

A group of diverse young children, including a girl with a pink and white patterned headscarf, are sitting together and talking. The image is overlaid with a large, semi-transparent red banner that contains the title text.

# **EMERGING PRODUCTS & STRATEGIES TO REDUCE YOUTH & YOUNG ADULT USE OF TOBACCO PRODUCTS**



**PUBLIC HEALTH  
LAW CENTER**  
at Mitchell Hamline School of Law



# THE PUBLIC HEALTH LAW CENTER









# EFFECTIVE PUBLIC HEALTH POLICY IS CREATED IN CONSIDERATION OF EQUITY



based on work for First Nations Health Authority at Gathering Wisdom VI  
Drawing Change

Image credit: Sam Bradd <https://drawingchange.com/gathering-wisdom-visuals-for-a-healthy-future/>

# LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

# AGENDA

- **Emerging products**
  - Synthetic nicotine
  - Non-nicotine Vapes
- **Strategies to reduce youth & young adult use of tobacco products**
  - Regulate retailers
  - Restrict product sales
  - Restrict flavored tobacco sales
  - Regulate Youth Access
  - Regulate Advertising
  - Regulate Use

# SYNTHETIC NICOTINE PRODUCTS

Emergence related to cost:

- 1967 R.J. Reynolds report “Feasibility of Synthetic Nicotine Production”
  - “The cost of optically active [S-nicotine] obtained by a resolution step would be considerably higher.”
- 2019 Patent (CN110256403B)
  - “the preparation process is simple, the cost is low,...and [it] is suitable for industrial large-scale production.”
- Tobacco Reporter (Dec. 2019) (industry trade publication):
  - Previously 10 times the cost of tobacco-derived nicotine, now only 3-4 times the cost
    - “practically unlimited production capacity”





# SYNTHETIC NICOTINE PRODUCTS

## Our Mission

We believe that innovation is the key to creating unforgettable experiences. And innovation is at the heart of what we do. PuffBar provides adult vapers with premium products to elevate life's greatest moments. For us, offering consumers the best choice on the market isn't just a mission — it's a requirement. As America's leading innovator in vape devices, we pride ourselves in setting the bar. And we're committed to raising that bar, one puff at a time.



## Tobacco Free

### Better Flavor, Better Experience

As a demonstrated pledge to premium quality, Puffs nicotine-based products are created with tobacco-free nicotine. Our nicotine-based products are crafted from a patented manufacturing process, not from tobacco. The result? A virtually tasteless, odorless nicotine without the residual impurities of tobacco-derived nicotine. This dramatically improves flavor while still maintaining the same satisfaction smokers are seeking from their nicotine.

rience

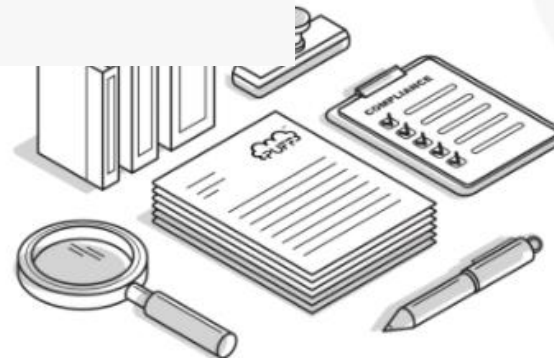
s nicotine-based products are used products are crafted from a . The result? A virtually tasteless, tobacco-derived nicotine. This the same satisfaction smokers are



## Fully Licensed & Compliant

### The Puff Difference

Puff Bar is fully licensed and compliant with current tobacco regulations in the United States. Puff Bar is proud to be working directly with state and federal policy makers to create fair rules & regulation as well as assisting in stopping counterfeits from entering the US market.



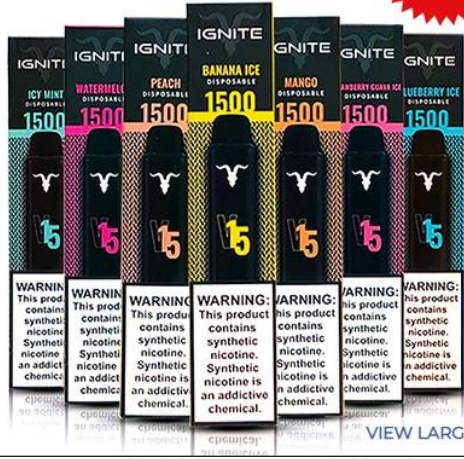
# SYNTHETIC NICOTINE PRODUCTS

HOME > IGNITE V15 DISPOSABLE VAPE PEN

SECURE CHECKOUT 
 60-DAY WARRANTY 
 GUARANTEED AUTHENTIC 
 SAME-DAY SHIPPING

SALE

1,500 PUFFS



VIEW LARGE IMAGE



## IGNITE V15 DISPOSABLE VAPE PEN

By Ignite  
★★★★★ 12 reviews

List Price: \$19.99  
Our Price: \$10.99

FLAVOR

QTY



Cloud Nurdz

## Cloud Nurdz Synthetic Nicotine 30ml Nic Salt Vape Juice

Log in for pricing

★★★★★ (0) | [Write a Review](#)

