



DEPARTMENT OF  
**HEALTH AND HUMAN SERVICES**

Promoting and protecting health, well-being, self-sufficiency, and safety of all in Marin County.



November 6, 2018

Marin County Board of Supervisors  
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**SUBJECT: Request to conduct merit hearing of the proposed ordinance adding Chapter 5.75 of the Marin County Code prohibiting the sale or offer for sale of flavored tobacco products and amending all existing Marin County Code Sections that define “Tobacco” or “Tobacco Product”**

Dear Supervisors:

**RECOMMENDATIONS:**

1. Conduct a merit hearing of the proposed ordinance adding Chapter 5.75 of the Marin County Code prohibiting the sale or offer for sale of flavored tobacco products and amending all existing Marin County Code Sections that define “Tobacco” or “Tobacco Product”.
2. Following the merit hearing, consider the proposed ordinance and take a vote on passage of the ordinance.

**SUMMARY:** Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year.<sup>1</sup> It causes or contributes to many forms of cancer, as well as heart and respiratory diseases, among other health disorders.<sup>2</sup> Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society and the burdens it places on our health care system.

Each day, about 2,500 children in the United States try their first cigarette; and another 400 children under 18 years of age become new regular, daily smokers.<sup>3</sup> 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored.<sup>4</sup> Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products.<sup>5</sup>

<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary.*; 2014. Available at: [www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf)

<sup>2</sup> The tobacco health toll. Cairo, WHO Regional Office for the Eastern Mediterranean, 2005.

<sup>3</sup> Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, Results from the 2016 National Survey on Drug Use and Health, NSDUH: Detailed Tables, 2017. <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.pdf>.

<sup>4</sup> 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.

<sup>5</sup> Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: Tobacco marketing strategies. Tobacco industry documents reveal a deliberate strategy

Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine.<sup>6</sup> It is therefore unsurprising that young people are much more likely to use menthol-, candy- and fruit-flavored tobacco products than adults, including not just cigarettes but also cigars, cigarillos, and hookah tobacco.<sup>7</sup> Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using flavored little cigars or flavored cigarettes.<sup>8</sup> In U.S Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015.<sup>9</sup> Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum.<sup>10</sup>

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to add flavors known to appeal to younger people. *Health Aff.* 2005;24(6):1601-1610. doi:10.1377/hlthaff.24.6.1601. Lewis MJ, Wackowski O. Dealing with an innovative industry: A look at flavored cigarettes promoted by mainstream brands. *Am J Public Health.* 2006;96(2):244-251. doi:10.2105/AJPH.2004.061200. Connolly GN. Sweet and spicy flavours: new brands for minorities and youth. *Tob Control.* 2004;13(3):211-212. doi:10.1136/tc.2004.009191. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/). King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res.* 2013;15(2):608-614. doi:10.1093/ntr/nts178. Nelson DE, Mowery P, Tomar S, Marcus S, Giovino G, Zhao L. Trends in smokeless tobacco use among adults and adolescents in the United States. *Am J Public Health.* 2006;96(5):897-905. doi:10.2105/AJPH.2004.061580. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes.* 2013. [www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf](http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf).

- <sup>6</sup> Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006;8(3):403-413. doi:10.1080/14622200600670389. Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007;32(9):1964-1969. doi:10.1016/j.addbeh.2006.12.023. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/).
- <sup>7</sup> U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/). King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res.* 2013;15(2):608-614. doi:10.1093/ntr/nts178. Villanti AC, Richardson A, Vallone DM, Rath JM. Flavored tobacco product use among U.S. young adults. *Am J Prev Med.* 2013;44(4):388-391. doi:10.1016/j.amepre.2012.11.031. Substance Abuse and Mental Health Services Administration. *The NSDUH Report: Recent Trends in Menthol Cigarette Use.* Rockville, MD; 2011. [www.samhsa.gov/data/sites/default/files/WEB\\_SR\\_088/WEB\\_SR\\_088/WEB\\_SR\\_088.htm](http://www.samhsa.gov/data/sites/default/files/WEB_SR_088/WEB_SR_088/WEB_SR_088.htm).
- <sup>8</sup> King BA, Tynan MA, Dube SR, Arrazola R. Flavored-little-cigar and flavored-cigarette use among U.S. middle and high school students. *J Adolesc Heal.* 2014;54(1):40-46. doi:10.1016/j.jadohealth.2013.07.033.
- <sup>9</sup> Singh T, Arrazola RA, Corey CG, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2015. *MMWR Morb Mortal Wkly Rep.* 2016;65(14):361-367. doi:10.15585/mmwr.mm6514a1.
- <sup>10</sup> Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control.* 2014;23(1):77-78. doi:10.1136/tobaccocontrol-2012-050604. U.S. Department of Health and Human Services Office of

Tobacco is not safe in any form, in any amount, or at any age, for the user and for those exposed to it. Policies to protect the community from the harmful health, environmental and societal effects of tobacco should include protections for all its members, and not leave anyone behind. A recent study showed that use of electronic cigarettes doubled the risk of heart attacks.<sup>11</sup>

Should your Board adopt the proposed Ordinance, the sale or offer for sale, by any person or Tobacco Retailer of any Flavored Tobacco Product would be prohibited and the definition of "Tobacco Products" would be clarified and include electronic devices. If adopted, the Ordinance would be effective December 6, 2018, but its provisions shall not become enforceable until July 1, 2019 for any person or Tobacco Retailer that is not a Tobacco Store, or January 1, 2020 for any Tobacco Store already lawfully operating.

**COMMUNITY BENEFITS:** Youth and young adults use flavored tobacco and vaping products more than any other age groups. Decreases in youth smoking initiation rates and youth smoking rates overall are very likely effects of this policy, given that flavor tobacco plays a significant role in influencing tobacco use or experimentation among youth. Flavored products are often the first tobacco products youth and young adults use. By decreasing access to these products, younger members of the community will benefit from not being exposed to the addictive effects of nicotine and the harmful chemicals in these products. A ban on the sale of menthol tobacco products has the potential to address further inequities in health and social outcomes for vulnerable youth, low socio-economic status populations, and diverse communities who have historically been the target of marketing of these products by industry.

**FISCAL IMPACT:** There is no fiscal impact associated with this proposed action.

<b>REVIEWED BY:</b>	County Administrator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
	Department of Finance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A
	County Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
	Human Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A

Sincerely,

Grant Nash Colfax, MD  
Director

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Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General*. 2012. [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/).

<sup>11</sup> Alzahrani T, Pena I, Temesgen N, Glantz SA, *Association Between Electronic Cigarette Use and Myocardial Infarction*, American Journal of Preventive Medicine, 2018, ISSN 0749-3797, <https://doi.org/10.1016/j.amepre.2018.05.004>.  
<http://www.sciencedirect.com/science/article/pii/S0749379718318713>