

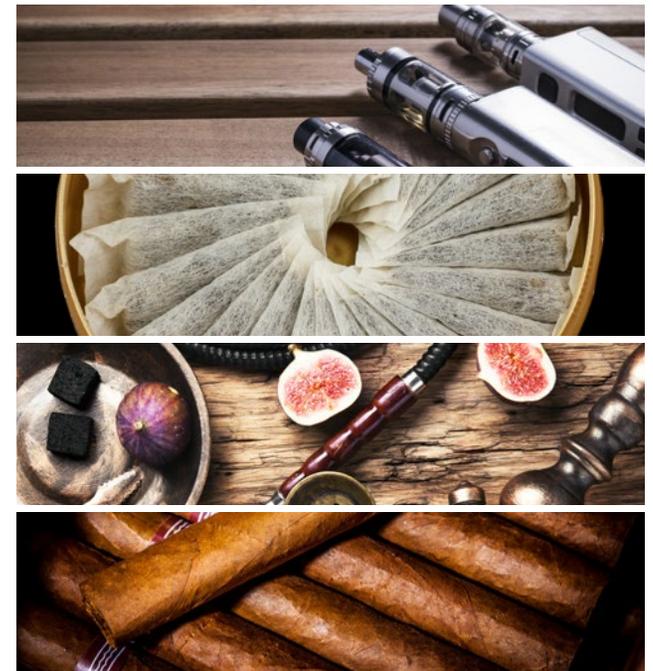
U.S. SALES RESTRICTIONS ON FLAVORED TOBACCO PRODUCTS



This chart provides select examples¹ 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,² and (4) exemptions are provided for certain retailers. The chart also provides links to each jurisdiction’s laws and summarizes relevant legal challenges. Beneath the 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.



CALIFORNIA	3	COLORADO	25	NEW JERSEY	48
Berkeley	3	Boulder	25	Jersey City	48
Burbank	4	ILLINOIS	26	NEW YORK	49
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Jurisdiction / California / Berkeley³ / effective June 11, 2019

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be a violation of a tobacco retailer’s license for a licensee or his or her agent or employee to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.”</p> <p><u>BERKELEY, CAL. CODE § 9.80.031 (2019).</u></p>	<p>Yes</p> <p>“Characterizing flavor” includes “menthol, mint, wintergreen.”</p> <p><u>BERKELEY, CAL. CODE § 9.80.20 (2019).</u></p>	<p>Yes</p> <p>“‘Tobacco product’ means:</p> <ol style="list-style-type: none"> 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.” <p><u>BERKELEY, CAL. CODE § 9.80.020(K) (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Burbank

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be a violation of this Article for any Tobacco Retailer ... any agents or employees to sell, offer for sale, or to possess with intent to sell ... any flavored tobacco product.”</p> <p><u>BURBANK MUNICIPAL CODE sec. 3-4-2508 (A).</u></p>	<p>Yes</p> <p>A “flavored tobacco product” contains a “characterizing flavor.”</p> <p><u>BURBANK MUNICIPAL CODE sec. 3-4-2502 (E).</u></p> <p>“Characterizing flavor” includes “taste or aroma, other than the taste or aroma of tobacco..including, but not limited to, tastes or aroma relating to menthol, mint, wintergreen,” etc.</p> <p><u>BURBANK MUNICIPAL CODE sec. 3-4-2502(B).</u></p>	<p>Yes</p> <p>“Tobacco product” includes “any electronic smoking device that delivers nicotine or other substances ... including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe or electric hookah.”</p> <p><u>BURBANK MUNICIPAL CODE sec. 3-4-2502 (K)(2).</u></p>	<p>Yes</p> <p>“Tobacco bar, whose sales of flavored tobacco products are limited to on-site use only by customers at least 21 years of age, and except for hookah tobacco in a form that may only be used in a non-electric hookah pipe or water pipe.”</p> <p><u>BURBANK MUNICIPAL CODE sec. 3-4-2508 (A).</u></p>	<p>No</p>

Jurisdiction / California / Contra Costa County

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., CODE § 445-6.006 (2019) (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., CODE § 445-6.006 (2019) (emphasis added).</u></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., CODE § 445-2.006(g) (2019).</u></p> <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., CODE § 445-2.006(j) (2019).</u></p>	<p>Yes</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, snorted, sniffed, or ingested by any other means ... (2) [a]ny electronic smoking device ... ”</p> <p><u>CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(t) (2019) (emphasis added).</u></p>	<p>No</p>	<p>No</p> <p>Note this ordinance only applies to unincorporated parts of the county.</p>

Jurisdiction / California / Cupertino

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“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.”</p> <p><u>CUPERTINO, CAL. CODE § 505.50.030(h) (2019).</u></p>	<p>Yes</p> <p>It is “an artificial or natural flavor or aroma (other than tobacco)” as a characterizing flavor.</p> <p><u>CUPERTINO, CAL. CODE § 505.50.030(h) (2019).</u></p> <p>At beginning of ordinance Finding # 12 states, “the ordinance would ... (2) prohibit the sale of flavored tobacco products, including menthol cigarettes.”</p>	<p>Yes</p> <p>A “tobacco product” is defined as “any product subject to: 21 U.S.C. sec. 387 et seq. (‘Subchapter IX’) of the Federal Food, Drug, and Cosmetic Act ... products subject to Subchapter IX include, but are not limited to ... electronic nicotine delivery systems (such as, but not limited to, electronic cigarettes, electronic cigars, electronic hookahs, vape pens, personal vaporizers and electronic pipes.”</p> <p><u>CUPERTINO, CAL. CODE § 5.50.020 (f)(1) (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Delano

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be a violation of a tobacco retailer’s permit for a tobacco retailer or his or her agent or employee to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product”</p> <p><u>DELANO, CAL. CODE § 6.64.030 (2019).</u></p>	<p>Yes</p> <p>“Characterizing flavor” includes “menthol, mint, wintergreen”</p> <p><u>DELANO, CAL. CODE § 6.64.020 (2019).</u></p>	<p>Yes</p> <p>“Flavored tobacco product” includes “Any e-liquid” and “Any electronic smoking device”</p> <p><u>DELANO, CAL. CODE § 6.64.020 (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Hayward

Flavor prohibited?