Weight: 1.90 Ounces

Flavor and Nicotine Level: \*

- Watermelon Berry 25MG
- Watermelon Berry 50MG
- Peach Blue Raspberry 25MG
- Peach Blue Raspberry 50MG
- Strawberry Lemon 25MG
- Strawberry Lemon 50MG
- Grape Strawberry 25MG
- Grape Strawberry 50MG
- Watermelon Apple 25MG
- Watermelon Apple 50MG



# SYNTHETIC NICOTINE PRODUCTS

**TFN® NICOTINE IS NOT DERIVED FROM TOBACCO LEAF, STEM, RECONSTITUTED SHEET, EXPANDED OR POST-PRODUCTION WASTE DUST.**



# SYNTHETIC NICOTINE POPULARITY

## Usual brand\*\*

Puff Bar

26.8 (22.9–31.1)

Vuse

10.5 (6.9–15.6)

SMOK (including NOVO)

8.6 (6.4–11.5)

JUUL

6.8 (4.9–9.3)

Suorin

2.1 (1.2–3.7)

No usual brand

2.4 (1.5–3.8)

Some other brand not listed

19.8 (15.7–24.6)

Don't know

16.1 (13.8–18.8)

# SYNTHETIC NICOTINE FDA AUTHORITY

Are they tobacco products? **(new: yes!)**

- Previous definition: “The term “tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product . . .” 21 U.S.C. §321(rr)
- **Updated definition** (March 16, 2022) “any product made or derived from tobacco **or containing nicotine from any source** that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product)...”
  - Does not include drugs (NRTs)
  - Does not include food (eggplants, tomatoes)



# NON-NICOTINE VAPES

SPARQ



## LUVV

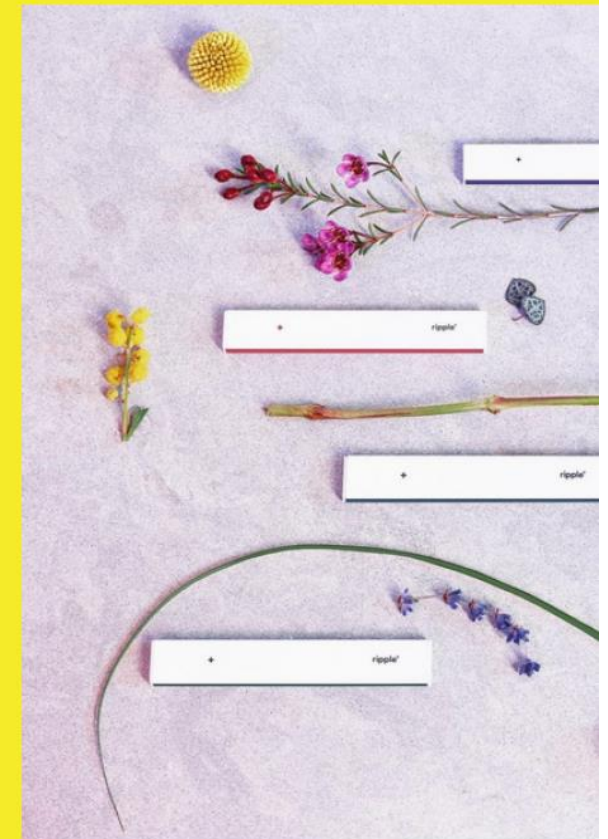
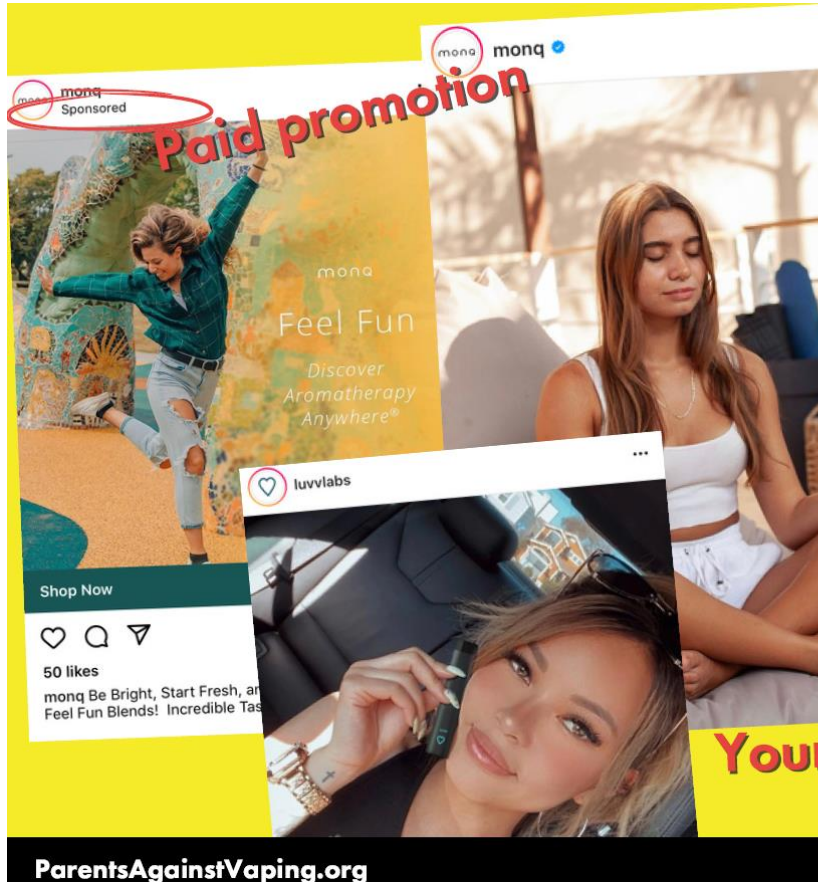


