

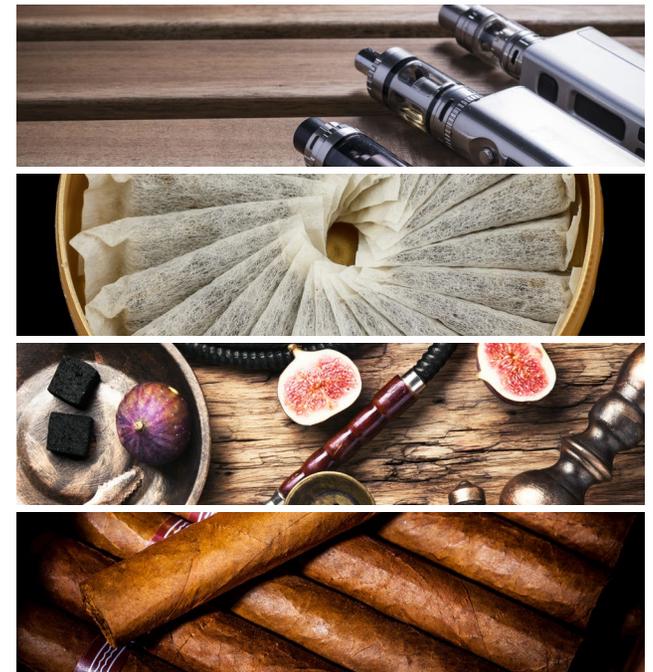
# U.S. SALES RESTRICTIONS ON FLAVORED TOBACCO PRODUCTS



This chart provides select examples<sup>1</sup> 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,<sup>2</sup> 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 Public Health Law Center 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 / California / Berkeley<sup>3</sup>

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes — within buffer zone</b>            “Effective January 1, 2017, no person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products <b>within six hundred (600) feet of any school ...</b>”  <u>BERKELEY, CAL. CODE § 9.80.035(D) (2019) (emphasis added).</u><sup>4</sup></p>	<p><b>Yes</b>            “‘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, <b>including but not limited to tastes or aromas of menthol ...</b>”  <u>BERKELEY, CAL. CODE § 9.80.020(A) (2019) (emphasis added).</u>            “‘Flavored tobacco product’ means <b>any tobacco product</b> containing, made of, or derived from tobacco or nicotine that contains a constituent <b>that imparts a characterizing flavor.</b>”  <u>BERKELEY, CAL. CODE § 9.80.020(F) (2019) (emphasis added).</u></p>	<p><b>Yes</b>            “‘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 <b>e-liquid</b>; 3. any <b>electronic nicotine delivery system</b>; and 4. any tobacco paraphernalia.”  <u>BERKELEY, CAL. CODE § 9.80.020(K) (2019).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / California / Beverly Hills

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b> "It shall be unlawful for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale any flavored tobacco product." <u>BEVERLY HILLS, CALIF., CODE § 4-2-2109(H) (2019).</u></p>	<p><b>Yes</b> "Flavored tobacco product: Any tobacco product that imparts a characterizing flavor." "Characterizing flavor means a <b>taste or aroma</b>, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, <b>including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen ...</b> " <u>BEVERLY HILLS, CALIF., CODE § 4-2-2102 (2019) (emphasis added).</u></p>	<p><b>Yes</b> "Tobacco product [i]ncludes ... any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including ... any <b>electronic cigarette</b> ... [and] any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately." <u>BEVERLY HILLS, CALIF., CODE § 4-2-2102 (2019) (emphasis added).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / California / Contra Costa County

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes — within buffer zone</b> "It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco</p>	<p><b>Yes</b> "It is a violation of this division for any tobacco retailer to sell or offer for sale any <b>flavored tobacco product or</b></p>	<p><b>Yes</b> "'Tobacco product' means ... (1) [a]ny product <b>containing</b>, made from, or derived from tobacco or nicotine that is intended for</p>	<p><b>No</b></p>	<p><b>No.</b> Note that this ordinance only applies to unincorporated parts of the county.</p>

Jurisdiction / California / Contra Costa County

(continued)

Flavor prohibited?

product or menthol cigarettes **within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.**"

CONTRA COSTA COUNTY, CAL., CODE § 445-6.006 (2019) (emphasis added).

Menthol prohibited?

**menthol cigarettes** within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library."

CONTRA COSTA COUNTY, CAL., CODE § 445-6.006 (2019) (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."

CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(g) (2019).

"'Menthol cigarettes' means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint or wintergreen ..."

CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(j) (2019).

E-cigs included?

human consumption, whether smoked, heated, chewed, absorbed, dissolved, **inhaled**, snorted, sniffed, or **ingested by any other means ... (2) [a]ny electronic smoking device ... "**

CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(t) (2019) (emphasis added).