Yes — within buffer zone
“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 **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) (2019) (emphasis added).

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, but not limited to, tastes or aromas relating to ... menthol ...**”
HAYWARD, CAL. CODE § 10-1.2782(b) (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.**”
HAYWARD, CAL. CODE § 10-1.2782(f) (2019).

E-cigs included?

Yes (note that conventional cigarettes not included)
“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).**”
HAYWARD, CAL. CODE § 10-1.2782(t) (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.”
HAYWARD, CAL. CODE § 10-1.2782(f) (2019) (emphasis added).

Exemption for certain retailers?

Yes
Exception for “Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of [the flavored tobacco regulation].”
HAYWARD, CAL. CODE § 10-1.2783(c) (2019).

Case law

No

Jurisdiction / California / Laguna Niguel

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be a violation of this article for any electronic cigarette retailer or any of th electronic cigarette retainer’s agents or employees to sell or offer for sale, any flavored electronic cigarette product.”</p> <p><u>LAGUNA NIGUEL, CAL. ORDINANCE No. 2019-199 sec. 5-3-198(a).</u></p>	<p>Yes</p> <p>“Characterizing flavor” means “a taste or aroma, other than the taste or aroma of tobacco ... of an electronic cigarette product ... including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice.”</p> <p><u>LAGUNA NIGUEL, CAL. ORDINANCE No. 2019-199 sec. 5-3-197.</u></p>	<p>Yes</p> <p>“It shall be a violation of this article for any electronic cigarette retailer or any of the electronic cigarette retailer’s agents or employees to sell or offer for sale, any flavored electronic cigarette product.”</p> <p><u>LAGUNA NIGUEL, CAL. ORDINANCE No. 2019-199 sec. 5-3-198(a).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Livermore

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“Sale, offer for sale, exchange, or offer to exchange any flavored tobacco product is prohibited.”</p> <p><u>LIVERMORE, CAL. CODE § 5.50.100 (A) (2019).</u></p>	<p>Yes</p> <p>“Characterizing flavor” includes “menthol, mint, wintergreen.”</p> <p><u>LIVERMORE, CAL. CODE § 5.50.020 (B) (2019).</u></p>	<p>Yes</p> <p>“Sale, offer for sale, exchange, or offer to exchange of any electronic smoking device” and “electronic smoking device fluid” prohibited.</p> <p><u>LIVERMORE, CAL. CODE § 5.50.100 (B-C) (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Long Beach

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“A person, including a tobacco retailer or any employee of a tobacco retailer, shall not sell or offer for sale, or distribute any prohibited product.”</p> <p><u>LONG BEACH, CAL. ORDINANCE No. 19-0033, sec. 5.94.030 (A).</u></p> <p>Prohibited products are defined as “flavored cigarillos, flavored electronic smoking devices, flavored electronic smoking device fluid and menthol cigarettes.”</p> <p><u>LONG BEACH, CAL. ORDINANCE No. 19-0033 sec. 5.94.020(O).</u></p>	<p>Yes</p> <p>“Flavor” means “an artificial or naturally-occurring substance that contains the taste or smell, other than the taste of tobacco ... including, but not limited to ... menthol, mint, wintergreen ... ”</p> <p><u>LONG BEACH, CAL. ORDINANCE No. 19-0033 sec. 5.94.020 (H).</u></p>	<p>Yes</p> <p>“Flavored electronic smoking devices” and “flavored electronic smoking device fluid” are included in the “prohibited products.”</p> <p><u>LONG BEACH, CAL. ORDINANCE No. 19-0033, sec. 5.94.020(O).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Marin County

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.”</p> <p><u>MARIN CTY., CAL. CODE § 5.75.040 (a) (2019).</u></p>	<p>Yes</p> <p>A “characterizing flavor” is “distinguishable taste or aroma or both, other than the taste or aroma of tobacco ... include[ing], but not limited to ... menthol, mint, wintergreen.”</p> <p><u>MARIN CTY., CAL. CODE § 5.75.030 (a) (2019).</u></p>	<p>Yes</p> <p>“Tobacco product” includes “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... ”</p> <p><u>MARIN CTY., CAL. CODE § 5.75.030 (g)(1) (2019).</u></p> <p>and “any electronic device that delivers nicotine ... an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.”</p> <p><u>MARIN CTY., CAL. CODE § 5.75.030 (g)(2).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Oakland

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“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</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 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.”</p> <p><u>OAKLAND, CAL., CODE 5.91 (2019).</u></p>	<p>Yes</p> <p>“‘Tobacco Product,’ as used in this Chapter means ... b) Any Electronic Smoking Device.”</p> <p><u>OAKLAND, CAL., CODE 5.91 (2019).</u></p>	<p>Yes</p> <p>“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.</p> <p><u>OAKLAND, CAL., CODE 5.91 (2019).</u></p>	<p>No</p>

