

FILE NO.

## **LEGISLATIVE DIGEST**

[Health Code - Banning the Sale of Flavored Tobacco Products]

### **Ordinance amending the Health Code to prohibit tobacco retailers from selling flavored tobacco products, including menthol cigarettes**

#### Existing Law

Federal law bans the manufacture of cigarettes with characterizing flavors, other than the flavor of menthol and tobacco. Federal law does not ban the manufacture of menthol cigarettes or flavored tobacco products other than cigarettes.

#### Amendments to Current Law

The proposed ordinance amends the Health Code to prohibit local tobacco retailers from selling flavored tobacco products. The tobacco products that would be subject to the prohibition on sale would include, but not be limited to, flavored cigarettes, including menthol cigarettes, flavored cigars, flavored smokeless tobacco, flavored shisha, and flavored nicotine solutions that are used in electronic cigarettes.

The ordinance defines a flavored tobacco product as a tobacco product that contains a constituent that imparts a characterizing flavor. The ordinance would create a presumption that a tobacco product is flavored if the tobacco manufacturer makes a statement or claim that the product has a characterizing flavor. For example, if the packaging in which a tobacco product is sold is printed with the word “grape” or with an image of grapes, the tobacco product would be presumed to be flavored, and subject to the restriction on sale.

Violation of the ordinance would be punishable by a suspension of the retailer’s tobacco license.

#### Background Information

Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders. The financial cost of tobacco use in San Francisco alone amounts to \$380 million per year in direct health care expenses and lost productivity.

Although federal law prohibits the manufacture of flavored cigarettes, it does not ban menthol cigarettes or other types of flavored tobacco products, which are widely available in flavors like bubble gum, cotton candy, banana, cherry and vanilla. Each day, about 2,500 children in

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the United States try their first cigarette, and another 400 children under 18 years of age become new regular, daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored.

Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. Menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Young people are much more likely to use menthol-, candy- and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah tobacco, than adults.

Much as young people disproportionately use flavored tobacco products including menthol cigarettes, the same can be said of certain minority groups. In one survey, the percentage of people who smoke cigarettes that reported smoking menthol cigarettes in the prior month included, most dramatically, 82.6% of Blacks or African-Americans who smoke cigarettes. The statistics for other groups were: 53.2% of Native Hawaiians or Other Pacific Islanders who smoke cigarettes; 36.9% of individuals with multiracial backgrounds who smoke cigarettes; 32.3% of Hispanics or Latinos who smoke cigarettes; 31.2% of Asians who smoke cigarettes; 24.8% of American Indians or Alaska Natives who smoke cigarettes; and 23.8% of Whites or Caucasians who smoke cigarettes. People who identify as LGBT and young adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use. The disproportionate use of menthol cigarettes among targeted groups, especially the extremely high use among African-Americans, is troubling because of the long-term adverse health impacts on those groups.

Between 2004 and 2014, overall smoking prevalence decreased, but use of menthol cigarettes increased among both young adults (ages 18-25) and other adults (ages 26+). These statistics are consistent with the finding that smoking menthol cigarettes reduces the likelihood of successfully quitting smoking. Scientific modeling has projected that a national ban on menthol cigarettes could save between 300,000 and 600,000 lives by 2050.

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