LUVV Air Inhalers



LUVV Air Pods

# NON-NICOTINE VAPES AVAILABILITY & SOCIAL MEDIA MARKETING



ParentsAgainstVaping.org



Ripple - available on [UrbanOutfitters.com](https://www.urbanoutfitters.com)

# NON-NICOTINE VAPES AVAILABILITY & SOCIAL MEDIA MARKETING

**URBAN OUTFITTERS**

MONQ Personal Diffuser

Women's Men's Home Lifestyle Beauty **Sale**

Search

Jan 7, 202

★★★★★

juzi  
Age: 13-17

they need to update ingredients for sleep.

i got the sleep pen and a while after my throat started to itch as well as my nose became runny so I searched up side effects for bergamot (what replaced kava) and it said when inhaled it can cause irritation to throat and nose as well as muscle cramps. literally after I took a couple hits the left side of my abs started hurting would not recommend this ://

No, I do not recommend this product.

[urbanoutfitters.com/shop/monq-personal-diffuser?recommendation=dyrectray-OfenViewedWith&color=087&type=REGULAR](https://urbanoutfitters.com/shop/monq-personal-diffuser?recommendation=dyrectray-OfenViewedWith&color=087&type=REGULAR)

**URBAN OUTFITTERS**

Women's Men's Home Lifestyle Beauty **Sale**

★★★★★

makaylas cool  
Age: 13-17

it's good but

i got suspended cuz of this still good tho



# NON-NICOTINE VAPES AVAILABILITY & SOCIAL MEDIA MARKETING

URBAN OUTFITTERS

MONQ Personal Diffuser

★★★★★  
decent  
made me a lil sleepy. burned my throat tho

No, I do not recommend this product.

Clara\_h15

---

★★★★★  
decent!  
never had any kind of pen before, so i really like this one to start with!! very nice flavor for the Zen, not too aggressive or anything!

Yes, I recommend this product.

Wylde

# NON-NICOTINE VAPES REGULATION

**The product I manufacture contains no substance made or derived from tobacco, e.g. is zero-nicotine, or has synthetic nicotine or nicotine made from tomatoes. Is my product subject to FDA regulation?**

The definition of "tobacco product" includes any product made or derived from tobacco, including any component, part, or accessory of a tobacco product. E-liquids that do not contain nicotine or other substances made or derived from tobacco may still be components or parts and, therefore, subject to FDA's tobacco control authorities.

However, it's possible that a disposable, closed system device that contains an e-liquid with truly zero nicotine (or synthetic nicotine) would not be regulated by the FDA as a tobacco product, if it is not intended or reasonably be expected to be used in such a fashion. FDA intends to make these determinations on a case-by-case basis, based on a totality of the circumstances. [^ top ^](#)



# NON-NICOTINE VAPES REGULATION

## LUVV



### 200 inhalations with each LUVV Air Pod

You can expect approximately 800 uses with each LUVV Air pod 4-pack. Each 1ml Pod should produce approx. 200 inhalations.



### J\*\*L Battery Compatible

Use LUVV Air pods with your current battery or with a LUVV Air battery.