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>Yes</p> <p>“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.”</p> <p><u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p>Yes</p> <p>“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.”</p> <p><u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p>Yes</p> <p>“‘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.”</p> <p><u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p>Yes</p> <p>“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.”</p> <p><u>PALO ALTO, CAL., CODE 4.64 (2019).</u></p>	<p>No</p>

Jurisdiction / California / Sacramento / effective October 1, 2019

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
Yes	Yes	Yes	No	No
<p>“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 ...”</p> <p><u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.100(A)).</u></p>	<p>“<i>Flavored tobacco product</i> means any tobacco product that imparts a characterizing flavor.”</p> <p>“<i>Characterizing flavor</i> means a taste or aroma, 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, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen ...”</p> <p><u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.030) (emphasis added).</u></p>	<p>“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 electronic cigarette ... [and] [a]ny component, part, or accessory ... whether or not sold separately.”</p> <p><u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.030) (emphasis added).</u></p>		

Jurisdiction / California / San Francisco

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., HEALTH CODE § 19Q.3 (2019).</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., HEALTH CODE § 19Q.2 (2019) (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., 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 electronic cigarettes, cigars, or pipes ... ”</p> <p><u>S.F., CAL., HEALTH CODE § 19Q.2 (2019) (emphasis added).</u></p>	<p>No</p>	<p>No</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?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No Retailer shall Sell a Tobacco Product containing ... an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, mint, menthol, or coffee, that is a characterizing flavor or aroma of the Tobacco Product, smoke, or vapor produced.”</p> <p><u>SANTA CLARA CTY., CAL. CODE § B11-578(i)(1) (2020).</u></p>	<p>Yes</p> <p>“An artificial or natural flavor or aroma ... including but not limited to ... mint, menthol.”</p> <p><u>SANTA CLARA CTY., CAL. CODE § B11-578(i)(1) (2020).</u></p>	<p>Yes</p> <p>“Tobacco Product means any product subject to Subchapter IX (21 U.S.C. et seq. [...] of the Federal Food, Drug, and Cosmetic Act ... include, but are not limited to, cigarettes, cigarette tobacco ... and Electronic Cigarette Products.”</p> <p><u>SANTA CLARA CTY., CAL. CODE § B11-577(i) (2020).</u></p>	<p>Yes</p> <p>The law “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 revenues annually from the sale of Tobacco Products; (iii) does not permit any individual under 21 years of age to be present or enter the premises at any time ... (iv) does not sell alcoholic beverages or food consumption on the premises; and (v) posts a sign outside a retail location that clearly, sufficiently, and conspicuously informs the public that individuals under 21 years of age are prohibited from entering the premises.”</p> <p><u>SANTA CLARA CTY., CAL. CODE § B11-578 (i)(3) (2020).</u></p>	<p>No</p>

Jurisdiction / California / Santa Cruz

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“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 ... possess with intent to sell ... any flavored tobacco product.”</p> <p><u>SANTA CRUZ CTY., CAL. CODE § 6.06.030 (2019).</u></p>	<p>Yes</p> <p>“Characterizing flavor” means a “taste or aroma, other than the taste or aroma of tobacco ... relating to menthol, mint, wintergreen.”</p> <p><u>SANTA CRUZ CTY., CAL. CODE § 6.06.020 (2019).</u></p>	<p>Yes</p> <p>“Flavored tobacco product” means “any tobacco product, e-cigarette, or tobacco paraphernalia that imparts a characterizing flavor.” Tobacco products include “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption” including “any electronic device that delivers nicotine or other substances to the person inhaling.”</p> <p><u>SANTA CRUZ CTY., CAL. CODE § 6.06.020 (K)(1-2) (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Santa Maria

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“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”</p> <p><u>SANTA MARIA, CAL. ORDINANCE No. 2019-11 sec. 6-13.11.</u></p>	<p>Yes</p> <p>“Characterizing flavor” includes “tastes or aroma relating to menthol, mint, wintergreen”</p> <p><u>SANTA MARIA, CAL. ORDINANCE No. 2019-11 sec. 6-13.01.</u></p>	<p>Yes</p> <p>“Tobacco product” means “any electronic smoking device that delivers nicotine or other substances to the Person inhaling from the device including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe or electronic hookah, and specifically includes the cartridges or vaping capsules”</p> <p><u>SANTA MARIA, CAL. ORDINANCE No. 2019-11 sec. 6-13.01(x)(2).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / South San Francisco

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person or tobacco retailer shall sell, or offer to sell, any flavored tobacco product.”</p> <p><u>S. SAN FRANCISCO, CAL. CODE § 6.47.020 (a) (2019).</u></p> <p>Flavored tobacco product is “any tobacco product that contains a constituent that imparts a characterizing flavor.” 6.47.010 (f); Characterizing flavor is “a distinguishable taste or aroma or both, other than the taste or aroma of tobacco ... includ[ing], but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.”</p> <p><u>S. SAN FRANCISCO, CAL. CODE § 6.47.010 (c).</u></p>	<p>Yes</p> <p>(See previous section.)</p>	<p>Yes</p> <p>“Tobacco products” include “(2) any electronic device that delivers nicotine or other substances to a person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.”</p> <p><u>S. SAN FRANCISCO, CAL. CODE § 20.420.002 (2019).</u></p>	<p>Yes</p> <p>Adult-only retailers and hookah bars/smoking lounges.</p> <p><u>S. SAN FRANCISCO, CAL. CODE § 6.47.050 (b) & 6.47.020 (a) (2019).</u></p>	<p>No</p>