Exemption for certain retailers?

Case law

Jurisdiction / California / El Cerrito

Flavor prohibited?

**Yes**  
“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.”  
EL CERRITO, CAL., CODE § 6.100.160 (2019).

Menthol prohibited?

**Yes** (note: menthol *cigarettes* are not prohibited because the ordinance excludes cigarettes)  
“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.”  
EL CERRITO, CAL., CODE § 6.100.020 (2019) (emphasis added).

E-cigs included?

**Yes** (note that conventional cigarettes not included<sup>5</sup>)  
“‘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.**”  
EL CERRITO, CAL., CODE § 6.100.020 (2019) (emphasis added).

Exemption for certain retailers?

**No**  
“**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.”  
EL CERRITO, CAL., CODE § 6.100.160 (2019).  
“‘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.”  
EL CERRITO, CAL., CODE § 6.100.020 (2019) (emphasis added).

Case law

**No**

Jurisdiction / California / Hayward

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes — within buffer zone</b> “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 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 <b>within a 500 foot radius of any private or public kindergarten, elementary, middle, junior high, or high school.</b> 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.”</p>	<p><b>Yes</b> (note: menthol <i>cigarettes</i> are not prohibited because the ordinance excludes cigarettes) “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, <b>including, but not limited to, tastes or aromas relating to ... menthol ...</b>” <u>HAYWARD, CAL. CODE § 10-1.2782(b) (2019) (emphasis added).</u> “Flavored Tobacco Product’ means <b>any tobacco product</b> (other than cigarettes as defined by federal law) that contains a constituent <b>that imparts a characterizing flavor.</b>” <u>HAYWARD, CAL. CODE § 10-1.2782(f) (2019).</u></p>	<p><b>Yes</b> (note that conventional cigarettes not included) “Tobacco product’ includes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, <b>or electronic smoking devices (with or without nicotine).</b>” <u>HAYWARD, CAL. CODE § 10-1.2782(t) (2019) (emphasis added).</u> “Flavored Tobacco Product’ means <b>any tobacco product (other than cigarettes as defined by federal law)</b> that contains a constituent that imparts a characterizing flavor.” <u>HAYWARD, CAL. CODE § 10-1.2782(f) (2019) (emphasis added).</u></p>	<p><b>Yes</b> Exception for “Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of [the flavored tobacco regulation].” <u>HAYWARD, CAL. CODE § 10-1.2783(c) (2019).</u></p>	<p><b>No</b></p>

Jurisdiction / California / Hayward

(continued)

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

HAYWARD, CAL. CODE § 10-1.2783(c) (2019) (emphasis added).

Jurisdiction / California / Los Gatos

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

**Yes**  
“[N]o 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, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a **characterizing flavor or aroma of the tobacco product, smoke or vapor produced by the tobacco product ... rebuttable presumption that the product is prohibited ... if:**

**Yes**  
“[N]o retailer shall sell a tobacco product containing, as a constituent or additive, an **artificial or natural flavor or aroma** (other than tobacco)”  
LOS GATOS, CAL., CODE § 18.60.020(c)(8) (2019) (emphasis added).

**Yes**  
“[N]o retailer shall sell a **tobacco product** containing, as a constituent or additive, an **artificial or natural flavor or aroma** (other than tobacco)”  
LOS GATOS, CAL., CODE § 18.60.020(c)(8) (2019) (emphasis added).  
“Tobacco product means ... : (1) Any product subject to Subchapter IX [21 U.S.C. § 387 et seq. (‘Subchapter IX’) of the Federal Food, Drug, and Cosmetic Act ... Products subject to Subchapter IX include ... **electronic nicotine delivery systems** (such as; but not limited to, **electronic cigarettes, electronic cigars,**

**Yes**  
[Flavor prohibition] shall not apply to any **retailer** that meets **all of the following criteria:** (1) Primarily sells tobacco products; (2) Generates **more than sixty (60) percent of its gross revenues annually from the sale of tobacco products;** (3) **Does not permit any person under twenty-one (21) years of age to be present** or enter the premises at any time, unless accompanied by the person’s parent or legal guardian ... ; (4) **Does not sell alcoholic beverages or food for consumption on the premises;** and (5) Posts a sign outside the retail location that **clearly, sufficiently, and conspicuously**

Jurisdiction / California / Los Gatos

(continued)

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

(1) The product's manufacturer or any other person associated with the manufacture or sale of tobacco products makes or disseminates **public statements or claims to the effect that the product has or produces a characterizing flavor or aroma**, other than tobacco; or (2) The product's label, labeling, or packaging includes a statement or claim including any text and/or images used to communicate information that the product has or produces a characterizing flavor or aroma other than tobacco."  
LOS GATOS, CAL., CODE § 18.60.020(c)(8) (2019)  
(emphasis added).

electronic hookahs, vape pens, personal vaporizers, and electronic pipes)... Products subject to Subchapter IX also include components or parts of tobacco products, such as, but not limited to, **liquids that are for use in an electronic nicotine delivery system and that contain tobacco or nicotine or are derived from tobacco or nicotine** ('e-liquids'), vials that contain e- liquids, and atomizers."  
LOS GATOS, CAL., CODE § 18.60.020(b) (2019) (emphasis added).

