacco Advertising Among Middle and High School Students — United States, 2012–2016*, 67 MORBIDITY & MORTALITY WKLY. REP. 119 (2018).
- 37 Meyers, *supra* note 35.
- 38 Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12–17 Years, 2013–2014*, 314 JAMA 1871 (2015).
- 39 Yang & Glantz, *supra* note 2, at 708
- 40 *Id.*
- 41 Vyas et al., *supra* note 2, at 228.
- 42 *Id.*; Yang & Glantz, *supra* note 2, at 709; *San Francisco Restriction on the Sale of Menthol and All Other Flavored Tobacco Products*, *supra* note 13.
- 43 Vyas et al., *supra* note 2, at 228.
- 44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 Abigail S. Friedman, *A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco products in San Francisco, California*, 175 JAMA PEDIATRICS 863 (2021).

53 See Jessica Liu et al., *Youth Tobacco Use Before and After Flavoured Tobacco Sales Restrictions in Oakland, California and San Francisco, California*, TOBACCO CONTROL (2022).

54 *Tobacco Industry Uses Flawed Study to Oppose Flavored Tobacco Restrictions*, TRUTH INITIATIVE (Apr. 21, 2022), <https://truthinitiative.org/research-resources/emerging-tobacco-products/tobacco-industry-uses-flawed-study-oppose-flavored>.

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56 Yong Yang et al., *The Impact of a Comprehensive Tobacco Product Flavor Ban in San Francisco Among Young Adults*, 11 ADDICTIVE BEHAVIOR REPORTS 1, 3 (2020).

57 *Id.*

58 *Id.*

59 *Id.* at 4.

60 *U.S. State and Local Issues: Ending the Sale of Flavored Tobacco Products*, CAMPAIGN FOR TOBACCO-FREE KIDS (Apr. 11, 2022), <https://www.tobaccofreekids.org/what-we-do/us/flavored-tobacco-products>.