Jurisdiction / California / Watsonville

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be unlawful 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.”</p> <p><u>WATSONVILLE, CAL. CODE § 5-46.08 (f) (2019).</u></p>	<p>Yes</p> <p>“Flavored tobacco product” means “any tobacco product that contains the taste or smell, other than the taste or smell of tobacco ... distinguishable by the consumer ... including, but not limited to ... menthol, mint, wintergreen.”</p> <p><u>WATSONVILLE, CAL. CODE § 5-46.02 (d) (2019).</u></p>	<p>Yes</p> <p>“Flavored tobacco product” includes “any tobacco product.” A tobacco product means “an article or substance containing or made of, or derived from tobacco or nicotine ... intended for human consumption” and “any electronic smoking device.”</p> <p><u>WATSONVILLE, CAL. CODE §§ 5-46.02 (q)(1) & (2) (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / California / Yolo County*

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) (2019).</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) (2019) (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) (2019) (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) (2019) (emphasis added).</u></p>	<p>No. Note that this ordinance only applies to unincorporated parts of the county.</p>

* Woodland, CA, and Davis, CA, adopted Yolo County’s flavor restrictions by reference.”

Jurisdiction / Colorado / Boulder

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No tobacco retailer or any agent or employee of any tobacco retailer shall sell, offer for sale or possess with the intent to sell ... any flavored tobacco product designed for or capable of use in any electronic smoking device”</p> <p><u>BOULDER, COLO. CODE § 6-4.5-2(c) (2020).</u></p>	<p>Yes</p> <p>A “characterizing flavor” is defined as “distinguishable taste or aroma or both other than the taste or aroma of tobacco” including “menthol, mint, wintergreen.”</p> <p><u>BOULDER, COLO. CODE § 6-4.5-1 (2020).</u></p>	<p>Yes</p> <p>Retailers are prohibited from selling “any flavored tobacco product designed for or capable of use in any electronic smoking device.”</p> <p><u>BOULDER, COLO. CODE § 6-4.5-2(c) (2020).</u></p>	<p>Yes</p> <p>“Provided however, that until January 1, 2020, a tobacco retailer who does not permit anyone under the age of 21 from being present in or entering the premises may sell or offer for sale menthol-flavored flavored tobacco products designed for or capable of being used in an electronic smoking device.”</p> <p><u>BOULDER, COLO. CODE § 6-4.5-2(c) (2020).</u></p>	<p>No</p>

Jurisdiction / Illinois / Chicago

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 property line of any public, private, or parochial secondary school located in the City of Chicago.”</p> <p><u>CHICAGO, ILL., CODE § 4-64-515(b) (2019) (emphasis added).</u></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 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 ... ”</p> <p><u>CHICAGO, ILL., CODE § 4-64-100 (2019) (emphasis added).</u></p>	<p>Yes</p> <p>“<i>Tobacco product</i> means any electronic cigarette as defined herein or component or part thereof ... ”</p> <p><u>CHICAGO, ILL., CODE § 4-64-100 (2019) (emphasis added).</u></p> <p>“Electronic cigarette means any electronically actuated device which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation ... ”</p> <p><u>CHICAGO, ILL., CODE § 7-32-010 (2019).</u></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, 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 <u>Section 7-32-010.</u>”</p> <p><u>CHICAGO, ILL., CODE § 4-64-151(b) (2019) (emphasis added).</u></p> <p>“‘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</p>	<p>No</p>

Jurisdiction / Illinois / Chicago / *continued*

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

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."

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

Jurisdiction / Massachusetts / effective June 1, 2020

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person, retailer or manufacturer shall sell, distribute, cause to be sold or distributed, offer for sale any flavored tobacco product or tobacco product flavor enhancer in any retail establishment, online or through any other means to any consumer in the commonwealth; ... No person, retailer or manufacturer shall market or advertise a proposed sale or distribution that is prohibited herein.”</p> <p><u>MASS. GEN. LAWS c.270 § 28(b) (2019).</u></p>	<p>Yes</p> <p>“Characterizing flavor” includes “menthol, mint.”</p> <p><u>MASS. GEN. LAWS c.270 § 28(a) (2019).</u></p>	<p>Yes</p> <p>“Tobacco product” includes “electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product.”</p> <p><u>MASS. GEN. LAWS c.270 § 28(a) (2019).</u></p>	<p>Yes</p> <p>The law “shall not apply to the sale or distribution by a smoking bar, as defined in section 22, of flavored tobacco products or tobacco product flavor enhancers for on-site consumption.” Mass. Gen. Laws c.270 § 28(b). “Smoking bar’, an establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products as defined in section 6 for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product</p>	<p>No</p>

Jurisdiction / Massachusetts / effective June 1, 2020 / continued

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers? Case law

as required to be issued by the appropriate authority in the city or town in which the establishment is located; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar.”

MASS. GEN. LAWS c.270 § 22(a) (2019).

Jurisdiction / Massachusetts / Boston

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) (2019).</u></p>	<p>Yes</p> <p>“Characterizing flavor” includes “mint, menthol, and wintergreen.” Boston Public Health Commission, Youth Access Regulation § II(5) (2019). “Amendments to this regulation shall take effect immediately upon passage. Notwithstanding the foregoing, restrictions on the sale of mint, menthol, and wintergreen flavored tobacco products shall take effect June 1, 2020.”</p> <p><u>BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § XIII (2019).</u></p>	<p>Yes</p> <p>“Nicotine delivery products include ... e-cigarettes ... ”</p> <p><u>BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § II(14) (2019) (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>Yes. Prohibiting flavor “shall not apply to an adult-only retail tobacco store or smoking bar as defined by this regulation.”</p> <p><u>BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § III(5) (2019).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Brookline

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No entity shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.”</p> <p><u>BROOKLINE, MASS. BY-LAWS sec. 8.23.5(i)(5) (2019).</u></p>	<p>No</p> <p>A characterizing flavor is “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette products ... ”</p> <p><u>BROOKLINE, MASS. BY-LAWS sec. 8.23.2(p) (2019).</u></p>	<p>Yes</p> <p>The flavor prohibition includes “flavored tobacco or e-cigarette products.”</p> <p><u>BROOKLINE, MASS. BY-LAWS sec. 8.23.2 (b) (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / Massachusetts / Cambridge

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) (2019) (emphasis added).</u></p>	<p>Yes</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 (2019) (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 (2019) (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) (2019) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Framingham

Flavor prohibited?

