



## Flavored Tobacco Sales Ban FREQUENTLY ASKED QUESTIONS

The San Francisco Department of Public Health (“SFDPH”) began visiting tobacco retailers to educate the businesses about the flavored tobacco sales prohibition law. After visiting over 200 businesses, SFDPH prepared this FAQ that answers the most frequently asked questions. This FAQ is also available in Arabic, Spanish, Chinese, Tagalog, and Vietnamese on the Environmental Health website at <https://www.sfdph.org/dph/EH/Tobacco/default.asp>.

### San Francisco Health Code, Article 19Q – Prohibiting the Sale of Flavored Tobacco Products

#### 1. What is the new law on flavored tobacco products?

On July 7, 2017, the City and County of San Francisco (“the City”) approved Article 19Q of the San Francisco Health Code (SFHC 19Q) which prohibits all San Francisco retail establishments from the sale or distribution of any flavored tobacco product and flavored cigarettes including menthol cigarettes. The law was suspended before it went into effect because of the filing in the Department of Elections of the referendum petition that became Proposition E. San Francisco voters affirmed their support of the prohibition on the sale of flavored tobacco products by adopting Proposition E. Thereafter, the City convened the SFDPH and the Office of Economic Workforce Development to support the retailers through the transition of the prohibition on the sale of flavored tobacco products.

This law affects only retailers—not the use or possession of these products by individuals.

#### 2. When does the flavored tobacco products sales prohibition go into effect?

The law went into effect on July 21, 2018.

#### 3. When is the last day to sell flavored tobacco products?

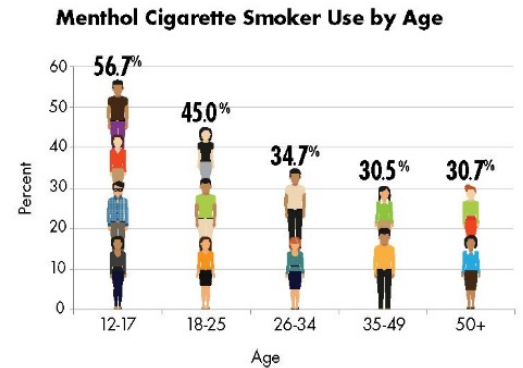
After July 20, 2018, the sale of flavored tobacco products became illegal in San Francisco. However, on July 20, 2018, the majority of San Francisco retail establishments had significant amounts of flavored tobacco products on their shelves. In order to avoid undue hardship to San Francisco businesses, SFDPH elected to defer taking any enforcement actions against retailers until it conducted at least one site visit (“compliance check”) at each retail location in the City. SFDPH will commence taking enforcement on January 1, 2019. **All flavored tobacco products sales must stop before January 1, 2019.**

#### 4. Which tobacco retailers can sell flavored tobacco products?

No retail establishment may sell flavored tobacco products within the City and County of San Francisco.

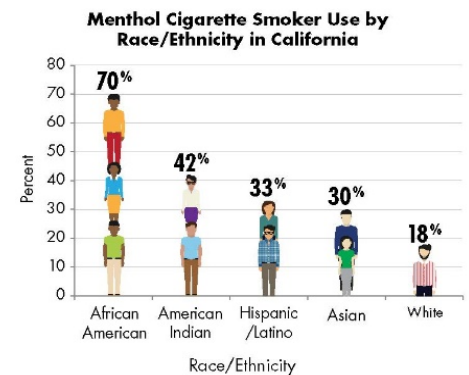
## 5. Why are flavored tobacco products, including flavored cigarettes, a public health concern?

The law represents an important step in reducing health disparities and smoking incidence rates in San Francisco since the tobacco industry has historically targeted sales of flavored products, especially menthol cigarettes, to youth and communities of color. Most youth who start using tobacco products (including cigarettes, little cigars, or e-cigarettes) start with a flavored product. Research shows that the flavors, particularly menthol, keep people using the product even if they desire to quit. This law was passed to limit youth and exposure to flavored tobacco products and to support quitting smoking to reduce the burden of the number one cause of death and disease in the country.



