

U.S. SALES RESTRICTIONS ON FLAVORED TOBACCO PRODUCTS



This document provides select examples of U.S. states, cities, and counties¹ that restrict the sale of flavored tobacco products. For local jurisdictions, it focuses on those with a population over 75,000. The Public Health Law Center includes the following best practices in its model tobacco flavor restrictions policies: (1) covering the entire jurisdiction, (2) prohibiting menthol, (3) restricting flavors in all tobacco products, and (4) not including exemptions for certain retailers.

The first chart organizes jurisdictions based on how they address these four best practices.

The second chart organizes the jurisdictions by state, capturing variations among flavor restrictions in each of these four areas. The chart

also provides links to each jurisdiction's laws and summarizes relevant legal challenges.

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.



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Flavored Tobacco Restrictions by Type

This list organizes states, cities and counties by restriction type. 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.

State Policies

State	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Effective date
Maine ¹	✓	✓	✗	✓	2009
Maryland ²	✓	✗	✗	✓	February 2020
Rhode Island ²	✓	✓	✗	✓	March 2020
New Jersey ²	✓	✓	✗	✓	April 2020
New York ²	✓	✓	✗	✓	May 2020
Massachusetts ³	✓	✓	✓	✗	June 2020
Utah ^{2,4}	✓	✗	✗	✗	July 2020
California ^{3,5}	✓	✓	✗	✗	December 2022, if voters approve referendum

1 Only covers non-premium flavored cigars

2 Only covers flavored e-cigarettes

3 Retailer exemptions for licensed smoking bars

4 Retailer exemption for specialty tobacco stores

5 Product exemptions for hookah, premium cigars, pipe tobacco.

Also, in 2019, the following states took temporary action to ban flavored e-cigarettes in response to the EVALI (e-cigarette or vaping product use-associated lung injury) crisis:

- Massachusetts
- Michigan
- Montana
- New York
- Oregon
- Rhode Island
- Utah
- Washington

Local Policies

Comprehensive

(jurisdiction-wide ban, menthol flavor prohibited, all tobacco products included, no retailer exemption)

Jurisdiction	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?
Alameda, CA	✓	✓	✓	✓
Berkeley, CA	✓	✓	✓	✓
Carson, CA	✓	✓	✓	✓
Contra Costa County, CA	✓	✓	✓	✓
Fremont, CA	✓	✓	✓	✓
Livermore, CA	✓	✓	✓	✓
Los Angeles County, CA	✓	✓	✓	✓
Marin County, CA	✓	✓	✓	✓
Oxnard, CA	✓	✓	✓	✓

(continued)

Richmond, CA	✓	✓	✓	✓
Sacramento, CA	✓	✓	✓	✓
San Francisco, CA	✓	✓	✓	✓
San Mateo, CA	✓	✓	✓	✓
San Mateo County, CA	✓	✓	✓	✓
Santa Barbara County, CA	✓	✓	✓	✓
Santa Cruz County, CA	✓	✓	✓	✓
Santa Maria, CA	✓	✓	✓	✓
Yolo County, CA ¹	✓	✓	✓	✓

¹ See also Woodland, CA, and Davis, CA, adopting Yolo County restrictions by reference.

E-Cigarettes Only

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

Jurisdiction	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?
Jersey City, NJ	✓	✓	✗	✓
Missoula, MT	✓	✓	✗	✓
Palmdale, CA	✓	✓	✗	✓

(continued)

Ventura County, CA	✓	✓	✗	✓
Yonkers, NY	✓	✓	✗	✓

Covers Multiple Tobacco Products, with Exceptions

Jurisdiction	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?
Burbank, CA ¹	✓	✓	✗	✗
Long Beach, CA ²	✓	✓	✗	✓
New York City, NY ³	✓	✓	✗	✗
Philadelphia, PA ⁴	✓	✓	✗	✗
Providence, RI ³	✓	✗	✗	✗
San Diego County, CA ⁵	✓	✓	✗	✓
San Leandro, CA ³	✓	✓	✗	✓
Ventura, CA ¹	✓	✓	✗	✓

1 Hookah excluded

2 Only covers e-cigarettes, menthol cigarettes, and cigarillos

3 Conventional cigarettes excluded

4 Only covers e-cigarettes, cigars, and roll-your-own tobacco

5 Hookah, premium cigars, pipe tobacco excluded

Retailer Exemptions, Menthol Flavor Prohibited

(jurisdiction-wide ban, menthol flavor prohibited, certain retailers exempt)

Jurisdiction	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?
Alameda County, CA	✓	✓	✓	✗
Boston, MA	✓	✓	✓	✗
Boulder, CO	✓	✓	✓	✗
Duluth, MN	✓	✓	✓	✗
Hayward, CA	✓	✓	✓	✗
Minneapolis, MN	✓	✓	✓	✗
Oakland, CA	✓	✓	✓	✗
Saint Paul, MN	✓	✓	✓	✗
Santa Clara County, CA	✓	✓	✓	✗
Somerville, MA	✓	✓	✓	✗

Buffer Zone Restrictions

(flavor sales prohibited around buffer zone, menthol flavor prohibited)

Jurisdiction	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?
Chicago, IL ¹	✘	✔	✔	✘
1 flavored e-cigarette sales banned everywhere, other flavored tobacco product sales only banned in buffer zone				

Menthol Flavor Allowed, with Retailer Exemption

(jurisdiction-wide ban, menthol flavor allowed, exemption for retailers)

