



OREGON PUBLIC HEALTH DIVISION
Director's Office

Kate Brown, Governor

Oregon
Health
Authority

800 NE Oregon Street, Suite 930

Portland, OR 97232

Voice: (971) 673-1222

Fax: (971) 673-1229

Date November 12, 2019

TO: Multnomah County Commission

FROM: Karen Girard, MPA
Health Promotion and Chronic Disease Prevention Section Manager
Public Health Division
Oregon Health Authority

SUBJECT: Restricting the Sale of Flavored Tobacco and Nicotine Products

Thank you for considering a flavor ban of all tobacco products and vaping products in the County. Flavor bans are effective to reduce youth use of tobacco products.

This testimony is to provide you with information about ramifications of exceptions to tobacco control policies.

Our state and Multnomah County are at an unprecedented moment for public health. Youth vaping represents one of the most widespread threats to public health in a generation. Never before has our society faced such an increase in substance use among children. The National Institutes of Health noted that the doubling of e-cigarette use among high school seniors from 11% in 2017 to 21% in 2018 is the largest increase ever recorded of any substance in the 43-year history of their Monitoring the Future Survey.¹

There is a clear rationale for uncompromising policies that shield our youth from the tobacco industry, without one of our communities being left more exposed to industry influence than another. History has shown that the tobacco industry works hard to exploit any potential loopholes in tobacco control policies. These exceptions are costly not only to public health, but also to cities which expend significant resources to implement these complex laws.

The tobacco industry will argue that kids do not have access to these products if they are sold in age-restricted stores. We know that this is not correct. Despite the implementation of a Tobacco 21 law in Oregon in 2018, rates youth vaping skyrocketed in the last year with vaping rates among 11th graders increasing 80% between 2017 and 2019.² In fact, studies have shown that it's easier for underage buyers to purchase e-cigarettes illegally from vape shops than from other types of retailers.^{3 4} These data underscore the need for complementary, comprehensive tobacco control laws to effectively reduce use and help users quit.

In addition, pushing flavored tobacco sales to stores that are restricted to those 21 and over may serve to increase the density of liquor stores and tobacco shops in communities that are already saturated with these types of retailers, further contributing to serious health disparities.

Experiences in other jurisdictions show the ramifications of exemptions:

1. In Minneapolis, an exemption allowing only age-restricted tobacco-only stores to sell flavored products and liquor stores to sell menthol, mint and wintergreen products caused several convenience stores either to convert their stores to tobacco-only stores or create tobacco-only stores inside their stores and gas stations. This doubled the number of tobacco-only retailers in the city. In addition, the exemption spurred land-use, rezoning and business applications and caused a spike in tobacco-only license applications forcing the city to put a one-year moratorium on the establishment of new tobacco-only retailers.^{5 6}
2. In Duluth, a flavor ban exemption also led to an increase in “smoke shops” inside other types of retailers with one retailer calling the move “a no-brainer.”⁷
3. In Chicago, exemptions for certain retailers located further from schools forced the city to delay implementation due to litigation and administrative burden associated with a complex policy. For example, unexpected protracted rulemaking process and lawsuits from retailers delayed implementation. As a result, a law that was supposed to be implemented in 2014 was pushed to 2016.⁸
4. In communication with the Public Health Law Center which provides legal and policy support to states, cities and counties on tobacco control, we have been cautioned exceptions such as exemption 21+ retailers from flavor bans may do the following:
 - Spark confusion in the retail community
 - Create concerns over fairness in the retail market
 - Create problems for enforcement entities
 - Increase litigation due to unfairness of the exemption
 - Move states/cities/counties to reconsider or rework policies to remove exemptions
 - Increase costs for implementation and administration of the law
 - Cause further health disparities such as in St. Paul where, like in Minneapolis, liquor stores are exempt from a menthol ban, thus consolidating menthol tobacco product and liquor sales.

Here in Oregon OHA has experienced the administrative burden of exemptions to tobacco policies. The exemption to the Indoor Clean Air Act, which allows for smoking indoors in “certified smoke shops,” has been costly to implement, to the detriment of tobacco prevention. There are currently 23 certified smoke shops which were granted exemptions when the ICAA was strengthened in 2007. Smoking is allowed indoors in these shops.

To illustrate the cost of the exemption for these 23 shops: during the course of a biennium, the OHA uses tobacco prevention funds to process re-certifications, relocations, transfers of ownership, required annual financial documentation and all documentation associated with required annual site visits. OHA provides technical assistance to smoke shop owners for applications and processes civil penalties for these businesses. In addition, OHA provides technical assistance to local public health agencies on this exemption.

Tobacco prevention funds are intended for tobacco prevention. However, they are being used to cover administrative costs associated with the smoke shop exemption. OHA estimates these costs to be more than \$100,000 per biennium, since 2007, due to extensive legal fees and significant staff time dedicated to these processes.

Combined with other tobacco control policies, flavor bans are effective in reducing the availability of these products to youth. A full flavor ban, without exceptions, is the most effective for public health, fairest to retailers and least burdensome and costly to county taxpayers to implement.

Multnomah County is often a leader in protecting the public's health in our state. The entire state benefits from the path Multnomah County's leadership provides in developing sound policy.

¹ Johnston, L. D., Miech, R. A., O'Malley, P. M., Bachman, J. G., Schulenberg, J. E., & Patrick, M. E. (2019). Monitoring the Future national survey results on drug use 1975-2018: Overview, key findings on adolescent drug use. Ann Arbor: Institute for Social Research, University of Michigan.

² Oregon Health Authority. Oregon Healthy Teens, 2017-2019.

³ Roeseler, April. (2019, June 24). Assessment of Underage Sales Violations in Tobacco Stores and Vape Shops. Available at: <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2735684>

⁴ Food and Drug Administration. (2019, March). Modifications to Compliance Policy for Certain Deemed Tobacco Products. Guidance for Industry. Draft Guidance. Available at: <https://www.fda.gov/media/121384/download>

⁵ Minneapolis Community Planning and Economic Development. Tobacco Density Study, 2019. Available at: <https://lms.minneapolismn.gov/Download/File/2550/Tobacco%20Density%20Study%20updated.pdf>

⁶ Otarola, Miguel. (2019, April 11). Tobacco shops in Minneapolis doubled after menthol restrictions enacted, report finds. *Star Tribune*. Available at: <http://www.startribune.com/tobacco-shops-in-minneapolis-doubled-after-menthol-restrictions-enacted-report-finds/508444272/?refresh=true>

⁷ Slater, Bradley. (2019, March 19). Duluth businesses circumvent flavored tobacco ban. *Duluth News Tribune*. Available at: <https://www.duluthnewstribune.com/news/4587043-duluth-businesses-circumvent-flavored-tobacco-ban>

⁸ Tobacco Control Legal Consortium. Chicago's Regulation of Menthol Flavored Tobacco Products: A Case Study (2016). Available at: <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-Chicago-Regulation-of-Menthol-Case-Study-Update-2016.pdf>