# NON-NICOTINE VAPES FEDERAL REGULATION

- Likely not tobacco products
- What about drugs?
  - Supplements
  - Drug/Delivery devices
    - Structure/Function Claims



Six convenient options to increase focus and energy, or help you rest, relax and rejuvenate. Choose the one that makes the most sense for your wellness plans or try a variety sample pack!

**ACTIVE INGREDIENTS**

- Co-Enzyme Q10 (157mg) - For detoxifying, energy, and disease prevention
- Vitamin B12 (11mcg) - For optimizing brain and nervous system function, aiding weight loss
- Vitamin C (95mg) - For boosting immunity, antioxidant properties, mental stamina, muscle support, and improving mood

# NON-NICOTINE VAPES FEDERAL REGULATION



- One bright spot: PACT ACT
  - “any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or **any other substance** to the user inhaling from the device.”
  - USPS, other common carriers *voluntarily complying*

# EMERGING PRODUCTS

## STATE, LOCAL, TRIBAL SOLUTIONS

- Definitions, definitions, definitions
- 3 types of laws to look at: Smoke-free, MLSA, and Tax





## Smoke Free

*E-cigarette* means “any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a **vapor of nicotine or any other substances**, and the use or inhalation of which simulates smoking [including a product marketed as an] e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.” (North Dakota)

## MLSA

*Electronic delivery device* means “any product **containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic**, intended for human consumption through inhalation of aerosol or vapor from the product.... (Minnesota)

*Alternative nicotine product* means a **noncombustible product containing nicotine** that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include a tobacco product, a vapor product, food, or a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360ff-7.

## Tax

*Electronic cigarette* means a battery-powered device, whether or not such device is shaped like a cigarette, **that can provide inhaled doses of nicotine** by delivering a vaporized solution by means of cartridges or other chemical delivery systems. (Kansas)

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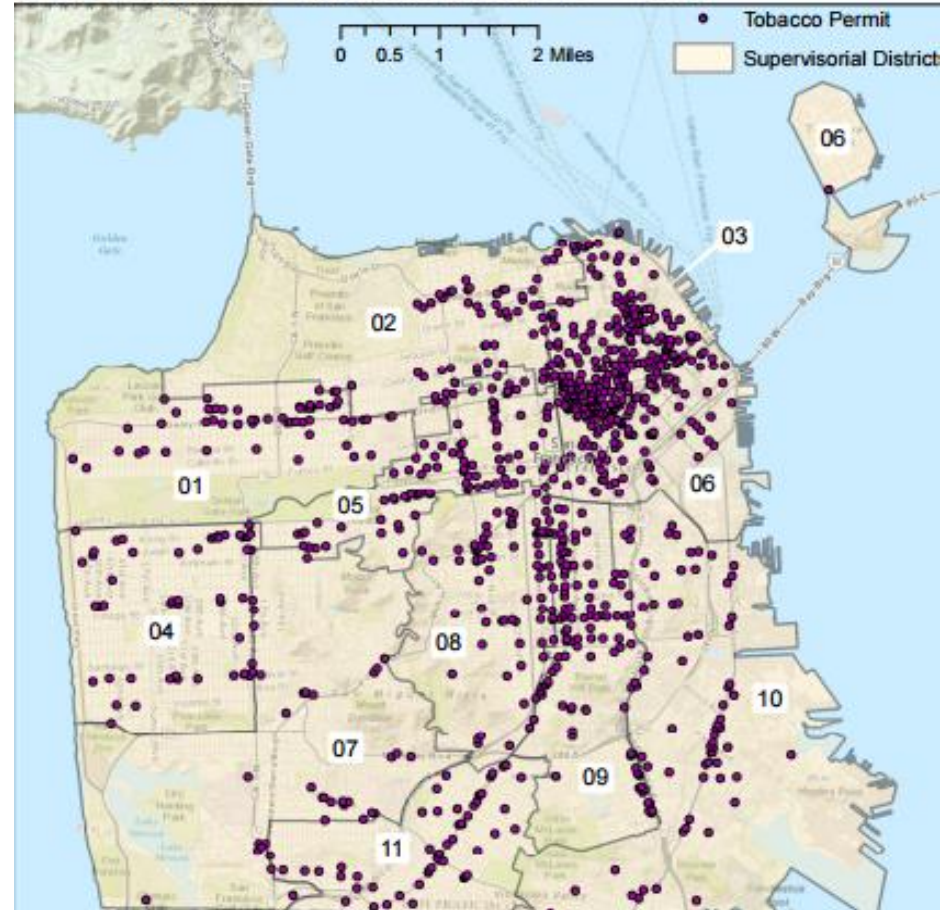
# RETAILER

