



March 17, 2022

The Honorable Rob Nosse, Chair
Vice-Chair Christine Goodwin
Vice-Chair, Travis Nelson
House Committee on Behavioral Health and Health Care
900 Court St. NE, H-472,
Salem, Oregon 97301

From: Campaign for Tobacco-Free Kids

Re: Letter in Support of House Bill 3090 to End the Sale of Flavored Tobacco Products

Dear Chairman Nosse and Members of the House Committee on Behavioral Health and Health Care,

The Campaign for Tobacco-Free Kids & the Tobacco-Free Kids Action Fund are pleased to submit this letter in support of HB 3090 to reduce tobacco use, particularly among youth that will end all sales of flavored tobacco products including menthol. The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco and help smokers quit. It is encouraging to see legislators continue to take thoughtful, evidence-based steps to reduce the number of kids who start using tobacco and help tobacco users quit.

Tobacco use remains the number one preventable cause of premature death and disease in the nation, killing 480,000 Americans annually. **We stand with dozens of other national health organizations to urge you to end the sale of *all* flavored tobacco products including candy-flavored e-cigarettes, sweet-flavored cigarillos, and menthol cigarettes, and hookah products with no exemptions.**

Policies that end the sale of flavored tobacco products are gaining momentum both nationally and regionally. In fact, both Washington County and Multnomah County recently adopted policies. In Washington County, the tobacco companies collected signatures to force a referendum in an attempt to overturn the law. Voters were not swayed by Big Tobacco's malicious attempt to repeal this life-

saving policy. They were thoroughly defeated by a whopping 52 points (24% Yes/76% No) in the May 2022 primary election. The Multnomah County Board of Commissioners adopted the law in a unanimous vote in December of 2022.

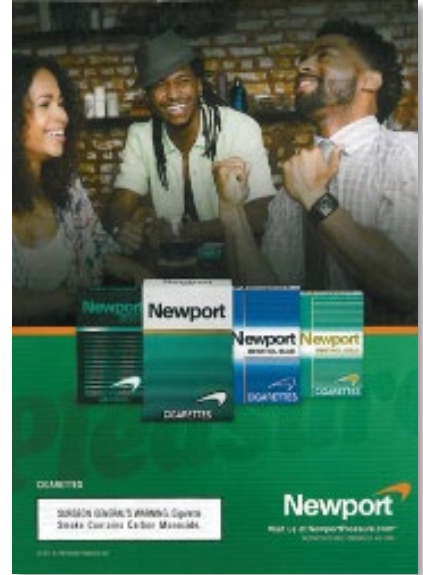
In Oregon, an estimated 5,500 adults die from smoking every year and there are 68,000 children under 18 who are alive now that will die prematurely from smoking. The costs of tobacco use in Oregon are staggering. The annual health care costs caused directly by smoking are \$1.79 billion every year. Oregon taxpayers pick up \$373 million in direct costs through Medicaid. The state and federal tax burden for smoking caused government expenditures is \$801 per household. Productivity loss due to smoking is \$3.7 billion each year.¹

Prohibiting the sale of all flavored tobacco products in all tobacco retailers is a critical step that will help protect children living in Multnomah County from the unrelenting efforts by the tobacco industry to hook them to a deadly addiction. Flavored tobacco products are designed to alter the taste and reduce the harshness of tobacco products, so they are more appealing and easy for beginners, who are almost always kids. These products are pervasive and are marketed and sold in a variety of kid-friendly flavors. With their colorful packaging and sweet flavors, flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets.

Menthol Cigarettes Increase Smoking Among Youth

No other flavored product contributes more to the death and disease caused by tobacco use than menthol cigarettes. We applaud your decision not to exempt menthol cigarettes from your ordinance. Menthol delivers a pleasant minty taste and imparts a cooling and soothing sensation. These characteristics successfully mask the harshness of tobacco, making it easier for beginner smokers and kids to tolerate smoking. The FDA's Tobacco Product Scientific Advisory Committee (TPSAC) has reported that:

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.
- The availability of menthol cigarettes reduces smoking cessation in some populations, especially among Black Americans, and increases the overall prevalence of smoking among Black Americans.
- Menthol cigarettes are marketed disproportionately to younger smokers and are disproportionately marketed per capita to Black Americans.