## 6. Why is the City prohibiting the sale of menthol flavored tobacco products?

The law is focused on reducing the health disparities we see in San Francisco smoking rates. Because the tobacco industry has historically targeted sales of flavored products such as menthol cigarettes to African-American, American Indian, Latino, LGBT and other communities, the result is a higher use of menthol cigarettes in these communities. The tobacco industry has long used attractive flavors, cheap prices, and bold packaging to target young people and has heavily advertised in communities of color. In 2009 the Federal Family Smoking Prevention and Tobacco Control Act outlawed cherry, vanilla, and alcohol flavored cigarettes but did NOT eliminate the production and sale of menthol cigarettes. This is due to the strong tobacco industry lobby to maintain menthol in their product. This San Francisco law corrects this injustice by eliminating the only remaining flavor of cigarettes- menthol- to protect our community.



## 7. How is “tobacco product” and “cigarette” defined in the law?

“Tobacco product” is defined in Article 19H, Section 19H.2 of the San Francisco Health Code (“SFHC”) as (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, or sniffed or ingested by any other means, including but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to person using the device, including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately.

“Cigarette” is defined in Title 15 of the U.S. Code Section 1332(1) as tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

## 8. Which tobacco products or cigarettes are flavored and not allowed to be sold in San Francisco?

All flavored tobacco products and cigarettes may not be sold by retail establishments in San Francisco, including flavored cigarettes, cigars, cigarillos/little cigars, cigar wraps, chewing tobacco, pipe tobacco, snuff, shisha, hookah tobacco, flavored nicotine products, and electronic devices when flavored nicotine or flavored tobacco are a component or packaged, sold, distributed with the device.

**9. What is a flavored tobacco product or cigarette?**

Any tobacco product or cigarette that contains an ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to the product during the processing, manufacture, or packing phase that imparts a characterizing flavor.

**10. What is a “characterizing flavor?”**

A “characterizing flavor” is a distinguishable taste or smell, other than the taste or smell of tobacco. Examples of characterizing flavors include but are not limited to:

Fruit or Sweet		Liquor	Mint or Menthol
Apple	Gummy Bear	Amaretto	Menthol
Berry	Pineapple	Bourbon	Frost
Blueberry	Honey	Rum	Peppermint
Cherry	Java	Cognac	Spearmint
Chocolate	Mango	Irish Cream	Cool Mint
Cinnamon	Peach	Moonshine	Mint
Cream	Spice	Peach Schnapps	Wintergreen
Dulce De Leche	Sour Apple	Pina Colada	Winterchill
Fruit Punch	Sweet Vanilla	Wine	
Grape (white or red)	Raspberry	Scotch	
Sweet Clove	Watermelon	Tequila	
		Whiskey	

**11. Can the City give the retailers more time to sell the flavored tobacco products that are currently on the shelf?**

No. The law does not provide a grace period for the retailer to sell flavored tobacco products after July 20, 2018. In order to assist San Francisco retailers to comply with the law, SFDPH will not take any enforcement action until January 1, 2019. **All flavored tobacco products sales must stop before January 1, 2019.**

**12. Why did it take the City so long to notify the retailers about the law?**

The law was suspended before it went into effect because of the filing in the Department of Elections of the referendum petition that became Proposition E. Under a qualified referendum, the law subject to the referendum does not go into effect until the voters decide whether to adopt it. Therefore, the City had to wait until the June 5, 2018 election results were declared. Once San Francisco voters affirmed their support of the ban against flavored tobacco products sales by adopting Proposition E, the ban went into effect on July 21, 2018. Thereafter, the City convened the SFDPH and the Office of Economic Workforce Development to support the retailers through the transition to implementation of the full ban against sales of flavored tobacco products in San Francisco.

**13. Will the City mail an official notice about the last day to sell flavored tobacco products?**

SFDPH has provided official notification about the flavored tobacco products ban to retail tobacco permit holders through the following methods:

- Fact sheet poster mailer.
- Educational site visits by volunteers to hand deliver the mailers and to provide information about the law.
- Compliance checks by SFDPH staff. Moreover, during the compliance checks, SFDPH staff will leave a Compliance Notification at all establishments that have flavored tobacco products.
- Emails sent to tobacco permit holders if business registered their email under their Business Registration with the City.

## Enforcement & Penalties for Selling Flavored Tobacco Products on or after January 1, 2019

### 14. When will SFPDPH begin enforcement?

SFPDPH will take enforcement action against any San Francisco retailer that continues to sell flavored tobacco products on or after January 1, 2019.

### 15. If SFPDPH does not begin enforcement until on or after January 1, 2019, why conduct compliance checks in November 2018?

As a courtesy and to assist the retailers, SFPDPH will visit all tobacco retailers that are selling flavored tobacco products. The purpose of the visit is to:

- Ensure that each retailer is aware that enforcement will begin on or after January 1, 2019;
- Understand how the retailer plans to comply with the law; and
- Issue a Compliance Notification with a self-verification procedure in order to document that all flavored tobacco sales have stopped at the establishment.

