



MEMORANDUM

TO: Robyn Stewart, Acting City Manager
Ethan Barnhardt, Management Assistant/Special Projects Coordinator

FROM: Sam Roberts, City of Worthington Public Policy Intern

DATE: May 11, 2023

SUBJECT: Flavored Tobacco Ban

Background

The sale and consumption of flavored tobacco products in the U.S. is considered a major health crisis that particularly effects youth and African American populations. These products include vaporable nicotine solutions that are sold in thousands of flavors that appeal to young people, and menthol cigarettes that have historically targeted certain populations in their marketing. Tobacco use remains the leading cause of preventable death in the U.S. and between 2011-2015, the Centers for Disease Control and Prevention (CDC) estimated an 800% increase in e-cigarette use among middle and high school students.¹ Of the two million U.S. students estimated to be consuming flavored cigarettes in 2021, 8/10 of those students were smoking flavored products.¹

Of all U.S. African American smokers, 85% of them smoke menthol.² Menthol tobacco products have historically targeted certain minority populations and lead to issues of social equity and health. While some historians note that it is somewhat of a mystery as to how exactly menthol cigarettes became so heavily targeted towards these populations in their advertising, in terms of whether targeted advertising efforts were made before or after consumer trends in African Americans, the facts are that menthol cigarette marketing is significantly more prevalent in predominantly African American neighborhoods and media. This can be seen in the form of proportionally higher rates of exterior advertisements and price discounts for menthol cigarettes at retailers in these communities, and with African American media sources like Ebony and Jet

¹ Columbus, OH., AMENDED ORDINANCES, Ch. 715 (2022)

² Biddle, M. The historical 'messy, moral dilemma' of marketing menthol cigarettes to black communities.
<https://why.org/articles/fda-menthol-ban-history-marketing-menthol-cigarettes-black-communities/>

magazine running only menthol brand advertisements instead of other non-menthol brands and flavors.

The inclusion of menthol products in a flavored tobacco ban would help address these issues of social equity by reducing the consumption and exposure of these products. It is projected that menthol bans would lead to reductions in overall smoking in African Americans by ~35% by 2026, and ~25% by 2060.³ Social justice and health organizations have already fought and called for the ban of menthol cigarettes to address issues of social equity surrounding affected populations, and the proposed ban would not target individuals, only retailers.

In 2022 the FDA proposed bans on flavored cigar and menthol cigarette products, marking a major win for public and societal health. Other states and municipalities have been implementing their own bans on flavored tobacco products. The City of Columbus voted to institute its own ban starting January 1st, 2024. This policy is aimed at reducing the harm to city residents created by flavored tobacco products and address social equity concerns as the City of Columbus considers racism to be a public health crisis. While smoking rates among African Americans has declined overall, Columbus Public Health recorded an 8% increase in smoking rates among African American residents in Franklin County.

In 2019 it was estimated that ~29% of Ohio high schoolers and ~12% of middle schoolers reported to using an e-cigarette tobacco product.⁴ Last year in 2022, smoking illnesses cost Ohio Medicaid \$1.8 billion dollars, pointing to some of the fiscal implications of enacting a ban.⁵ California as a state has similarly banned flavored tobacco products and while they are projected to see losses in tobacco product and cigarette tax revenues, these losses are offset by savings in state MediCal activity and increases in economic activity.⁶

In February, the United States Supreme Court declined to hear a case challenging a ban on flavored tobacco products in Los Angeles County.⁷ Similarly, in January Governor DeWine vetoed a bill proposed by the Republican-led state legislature that called for a ban on communities' ability to ban flavored tobacco products, demonstrating his own stance on the issue. DeWine called vaping among young Ohioans an epidemic with long-term consequences, and called for a State-wide ban, but stopped short of demanding one. Columbus is the third city in Ohio to institute its own ban, following the cities of Toledo and Bexley. Other central Ohio cities are following suit, with the

³ Issabakhsh, M., Meza, R., Li, Y., Yuan, Z., Sanchez-Romero, L. M., & Levy, D. T. (2022, June 13). *Public health impact of a US menthol cigarette ban on the non-Hispanic black population: A simulation study*. Tobacco Control. <https://tobaccocontrol.bmj.com/content/early/2022/06/12/tobaccocontrol-2022-057298>

⁴ Tobacco Use Among Youth in Ohio, 2019. ohio.gov. <https://odh.ohio.gov/know-our-programs/youth-risk-behavior-survey/high-school-data/2019-yrbs-survey-summary>

⁵ The Statehouse News Bureau | By Karen Kasler. DeWine vetoes Bill Banning Ohio communities from banning flavored tobacco. statenews.org. <https://www.statenews.org/government-politics/2023-01-05/dewine-vetoes-bill-banning-ohio-communities-from-banning-flavored-tobacco>

⁶ Tobacconomics. Potential effects of a ban on the sale of flavored ... <https://www.tobacconomics.org/files/research/671/ca-flavor-ban-and-revenues-27-feb-2022.pdf>

⁷ Fritze, J. Supreme Court declines challenge to flavored tobacco ban, leaving prohibition in place. USA Today. <https://www.usatoday.com/story/news/politics/2023/02/27/supreme-court-flavored-tobacco-ban/11354548002/>

cities of Grandview Heights and Westerville working to discuss potential legislation at future council meetings.⁸

Like the recent Tobacco 21 legislation, this policy aims to prohibit the sale and distribution of products and not target the individual consumer. This legislation does not include a ban on hookah bars or their associated flavored tobacco products so long as the retailers are compliant with state and local laws and licensing and the customers purchase and consume any tobacco products on site. The Columbus Board of Health was tasked with promulgating the rules and regulations relating to the ban.