Jurisdiction	Jurisdiction-wide ban?	Menthol prohibited?	All tobacco products?	Covers all retailers?
Cambridge, MA	✔	✘	✔	✘
Lowell, MA	✔	✘	✔	✘
Lynn, MA	✔	✘	✔	✘
Newton, MA	✔	✘	✔	✘
Worcester, MA	✔	✘	✔	✘

Jurisdiction / California / *pending referendum result in December 2022*

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“A tobacco retailer, or any of the tobacco retailer’s agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.”</p> <p><u>SB-793(b)(1).</u></p>	<p>Yes.</p> <p>“Characterizing flavor” means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include ... menthol, mint, wintergreen ...”</p> <p><u>SB-793(a)(1).</u></p>	<p>No.</p> <p>“Subdivision (b) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises ... [or] to loose leaf tobacco or premium cigars.”</p> <p><u>SB-793(d).</u></p>	<p>No.</p> <p>“Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met: (1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code. (2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time. (3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products. (4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate</p>	<p>Yes.</p> <p>SB-793 is being challenged by the tobacco industry on preemption, dormant commerce clause grounds. R.J. Reynolds Tobacco Co. et al v. Becerra et al, No. 3:20-cv-01990 (S.D. Cal., filed Oct. 9, 2020).</p>

Jurisdiction / California / *continued*

Flavor prohibited?

Menthol prohibited?

All tobacco products?

Covers all retailers?

Case law

in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.”

SB-793(c).

Jurisdiction / California / Alameda

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“It shall be a violation of this article 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>ALAMEDA, CAL. CODE § 6-60.110 (a) (2018).</u></p>	<p>Yes.</p> <p>“Characterizing flavor means a taste or aroma, other than the taste or aroma of tobacco, imparted prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product including, but not limited to, tastes or aroma relating to menthol, mint, wintergreen...”</p> <p><u>ALAMEDA, CAL. CODE § 6-60.10 (2018).</u></p>	<p>Yes.</p> <p>“Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device that delivers nicotine or other substances... (3) ...any component, part, or accessory of a tobacco product...”</p> <p><u>ALAMEDA, CAL. CODE § 6-60.10 (2018).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Alameda County

Flavor prohibited?

Yes.

“No tobacco retailer or any of the tobacco retailer’s agents or employees may sell or possess with intent to sell any flavored tobacco product.”

ALAMEDA COUNTY, CAL. CODE § 3.58.040 (A) (2020).

Menthol prohibited?

Yes.

“‘Characterizing flavor’ 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...”

ALAMEDA COUNTY, CAL. CODE § 3.58.020 (2020).

All tobacco products?

Yes.

“Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device that delivers nicotine or other substances... (3) ...any component, part, or accessory intended or reasonably expected to be used with a tobacco product...”

ALAMEDA COUNTY, CAL. CODE § 3.58.020 (2020).

Covers all retailers?

No.

“The requirements and prohibitions of this chapter shall not apply to cannabis retail or delivery operators holding a permit under Chapter 6.108 or combined cannabis operations holding a permit under Chapter 6.109.”

ALAMEDA COUNTY, CAL. CODE § 3.58.210 (2020).

Case law

No.

Jurisdiction / California / Berkeley² / effective June 11, 2019

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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: 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> <p><u>BERKELEY, CAL. CODE § 9.80.020(K) (2019).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Burbank

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>No.</p> <p>“[E]xcept 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> <p>“[E]xcept in a tobacco bar, whose sales of flavored tobacco products are limited to onsite use only by customers at least 21 years of age ...”</p> <p><u>BURBANK MUNICIPAL CODE sec. 3-4-2508 (A).</u></p>	<p>No.</p>

Jurisdiction / California / Carson

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“[I]t is unlawful in the City for any tobacco and electronic cigarette retailer to sell, offer to sell, exchange, or offer to exchange, for any form of consideration, any flavored tobacco product.”</p> <p><u>CARSON, CAL. ORDINANCE No. 19-1940, sec. 63150.5.13 (2020).</u></p>	<p>Yes.</p> <p>“Characterizing flavor’ 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>CARSON, CAL. ORDINANCE No. 19-1940, sec. 63150.5.1 (2020).</u></p>	<p>Yes.</p> <p>“‘Tobacco product’ means any substance containing, made, or derived from tobacco leaf or nicotine, including but not limited to any tobacco cigarette, cigar, pipe tobacco, snuff, hookah shisha, smokeless tobacco or any other form of tobacco which may be utilized for smoking, chewing, inhaling or other manner of ingestion.”</p> <p><u>CARSON, CAL. ORDINANCE No. 19-1940, sec. 63150.5.1 (2020).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Contra Costa County

Flavor prohibited?

Yes.

“No tobacco retailer may sell, offer for sale, or exchange or offer to exchange for any form of consideration, to a consumer any flavored tobacco product or menthol cigarette.”

CONTRA COSTA COUNTY, CAL., CODE § 445-6.006 (2020).

Menthol prohibited?

“A ‘characterizing flavor’ includes, but is not limited to, a taste or aroma relating to ... menthol, mint, wintergreen ...”

CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(a) (2020).

“‘Menthol cigarettes’ means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.”

CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(k) (2020).

All tobacco products?

Yes.

“‘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** ... ”

CONTRA COSTA COUNTY, CAL., CODE § 445-2.006(u) (2020) (emphasis added).

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / California / Fremont

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.”

FREMONT, CAL. CODE § 8.75.120(a) (2020).

Menthol prohibited?

Yes.