### 16. What happens at a compliance check?

At a compliance check, SFPDPH field staff will introduce themselves, speak to the person-in-charge, verify that flavored tobacco products are present at the establishment, issue a Compliance Notification Letter when flavored tobacco products are present, learn how the business plans to comply with SFHC Article 19.Q, and issue required procedures for the business to report to SFPDPH, Environmental Health, that all flavored tobacco products are no longer sold or displayed at their retail store.



**[Note: All San Francisco businesses are required to have one person-in-charge during normal business operating hours.]**

### 17. What are the penalties if SFPDPH finds a retailer selling flavored tobacco products on or after January 1, 2019?

SFPDPH will pursue the suspension of the tobacco permit for establishments that sell flavored tobacco products on or after January 1, 2019.

### 18. How long is the tobacco suspension period?

The SF Health Code, Sections 19H.14-2 and 19H.19 allow SFPDPH to suspend the tobacco permit for:

- Up to 90 days for the first violation;
- Up to 180 days for the second violation within 1 year of the first violation;
- Up to 365 days for the third and subsequent violation within 1 year of the second violation.

### 19. Will SFPDPH issue a citation and monetary fines instead of a tobacco permit suspension?

No. SFPDPH does not issue citations (also known as tickets) to retail business owners. The law focuses on the point of sales, therefore SFPDPH will pursue only suspension of the retail tobacco permit. Additionally, this law does not focus on the general public possessing flavored tobacco products. Citations/tickets will not be issued to anyone from the general public using flavored tobacco products.

## 20. In order to avoid the suspension of the tobacco permit, what should I do with the current inventory?

The City recommends that all San Francisco retailers take the following steps:

- a. Contact your vendor or supplier to determine which tobacco products are without any flavors, sweeteners, menthol, or mints.
- b. Stop ordering and restocking flavored tobacco products.
- c. Replace flavored tobacco products with tobacco products without any flavors, sweeteners, menthol, or mints.
- d. Secure and dispose of any remaining or unsold flavored tobacco products before January 1, 2019.

## Approved Tobacco Products Permitted for Retail Sale in San Francisco and Disposal of Flavored Tobacco

### 21. What type of tobacco products may I sell in my retail establishment?

With the SFPDH tobacco permit and the California Tobacco Products and Cigarette Sales License you may sell the following types of tobacco products and cigarettes:

- Tobacco only products
- Tobacco flavored hookah
- Tobacco products labelled “unflavored”
- Tobacco products labelled “unsweetened”
- Tobacco products manufactured without any additive flavors or sweetness
- Electronic smoking devices and components
- Electronic smoking devices with tobacco only flavored juices
- Flavored juices without nicotine
- Flavored juices labelled “0 nicotine”
- Accessories like matches, paper wrappers, ash trays/receptacles, lighters, charcoals, tongs

### 22. How do you determine which tobacco products are flavored and prohibited from selling in San Francisco?

The City recommends the following to determine whether a tobacco product may be sold in San Francisco:

- a. Work with your vendor or supplier.
- b. Read the label. Does it state “unflavored”, “no flavors”, “unsweetened”, or “not sweet”?
- c. Read websites, advertisements, and customer comments about the tobacco product.
- d. Smell the product.
- e. When in doubt, refuse to sell the product.

Most tobacco products are described on the Internet. For example, a brand of “tropical fusion” cigarillos is described as “enhanced with delicious tropical flavors.” If you remain unsure about a product, refuse to sell the product until you receive a letter from the manufacturer on business letter head that clearly states the tobacco product is not sweetened, flavored, or processed to have a characterizing flavor.

### 23. Will the City develop a list of flavored tobacco products that may not be sold in San Francisco?

No. In 2014, the City of Chicago created a database of flavored tobacco products for their retailers that could not sell flavored tobacco products. To date, there are over 1,800 different products in the City of Chicago’s database. Tobacco Retailer should follow the steps outlined in Question #22 of this FAQ. Finally, when there is doubt about a product, retailers should refuse to sell the product until they receive a letter from the product manufacturer on business letter head that the product has no additives or flavors.

**24. If a product label does not say the tobacco product is flavored, or if the description is vague, such as “tropical fusion,” does that mean the retail establishment may sell the product?**

Maybe not. Some products do not list the flavor on the package, but are still flavored. Regardless of how a product is labeled, if the product has a distinguishing taste or smell other than tobacco (a “characterizing flavor”), the retail establishment may not sell or distribute the product.