Yes

"A holder of a valid Tobacco Product Sales Permit ... may **not** sell Smoke Accessories or Flavored Tobacco Products."

REGULATION OF FRAMINGHAM BOARD OF HEALTH, Approved 4-25-2019, revised 12-19-2019.

Menthol prohibited?

No

"Characterizing flavor" is defined as "a distinguishable taste or aroma, other than the taste or aroma of tobacco ... including, but not limited to, tastes or aromas relating to any ... menthol, mint, wintergreen ... "

REGULATION OF FRAMINGHAM BOARD OF HEALTH, Approved 4-25-2019, revised 12-19-2019, sec. D.

E-cigs included?

Yes

"Tobacco products" includes "electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, 'e-liquids' or other similar products."

REGULATION OF FRAMINGHAM BOARD OF HEALTH, Approved 4-25-2019, revised 12-19-2019, sec. D.

Exemption for certain retailers?

Yes

Adult-Only Retail Tobacco Stores, as defined herein, may sell Tobacco Products, Flavored Tobacco Products, and Smoke Accessories."

REGULATION OF FRAMINGHAM BOARD OF HEALTH, Approved 4-25-2019, revised 12-19-2019, sec. E(3).

Case law

Yes

Framingham was sued by Cumberland Farms in 2019.

Jurisdiction / Massachusetts / Lowell

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell or distribute or cause to be sold or distributed any flavored product.” Regulation of Lowell Board of Health, sec. O (2016). Flavored tobacco product is defined as “any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor.”</p> <p><u>REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).</u></p>	<p>No</p> <p>A “characterizing flavor” is defined as “a distinguishable taste or aroma of tobacco, menthol, mint or wintergreen ... including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice.”</p> <p><u>REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).</u></p>	<p>Yes</p> <p>“Tobacco product” means “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: ... electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products ... that rely on vaporization or aerosolization.”</p> <p><u>REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).</u></p>	<p>Yes</p> <p>There is an exemption for “retail tobacco stores,” which are defined as establishments, “whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age ... is prohibited at all times.”</p> <p><u>REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Lynn

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product at retail”</p> <p><u>CITY OF LYNN, MASS. BOARD OF HEALTH REG., sec. P (2019).</u></p>	<p>No</p> <p>“Characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen”</p> <p><u>CITY OF LYNN, MASS. BOARD OF HEALTH REG., sec. C (2019).</u></p>	<p>Yes</p> <p>“Tobacco product” is defined as “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... including, but not limited to ... electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, e-liquids or other similar products.”</p> <p><u>CITY OF LYNN, MASS. BOARD OF HEALTH REG., sec. C (2019).</u></p>	<p>Yes</p> <p>Flavored products are banned “except in smoking bars and adult-only retail tobacco stores.”</p> <p><u>CITY OF LYNN, MASS. BOARD OF HEALTH REG., sec. P (2019).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Malden

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.”</p> <p><u>MALDEN, MASS. DEPT. OF HEALTH, RULES AND REG., sec. 21(O).</u></p>	<p>No</p> <p>“Characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ...”</p> <p><u>MALDEN, MASS. DEPT. OF HEALTH, RULES AND REG., sec. 21(C).</u></p>	<p>Yes</p> <p>“Tobacco product” is defined as “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... including, but not limited to ... electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, ‘e-liquids’ or other similar products.”</p> <p><u>MALDEN, MASS. DEPT. OF HEALTH, RULES AND REG., sec. 21(C).</u></p>	<p>Yes</p> <p>Flavored products are banned “except in smoking bars and adult-only retail tobacco stores.”</p> <p><u>MALDEN, MASS. DEPT. OF HEALTH, RULES AND REG., sec. 21(O).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Medford

Flavor prohibited?

Yes

“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product”

MEDFORD, MASS. BD. OF HEALTH REG. sec. (G) (2017).

Menthol prohibited?

No

“Characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ...”

MEDFORD, MASS. BD. OF HEALTH REG. sec. (C) (2017).

E-cigs included?

Yes

“Tobacco product” is defined as “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... including ... electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, ‘e-liquids’ or other similar products.”

MEDFORD, MASS. BD. OF HEALTH REG. sec. (C) (2017).

Exemption for certain retailers? Case law

Yes

Flavored products are banned “except in adult-only retail tobacco stores.”

MEDFORD, MASS. BD. OF HEALTH REG. sec. (G) (2017).