Flavored Tobacco Ban – City of Columbus

- On December 5th, 2022, the City Council of Columbus voted unanimously to enact the ban starting January 1st, 2024.
 - Columbus Public Health held a period of ongoing public feedback regarding the ban from November to December.
 - The start date of 1/1/2024 is to allow time for affected retailers to transition their stock and mitigate the impending economic effects from sales prohibitions.
 - In addition to the ban, the council announced \$1 million to go to a smoking cessation education and awareness program.
 - “The 2023 Comprehensive Tobacco Cessation Education and Awareness Campaign would provide access to resources and programs through community events, youth education, and training for medical professionals”.⁹
 - Additional funds will be invested into cessation programs for youth and targeted communities. This will include disseminating information to middle schools and high schools. Local community health organizations, low-cost health clinics, and other providers will be engaged to ensure they have sufficient information and materials.
- No Licensee, agent, employee, or representative shall do any of the following at a Retail Tobacco Establishment:¹⁰
 - Give, sell, or distribute tobacco products to anyone under the age of 21.
 - Give, sell, or distribute tobacco products to anyone under the age of 30 without checking for proof of age.
 - Give, sell, or distribute tobacco products while under a license suspension.
 - Give, sell, or distribute flavored tobacco products.
 - Give, sell, or distribute tobacco products out of a vending machine.

⁸ Landers, A. K.. As Columbus plans to ban flavored tobacco, where do other Central Ohio Cities Stand? <https://www.10tv.com/article/news/local/as-columbus-plans-ban-flavored-tobacco-where-do-other-central-ohio-cities-stand/530-8c75196d-20d1-40f3-b435-1a7eab019461>

⁹ City of Columbus - City Council and Community Partners Announce Proposal for \$1 Million Tobacco Cessation Effort. <https://www.columbus.gov/Templates/Detail.aspx?id=2147528329>

¹⁰ Columbus, OH., Columbus Public Health Codes, RESOLUTION No. 23-08, (2023)

- Columbus Public Health may conduct inspections, which may include underage buy attempts and/or Flavored Tobacco Product buy attempts for all Temporary and annual Retail Tobacco Establishments that have retail sales licenses.
- If Columbus Public Health observes a violation(s) at a Retail Tobacco Establishment with either an annual or temporary license, the following civil penalties shall be imposed, in addition to the sanctions specified in Section 248.03 of the Columbus Public Health Codes:
 - A fine of **\$1,000** for a first-time violation.
 - A fine of **\$5,000** for a second violation within two years of the first.
 - For a third and any subsequent violations within two years of the first violation:
 - A fine of **\$10,000** per violation and revocation of any existing Retail Tobacco Product Sales license and the imposition of a two-year period of ineligibility to obtain a new one.
- Civil penalties may be appealed to Columbus Public Health.

Products Included in Flavored Tobacco Ban Legislation

- **Electronic Smoking Device** refers to any device that can be used to deliver aerosolized or vaporized nicotine or other products to the user. Includes, but not limited to, electronic cigarettes, electronic hookahs, or vape pens.
- **Flavored Tobacco Product** refers to any tobacco product that imparts a taste or smell other than that of tobacco. Includes, but not limited to tastes like chocolate, vanilla, mint, or candy. It shall be assumed that a tobacco product is flavored if:
 - The product uses texts or images indicating that it imparts a taste or smell other than tobacco.
 - The product has a public statement or claim associated with it reporting that it imparts a taste or smell other than tobacco.
 - There are actions directed at the consumer indicating that the product imparts a taste or smell other than tobacco.
- **Flavored Shisha Tobacco Product** refers to any flavored tobacco product that is smoked out of a Hookah and can include Hookah tobacco, waterpipe tobacco, and maassel. These products are not included in the flavored tobacco ban when appropriately consumed.
 - **Hookah** refers to a type of waterpipe used to smoke flavored shisha tobacco products.
 - **Hookah Bar** refers to an establishment that derives revenue from the consumption of on-site flavored shisha tobacco products. Must be compliant with state and local laws and regulations.

Flavored Tobacco Bans in Ohio

- *City of Toledo*
 - Was the first city in Ohio to pass flavored tobacco related legislation.