“‘Characterizing flavor’ 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...”

FREMONT, CAL. CODE § 8.75.010(b) (2020).

All tobacco products?

Yes.

“Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device that delivers nicotine or other substances... (3) ...any component, part, or accessory of a tobacco product...”

FREMONT, CAL. CODE § 8.75.010(q) (2019).

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / California / Hayward

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“It shall be a violation of these regulations for any Tobacco Retailer ... to sell or offer for sale ... 1) Flavored tobacco products, parts, components, or flavored tobacco paraphernalia ...”</p> <p><u>HAYWARD, CAL. ORD. NO. 20-13, Sec. 10-1.2783(c) (Adopted July 7, 2020).</u></p>	<p>Yes.</p> <p>“‘Characterizing Flavor’ means a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product . . . Including but not limited to . . . menthol, mint, wintergreen . . .”</p> <p><u>HAYWARD, CAL. ORD. NO. 20-13, Sec. 10-1.2782(f) (Adopted July 7, 2020).</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, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means. ‘Tobacco Product’ includes but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff snus, electronic smoking devices ...”</p> <p><u>HAYWARD, CAL. ORD. NO. 20-13, Sec. 10-1.2782(aa) (Adopted July 7, 2020).</u></p>	<p>No.</p> <p>Exception for “Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of [the flavored tobacco regulation].”</p> <p><u>HAYWARD, CAL. CODE § 10-1.2783(c) (2019).</u></p>	<p>No.</p>

Jurisdiction / California / Livermore

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>“‘Tobacco product’ means: Any 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, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; Any electronic smoking device; ...”</p> <p><u>LIVERMORE, CAL. CODE § 5.50.100 (L)(2019).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Long Beach

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>No.</p> <p>“‘Prohibited products’ means the following: 1. ‘Flavored cigarillos’, as defined by this Section; 2. ‘Flavored electronic smoking devices’, as defined by this Section; 3. ‘Flavored electronic smoking device fluid’, as defined by this Section; and 4. ‘Menthol cigarettes’, as defined by this Section.” (Note, this does not include flavored cigars, roll-your-own tobacco, chewing tobacco, or hookah.)</p> <p><u>LONG BEACH, CAL. ORDINANCE No. 19-0033, sec. 5.94.020(O).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Los Angeles County

Flavor prohibited?

Yes.

“After 180 days of the effective date of the Ordinance codified in this Chapter, it shall be a violation of this Chapter for a tobacco retailer/ licensee or its agent(s) or employee(s) to sell or offer for sale, or to possess with the intent to sell or offer for sale, any flavored tobacco product or any component, part, or accessory intended to impart, or imparting a characterizing flavor in any form, to any tobacco product or nicotine delivery device, including electronic smoking devices.”

LOS ANGELES COUNTY, CAL.
CODE § 11.35.070 (E) (2019).

Menthol prohibited?

Yes.

“‘Characterizing flavor’ 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...”

LOS ANGELES COUNTY, CAL.
CODE § 11.35.020 (C) (2019).

All tobacco products?

Yes.

“Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device that delivers nicotine or other substances... (3) ...any component, part, or accessory intended or reasonably expected to be used with a tobacco product...”

LOS ANGELES COUNTY, CAL.
CODE § 11.35.020 (U) (2019).

Covers all retailers?

Yes.

Case law

Yes.

Ordinance survived preemption challenge from manufacturers. Case on appeal to the 9th Cir. as of Jan. 2021. R.J. Reynolds Tobacco Co. et al v. Cty. of Los Angeles et al., No. 2:20-cv-04880 (C.D. Cal. Aug 7, 2020). Also survived vagueness, due process challenges brought by retailers. CA Smoke and Vape Assn., Inc. et al v. Cty. of Los Angeles, et al, No. 2:20-cv-04065 (C.D. Cal. Aug 7, 2020).

Jurisdiction / California / Marin County

Flavor prohibited?

Yes.

“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.”

MARIN CTY., CAL. CODE § 5.75.040 (a) (2019).

Menthol prohibited?

Yes.

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.”

MARIN CTY., CAL. CODE § 5.75.030 (a) (2019).

All tobacco products?

Yes.

“Tobacco product” includes “any product containing, made, or derived from tobacco or nicotine that is intended for human consumption ... ”

MARIN CTY., CAL. CODE § 5.75.030 (g)(1) (2019).

and “any electronic device that delivers nicotine ... an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.”

MARIN CTY., CAL. CODE § 5.75.030 (g)(2).

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / California / Oakland

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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: (a) any product containing, made, 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, including but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; and (b) any Electronic Smoking Device ... ”</p> <p><u>OAKLAND, CAL., CODE 5.91 (2019).</u></p>	<p>No.</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?

All tobacco products?

Covers all 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 / Oxnard

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“It shall be unlawful for any retailer to sell or offer for sale any flavored tobacco product.”</p> <p><u>OXNARD, CAL. CODE § 11-374 (A) (2019).</u></p>	<p>Yes.</p> <p>A flavored tobacco product is defined as “any tobacco 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 the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to... menthol, mint, wintergreen...”</p> <p><u>OXNARD, CAL. CODE § 11-370 (F) (2019).</u></p>	<p>Yes.</p> <p>“Tobacco product means (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by other means . . . (2) any electronic smoking device as defined in this article and any substances that may be aerosolized or vaporized by such device; or (3) any component, part, or accessory of (1) or (2)...”</p> <p><u>OXNARD, CAL. CODE § 11-370 (L) (2019).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Palmdale

Flavor prohibited?