- Location
- Type
- Number



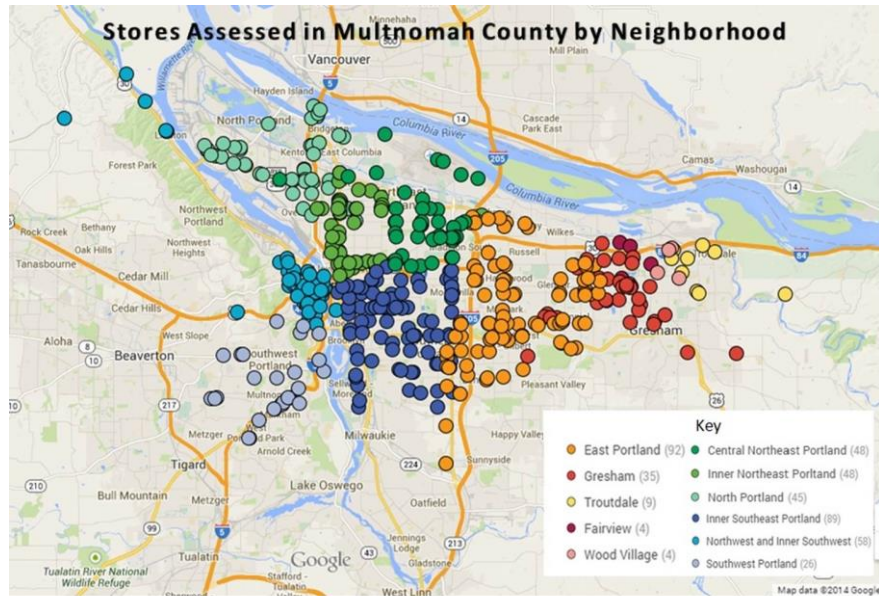
# REGULATING THE NUMBER: LICENSING CAPS

San Francisco Tobacco Permits - 2014





# REGULATING THE WHERE: PROXIMITY

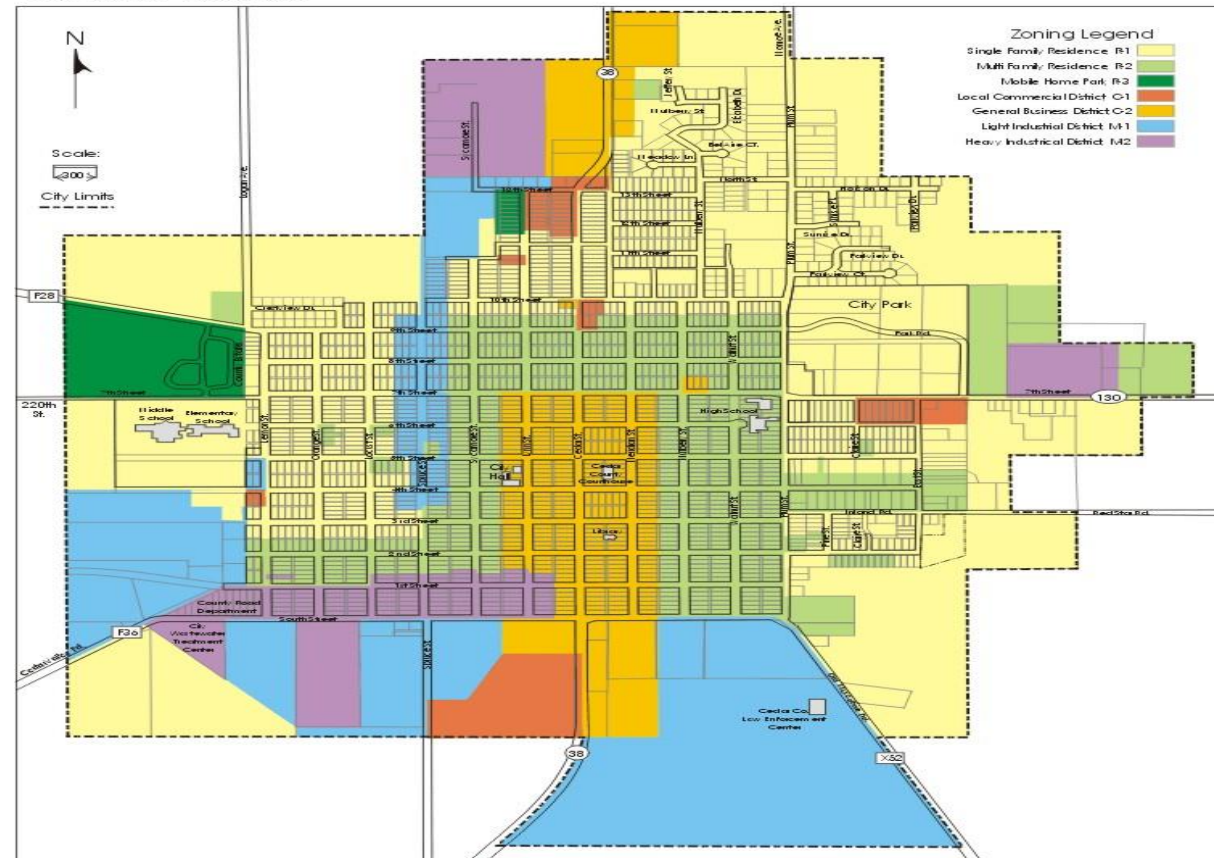


San Francisco Tobacco Retailers April 2016 - 871



# REDUCING THE NUMBER/LOCATION OF RETAILERS: ZONING

The City of Tipton  
Zoning Map - April, 2003



# REGULATE THE TYPE OF RETAILERS

ARCH

The New York Times

BUSINESS DAY

## CVS Stores Stop Selling All Tobacco Products

By RACHEL ABRAMS SEPT. 3, 2014



Antismoking signs are posted where cigarettes once were displayed at a CVS in Manhattan that no longer sells tobacco products. Andrew Renneisen/The New York Times

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# TAX AND PRICING POLICIES

## Juul Starter Kit

Only \$29.99

EXTRA 5% off FOR SEMO STUDENTS





# SALES RESTRICTIONS



Source: Campaign for Tobacco-Free Kids



Source: Statesboroherald.com

The Sale of  
Tobacco Products  
or Electronic  
Smoking Devices  
to Persons Under  
21 is Prohibited

# AGENDA

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“Cherry Skoal is for somebody who likes the taste of candy, if you know what I’m saying.”

-former U.S. Tobacco sales representative

"Menthol makes the poison go down smoother."

-Jonathan Foulds, Ph.D.



# REGULATING SALES: FLAVORED TOBACCO

Why:

- 15,500 e-liquid flavors on market
- 85% of youth e-cigarette users
- 81% of youth cite flavors as a primary reason for using an e-cigarette
  - Source: California Department of Public Health and Truth Initiative



# 2009 FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT



- Banned sale of most flavored cigarettes.
- Exempts menthol.
- Divides tobacco regulatory authority between FDA and states.

# **TOBACCO CONTROL ACT**

## **STATE AND LOCAL AUTHORITY**

### **Preservation**

Nothing in the Act limits state/local authority to enact a law “prohibiting the sale . . . of tobacco products.”