**informs the public that persons under twenty-one (21) years of age are prohibited** from entering the premises.  
LOS GATOS, CAL., CODE § 18.60.020(c)(8)(c) (2019)  
(emphasis added).

Jurisdiction / California / Manhattan Beach

Flavor prohibited?

Yes

“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.”

MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2019).

Menthol prohibited?

No

“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.”

MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2019) (emphasis added).

E-cigs included?

Yes

“‘Tobacco product’ means any product containing tobacco leaf, including but not limited to cigarettes ... ”

MANHATTAN BEACH, CAL., CODE § 4.118.020 (2019).

“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.”

MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2019) (emphasis added).

Exemption for certain retailers?

Yes

“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.”

MANHATTAN BEACH, CAL., CODE § 4.118.030(H) (2019) (emphasis added).

Case law

No

Jurisdiction / California / Oakland

Flavor prohibited?

Yes

“It shall be a violation of this Chapter for any 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. A tobacco product is presumed to be a flavored tobacco product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has: a) Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the products’ labeling or packaging that are used to explicitly or implicitly communicate information about the flavor, taste

Menthol prohibited?

Yes

“‘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 limited to, taste or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, **menthol**, mint, wintergreen, herb, or spice; provided, however that a tobacco product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.”  
OAKLAND, CAL., CODE 5.91 (2019).

E-cigs included?

Yes

“‘Tobacco Product,’ as used in this Chapter means ... b) Any Electronic Smoking Device.”  
OAKLAND, CAL., CODE 5.91 (2019).

Exemption for certain retailers?

Yes

“This section does not apply to the sale or offer for sale of Flavored Tobacco Products by a ‘Tobacco Store.’” “Tobacco Store” is a retail business that primarily sells tobacco products; generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia; does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian; and does not sell alcoholic beverages or food for consumption on the premises.  
OAKLAND, CAL., CODE 5.91 (2019).

Case law

No

**Jurisdiction / California / Oakland**

*(continued)*

**Flavor prohibited?**

**Menthol prohibited?**

**E-cigs included?**

**Exemption for certain retailers?**

**Case law**

or aroma of a tobacco product; b) Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.”  
OAKLAND, CAL., CODE 5.91 (2019).

Jurisdiction / California / Palo Alto

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>                      “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, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor or aroma of the tobacco product, smoke or vapor produced by the tobacco product.”  <u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p><b>Yes</b>                      “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.”  <u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p><b>Yes</b>                      “‘Tobacco products’ include electronic nicotine delivery systems (such as, but not limited to, electronic cigarettes, electronic cigars, electronic hookahs, vape pens, personal vaporizers, and electronic pipes), as well as components or parts of tobacco products, including liquids that are for use in an electronic nicotine delivery system and that contain or are derived from tobacco or nicotine.”  <u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p><b>Yes</b>                      “Retailers that primarily sell tobacco products; generate more than 60 percent of their gross revenues annually from the sale of tobacco products; do not permit any person under 21 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian; do not sell alcoholic beverages or food for consumption on the premises; and post a sign outside the retail location that clearly, sufficiently, and conspicuously inform the public that persons under 21 years of age are prohibited from entering the premises.”  <u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p><b>No</b></p>

**Jurisdiction / California / Sacramento**

Effective October 1, 2019.

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>                      "It is a violation of a license for a licensee or his or her agents or employees to sell or offer for sale any flavored tobacco product ... "  <u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.100(A)).</u></p>	<p><b>Yes</b>                      "Flavored tobacco product means any tobacco product that imparts a characterizing flavor."                      "Characterizing flavor means a <b>taste or aroma</b>, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, <b>including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen ...</b> "  <u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.030) (emphasis added).</u></p>	<p><b>Yes</b>                      "Tobacco product means ... [an] electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an <b>electronic cigarette</b> ... [and] [a]ny component, part, or accessory ... whether or not sold separately."  <u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.030) (emphasis added).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / California / San Francisco