Yes.

“It shall be a violation of this section for any tobacco retailer or any of permittee’s agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette product.”

PALMDALE, CAL. CODE § 5.04.670 (H)(4)(a) (2019).

Menthol prohibited?

Yes.

“Flavored electronic cigarette product” shall mean any product used in an electronic cigarette, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice, including but not limited to tobacco, mint, menthol, spearmint, wintergreen...”

PALMDALE, CAL. CODE § 5.04.670 (A)(4) (2019).

All tobacco products?

No.

Only “electronic cigarette products” are included.

PALMDALE, CAL. CODE § 5.04.670 (H)(4)(a) (2019).

Covers all retailers?

Yes.

Case law

Yes.

Ordinance challenged on preemption, vagueness, due process grounds, but plaintiffs voluntarily withdrew case. CA Smoke and Vape Assn., Inc. et al v. City of Palmdale (2020) No. 2:20-cv-05039 (C.D. Cal., filed Jun 07, 2020).

Jurisdiction / California / Richmond

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, offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.”

RICHMOND, CAL. CODE § 7.106.030 (j)(1)(2019).

Menthol prohibited?

Yes.

“‘Characterizing flavor’ 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...”

RICHMOND, CAL. CODE § 7.106.020 (2019).

All tobacco products?

Yes.

“Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device that delivers nicotine or other substances... (3) ...any component, part, or accessory intended or reasonably expected to be used with a tobacco product...”

RICHMOND, CAL. CODE § 7.106.020 (2019).

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / California / Sacramento / effective October 1, 2019

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <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>Yes.</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>Yes.</p> <p>“‘Tobacco product’ means: 1. A product containing, made, 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, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; 2. 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, cigar, pipe, or hookah ...”</p> <p><u>Sacramento, Calif., Ordinance 2019-0012 (April 16, 2019) (codified at SACRAMENTO, CALIF., CODE § 5.138.030).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / San Diego County

Flavor prohibited?

Yes.

“A tobacco retailer, or any of the tobacco retailer’s agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.”

SAN DIEGO COUNTY, CAL. CODE § 21.2604(a) (2020).

Menthol prohibited?

Yes.

“‘Flavored tobacco product’ means any tobacco 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 the consumption of the product, including, but not limited to, any taste or smell relating to ... menthol, mint, wintergreen ...”

SAN DIEGO COUNTY, CAL. CODE § 21.2602(i) (2020).

All tobacco products?

No.

“This section shall not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met: (1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with section 22971.7) of Division 8.6 of the California Business and Professions Code. (2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time. (3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products. (4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate

Covers all retailers?

Yes.

Case law

Yes.

Separate lawsuits brought by tobacco manufacturers and retailers on preemption grounds. Cases pending as of January 2021. (N’hood Market Assn., Inc. et al v. Cty. of San Diego, No. 3:20-cv-01124 (S.D. Cal., filed Jun 19, 2020); R.J. Reynolds Tobacco Co. et al v. Cty. of San Diego, No. 3:20-cv-01290 (S.D. Cal., filed Jul 09, 2020)

Jurisdiction / California / San Diego County / *continued*

Flavor prohibited?

Menthol prohibited?

All tobacco products?

Covers all retailers?

Case law

in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, section 6404.5 of the Labor Code.” and “This section shall not apply to loose leaf tobacco or premium cigars.”

SAN DIEGO COUNTY, CAL. CODE
§ 21.2604 (c) & (d) (2020).

Jurisdiction / California / San Francisco

Flavor prohibited?

Yes.

“The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.”

S.F., CAL., HEALTH CODE § 19Q.3 (2019).

Menthol prohibited?

Yes.

“‘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.”

S.F., CAL., HEALTH CODE § 19Q.2 (2019) (emphasis added).

All tobacco products?

Yes.

“‘Tobacco Product’ has the meaning set forth in Health Code Section 19H.2.”

S.F., CAL., HEALTH CODE § 19Q.2 (2019).

“‘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 ... ”

S.F., CAL., HEALTH CODE § 19Q.2 (2019) (emphasis added).

Covers all retailers?

Yes.

Case law

No.

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.

Characterizing flavor is defined as “ 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 ...”

SAN LEANDRO, CAL., CODE § 4.36.100 (2020).

All tobacco products?

No.

“‘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 (2020).

Covers all retailers?

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).

“‘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 / San Mateo

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>SAN MATEO, CAL. CODE § 7.40.130(a) (2020).</u></p>	<p>Yes.</p> <p>"'Characterizing flavor' means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include ... menthol, mint, wintergreen ..."</p> <p><u>SAN MATEO, CAL. CODE § 7.40.130(c)(1) (2020).</u></p>	<p>Yes.</p> <p>"'Tobacco product' means any substance containing tobacco leaf, including cigarettes, cigars, loose tobacco, snuff or any other preparation of tobacco which may be used for smoking, chewing, inhalation or other means of ingestion; and any electronic cigarette or other electronic device used to generate smoke ..."</p> <p><u>SAN MATEO, CAL. CODE § 7.40.020(l) (2020).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / San Mateo County

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>SAN MATEO COUNTY, CAL. CODE § 4.99.030 (a) (2018).</u></p>	<p>Yes.</p> <p>“‘Characterizing flavor’ means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to ... menthol, mint, wintergreen ...”</p> <p><u>SAN MATEO COUNTY, CAL. CODE § 4.99.020 (a) (2018).</u></p>	<p>Yes.</p> <p>“Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device that delivers nicotine or other substances... (3) ...any component, part, or accessory intended or reasonably expected to be used with a tobacco product...”</p> <p><u>SAN MATEO COUNTY, CAL. CODE § 4.96.030 (H) (2018).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Santa Barbara County