After a thorough review of the evidence, TPSAC concluded that “Removal of menthol cigarettes from the marketplace would benefit public health in the United States.”² Over a decade later—in April 2022—the FDA issued proposed rulemaking to prohibit menthol cigarettes and flavored cigars. However, until any FDA action is finalized, states and cities should continue their growing efforts to end the sale of menthol cigarettes and other flavored tobacco products. It will take time for the FDA to finalize and implement the necessary regulations to prohibit menthol cigarettes and flavored cigars, and tobacco industry lawsuits could cause more delays. States and cities have an obligation to protect the health of their citizens and must act now to stop tobacco companies from targeting kids, Black Americans and other groups with menthol cigarettes and other flavored products. We can’t afford more delay in taking action to protect kids and save lives.

Flavored Tobacco Products Are Pervasive

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors. While overall cigarette sales have been declining since the 2009 law, the proportion of smokers using *menthol* cigarettes (the only remaining flavored cigarette) has been increasing.³ Menthol cigarettes comprised 37 percent of the market in 2020.⁴

The Tobacco Control Act’s prohibition on characterizing flavors did not apply to other tobacco products, and as a result, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products. In fact, the overall market for flavored tobacco products is actually growing. In recent years, there has been an explosion of sweet-flavored tobacco products, especially e-cigarettes and cigars. These products are available in a wide assortment of

flavors – like mango, blue razz, pink punch and mint for e-cigarettes and chocolate, watermelon, and cherry dynamite for cigars. Tobacco companies are making and marketing deadly and addictive products that look and taste like a new line of flavors from a Ben and Jerry’s ice cream store.

Flavors are not just a critical part of the product design, but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded, “E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”⁵ The 2021 National Youth Tobacco Survey found that 70.3% of middle and high school students—over 17.77 million youth—had been exposed to e-cigarette advertisements from at least one source.⁶



Sales of cigars (i.e., large cigars, cigarillos, and small cigars) have more than doubled between 2000 and 2020, and much of the growth is attributable to smaller types of cigars, many of which are flavored and inexpensive.⁷ Nielsen convenience store market scanner data showed that over half (53.3%) of cigar sales in 2020 were for flavored cigars. Among flavored cigars sold in these stores in 2020, the most popular flavors were sweet or candy (30.6%) and fruit (29.5%).⁸ Earlier data show the number of unique cigar flavor names more than doubling from 108 to 250 over the same time period.⁹ The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Black & Mild, Swisher Sweets, White Owl, Backwoods, and Dutch Masters – all come in flavor varieties.¹⁰ These products are often sold singly or can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth. Note that cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke.¹¹



Although tobacco companies claim to be responding to adult tobacco users’ demand for variety, it’s clear that flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. This growing market of flavored tobacco products is undermining progress in reducing youth tobacco use.

Flavored Tobacco Products Are Popular Among Youth

These sweet products have fueled the popularity of e-cigarettes and cigars among youth. A government study found that **eight out of ten of kids who have ever used tobacco products started with a flavored product.**¹² Across all tobacco products, the data is clear: flavored tobacco products are overwhelmingly used by youth as a starter product, and preference for flavors declines with age.

E-cigarettes have been the most commonly used tobacco product among youth since 2014. In 2021, during the midst of the Covid-19 pandemic, 2 million youth, including 11.3% of US high schoolers and 2.8% of middle schoolers, were current e-cigarette users. While the data are not comparable to previous survey years due to methodology changes¹³, just prior to the pandemic in 2020, 19.6% of US high schoolers reported current e-cigarette use, about the same level as in 2018 when the Surgeon General first declared e-cigarette use an “epidemic.”¹⁴ Youth e-cigarette use remains a serious public health concern. Here in Multnomah County, the latest available data show that 23.1% of 11th graders were current e-cigarette users in 2019.¹⁵ Almost all e-cigarettes contain nicotine, a highly addictive drug. Young people are especially vulnerable to nicotine addiction.¹⁶ The Surgeon General has concluded that, “The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”¹⁷ The manufacturer of JUUL, a popular e-cigarette among youth, claims that each JUUL pod contains as much nicotine as a pack of twenty cigarettes. Since the introduction of Juul, many youth are now using products that effectively deliver massive doses of nicotine and it is clear that large numbers of teen e-cigarette users are struggling with nicotine addiction. In 2021, 43.6% of high school e-cigarette users were frequent users of e-cigarettes, reporting use on at least 20 of the preceding 30 days. Alarming, 27.6% of high school users were daily users, a strong indication of addiction. In total, over 800,000 middle and high school students were frequent users of e-cigarettes in 2021, including half a million daily users.¹⁸

Youth e-cigarette users are also at risk of smoking cigarettes. A 2018 report from the National Academies of Science, Engineering & Medicine found that “There is substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”¹⁹ More recent research confirms this finding.²⁰ Therefore, it is critical for any policy restricting sales of flavored tobacco products to include e-cigarettes.