### **Preemption**

No state/locality may establish “any requirement which is different from . . . any requirement under [the Act] relating to tobacco product standards.”

### **Saving Clause**

The preemption restriction above “does not apply to [state or local] requirements relating to the sale” of tobacco products.

# The Act: State and Local Authority

## The FDA

### YES:

- Product standards
  - Nicotine yields
  - Ingredients, constituents (flavors!)
  - How constructed
- Sale restrictions
- Advertising and marketing

### NO:

- Smoke-free
- Tax
- Ban a class of products

## States/Locals

### NO: Product standards

### YES:

- Smoke-free
- Youth access
- Taxes and pricing
- Sales & distribution
- Advertising and promotion



# LOCAL FLAVORED TOBACCO RESTRICTIONS THE EVOLUTION



Designed by TownMapsUSA.com



# LOCAL MENTHOL RESTRICTIONS

## Most Active States

- Massachusetts
  - 168 localities
- California
  - 86 localities
- Minnesota
  - 12 localities



## Many Big Cities

- Boston
- Chicago
- Minneapolis
- New York
- Oakland
- Philadelphia
- San Francisco

# STATE FLAVOR RESTRICTIONS

## Massachusetts

- In effect June 2020
- Limits sale of flavored cigarette and tobacco products, including menthol and e-cigarettes
- Exempts on-site consumption in licensed smoking bars

## California

- Legislation passed August 2020
- Prohibits sale of flavored cigarette and tobacco products
- Exempts hookah and shisha, premium cigars, and pipe tobacco
- Tobacco industry response:
  - Gathered signatures to send to ballot
  - Sued in federal court
- Current status: stayed

# TRIBAL GOVERNMENT ACTION



Many Tribes have restricted flavored e-cigarettes:

- Iipay Nation of Santa Ysabel
- Lac Courte Oreilles Tribe
- Muckleshoot Tribe
- Oglala Sioux Tribe
- Puyallup Tribe
- Saint Regis Mohawk Tribe
- Turtle Mountain Band of Chippewa Tribe



# CHALLENGES TOBACCO INDUSTRY RESPONSE



Rev. Al Sharpton  
National Action Network  
President & Founder



Host  
Pastor Billy G. Russell  
Pastor of Greater Friendship MBC  
President of Minnesota State Baptist Convention