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“No person engaged in tobacco retailing may ... Sell a flavored tobacco product ... ”</p> <p><u>SANTA BARBARA COUNTY, CAL. CODE § sec. 37A-9.5 (4)(a)(2019).</u></p>	<p>Yes.</p> <p>“Flavored tobacco product’ means any tobacco 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 the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen...”</p> <p><u>SANTA BARBARA COUNTY, CAL. CODE § sec. 37A-2 (g)(2019).</u></p>	<p>Yes.</p> <p>“Tobacco product means: (1) Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) Any electronic smoking device... (3) Any component, part, or accessory of (1) or (2)...”</p> <p><u>SANTA BARBARA COUNTY, CAL. CODE § sec. 37A-2 (o)(2019).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Santa Clara County

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>No.</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 County

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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 CRUZ COUNTY, CAL. CODE § 5.60.040(I) (2020).</u></p>	<p>Yes.</p> <p>"Characterizing flavor' 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>SANTA CRUZ COUNTY, CAL. CODE § 5.60.020(A) (2020).</u></p>	<p>Yes.</p> <p>"Tobacco product means: (1) Any product containing, made, 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) Any electronic smoking device; and (3) Any component, part, or accessory intended or reasonably expected to be used with a tobacco product..."</p> <p><u>SANTA CRUZ COUNTY, CAL. CODE § 5.60.020(R) (2020).</u></p>	<p>Yes.</p>	<p>No.</p>

Jurisdiction / California / Santa Maria

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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: (1) any product containing, made, 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, including, but not limited to Cigarettes, Cigars, Little Cigars, chewing tobacco, pipe tobacco, snuff; and (2) 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>Yes.</p>	<p>No.</p>

Jurisdiction / California / Ventura

Flavor prohibited?

Yes.

“It shall be a violation of this Chapter for any Tobacco Retailer’s agents or employees to sell or deliver or offer for sale or delivery, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product to a person in the City.”

VENTURA, CAL. CODE § 8.350.040 (E) (2019).

Menthol prohibited?

Yes.

“‘Characterizing Flavor’ 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...”

VENTURA, CAL. CODE § 8.355.020 (2019).

All tobacco products?

No.

“Tobacco Retailers shall be permitted to sell flavored hookah tobacco for onsite use and consumption, subject to all state and federal regulations.”

VENTURA, CAL. CODE § 8.350.040 (F) (2019).

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / California / Ventura County

Flavor prohibited?

Yes.

"...[N]o person or flavored vaping products retailer, or its agents or employees, shall sell or exchange or offer for sale or exchange, or possess with the intent to sell or exchange or offer for sale or exchange, any flavored vaping products or any flavored vaping products paraphernalia..."

VENTURA COUNTY, CAL. CODE DIV. 6 CH. 8.5 § 6834 (2019).

Menthol prohibited?

Yes.

"'Flavored vaping products' means any product containing flavored nicotine or other flavored substances, made or derived from flavored nicotine or other flavored substances, whether natural or synthetic, that is intended for human consumption and is heated, inhaled, smoked, snorted or sniffed through an electronic smoking device. 'Flavored vaping products' does not include tobacco-only flavored vaping products.'

VENTURA COUNTY, CAL. CODE DIV. 6 CH. 8.5 § 6833 (b) (2019).

All tobacco products?

No. See first box.

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / California / Yolo County*

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>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) (emphasis added).</u></p>	<p>No.</p>

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

Jurisdiction / Colorado / Boulder

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>“Tobacco product means: (1) Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints or hand gels, including but not limited to any product that is required by the Federal Food and Drug Administration to be labeled as possibly containing nicotine; (2) An electronic smoking device; (3) Flavored tobacco products ...”</p> <p><u>BOULDER, COLO. CODE § 6-4.5-1 (2020).</u></p>	<p>No.</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?

Yes — in all e-cigarettes, but other tobacco products only within buffer zone.

“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.”

CHICAGO, ILL., CODE § 4-64-515(b) (2019) (emphasis added).

“No person shall sell, give away, barter, exchange, or otherwise furnish to any other person any flavored liquid nicotine product.”

CHICAGO, ILL., CODE § 4-64-355 (c) (2020).

Menthol prohibited?

Yes.

“‘Flavored tobacco product’ means any tobacco product, other than a liquid nicotine 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 ... ” “‘Flavored liquid nicotine product’ means any liquid nicotine product that contains a constituent that imparts a characterizing flavor. As used in this definition. the term ‘characterizing flavor’ means a distinguishable taste or aroma imparted either prior to or during consumption of a liquid nicotine product, including but not limited to

All tobacco products?

Yes.

“‘Tobacco product’ means any electronic cigarette as defined herein or component or part thereof or any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from tobacco, which product is intended to enable human consumption of the tobacco or nicotine, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means ...”

CHICAGO, ILL., CODE § 4-64-100 (2020);

“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 ... ”

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

Covers all retailers?

No.

“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 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, cigarillos, cigars, pipes, other smoking devices and accessories, hookahs and

Case law

Yes.