In January 2020, the FDA restricted some flavors in cartridge-based e-cigarettes, but exempted all menthol-flavored e-cigarettes and left flavored e-liquids and disposable e-cigarettes widely available in every imaginable flavor. New data show that the market share of these products has grown substantially and that youth quickly migrated to the flavored products that were exempt from the FDA’s policy. Over half of youth e-cigarette users reported using disposable e-cigarettes in 2021, and nearly 30% of youth users of flavored e-cigarettes report using menthol-flavored products.²¹

While the FDA recently announced that it had denied marketing applications for certain flavored e-cigarettes, many of the flavored products most popular among kids, like Juul, are still on the market. Every day these products remain on the market, our kids remain in jeopardy. Because of the delays and gaps in the FDA’s actions, it is critical that states and cities step up their efforts to eliminate ALL flavored e-cigarettes, as well as other flavored tobacco products. The evidence is also clear that as long as any flavored e-cigarettes – including menthol-flavored products – are on the market, kids will shift

to them and we will not end this public health crisis. Multnomah County must close the gaps left by the FDA and protect our kids from these dangerous and addictive products.

As the only flavored cigarette left on the market, it's also no surprise that menthol cigarettes are popular among youth. Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating smoking. About half of youth who have ever tried smoking initiated with menthol-flavored cigarettes.²² As noted previously, young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.²³

Tobacco companies have a long history of targeting and marketing flavored tobacco products to Black Americas and youth. Tobacco industry marketing, often targeted at minority communities, has been instrumental in increasing the use of menthol products and in the disproportionate use of menthol products by minority groups and youth. TPSAC concluded that menthol cigarettes are marketed disproportionately to younger smokers and Black Americans.²⁴ Dating back to the 1950s, the tobacco industry has targeted these communities with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, and marketing in the retail environment. Nationwide, as a result of this targeting, 85% of Black smokers smoke menthol cigarettes, compared to 29% of White smokers.²⁵

Menthol cigarettes are a major reason why Black Americans suffer disproportionately from tobacco use. The tobacco industry's "investment" in the African American community has had a destructive impact. In 2013, the FDA released a report finding that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction, and decreased success in quitting smoking.²⁶ Tobacco use is the number one cause of preventable death among Black Americans, claiming 45,000 Black lives every year.²⁷ Tobacco use is a major contributor to three of the leading causes of death among Black Americans - heart disease, cancer and stroke.²⁸ The higher rates of some tobacco-caused diseases among Black Americans result, in part, from their greater use of menthol cigarettes, which are associated with reduced cessation.²⁹ Researchers estimate that among the Black community, 157,000 smoking-related premature deaths and 1.5 million excess life-years between the years 1980 and 2018 can be attributed to menthol cigarettes.³⁰

The scientific evidence leaves no doubt that menthol cigarettes and other flavored tobacco products increase the number of people, particularly kids, who try the product, become addicted and die a premature death as a result. Prohibiting the sale of menthol cigarettes and other flavored tobacco products is an important step toward protecting our children from the tobacco industry's aggressive efforts to hook children to a deadly, addictive product.

This issue is about protecting our kids and vulnerable populations. By prohibiting the sale of all flavored tobacco products, Multnomah County would join over 100 cities and counties nationwide that have

already enacted comprehensive laws to *end* the sale of all flavored tobacco products. **Thank you for considering a strong and comprehensive policy without exemptions. It will save lives.**

Sincerely,

A handwritten signature in black ink that reads "Brittany". The script is cursive and fluid.