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b></p> <p>“The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.”  <u>S.F., CAL., HEALTH CODE § 19Q.3 (2019).</u></p>	<p><b>Yes</b></p> <p>“‘Characterizing Flavor’ means a Distinguishable taste or aroma or both, <b>other than the taste or aroma of tobacco</b> ... Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, <b>menthol</b>, mint, wintergreen, herb, or spice.”  <u>S.F., CAL., HEALTH CODE § 19Q.2 (2019) (emphasis added).</u></p>	<p><b>Yes</b></p> <p>“‘Tobacco Product’ has the meaning set forth in Health Code Section 19H.2.”  <u>S.F., CAL., HEALTH CODE § 19Q.2 (2019).</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 <b>electronic cigarettes</b>, cigars, or pipes ... ”  <u>S.F., CAL., HEALTH CODE § 19Q.2 (2019) (emphasis added).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / California / San Leandro

Flavor prohibited?

**Yes**  
“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 flavored tobacco product.**”  
SAN LEANDRO, CAL., CODE § 4.36.150(I) (2019) (emphasis added).

Menthol prohibited?

**Yes** (note: menthol *cigarettes* are not prohibited because the ordinance excludes cigarettes)  
“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 flavored tobacco product.**”  
SAN LEANDRO, CAL., CODE § 4.36.150(I) (2019) (emphasis added).  
“‘Flavored tobacco product’ means any tobacco product (**other than cigarettes** as defined by the U.S. Food and Drug Administration).”  
SAN LEANDRO, CAL., CODE § 4.36.100 (2019) (emphasis added).

E-cigs included?

**Yes**  
“‘Flavored tobacco product’ means any tobacco product ... **This includes ... electronic cigarettes or electronic smoking devices.**”  
SAN LEANDRO, CAL., CODE § 4.36.100 (2019) (emphasis added).

Exemption for certain retailers?

**No**  
“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 flavored tobacco product.**”  
SAN LEANDRO, CAL., CODE § 4.36.150(I) (2019) (emphasis added).  
“‘Tobacco retailer’ means **any person who sells, offers for sale, or does or offers to exchange for any form of consideration**, electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia.... **This definition is without regard to the quantity ... sold, offered for sale, exchanged, or offered for exchange.**”  
SAN LEANDRO, CAL., CODE § 4.36.100 (2019) (emphasis added).

Case law

**No**

Jurisdiction / California / Santa Clara County

Flavor prohibited?

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 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 ...

Menthol prohibited?

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., CODE § A18-369(i) (2019) (emphasis added).

E-cigs included?

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., CODE § A18-368(e) (2019) (emphasis added).

Exemption for certain retailers?

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 under 21 ... are prohibited from entering ... " SANTA CLARA COUNTY, CAL., CODE § A18-369(i)(3) (2019) (emphasis added).

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

Case law

**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 / California / Santa Clara County

(continued)

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

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., CODE § A18-369(i) (2019).

SANTA CLARA COUNTY, CAL., CODE § A18-368(f) (2019) (emphasis added).

Jurisdiction / California / Yolo County

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b> “[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: (1) Any Flavored Tobacco Product.” <u>YOLO COUNTY, CAL., CODE § 6-15.10(e) (2019).</u></p>	<p><b>Yes</b> “‘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, <b>including menthol ...</b>” <u>YOLO COUNTY, CAL., CODE § 6-15.02(f) (2019) (emphasis added).</u></p>	<p><b>Yes</b> “‘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, <b>including but not limited to an electronic cigarette</b>, cigar, pipe, or hookah.” <u>YOLO COUNTY, CAL., CODE § 6-15.02(m) (2019) (emphasis added).</u></p>	<p><b>No</b> “[I]t shall be a violation of this Chapter for <b>any licensee</b> or any of the licensee’s agents or employees to sell, offer for sale, or exchange for any form of consideration: (1) Any Flavored Tobacco Product.” <u>YOLO COUNTY, CAL., CODE § 6-15.10(e) (2019) (emphasis added).</u></p>	<p><b>No.</b> Note that this ordinance only applies to unincorporated parts of the county.</p>

Jurisdiction / Illinois / Chicago

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes — within buffer zone</b> “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 <b>within 500 feet of the</b></p>	<p><b>Yes</b> “‘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, <b>other than the taste or aroma of</b></p>	<p><b>Yes</b> “<i>Tobacco product</i> means any <b>electronic cigarette</b> as defined herein or component or part thereof ...” <u>CHICAGO, ILL., CODE § 4-64-100 (2019) (emphasis added).</u>  “<b>Electronic cigarette</b> means any electronically actuated device</p>	<p><b>Yes</b> “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><b>Yes</b> Gas station association and Quick Pick Food Mart challenged law, arguing it was preempted by the Family Smoking Prevention Tobacco</p>

Jurisdiction / Illinois / Chicago

(continued)

Flavor prohibited?

property line of any public, private, or parochial secondary school located in the City of Chicago.”  
CHICAGO, ILL., CODE § 4-64-515(b) (2019) (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 § 4-64-100 (2019) (emphasis added).