Equal protection challenge pending as of Jan 2020. Sufi Foods Corp. v. City of Chicago, No. 2019-CH-03079 (Ill. Cir. Ct., filed Mar 08, 2019). Ordinance previously survived challenge on preemption, vagueness, due process grounds. Independents Gas & Serv. Stations Ass’ns, Inc. v. City of Chicago, 112 F. Supp. 3d 749 (N.D. Ill. 2015).

Jurisdiction / Illinois / Chicago / *continued*

Flavor prohibited?

Menthol prohibited?

All tobacco products?

Covers all retailers?

Case law

tastes or aromas of menthol, mint, wintergreen ..."

CHICAGO, ILL., CODE § 4-64-100 (2020).

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 / Maine

Flavor prohibited?

Yes.

“Except as provided in subsection 5-A, a person may not sell or distribute or offer to sell or distribute in this State any flavored cigar unless the cigar is a premium cigar.”

ME. STAT. TIT. 22, § 1560D(2) (2020).

“Any flavored cigar that the Attorney General determined had no characterizing flavor or was otherwise exempt under former subsection 5 is exempt from the prohibition on flavored nonpremium cigars in subsection 2 so long as no material change is made to the cigar’s flavoring, packaging or labeling subsequent to the Attorney General’s determination.”

ME. STAT. TIT. 22, § 1560D(5-A) (2020).

Menthol prohibited?

Yes.

“Characterizing flavor” means a distinguishable taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is imparted to tobacco or tobacco smoke either prior to or during consumption. ‘Characterizing flavor’ does not include a taste or aroma from tobacco.”

ME. STAT. TIT. 22, § 1560D(1) (A) (2020).

All tobacco products?

No.

“‘Flavored cigar’ means a cigar or any component part of the cigar that contains a constituent that imparts a characterizing flavor.”

ME. STAT. TIT. 22, § 1560D(1) (D) (2020).

Covers all retailers?

Yes.

Case law

Jurisdiction / Maryland / *implemented through executive action, effective February 2020*

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>"The Comptroller's Field Enforcement Division is prioritizing its enforcement actions against those unauthorized products most widely used by children — specifically, cartridge-based and disposable ESDs with flavors other than tobacco or menthol."</p> <p><u>COMPTROLLER OF MARYLAND, TOBACCO TAX BULLETIN 77 (February 10, 2020).</u></p>	<p>No.</p> <p>"... flavors other than tobacco or menthol."</p> <p><u>COMPTROLLER OF MARYLAND, TOBACCO TAX BULLETIN 77 (February 10, 2020).</u></p>	<p>No.</p> <p>Only "cartridge-based and disposable ESDs."</p> <p><u>COMPTROLLER OF MARYLAND, TOBACCO TAX BULLETIN 77 (February 10, 2020).</u></p>	<p>Yes.</p>	

Jurisdiction / Massachusetts / effective June 1, 2020

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>No.</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</p>	<p>No.</p>

Jurisdiction / Massachusetts / effective June 1, 2020 / continued

Flavor prohibited?

Menthol prohibited?

All tobacco products?

Covers all retailers?

Case law

retail sale of a tobacco product 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?

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 or tobacco product flavor enhancer to a consumer.”

BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § III(B)(13) (2020).

Menthol prohibited?

Yes.

Characterizing flavor is defined as “A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or nicotine delivery product or component part thereof, including but not limited to, tastes or aromas relating to menthol, mint or wintergreen ...”

BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § II(5) (2020).

All tobacco products?

Yes.

“Nicotine delivery products include ... **e-cigarettes** ... ”

BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § II(16) (2020) (emphasis added).

“**Tobacco Product** – A cigarette, cigar, chewing tobacco, pipe tobacco, bidi, snuff, other tobacco or **nicotine delivery product** in any form.”

Id. § II(22) (emphasis added).

Covers all retailers?

No.

“Massachusetts law relative to restricting the sale of flavored tobacco and nicotine products and tobacco product flavor enhancer permits these products to be sold only in a smoking bar for on-site consumption.”

BOSTON PUBLIC HEALTH COMMISSION, YOUTH ACCESS REGULATION § III(B)(13)(a) (2020).

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?

No.

“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).

All tobacco products?

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).

Covers all retailers?

No.

“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 / Lowell

Flavor prohibited?

Yes.

“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.”

REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).

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 ...”

REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).

All tobacco products?

Yes.

“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.”

REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).

Covers all retailers?

No.

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.”

REGULATION OF LOWELL BOARD OF HEALTH, sec. C (2016).

Case law

No.

Jurisdiction / Massachusetts / Lynn

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>No.</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 / Newton

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 or nicotine product to a consumer.”

NEWTON, MASS. ORD. Ch. 20-2(j) (2019).

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 ...”

NEWTON, MASS. ORD. Ch. 20-2(b) (2019).

All tobacco products?

Yes.

Nicotine Delivery Product is defined as: “Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption ...”

NEWTON, MASS. ORD. Ch. 20-2(b) (2019).

Covers all retailers?

No.

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.”

NEWTON, MASS. ORD. Ch. 20-2(b) & (j) (2019).

Case law

No.

Jurisdiction / Massachusetts / Somerville

Flavor prohibited?

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).

Menthol prohibited?

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).

All tobacco products?

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).

Covers all retailers?

No.

“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).

Case law

No.

Jurisdiction / Massachusetts / Worcester

Flavor prohibited?

Yes.

“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.”

WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (E) (2019).

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 ... ”

WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (C) (2019).

All tobacco products?

Yes.

“Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, vaped, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization.”

WORCESTER, MASS. ORDINANCES, Chapter 8, § 3 (b) (2020).

Covers all retailers?