Jurisdiction / Massachusetts / Melrose

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product or nicotine delivery device.”</p> <p><u>MELROSE, MASS. BD. OF HEALTH REG. sec. (J) (2019).</u></p>	<p>No</p> <p>Characterizing flavor is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ... including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice.”</p> <p><u>MELROSE, MASS. BD. OF HEALTH REG. sec. C definitions.</u></p>	<p>Yes</p> <p>Tobacco product is defined as “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, ‘e-liquids’ or other similar products.”</p> <p><u>MELROSE, MASS. BD. OF HEALTH REG. sec. C definitions.</u></p>	<p>Yes</p> <p>“Retail tobacco stores” are exempted, Melrose, Mass. Bd. of Health Reg. sec. (J) (2019), which are defined as “an establishment whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia.”</p> <p><u>MELROSE, MASS. BD. OF HEALTH REG. sec. (C) (2019).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Newton

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 or nicotine product to a consumer.”</p> <p><u>NEWTON, MASS. ORD. Ch. 20-2(j) (2019).</u></p>	<p>No</p> <p>A “characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ...”</p> <p><u>NEWTON, MASS. ORD. Ch. 20-2(b) (2019).</u></p>	<p>Yes</p> <p>A “nicotine delivery product” includes “e-cigarettes.”</p> <p><u>NEWTON, MASS. ORD. Ch. 20-2(b) & (j) (2019).</u></p>	<p>Yes</p> <p>There is an exception for “retail tobacco stores” and “retail nicotine delivery product stores.” These stores are defined as “establishment[s] ... whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, or nicotine delivery products, in which the entry of persons under the age of twenty-one (21) is prohibited at all times.”</p> <p><u>NEWTON, MASS. ORD. Ch. 20-2(b) & (j) (2019).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Peabody

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
Yes	No	Yes	Yes	No
<p>“No entity shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.”</p> <p><u>PEABODY, MASS. BD. OF HEALTH REG. Restricting the Sale of Tobacco Products, sec. (G) (2019).</u></p>	<p>A “characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ... ”</p> <p><u>PEABODY, MASS. BD. OF HEALTH REG. Restricting the Sale of Tobacco Products, sec. (C) (2019).</u></p>	<p>“Tobacco products” includes “electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, ‘e-liquids’ or other similar products.”</p> <p><u>PEABODY, MASS. BD. OF HEALTH REG. Restricting the Sale of Tobacco Products, sec. (C) (2019).</u></p>	<p>Flavored products are banned “except in smoking bars and adult-only retail tobacco stores.”</p> <p><u>PEABODY, MASS. BD. OF HEALTH REG. Restricting the Sale of Tobacco Products, secs. (C) & (J) (2019).</u></p>	

Jurisdiction / Massachusetts / Somerville

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product ... ”</p> <p><u>SOMERVILLE, MASS., Health Reg. Part G (2019).</u></p>	<p>Yes</p> <p>“<i>Flavored tobacco product:</i> Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor.”</p> <p>“<i>Characterizing flavor:</i> 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 ... ”</p> <p><u>SOMERVILLE, MASS., Health Reg. Part C (2019) (emphasis added).</u></p>	<p>Yes</p> <p>“<i>Tobacco product:</i> 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 ... ”</p> <p><u>SOMERVILLE, MASS., Health Reg. Part C (2019) (emphasis added).</u></p>	<p>Yes</p> <p>“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.”</p> <p><u>SOMERVILLE, MASS., Health Reg. Part G (2019) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / Massachusetts / Worcester

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
Yes	No	Yes	Yes	No
No entity shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.”	A “characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ...”	“Tobacco products” includes “electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, ‘e-liquids’ or other similar products.”	Flavored products are banned “except in smoking bars and adult-only retail tobacco stores.”	
<u>WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (G) (2019).</u>	<u>WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (C) (2019).</u>	<u>WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (C) (2019).</u>	<u>WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (E) (2019).</u>	

Jurisdiction / Minnesota / Duluth

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 tobacco products.”</p> <p><u>DULUTH, MINN., CODE § 11-11(a) (2019).</u></p>	<p>Yes</p> <p>“<i>Flavored tobacco product</i> means any tobacco or tobacco related device that contains a taste or smell, other than the taste or smell of tobacco ... including, but not limited to, any taste or smell relating to menthol, mint, wintergreen ...”</p> <p><u>DULUTH, MINN., CODE § 11-11(c) (2019) (emphasis added).</u></p>	<p>Yes</p> <p>“For purposes of this Chapter, the terms ‘<i>tobacco</i>’ and ‘<i>tobacco related devices</i>’ 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 ... ”</p> <p><u>DULUTH, MINN., CODE § 11-1(a) (2019) (emphasis added).</u></p>	<p>Yes</p> <p>“No person shall sell, offer for sale or otherwise distribute any flavored tobacco products. This restriction does not apply to retail establishments that:</p> <p>(1) Prohibit persons under the age of 18 from entering at all times; and</p> <p>(2) Derive at least ninety percent of their revenues from the sale of tobacco, tobacco-related devices.”</p> <p><u>DULUTH, MINN., CODE § 11-11(a) (2019) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / Minnesota / Minneapolis

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., CODE § 281.45(f) (2019).</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., CODE § 281.15 (2019) (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., CODE § 281.15 (2019) (emphasis added).</u></p> <p>“Electronic delivery device includes, but is not limited to ... e-cigarettes ...”</p> <p><u>Id. (emphasis added).</u></p> <p>“Tobacco means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption ...”</p> <p><u>Id.</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., CODE § 281.45(f) (2019) (emphasis added).</u></p>	<p>No</p>

Jurisdiction / Minnesota / St. Louis Park

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be a violation of this subdivision for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, nicotine or lobelia delivery product ... that meets the definition of flavored product.”</p> <p><u>ST. LOUIS PARK, MINN. CODE § 8-374 (a)(6) (2019).</u></p>	<p>Yes</p> <p>“Flavored tobacco product” means “any tobacco product, tobacco-related device, electronic-delivery device, or nicotine or lobelia delivery product that contains the taste or smell, other than the taste or smell of tobacco, menthol, mint or wintergreen.”</p> <p><u>ST. LOUIS PARK, MINN. CODE § 8-1 (2019).</u></p>	<p>Yes</p> <p>“Tobacco product” 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>ST. LOUIS PARK, MINN. CODE § 8-1 (2019).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / Minnesota / Saint Paul