E-cigs included?

which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation ... ”  
CHICAGO, ILL., CODE § 7-32-010 (2019).

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 § 4-64-151(b) (2019) (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, cigarrillos, 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

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 / Illinois / Chicago

(continued)

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

restaurant license.”  
CHICAGO, ILL., CODE § 7-32-010  
(2019).

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 / Massachusetts / Boston

Flavor prohibited?

Yes

“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.”  
BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § III(E)(1) (2019).

Menthol prohibited?

No

“**Characterizing Flavor** — A distinguishable taste or aroma, **other than the taste or aroma** of tobacco, menthol, mint or wintergreen ...”  
BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § II(4) (2019) (emphasis added).  
“**Flavored Tobacco Product** — Any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor.”  
BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § II(13) (2019) (emphasis added).

E-cigs included?

Yes

“Nicotine delivery products include ... **e-cigarettes** ...”  
BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § II(14) (2019) (emphasis added).  
“**Tobacco Product** - A cigarette, cigar, chewing tobacco, pipe tobacco, bidi, snuff, other tobacco or **nicotine delivery product** in any form.”  
Id. § II(20) (emphasis added).  
“**Flavored Tobacco Product** - Any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor.”  
Id. § II(13) (emphasis added).

Exemption for certain retailers?

Yes

“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.**”  
BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § III(E)(1) (2019) (emphasis added).

Case law

No

Jurisdiction / Massachusetts / Cambridge

Flavor prohibited?

Yes

“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.”  
CAMBRIDGE, MASS., CODE § 8.28.030(K) (2019) (emphasis added).

Menthol prohibited?

Yes

“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 ... ”  
CAMBRIDGE, MASS., CODE § 8.28.020 (2019) (emphasis added).

E-cigs included?

Yes

“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.**”  
CAMBRIDGE, MASS., CODE § 8.28.020 (2019) (emphasis added).

“Tobacco Product. Cigarettes, cigars, chewing tobacco, pipe tobacco, **nicotine delivery product**, snuff or tobacco in any of its forms.”  
*Id.* (emphasis added).

“Flavored Tobacco Product. **Any tobacco product** or component part thereof that contains a constituent that imparts a characterizing flavor.”  
*Id.* (emphasis added).

Exemption for certain retailers?

Yes

“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.**”  
CAMBRIDGE, MASS., CODE § 8.28.030(K) (2019) (emphasis added).

Case law

No

**Jurisdiction / Massachusetts / Needham**

Effective July 1, 2019.

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>            "No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product ... "  <u>NEEDHAM, MASS., Health Reg. Art. 1(G) (2019).</u></p>	<p><b>Yes</b>            "Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor."            "Characterizing flavor: A distinguishable <b>taste or aroma</b>, other than the taste or aroma of tobacco ... <b>including, but not limited to, tastes or aromas relating to</b> ... any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, <b>menthol, mint, wintergreen</b> ... "  <u>NEEDHAM, MASS., Health Reg. Art. 1(C) (2019) (emphasis added).</u></p>	<p><b>Yes</b>            "Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... including, but not limited to: <b>electronic cigarettes</b> ... [and] any component or part of a tobacco product ... "  <u>NEEDHAM, MASS., Health Reg. Art. 1(C) (2019) (emphasis added).</u></p>	<p><b>Yes</b>            "No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, <b>except in smoking bars and adult-only retail tobacco stores.</b>"  <u>NEEDHAM, MASS., Health Reg. Art. 1(G) (2019).</u></p>	<p><b>No</b></p>

Jurisdiction / Massachusetts / Somerville

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

Yes

“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product ... ”  
SOMERVILLE, MASS., Health Reg. Part G (2019).

Yes

“*Flavored tobacco product:* Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor.”

“*Characterizing flavor:* A distinguishable **taste or aroma**, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product ... **including, but not limited to, tastes or aromas relating to** any fruit, chocolate, vanilla, honey, **menthol, mint, wintergreen ...** ”

SOMERVILLE, MASS., Health Reg. Part C (2019) (emphasis added).

Yes

“*Tobacco product:* Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... including, but not limited to: **electronic cigarettes ...** [and] any component or part of a tobacco product ... ”  
SOMERVILLE, MASS., Health Reg. Part C (2019) (emphasis added).

Yes

“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, **except in smoking bars and retail tobacco stores.**”  
SOMERVILLE, MASS., Health Reg. Part G (2019) (emphasis added).