No.

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

WORCESTER, MASS. BD. OF HEALTH, REG. Restricting the Sale of Cigars and Flavored Tobacco Products, sec. (E) (2019).

Case law

No.

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** of tobacco ... including, but not limited to, any **taste or smell relating to menthol, mint, wintergreen ...**”

DULUTH, MINN., CODE § 11-11(c) (2019) (emphasis added).

All tobacco products?

Yes.

“The terms ‘tobacco’ and ‘tobacco related devices’ shall have the meanings given to them in Section 609.685 of the Minnesota Statutes and as the same may from time to time be amended, and 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).

Covers all retailers?

No.

“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 / Minneapolis

Flavor prohibited?

Yes.

“No person shall sell, offer for sale, give away, barter, exchange, or otherwise deal in flavored tobacco products or samples of such products.”

MINNEAPOLIS, MINN., CODE § 281.45(f) (2019).

Menthol prohibited?

Yes.

“*Flavored tobacco product* 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 ...**”

MINNEAPOLIS, MINN., CODE § 281.15 (2019) (emphasis added).

All tobacco products?

Yes.

“*Tobacco products* means tobacco, tobacco related devices, **electronic delivery devices**, or nicotine or lobelia delivery products as those terms are defined in this section.”

MINNEAPOLIS, MINN., CODE § 281.15 (2019) (emphasis added).

“Electronic delivery device includes, but is not limited to ... **e-cigarettes ...**”

Id. (emphasis added).

“Tobacco means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption ...”

Id.

Covers all retailers?

No.

“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.”

MINNEAPOLIS, MINN., CODE § 281.45(f) (2019) (emphasis added).

Case law

No.

Jurisdiction / Minnesota / Saint Paul

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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 lobelia delivery product that</p>	<p>No.</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><u>ST. PAUL, MINN., CODE § 324.07(h)(4) (2019) (emphasis added).</u></p>	<p>No.</p>

Jurisdiction / Minnesota / Saint Paul / *continued*

Flavor prohibited?

Menthol prohibited?

All tobacco products?

Covers all retailers?

Case law

contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen ... "

ST. PAUL, MINN., CODE §
324.03(3) (2019) (emphasis
added).

Jurisdiction / Montana / Missoula

Flavor prohibited?

Yes.

“It is unlawful for any Tobacco Retailer, licensed under MCA § 16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute a Flavored Tobacco Product or a Tobacco Product Flavor Enhancer that is or can be used in or with an Electronic Smoking Device.”

MISSOULA MUN. CODE § 8.38.050 (2020).

Menthol prohibited?

Yes.

“‘Flavored Tobacco Product’ means a tobacco product that imparts a taste or smell other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but is not limited to, the taste or smell of menthol, mint, wintergreen ...”

MISSOULA MUN. CODE § 8.38.030(B) (2020).

All tobacco products?

No.

Only covers “electronic smoking devices” or products that can be used in electronic smoking devices.

MISSOULA MUN. CODE § 8.38.050 (2020).

Covers all retailers?

Yes.

Case law

No.

Jurisdiction / New Jersey / effective April 2020

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“No retailer, either directly or indirectly by an agent or employee, or by a vending machine owned by the retailer or located in the retailer’s establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person any vapor product that has a characterizing flavor.”</p> <p><u>N.J. REV. STAT. § 2A:170-51.12(1)(a) (2020).</u></p>	<p>Yes.</p> <p>“‘Characterizing flavor’ means a distinguishable flavor , taste, or aroma other than tobacco, including, but not limited to, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, mint, menthol, wintergreen, or spice flavoring, that is imparted, prior to or during consumption, by a vapor product, including any smoke or vapor emanating from that product.”</p> <p><u>N.J. REV. STAT. § 2A:170-51.12(2)(e) (2020).</u></p>	<p>No.</p> <p>Only covers “vapor products,” meaning “any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.”</p> <p><u>N.J. REV. STAT. § 2A:170-51.12(2)(e) (2020).</u>*</p> <p>* Prior to the passage of the Family Smoking Prevention and Tobacco Control Act, which bans flavored cigarettes other than menthol, New Jersey had taken similar action with an additional exception of clove flavors. See <u>N.J. REV. STAT. § 2A:170-51.6 (2020).</u></p>	<p>Yes.</p>	

Jurisdiction / New Jersey / Jersey City

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>Yes.</p>	<p>No.</p>

Jurisdiction / New York / effective May 2020

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“No vapor products dealer, or any agent or employee of a vapor products dealer, shall sell or offer for sale at retail in the state any flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine.”</p> <p><u>N.Y. U.C.C. LAW § 1399-MM-1(2) (2020).</u></p>	<p>Yes.</p> <p>“‘[F]lavored’ shall mean any vapor product intended or reasonably expected to be used with or for the consumption of nicotine, with a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of such product or a component part thereof, including but not limited to tastes or aromas relating to ... mint, wintergreen, menthol ...”</p> <p><u>N.Y. U.C.C. LAW § 1399-MM-1(1) (2020).</u></p>	<p>No.</p> <p>Only covers “vapor products,” which means “any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured into a finished product for use in an electronic cigarette, including any device that contains such noncombustible liquid or gel. ...”</p> <p><u>N.Y. U.C.C. LAW § 1399-AA(17) (2020).</u></p>	<p>Yes.</p> <p>“‘Vapor products dealer’ means a person licensed by the commissioner of taxation and finance to sell vapor products in this state.”</p> <p><u>N.Y. U.C.C. LAW § 1399-AA(18) (2020).</u></p>	

Jurisdiction / New York / New York

Flavor prohibited?