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) (2019).</u></p>	<p>Yes</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 that is distinguishable by an ordinary consumer either prior to or during [use] ... including, but not limited to, any taste or smell relating to menthol, mint, wintergreen ...”</p> <p><u>ST. PAUL, MINN., CODE § 324.03(3) (2019) (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) (2019) (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) (2019).</u></p> <p>“<i>Flavored product</i> means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or</p>	<p>Yes</p> <p>“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 are permitted to sell and offer for sale flavored tobacco products.”</p> <p><u>ST. PAUL, MINN., CODE § 324.07(h)(3) (2019) (emphasis added).</u></p> <p>“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.”</p>	<p>No</p>

Jurisdiction / Minnesota / Saint Paul / *continued*

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
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		lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen ... "		
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		<u>ST. PAUL, MINN., CODE § 324.03(3) (2019) (emphasis added).</u>		
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			<u>ST. PAUL, MINN., CODE § 324.07(h)(4) (2019) (emphasis added).</u>	
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Jurisdiction / New Jersey / Jersey City

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“It shall be unlawful for any person to: sell, offer for sale, or distribute, any Electronic Smoking Device which delivers a Flavored Tobacco Product.”</p> <p><u>JERSEY CITY, N.J. ORD. 19-158 sec. 316-2(A).</u></p>	<p>Yes</p> <p>“Flavored tobacco product” means “any Tobacco Product that contains a taste or smell <i>other than the taste or smell of tobacco</i> ... including, but not limited to, any taste or smell similar to chocolate, cocoa, fruit, vanilla, honey, or any candy desert, alcoholic beverage, herb, or spice.”</p> <p><u>JERSEY CITY, N.J. ORD. 19-158 sec. 316-1 (emphasis added).</u></p>	<p>Yes</p> <p>“It shall be unlawful for any person to: sell, offer for sale, or distribute, any Electronic Smoking Device which delivers a Flavored Tobacco Product, including but not limited to any flavored liquid, cartridge, or component intended for the delivery ... of a flavored tobacco product by way of inhalation from an electronic smoking device.”</p> <p><u>JERSEY CITY, N.J. ORD. 19-158 sec. 316-2(A).</u></p>	<p>No</p>	<p>No</p>

Jurisdiction / New York / New York

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“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.”</p> <p><u>N.Y.C., N.Y., ADMIN. CODE § 17-715(a) (2019).</u></p>	<p>No</p> <p>“‘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 ... ”</p> <p><u>N.Y.C., N.Y., ADMIN. CODE § 17-713(b) (2019) (emphasis added).</u></p> <p>“‘Flavored tobacco product’ means any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor.”</p> <p><u>N.Y.C., N.Y., ADMIN. CODE § 17-713(e) (2019).</u></p> <p>“Tobacco products that impart a distinguishable taste or aroma of menthol, mint, wintergreen or tobacco, and do not also impart a characterizing</p>	<p>No (note that conventional cigarettes not included)</p> <p>“‘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 ... ”</p> <p><u>N.Y.C., N.Y., ADMIN. CODE § 17-713(j) (2019) (emphasis added).</u></p>	<p>Yes</p> <p>“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.”</p> <p><u>N.Y.C., N.Y., ADMIN. CODE § 17-715(a) (2019) (emphasis added).</u></p> <p>“Only the following entities may sell or offer for sale flavored tobacco products:</p> <p>(1) Tobacco bars; and</p> <p>(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.”</p> <p><u>N.Y.C., N.Y., R. § 28-02(a) (2019) (emphasis added).</u></p>	<p>Yes</p> <p>Manufacturers and distributors alleged that the Family Smoking Prevention Tobacco Control Act (FSPTCA) preempted NYC’s flavor restrictions.</p> <p><i>U.S. Smokeless Tobacco Mfg. Co. LLC v. City of N.Y.</i>, 708 F.3d 428, 430 (2d Cir. 2013). The court held that it didn’t. <i>Id.</i> 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</p>

Jurisdiction / New York / New York / *continued*

Flavor prohibited?

Menthol prohibited?

E-cigs included?

Exemption for certain retailers?

Case law

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) (2019) (emphasis added).

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 / New York / Yonkers

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 distribute in the City any flavored e-liquid or e-cigarette containing flavored e-liquid. No other provision of law authorizing the sale of tobacco products shall authorize the sale of flavored e-liquid.”</p> <p><u>YONKERS, N.Y. ORD. 8-2019 sec. 31-157.</u></p>	<p>Yes</p> <p>“Characterizing flavor” is defined as “[a] distinguishable taste or aroma, including but not limited to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, menthol, alcoholic beverage, herb or spice flavoring, but shall not include tobacco.”</p> <p><u>YONKERS, N.Y. ORD. 8-2019 sec. 31-152 (emphasis added).</u></p>	<p>Yes</p> <p>Prohibition includes “any flavored e-liquid or e-cigarette containing flavored e-liquid.”</p> <p><u>YONKERS, N.Y. ORD. 8-2019 sec. 31-157.</u></p>	<p>No</p>	<p>Yes</p> <p>Litigation over the flavor ban ordinance is pending. Vape Cave Yo and the New York State Vapor Association Inc. filed complaint Oct. 2019; the judge issued temporary restraining order Nov. 2019 (as of Jan 2020).</p>

