

February 26, 2018

Members, Ballot Simplification Committee  
Department of Elections  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 48  
San Francisco, CA 94102

VIA PDF E-MAIL

**Re: Comments on Draft Digest for “Prohibiting Tobacco Retailers from Selling Flavored Tobacco Products” Measure**

Dear Members of the Ballot Simplification Committee:

On behalf of Let’s Be Real San Francisco, the committee primarily formed to oppose the referendum on the ordinance titled “Ordinance amending the Health Code to prohibit tobacco retailers from selling flavored tobacco products, including menthol cigarettes,” we respectfully submit these comments and the attached redline of the Draft Digest that you will be considering at tomorrow’s meeting. The purpose of these comments is to further preparation of a fair and impartial Digest in simple language.

We believe certain changes to the Digest are warranted in order to increase clarity and more accurately describe the ordinance at issue. For example, in the first two paragraphs of the Digest, we propose adding language that more fully describes the current state of certain California and federal laws governing the sale of tobacco products. Specifically, it is important for the Digest to note that while state law prohibits the sale of all tobacco products, not just flavored tobacco products, to minors under 21, the ordinance at issue here would ban the sale of flavored tobacco products *to all adults*. In addition, we propose one edit to explain that federal law already bans flavored cigarettes (as indicated on page 1 of the ordinance’s Legislative Digest), and another edit to note that the ordinance is specifically targeted at flavored tobacco products, while leaving non-flavored tobacco products permissible for sale.

Furthermore, we request that the third paragraph of the Digest be modified to include shisha/hookah tobacco among the list of flavored tobacco products that would be prohibited under the ordinance. While we recognize that the Digest’s list of “tobacco products” is taken from the San Francisco Health Code, this list is not exhaustive, and the list’s omission of shisha/hookah tobacco deprives voters of a *full and fair picture* of the ordinance’s effects. The drafters of the ordinance certainly intended to ban flavored shisha/hookah tobacco, as evidenced by the broad language used to define “tobacco

products” and the ordinance’s mention of hookah tobacco in its “Findings” (see § 19Q.1(c) of the ordinance and pages 1 and 2 of the Legislative Digest).

Finally, we propose shortening the length of the fifth paragraph’s list of flavors and moving “menthol” to the first position in this list. Because menthol is the most common and well-known of the flavors that would be banned under this ordinance, it should not be buried among a laundry list of obscure and less commonly consumed flavors. Indeed, the Board of Supervisors highlighted the significance of menthol over all other flavors by mentioning the flavor *in the title of the ordinance itself* (i.e., “Ordinance amending the Health Code to prohibit tobacco retailers from selling flavored tobacco products, including menthol cigarettes”). Menthol’s status as the primary target of the ordinance is further evidenced by the prominent discussion of the flavor throughout the Legislative Digest, and noticeably absent from the Legislative Digest are similar analyses of the other flavors listed in the ordinance. Furthermore, shortening the length of the list of flavors will help simplify the Digest for the average voter seeking to quickly and accurately understand the issues presented by this referendum.

Thank you for your consideration of our proposed changes. We look forward to discussing these comments with you at tomorrow’s meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JA', with a long horizontal flourish extending to the right.

Joel Aurora  
Asst. Counsel & Asst. Treasurer  
Let’s Be Real San Francisco

Enclosure

## Prohibiting Tobacco Retailers from Selling Flavored Tobacco Products\*

Digest by the Ballot Simplification Committee

**Status:** Draft for Consideration  
**On:** Tuesday, February 27, 2018  
**Members:** Packard, Anderson, Patterson

**Deadline to Request Reconsideration:** TBD

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**The Way It Is Now:** State law prohibits the sale of any tobacco products, including flavored tobacco products, to people under 21. Federal law prohibits the sale of any flavored cigarette, except menthol.

In 2017, the Board of Supervisors adopted an Ordinance that would prohibit the sale of flavored tobacco products in San Francisco to adults. All non-flavored tobacco products would still be available for sale.

Tobacco products include cigarettes, electronic cigarettes, shisha/hookah tobacco, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.

A tobacco product can be flavored by adding tastes or smells including menthol, mint, wintergreen, fruit, spice, and other flavors. chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

A referendum was filed requiring that the Ordinance be submitted to the voters. The Ordinance will not go into effect unless a majority of voters vote in favor of it.

**The Proposal:** Proposition \_\_\_ is a Referendum to approve the Ordinance passed by the Board of Supervisors prohibiting the sale of flavored tobacco products in San Francisco.

**A "YES" Vote Means:** If you vote "yes," you want the Ordinance prohibiting the sale of flavored tobacco products in San Francisco to take effect.

**A "NO" Vote Means:** If you vote "no," you do not want the Ordinance prohibiting the sale of flavored tobacco products in San Francisco to take effect.

*\*Working title, for identification only. The Director of Elections determines the title of each local ballot measure; measure titles are not considered during Ballot Simplification Committee meetings.*