## NATIONAL ACTION NETWORK PRESENTS:

Community Leadership Luncheon  
Topic: Decriminalizing The Black Community  
Banning Of Menthol Cigarettes  
January 25, 2017 12-2PM  
Location: Greater New Friendship MBC  
2600 E. 38th Street  
Minneapolis, MN 55408

### Panelists Includes:



Major Neill Franklin  
Ex. Director/Former Narcotics Agent  
Maryland State Police



Chief John I. Dixon III  
President, Noble



Former Congressman Kendrick Meek  
Former Captain  
Florida State Highway Patrol

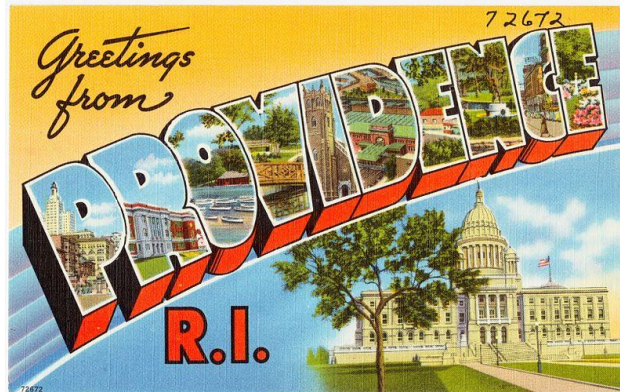
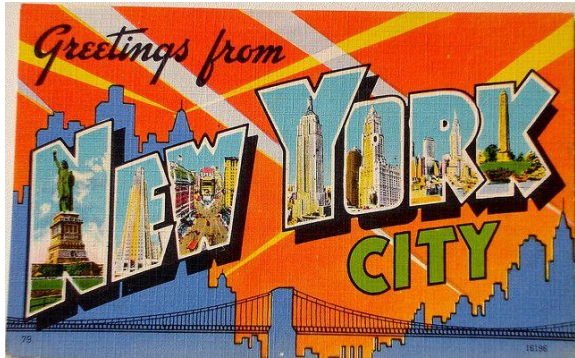


Art Way Esq.  
Sr. Drug Policy Manager/ Colorado  
DPA (Drug Policy Alliance)

For More Information, Please call Rev. DeVes Toon 646-961-9972/nanfieldassist@yahoo.com  
Greater New Friendship MBC 612-927-7928/info@greaterfriend.org

- Enforcing against concept flavors.
- Fighting exemptions that exacerbate disparities.
- Rebutting industry disinformation campaigns.
- Defending against litigation challenges.

# TOBACCO INDUSTRY RESPONSE LITIGATION & REPEAL AT THE BALLOT



# FLAVORED E-CIGARETTES

## FDA PREMARKET REVIEW



FDA Permits Marketing of First E-cigarettes Through PMTA Pathway

### FDA Permits Marketing of E-cigarette Products

FDA authorized the marketing of three new tobacco products, marking the first set of ENDS products ever to be authorized through the PMTA pathway.

- Premarket review authority in the Tobacco Control Act.
- Deeming Rule – extends premarket review to e-cigarettes.
- *AAP v. HHS* – new timeline for premarket review of e-cigs.
  - September 9, 2020. All e-cigarette manufacturers must have submitted an application to stay on the market.
  - September 9, 2021. All e-cigarettes were required to secure a marketing order in order to keep their products on the market.
- October 12, 2021. FDA authorized first e-cigarettes for sale.



# REGULATING YOUTH ACCESS: MINIMUM LEGAL SALES AGE

“If a man has never smoked by age 18, the odds are three-to-one he never will. By age 21 the odds are twenty-to-one.”





# MINIMUM LEGAL SALE AGE

## Tobacco 21: The Law of the Land



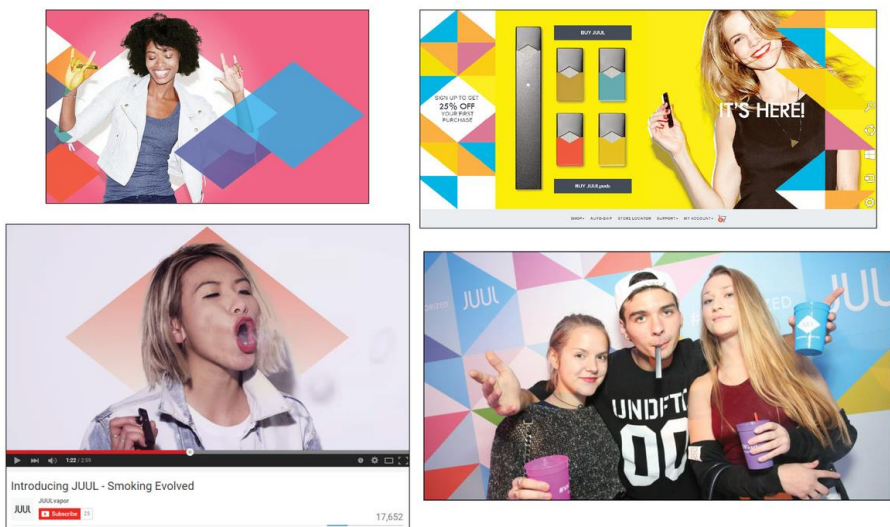
Federal Tobacco 21 is in effect. State and local work continues.