No

Jurisdiction / Minnesota / Arden Hills

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>            “No person shall sell or offer for sale any flavored products.”  <u>ARDEN HILLS, MINN., CODE § 350.06(2) (2019).</u></p>	<p><b>Yes</b>            “<i>Flavored Product</i>: Any licensed product that contains a <b>taste or smell</b>, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, <b>including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen ...</b>”  <u>ARDEN HILLS, MINN., CODE § 350.02 (2019) (emphasis added).</u></p>	<p><b>Yes</b>            “<i>Licensed Products</i>: The term that collectively refers to any tobacco, tobacco-related device, <b>electronic delivery device</b>, or nicotine or lobelia delivery product.”            “<i>Electronic Delivery Device</i>: Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product ... <b>includes ... e-cigarettes...</b> [and] any component part of a product, whether or not marketed or sold separately.”  <u>ARDEN HILLS, MINN., CODE § 350.02 (2019) (emphasis added).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / Minnesota / Duluth

Flavor prohibited?

Yes  
“No person shall sell, offer for sale or otherwise distribute any flavored tobacco products.”  
DULUTH, MINN., CODE § 11-11(a) (2019).

Menthol prohibited?

Yes  
“*Flavored tobacco product* means any tobacco or tobacco related device that contains a taste or smell, other than the **taste or smell relating to menthol, mint, wintergreen ...**”  
DULUTH, MINN., CODE § 11-11(c) (2019) (emphasis added).

E-cigs included?

Yes  
“For purposes of this Chapter, the terms ‘*tobacco*’ and ‘*tobacco related devices*’ shall ... include **electronic cigarettes** defined as any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name ...”  
DULUTH, MINN., CODE § 11-1(a) (2019) (emphasis added).

Exemption for certain retailers?

Yes  
“No person shall sell, offer for sale or otherwise distribute any flavored tobacco products. **This restriction does not apply to retail establishments that:**  
**(1) Prohibit persons under the age of 18 from entering at all times; and**  
**(2) Derive at least ninety percent of their revenues from the sale of tobacco, tobacco-related devices.”**  
DULUTH, MINN., CODE § 11-11(a) (2019) (emphasis added).

Case law

No

Jurisdiction / Minnesota / Lilydale

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>                      “No person shall sell or offer for sale any flavored product in any retail establishment ... ”  <u>LILYDALE, MINN., CODE § 504.06(B) (2019).</u></p>	<p><b>Yes</b>                      “<i>Flavored Product</i>: Any licensed product that contains <b>a taste or smell</b>, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, <b>including, but not limited to, any taste or smell relating to menthol, mint, wintergreen ...</b> ”  <u>LILYDALE, MINN., CODE § 504.02 (2019) (emphasis added).</u></p>	<p><b>Yes</b>                      “<i>Licensed Product</i>: The term that collectively refers to any tobacco, tobacco-related device, <b>electronic delivery device</b>, or nicotine or lobelia delivery product.”                      “<i>Electronic Delivery Devices</i>: Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product ... <b>includes ... e-cigarettes... [and] any component part of a product, whether or not marketed or sold separately.</b>”  <u>LILYDALE, MINN., CODE § 504.02 (2019) (emphasis added).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / Minnesota / Mendota Heights

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>                      “No person shall sell or offer for sale any flavored product in any retail establishment ... ”  <u>MENDOTA HEIGHTS, MINN., CODE § 3-2-6(B) (2019).</u></p>	<p><b>Yes</b>                      “<i>Flavored Product</i>: Any tobacco, tobacco product, tobacco related device, electronic delivery device, and nicotine or lobelia delivery device that contains a taste or smell, other than the <b>taste or smell</b> of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, <b>including</b>, but not limited to, any taste or smell relating to <b>menthol, mint, wintergreen ...</b> ”  <u>MENDOTA HEIGHTS, MINN., CODE § 3-2-2 (2019) (emphasis added).</u></p>	<p><b>Yes</b>                      “<i>Flavored Product</i>: Any tobacco, tobacco product, tobacco related device, <b>electronic delivery device</b>, and nicotine or lobelia delivery device ... ”                      “<i>Electronic Delivery Devices</i>: Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product ... <b>includes ... e-cigarettes...</b> [and] any component part of a product, whether or not marketed or sold separately.”  <u>MENDOTA HEIGHTS, MINN., CODE § 3-2-2 (2019) (emphasis added).</u></p>	<p><b>No</b></p>	<p><b>No</b></p>