Yes.

“(a)(1) 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. ... (b) (1) 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 electronic cigarette or flavored e-liquid.”

N.Y.C., N.Y., ADMIN. CODE § 17-715 (2020).

Menthol prohibited?

Yes.

“The term ‘characterizing 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, electronic cigarette or e-liquid, including ... menthol, mint, wintergreen ...”

N.Y.C., N.Y., ADMIN. CODE § 17-713 (2020).

All tobacco products?

No.

“Flavored electronic cigarette. The term ‘flavored electronic cigarette’ means any electronic cigarette that imparts a characterizing flavor. ...

“Flavored e-liquid. The term ‘flavored e-liquid’ means any e-liquid that imparts a characterizing flavor”

... ‘Flavored Tobacco Product. The term ‘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

Covers all retailers?

No.

“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) (2020) (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) (2020) (emphasis added).

Case law

Yes.

Manufacturers and distributors preemption challenge failed. U.S. Smokeless Tobacco Mfg. Co. LLC v. City of N.Y., 708 F.3d 428, 430 (2d Cir. 2013).

Jurisdiction / New York / New York / *continued*

Flavor prohibited?

Menthol prohibited?

All tobacco products?

Covers all retailers?

Case law

include cigarettes, electronic
cigarettes or e-liquid ...”

N.Y.C., N.Y., ADMIN. CODE § 17-
713 (2020) (emphasis added).

Jurisdiction / New York / Yonkers

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all 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>No.</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>Yes.</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?

Yes.

“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.”

PHILADELPHIA, PA. CODE § 9-638(2) (2019).

Menthol prohibited?

Yes.

Characterizing flavor includes “menthol, mint, wintergreen.”

PHILADELPHIA, PA. CODE § 9-638(2) (2019).

All tobacco products?

No.

Only covers flavored electronic smoking devices, cigars, or roll-your-own tobacco.

PHILADELPHIA, PA. CODE §§ 9-638(2) & 9-639(2) (2020).

Covers all retailers?

No.

Exception for “Adults-Only Establishments” for electronic smoking devices.

PHILADELPHIA, PA. CODE § 9-638(2) (2020).

For cigars and roll-your-own tobacco, exception for “Tobacco Products Distribution Business,” defined as “An establishment that prohibits minors from entering; provides neither food nor beverage to customers; and derives ninety percent (90%) or more of gross sales on an annual basis from Tobacco Products and accessories used in the consumption of Tobacco Products, including from sales via the internet which are delivered only upon verification of identity and age.”

PHILADELPHIA, PA. CODE §§ 9-639(1) & (3) (2020).

Case law

Yes.

Challenge based on state preemption, due process, vagueness grounds. Preliminary injunction granted against city in Nov. 2020 on state preemption grounds. Cigar Assn. of America v. City of Philadelphia, No. 2:20-cv-03220 (E.D. PA, Nov. 13, 2020).

Jurisdiction / Rhode Island / *implemented through executive action, effective March 2020*

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“The sale, or offer for sale of, or the possession with intent to sell or to offer for sale, flavored electronic nicotine-delivery system products to consumers within the State of Rhode Island is hereby prohibited.”</p> <p><u>R.I. CODE OF REGS., Licensing of Electronic Nicotine-Delivery System Distributors and Dealers, 216-RICR-50-15-6, 6.10(A) (Active Rule as of 8-11-20).</u></p>	<p>Yes.</p> <p>“Characterizing flavor’ means a distinguishable taste or aroma imparted either prior to, or during, consumption of an electronic nicotine-delivery system product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, mint, menthol, wintergreen, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice.”</p> <p><u>R.I. CODE OF REGS., Licensing of Electronic Nicotine-Delivery System Distributors and Dealers, 216-RICR-50-15-6, 6.3(A)(2) (Active Rule as of 8-11-20).</u></p>	<p>No.</p> <p>Only “flavored electronic nicotine-delivery system[s].”</p> <p><u>R.I. CODE OF REGS., Licensing of Electronic Nicotine-Delivery System Distributors and Dealers, 216-RICR-50-15-6, 6.10(A) (Active Rule as of 8-11-20).</u></p>	<p>Yes.</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).

All tobacco products?

No. (Note that conventional cigarettes are 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).

Covers all retailers?

No.

“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 / Utah

Flavor prohibited?	Menthol prohibited?	All tobacco products?	Covers all retailers?	Case law
<p>Yes.</p> <p>“It is unlawful for a tobacco retailer that is not a retail tobacco specialty business to give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any person.”</p> <p><u>UTAH CODE § 76-10-113(1) (2020).</u></p>	<p>No.</p> <p>“‘Flavored electronic cigarette product’ does not include an electronic cigarette product that: (i) has a taste or smell of only tobacco, mint, or menthol; ...”</p> <p><u>UTAH CODE § 76-10-101(7)(c) (2020).</u></p>	<p>No.</p> <p>Only covers “electronic cigarette products” which means “an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.”</p> <p><u>UTAH CODE § 76-10-101(5) (2020).</u></p>	<p>No.</p> <p>Excludes “retail tobacco specialty business.” <u>UTAH CODE § 26-62-102 (2020)</u> (citing § 10-8-41.6 as it relates to a municipality and § 17-50-333 as it relates to a county).</p>	

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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 Note that in California, the county ordinances apply only in the unincorporated parts of the county.
- 2 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.