Jurisdiction / Pennsylvania / Philadelphia

Flavor prohibited?	Menthol prohibited?	E-cigs included?	Exemption for certain retailers?	Case law
<p>Yes</p> <p>“Except at an adults-only establishment, no person shall sell or offer for sale, or possess with the intent to sell or offer for sale, any Electronic Smoking Device with a Characterizing Flavor, defined as a taste or aroma, other than the taste of tobacco.”</p> <p><u>PHILADELPHIA, PA. CODE § 9-638(2) (2019).</u></p>	<p>Yes</p> <p>Characterizing flavor includes “menthol, mint, wintergreen.”</p> <p><u>PHILADELPHIA, PA. CODE § 9-638(2) (2019).</u></p>	<p>Yes</p> <p>“Electronic smoking device” or “ESD” as defined by § 9-631(1) means “an electronic device, the use of which simulates tobacco smoking, that is intended to delivery nicotine to the person inhaling from the device; the term includes any solution, compound, or other substance containing nicotine and manufactured for use with such a device.”</p> <p><u>PHILADELPHIA, PA. CODE § 9-631(1) (2019).</u></p>	<p>Yes</p> <p>“No person shall sell or offer for sale, or possess with intent to sell or offer for sale, any Electronic Smoking Device, except at an Adults-Only Establishment.”</p> <p><u>PHILADELPHIA, PA. CODE § 9-638(4) (2019).</u></p>	<p>No</p>

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).

Jurisdiction / Rhode Island / Woonsocket

Flavor prohibited?

Yes

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

WOONSOCKET, R.I. CODE, Ch. 13, Tobacco sec. 6(3)(a) (2020).

Menthol prohibited?

No

A “characterizing flavor” is defined as “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen ...”

WOONSOCKET, R.I. CODE, Ch. 13, Tobacco sec. (2) (2020).

E-cigs included?

Yes

The definition of tobacco products includes “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.”

WOONSOCKET, R.I. CODE, Ch. 13, Tobacco sec. (2) (2020).

Exemption for certain retailers?

Yes (likely)

“This subsection (f) shall not apply to the following businesses: 1. a smoking bar ... 2. a retail store ... 3. an electronic smoking device establishment. Woonsocket, R.I. Code, Ch. 13, Tobacco sec. (6) (2020) (The reference to subsection (f) appears to be an error. It likely was intended to be subsection (e), the prohibition on sale of flavored tobacco products)

Case law

No

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)

- Berkeley, CA
- Burbank, CA
- Cupertino, CA
- Delano, CA
- Jersey City, NH
- Laguna Niguel, CA
- Livermore, CA
- Long Beach, CA
- Marin County, CA
- Oakland, CA
- Palo Alto, CA (exempts tobacco flavor)
- Sacramento, CA
- Saint Louis Park, MN
- San Francisco, CA
- Santa Cruz, CA
- Santa Maria, CA
- Watsonville, CA
- Yolo County, CA (only in unincorporated parts of the county, but see also Woodland, CA, and Davis, CA, adopting restrictions by reference)
- Yonkers, NY

Comprehensive with retailer exemption

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

- Massachusetts
- Boston, MA
- Boulder, CO
- Duluth, MN
- Framingham, MA
- Minneapolis, MN
- Philadelphia, PA
- Saint Paul, MN
- Santa Clara County, CA (applies only to unincorporated parts of the county, but Los Gatos, CA has its own flavor sales restrictions)
- Somerville, MA
- South San Francisco, CA

Buffer zone restriction

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

- 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)

- Cambridge, MA
- Malden, MA
- Newton, MA
- Providence, RI (conventional cigarettes excluded)
- Woonsocket, RI
- Lowell, MA
- Medford, MA
- Peabody, MA
- Worcester, MA
- Lynn, MA
- Melrose, MA

Flavor restriction excluding menthol, with no retailer exemption

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

- Brookline, MA

Other

- New Jersey (state-wide ban on flavored e-cigarettes, including menthol flavor, takes effect April 2020)
- New York City (city-wide ban of flavored e-cigarettes, including menthol flavor, takes effect July 2020; city-wide ban of flavored tobacco products (except menthol), conventional cigarettes not included, certain retailers exempt)

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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. The chart focuses on cities with a population over 40,000 and all counties we are aware of that prohibit flavored tobacco products. Other cities that have flavored tobacco prohibitions but smaller populations include: Culver City, CA; West Hollywood, CA; Manhattan Beach, CA; Beverly Hills, CA; Menlo Park, CA; Los Gatos, CA; Shoreview, MN; Imperial Beach, CA; El Cerrito, CA; Oroville, CA; Central Falls, RI; Mendota Heights, MN; Arden Hills, MN; Lilydale, MN. South Miami, FL, also has an interesting flavored tobacco sales law outside of a licensing section, South Miami, Fla., Code § 12-16 (2019). In Massachusetts, almost 100 municipalities, including many with populations below our 40,000 cutoff, also have sales restrictions on flavored cigarettes. See “Local Policy Restricting Flavored Tobacco and Vape Products To Adult-Only ‘Retail Tobacco Stores’,” Municipal Tobacco Control Technical Assistance Program, Mass. Municipal Assoc., <https://mhoa.com/wp-content/uploads/2019/07/Muni-List-Flavored-OTP-Restriction-C759-1.pdf> (last updated July 2019). For three Massachusetts jurisdictions — Haverhill, Brockton, and Methuen — we were unable to obtain the local regulations to analyze them. The jurisdictions not included in this chart 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.