Jurisdiction / Minnesota / Minneapolis

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>                      “No person shall sell, offer for sale, give away, barter, exchange, or otherwise deal in flavored tobacco products or samples of such products.”  <u>MINNEAPOLIS, MINN., CODE § 281.45(f) (2019).</u></p>	<p><b>Yes</b>                      “<i>Flavored tobacco product</i> means any tobacco product that contains a <b>taste or aroma</b>, other than the taste or aroma of tobacco ... <b>including, but not limited to, tastes or aromas of menthol, mint, wintergreen ...</b>”  <u>MINNEAPOLIS, MINN., CODE § 281.15 (2019) (emphasis added).</u></p>	<p><b>Yes</b>                      “<i>Tobacco products</i> means tobacco, tobacco related devices, <b>electronic delivery devices</b>, or nicotine or lobelia delivery products as those terms are defined in this section.”  <u>MINNEAPOLIS, MINN., CODE § 281.15 (2019) (emphasis added).</u>                      “Electronic delivery device includes, but is not limited to ... <b>e-cigarettes ...</b>”  <u>Id. (emphasis added).</u>                      “Tobacco means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption ...”  <u>Id.</u></p>	<p><b>Yes</b>                      “No person shall sell, offer for sale, give away, barter, exchange, or otherwise deal in flavored tobacco products or samples of such products. <b>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</b> 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.”  <u>MINNEAPOLIS, MINN., CODE § 281.45(f) (2019) (emphasis added).</u></p>	<p><b>No</b></p>

Jurisdiction / Minnesota / Shoreview

Flavor prohibited?

Yes

"No person shall sell, offer for sale, or otherwise distribute any flavored products."

SHOREVIEW, MINN., CODE § 706.065 (2019).

Menthol prohibited?

No

"*Flavored Product*. 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." SHOREVIEW, MINN., CODE § 706.020(C) (2019) (emphasis added).

E-cigs included?

Yes

"*Flavored Product*. Any **tobacco product, tobacco-related device, electronic delivery device**, or nicotine or lobelia delivery product ... " SHOREVIEW, MINN., CODE § 706.020(C) (2019) (emphasis added).

"Tobacco or Tobacco Products. Tobacco or tobacco products includes cigarettes ... " *Id.*

Exemption for certain retailers?

Yes

"No person shall sell, offer for sale, or otherwise distribute any flavored products. **This restriction does not apply to retail establishments that:**

**(1) Prohibit minors from entering at all times; and**

**(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."** SHOREVIEW, MINN., CODE § 706.065 (2019) (emphasis added).

Case law

No

Jurisdiction / Minnesota / Saint Paul

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p><b>Yes</b>                      “No person shall sell, offer for sale, or otherwise distribute any flavored products.”  <u>ST. PAUL, MINN., CODE § 324.07(f) (2019).</u></p>	<p><b>Yes</b>                      “<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 that is distinguishable by an ordinary consumer either prior to or during [use] ... <b>including, but not limited to, any taste or smell relating to menthol, mint, wintergreen ...</b>”  <u>ST. PAUL, MINN., CODE § 324.03(3) (2019) (emphasis added).</u></p>	<p><b>Yes</b>                      “<i>Electronic delivery device</i> means any product containing or delivering <b>nicotine</b>, 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 <b>inhalation of vapor</b> from the product.”  <u>ST. PAUL, MINN., CODE § 324.03(2) (2019) (emphasis added).</u>                      “<i>Tobacco or tobacco product</i> means any product containing, made, or derived from tobacco ... including, but not limited to cigarettes ...”  <u>ST. PAUL, MINN., CODE § 324.03(7) (2019).</u>                      “<i>Flavored product</i> means any tobacco product, tobacco-related device, <b>electronic delivery device</b>, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen ...”  <u>ST. PAUL, MINN., CODE § 324.03(3) (2019) (emphasis added).</u></p>	<p><b>Yes</b>                      “<b>Retail stores that derive at least ninety (90) percent of their revenue</b> from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products <b>and where the retailer ensures that no person under eighteen (18) years of age is permitted to enter</b>, at any time are permitted to sell and offer for sale flavored tobacco products.”  <u>ST. PAUL, MINN., CODE § 324.07(h)(3) (2019) (emphasis added).</u>                      “<b>Establishments holding an off-sale intoxicating liquor license ... who also hold a license for tobacco sales ... shall be permitted to sell and offer for sale flavored tobacco products only in the following flavors: menthol, mint, and wintergreen.</b>”  <u>ST. PAUL, MINN., CODE § 324.07(h)(4) (2019) (emphasis added).</u></p>	<p><b>No</b></p>

Jurisdiction / New York / New York

Flavor prohibited?

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) (2019).

Menthol prohibited?

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 or component part thereof ...”  
N.Y.C., N.Y., ADMIN. CODE § 17-713(b) (2019) (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) (2019).

“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

E-cigs included?

No (note that conventional 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) (2019) (emphasis added).

Exemption for certain retailers?

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) (2019) (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) (2019) (emphasis added).