Brittany Grant, MPH
Regional Advocacy Director – Western Region
Campaign for Tobacco-Free Kids
bgrant@tobaccofreekids.org

Appendix

A1: Examples of Flavored Tobacco Products



A2: Examples of Menthol Marketing

Source: TrinketsandTrash.org, CounterTobacco.Org



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- ¹ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Oregon. <https://www.tobaccofreekids.org/problem/toll-us/oregon>
- ² Tobacco Products Scientific Advisory Committee (TPSAC), Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011
<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ³ Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," Tobacco Control, 25(Suppl 2):ii14-ii20, 2016.
- ⁴ U.S. Federal Trade Commission (FTC), Cigarette Report for 2020, 2021, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report-2020/p114508fy20cigarettereport.pdf> [data for top 5 manufacturers only].
- ⁵ HHS, E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- ⁶ Gentzke, A, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021," MMWR 71(5): 1-29, March 10, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf>.
- ⁷ U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics. December 2000 & December 2020, <https://www.ttb.gov/tobacco/tobacco-stats.shtml>.
- ⁸ Delnevo, CD, et al. "Cigar Sales in Convenience Stores in the US, 2009-2020," JAMA 326(23):2429-2432.
- ⁹ Delnevo, CD, Giovenco, DP, & Miller, EJ, "Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act," Tobacco Regulatory Science, 3(2 Suppl 1):S8-S16, 2017.
- ¹⁰ SAMHSA's public online data analysis system (PDAS). National Survey on Drug Use and Health, 2015, https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CGR30BR2&column=CATAG2&weight=ANALWT_C&results_received=true.
- ¹¹ National Cancer Institute (NCI), Cigars: Health Effects and Trends. Smoking and Tobacco Control Monograph No. 9, 1998, http://cancercontrol.cancer.gov/Brp/tcrb/monographs/9/m9_complete.pdf. Chang, CM, et al., "Systematic review of cigar smoking and all cause and smoking related mortality," BMC Public Health, 2015.
- ¹² Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," Journal of the American Medical Association, published online October 26, 2015.
- ¹³ 2021 data is not comparable to previous years due to a methodology change. Whereas previous surveys were conducted entirely in-school, the 2021 survey included both in-school and at-home responses; students who completed surveys in school reported higher e-cigarette use. Pandemic-related factors such as reduced access to e-cigarettes due to fewer peer interactions may have impacted youth e-cigarette use in 2021.
- ¹⁴ Office of the Surgeon General, "Surgeon General's Advisory on E-Cigarette Use Among Youth," December 18, 2018, <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.
- ¹⁵ Oregon Health Authority, Public Health Division, Tobacco Prevention and Education Program, Multnomah County Tobacco Fact Sheet, <https://sharedsystems.dhsosha.state.or.us/DHSForms/Served/le2593Multnomah.pdf>.
- ¹⁶ HHS, E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General.
- ¹⁷ HHS, E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General.
- ¹⁸ Park-Lee, E, et al., "E-Cigarette Use Among Middle and High School Students—National Youth Tobacco Survey, 2021," MMWR, 70(39): 1387-1389, October 1, 2021, <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039a4-H.pdf>.
- ¹⁹ National Academies of Sciences, Engineering, and Medicine (NASEM), Public Health Consequences of E-Cigarettes, 2018, <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.
- ²⁰ Berry, KM, et al., "Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco Cigarettes in US Youths," JAMA Network Open, 2(2), published online February 1, 2019; Pierce, JP, et al., "Use of E-Cigarettes and Other Tobacco Products and Progression to Daily Cigarette Smoking," Pediatrics, 147(2), published online January 11, 2021.
- ²¹ Park-Lee, E, et al., "E-Cigarette Use Among Middle and High School Students—National Youth Tobacco Survey, 2021," MMWR, 70(39): 1387-1389, October 1, 2021, <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039a4-H.pdf>.
- ²² Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," Journal of the American Medical Association, published online October 26, 2015.
- ²³ TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011.
- ²⁴ TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011.
- ²⁵ Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," Nicotine & Tobacco Research, 22(10): 1673-1675, 2020.
- ²⁶ FDA, Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes, 2013.
- ²⁷ American Cancer Society, "Cancer Facts & Figures for African Americans, 2016-2018," 2016, <http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-047403.pdf>. American Heart Association, "African Americans and Cardiovascular Diseases: Statistical Fact Sheet, 2012 Update," http://www.heart.org/idc/groups/heart-public/@wcm/@sop/@smd/documents/downloadable/ucm_319568.pdf. HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998, http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf
- ²⁸ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998; CDC, National Vital Statistics Report, Vol. 68, No. 9. Table 10, 2019 https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_09-508.pdf.
- ²⁹ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998; HHS, Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General, 2014. See also Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," Nicotine & Tobacco Research, 18(S1): S91-S101, 2016.
- ³⁰ Mendez, D and Lee, TT, "Consequences of a match made in hell: the harm caused by menthol smoking to the African American population over 1980-2018," Tobacco Control, published online September 16, 2021.