- On December 10th, 2019, the City Council enacted a ban on the sale and distribution of flavored tobacco products from any business/retailer NOT designated as a “Retail Vapor Product Specialty Business”.¹¹
 - These are considered businesses that derive at least 60% of their gross receipts from e-cigarette and vapor product sales.
 - This bans many retailers from selling and distributing flavored tobacco products but does not ban those products in totality.
- Penalties for individuals/businesses that violate this policy:
 - First time offenders receive a misdemeanor of the fourth degree, subsequent offenses lead to a misdemeanor of the 3rd degree.
 - Minimum fines shall be fixed by the courts as follows:
 - Offenses from organizations:
 - First time offenses result in a \$250 fine.
 - Subsequent offenses result in a \$500 fine.
 - Offenses from individuals:
 - First time offenses result in a \$50 fine.
 - Subsequent offenses result in a \$100 fine.
- *City of Bexley*
 - Was the first city in Ohio to pass a flavored tobacco ban, which did not initially include menthol cigarettes.¹²
 - Amended ordinance #48 - 22 passed on March 7th, 2023, introducing chapter 837 to their codes. Purpose is to ensure that retailers comply with federal, state, and local tobacco control laws and standards to protect the public health. This resolution also removed section 636.16 of their codified ordinances, which related to the illegal distribution of tobacco products.
 - Amended ordinance #48 – 22 updated the definitions and penalties associated with the licensing and sale of tobacco products. These are similar to the promulgated rules and regulations made by CPH regarding their flavored tobacco ban.
 - “Flavored tobacco product” refers to any product imparting a smell or taste other than that of tobacco. Includes but is not limited to fruit, menthol, mint, etc.
 - Flavored Tobacco Product Sales Prohibition
 - “It shall be unlawful for a tobacco retailer ... to sell or offer for sale any flavored tobacco product.”
 - Penalties for violating this policy:
 - Any tobacco retailer found to have violated this ordinance shall be subjected to:
 - First time offence results in a fine of no less than \$1,000.
 - For a second violation within a 36-month period there is a fine of no less than \$2,500 and the retailer shall be prohibited from distributing their products for a minimum of 30 days.

¹¹ Toledo, OH., AMENDED ORDINANCES, Ch. 537, (2019)

¹² Bexley, OH., AMENDED ORDINANCE No. 48 – 22, Ch. 837, (2023)

- For a third violation within a 36-month period there is a fine of no less than \$5,000, revocation of their retail sales license, and a prohibition from distributing their products for a period of three years.

Implementation Discussion with City of Columbus Public Health – April 27th, 2023, at 12:30pm

In attendance from City of Worthington: *Acting City Manager Robyn Stewart, Management Assistant and Special Projects Coordinator Ethan Barnhardt, and Public Policy Intern Sam Roberts*

In attendance from CPH: *Assistant Health Commissioner for Public Affairs Edward Johnson, and Environmental Health Administrator Luke Jacobs*

- Columbus Public Health inspectors are already in place and will continue making routine inspections at Worthington retailers.
 - Would include a minimum of two visits and one “buy attempt” per year. Buy attempt would include a secret shopper visit where the retailer is prompted to sell to an underage person or sell a flavored tobacco product.
 - Penalties will not be “double-stacked” i.e., a retailer cannot be simultaneously charged for selling to an underage person and selling a flavored tobacco product.
- Columbus Public Health will be working with retailers over the next six months to help them transition by 1/1/2024.
 - Any concerns that retailers have can be directed to CPH.
 - Something that retailers should note is that Columbus has instituted some major tobacco related ban once every decade for the last 20+ years (indoor smoking ban, tobacco 21, now flavored tobacco). These policies are not novel to the city and haven’t driven all the business out of it.
- Licensing system is much stricter with its fines than was incorporated at the time Tobacco 21 was launched.
 - Previously fines started at \$500 and maxed out at \$1000 for subsequent violations.
 - A primary goal of this policy is to get compliance from tobacco retailers to ~90%. Compliance is currently around ~75% in Columbus.
 - Worthington is doing fine regarding its own compliance according to CPH.
 - According to CPH, compliance is 100% for 2023 year to date.
- There is an accompanying 2023 Smoking Cessation and Education Program.
 - Program has a particular minority focus and can coordinate to have informational resources distributed to Worthington via booths at community events, for example.
 - This is a potential avenue for addressing Worthington’s youth on this issue.
- There will be updated signage that will be required to be displayed by retailers.

- Signage updated to include the prohibition of selling electronic smoking devices.
- The intention would be for Worthington to adopt the regulations to maintain consistency in its language and definitions.

Affected Tobacco Retailers in Worthington

DUCHESS WORTHINGTON	7141	HIGH	WORTHINGTON	OH	43085
GURU WINES	2285	DUBLIN GRANVILLE	WORTHINGTON	OH	43085
HOUSE OF CIGAR	7099	HUNTLEY	COLUMBUS	OH	43229
KROGER #273	60	WORTHINGTON MALL	WORTHINGTON	OH	43085
WORTHINGTON MARATHON	911	HIGH	WORTHINGTON	OH	43085