Case law

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 regulate the manufacture of tobacco products.”) This is because the FSPTCA deals with product manufacturing standards — the flavor restrictions only focus

Jurisdiction / New York / New York

(continued)

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
	forth in § 17-715 of the Administrative Code or these rules.” <u>N.Y.C., N.Y., R. § 28-02(b) (2019) (emphasis added).</u>			on whether the final product has flavoring (not how the flavor got there). <i>Id.</i> at 434.

Jurisdiction / Rhode Island / Central Falls<sup>6</sup>

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<b>Yes</b> “No licensee, or employee or agent of such licensee, shall sell <b>any flavored tobacco product</b> to a consumer.” <u>CENTRAL FALLS, R.I., CODE § 12-421(e) (2019) (emphasis added).</u>	<b>No</b> “ <i>Characterizing flavor</i> means a distinguishable taste or aroma, <b>other than the taste or aroma of tobacco, menthol, mint, or wintergreen ...</b> ” <u>CENTRAL FALLS, R.I., CODE § 12-417 (2019) (emphasis added).</u>	<b>Yes</b> (note that conventional cigarettes not included) “ <i>Tobacco product</i> means: ... (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an <b>electronic cigarette</b> , cigar, pipe, or hookah.” <u>CENTRAL FALLS, R.I., CODE § 12-417 (2019) (emphasis added).</u>  “ <i>Flavored tobacco product</i> means any tobacco product, <b>other than a cigarette</b> , that contains a constituent that imparts a characterizing flavor.” <u>CENTRAL FALLS, R.I., CODE § 12-417 (2019) (emphasis added).</u>	<b>Yes</b> “This subsection (e) shall not apply to a <b>smoking bar</b> as defined in Section 23-20.10-2(15) of the Rhode Island General Laws[.]” <u>CENTRAL FALLS, R.I., CODE § 12-421(e) (2019) (emphasis added).</u>	<b>No</b>

Jurisdiction / Rhode Island / Providence

Flavor prohibited?

**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 (2019).

Menthol prohibited?

**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 (2019) (emphasis added).  
“*Flavored tobacco product* means any tobacco product or any component part thereof that contains a constituent that imparts a **characterizing flavor.**”  
PROVIDENCE, R.I., CODE § 14-308 (2019) (emphasis added).

E-cigs included?

**Yes** (note that conventional 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 to characterizing flavors of the Federal Family Smoking and Tobacco Prevention Act ... ”  
PROVIDENCE, R.I., CODE § 14-308 (2019) (emphasis added).

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 (2019) (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 \*13 (D.R.I. 2012), *aff’d. Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence*, R.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)*

- Arden Hills, MN
- Beverly Hills, CA
- El Cerrito, CA (conventional cigarettes excluded)
- Lilydale, MN
- Mendota Heights, MN
- Oakland, CA
- Palo Alto, CA (exempts tobacco flavor)
- Sacramento, CA
- 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)*

- Duluth, MN
- Minneapolis, MN
- Needham, MA
- Saint Paul, MN
- 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)
- Somerville, MA

## Buffer zone restriction

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

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

## Flavor restriction excluding menthol, with retailer exemption

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

- Boston, MA
- Cambridge, MA
- Central Falls, RI (conventional cigarettes excluded)
- Manhattan Beach, CA
- Providence, RI (conventional cigarettes excluded)
- Shoreview, MN

## Other

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

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 relationship. This document should not be considered legal advice. The Public Health Law Center thanks research assistants Arielle Sloan and Marcus Jardine and policy analyst Tracy Sides for their 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 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 (2019), 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., <http://mhoa.com/wp-content/uploads/2018/12/muni-list-Flavored-OTP-Restriction.pdf> (last updated December 11, 2018). 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.
- 2 For purposes of this table, the term “e-cigs” refers to any electronic nicotine delivery device.
- 3 Not all jurisdictions with flavored tobacco ordinances in highlighted states are covered here. For example, Novato, California, also has a limited flavored tobacco ordinance. NOVATO, CAL., CODE § 7-8.3(h) (2019). It should also be noted that some cities and counties may be in the process of adopting flavored tobacco sales restrictions. For more information about upcoming ordinances in your area, please contact the Public Health Law Center.
- 4 The years listed in citations in this document reference when the online codes in hyperlinks were last updated, not when the laws were first passed.
- 5 Flavored (conventional) cigarettes are prohibited under federal law. For more information, visit *Menthol and Other Flavors in Tobacco Products*, FOOD & DRUG ADMIN. (2018), <https://www.fda.gov/tobaccoproducts/labeling/productsingredientscomponents/ucm2019416.htm>.
- 6 Tobacco-Free Rhode Island maintains a list of tobacco restrictions in the state. For more information, visit <http://tobaccofree-ri.org/local-ordinances.htm>.