**25. Did San Francisco prohibit the sales of all Swisher Sweets or Black & Mild products?**

No. San Francisco’s flavored tobacco law does not prohibit brands. Swisher Sweets and Black & Mild are brand names. Within each brand name, the retail owner or vendor must determine which products do not have additives that produce a characterizing taste or smell. For example, Swisher Sweets products that are labelled “unflavored”, “no flavors”, “unsweetened”, or “not sweet” may be sold by San Francisco permitted tobacco retailers. Black & Mild Regular may be sold by San Francisco permitted tobacco retailers.



**26. Can you sell flavored liquids separately from nicotine or tobacco flavored only liquids?**

Yes. Vape shops and other tobacco retailers may sell flavored liquids separately from tobacco flavored only liquids. Be aware that tobacco retailers are only allowed to sell manufacturer sealed liquid products to retail customers. The Federal Food and Drug Administration (“FDA”) does not allow retailers to mix liquids on site without first receiving FDA approval as a manufacturer. Additionally, electronic smoking devices with tobacco only flavors may be sold by San Francisco retailers.

**27. Will the City reimburse retailers for any unsold flavored tobacco products?**

No. The City will not reimburse any retailers for any unsold flavored tobacco products. For this reason, in August 2018, the City advised all San Francisco permitted tobacco retailers to stop ordering and restocking flavored tobacco products.

**28. If unsold flavored tobacco products are disposed of as solid waste, can a retailer recover the Department of Public Works Cigarette Litter Abatement fee?**

No. The San Francisco Administrative Code, Chapter 105, the Cigarette Litter Abatement Fee Ordinance – requires that consumers pay a fee for every pack of cigarettes purchased at a San Francisco retail establishment. If a retailer chooses to dispose of packs of cigarettes as solid waste, there is no fee that will be collected from the consumer. The retail establishment is only required to self-report to the San Francisco Treasurer and Tax Collector’s Office (“SFTTX”) the number of cigarette packs sold during the quarter which should not include the number of packs disposed of as solid waste.

## Flavored Tobacco Products Sales Online, In Other Cities or Counties, and Distributors or Wholesalers

**29. Can Customers purchase flavored tobacco products online? Why?**

Yes. Online retail sales of flavored tobacco products are not under the authority of local jurisdictions. Online retailers must comply with federal and state laws and regulations regarding the distribution, shipping, and handling of tobacco products. Moreover, the City’s flavored tobacco law only applies to retail establishments with the SFDPH tobacco permit.

**30. Can Customers purchase flavored tobacco products in other Cities or Counties outside of San Francisco?**

Maybe. Although the State of California does not prohibit the sales of flavored tobacco products, as of June 2018, 19 cities or counties have passed laws similar to the City's flavored tobacco products sales prohibition. Customers may travel and purchase flavored tobacco products within jurisdictions that allow the sales of flavored tobacco products. Appendix A provides the June 2018 American Lung Association Center for Tobacco Policy and Organizing *Matrix of Local Ordinances Restricting the Sale of Flavored Tobacco Products*.

**31. Can a San Francisco retail establishment sell flavored tobacco products to customers that do not live in San Francisco?**

Maybe. A retail establishment that is also licensed by the California Department of Taxes and Fees Administration ("CDTFA") as a distributor may sell flavored tobacco products to any customer on their distribution list. The retail establishment must comply with all the distributor licensing, tobacco product shipping restrictions, and record keeping requirements. For more information about becoming a distributor, the business owner must contact the State of California Department of Taxes and Fees Administration.

**32. Can a retail customer purchase flavored tobacco products from Wholesalers or Distributors located in San Francisco?**

No. The Wholesaler or Distributors may not sell tobacco products to retail customers without first obtaining and maintaining a valid tobacco permit from SFDPH and a valid CDTFA Tobacco Products and Cigarette License. Once the Wholesaler or Distributor has a valid SFDPH permit, the Wholesaler or Distributor is subject to all San Francisco laws relating to the sales and distribution of tobacco products to retail customers, including the flavored tobacco retail sales prohibition.

**33. What other jurisdictions have passed ordinances restricting the sale of flavored tobacco products?**

Center for Tobacco Policy and Organizing (<https://center4tobaccopolicy.org>) has created a [matrix of jurisdictions in California that have laws about flavored tobacco](#).