Source: tobacco21.org

- As of December 19, 2019, Federal minimum legal sale age for tobacco products is 21.
- States and local jurisdictions should consider amending their laws to align with federal law.
- States and local jurisdictions retain authority to raise their MLSA beyond 21.

# REGULATING ADVERTISING

Can we regulate advertising? Maybe.



# REGULATING USE: CLEAN INDOOR AIR LAWS & SMOKE-FREE POLICIES

- Precautionary principle.
- Renormalization.
- Include ALL products.
- 22 states and territories and 970 municipalities include them in smoke-free laws.



Source: American Nonsmokers' Rights Foundation

# CLEAN INDOOR AIR LAWS/SMOKE-FREE POLICIES

## ADOPT OR STRENGTHEN POLICIES TO:

### COVER all tobacco products, including:

- Electronic smoking devices
  - Include a definition in the policy for electronic smoking devices
  - Expand the definition of smoking to include electronic smoking devices

#### Sample Language

"Smoking" Definition: "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, or pipe, or any other lighted, heated, or activated tobacco, nicotine, cannabis, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. "Smoking" also means using an electronic smoking device.



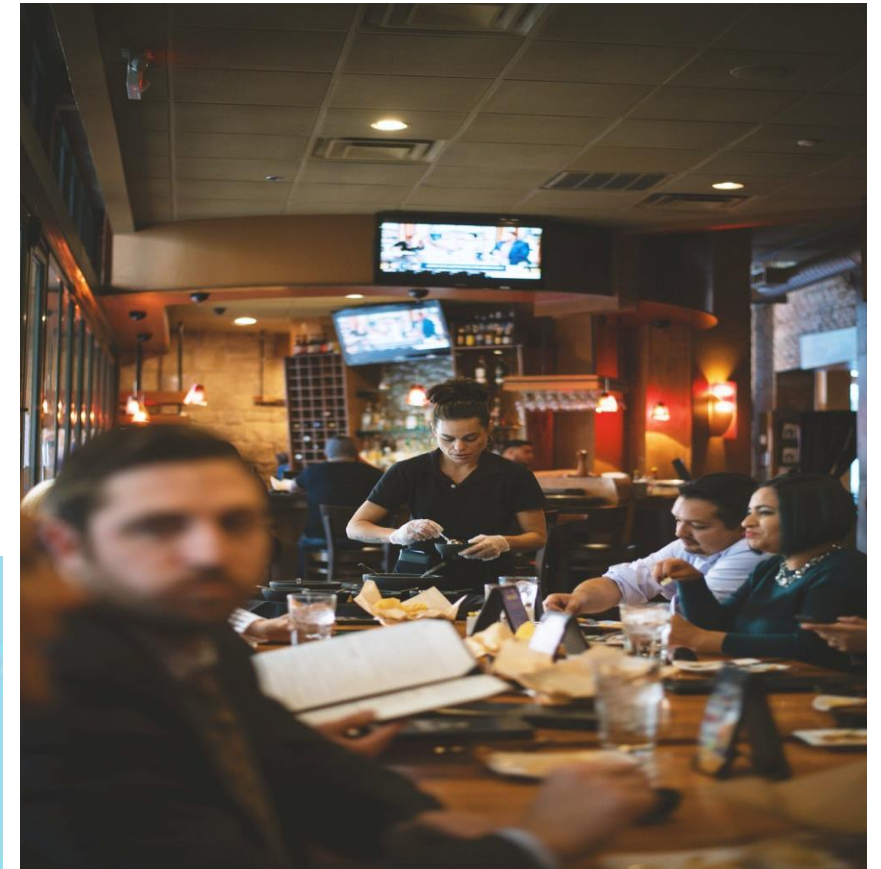
Source: Amazon.ca



# ADOPT OR STRENGTHEN POLICIES TO:

**COVER** more spaces,  
including:

- Public places
- Schools
- Outdoor spaces
- Multi-unit housing



Source: brooklynpark.org

Source: CDC

# CONTACT US



651.290.7506



[publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu)



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