

# Tobacco in the Retail Environment

## Antioch Survey Highlights



### Survey Findings Confirm Tobacco is being Promoted to Youth

#### Targeting Minority Communities at the Register

For nearly 50 years, tobacco companies have targeted low-income, minority communities, with advertising efforts. Research shows that lower socioeconomic neighborhoods have a greater number of tobacco retailers, widespread tobacco marketing and significantly higher rates of smoking.



#### Tobacco Stores Near to Antioch Schools

- Antioch has 35 tobacco retailers within 1000 feet of a school or other youth sensitive area in Antioch.
- Citywide, there are 26 schools grades K-12
- 1 store surveyed felt uncomfortable selling tobacco products

#### Abundance of cheap, sweet-flavored “little cigars” in Antioch

- 93% of stores sell cigarillos/ little cigars in flavors such as blueberry, peach, and cherry delight
- In Antioch, these can be bought for less than \$1.00, cheaper than the price of a candy bar

#### Menthol Cigarettes Targeted at Youth and African Americans

- 96% of the stores surveyed sold Menthol cigarettes
- Menthol hides the harshness of tobacco and makes it easier to inhale
- Menthol cigarettes are aggressively marketed to African American and Latino youth

#### E-Cigs –A Growing Trend

- 54% of stores sell E-cigarettes/Vape pens/E-hookah/E-liquid
- The CDC reports a sharp increase of e-cigarette use among middle and high school students between 2017 and 2018
- Many of these products are attractive to youth because they are relatively cheap and come in flavors like Gummy-bear and PearAdise



**Heavy Marketing in Stores** The tobacco industry spends over \$600 million advertising and promoting tobacco products in California and our kids are paying the price. Tobacco companies today spend more than 90 percent of their total marketing budget to advertise and promote their products in stores. Exposure to tobacco marketing in stores increases tobacco experimentation and use by youth and is more powerful than peer pressure.

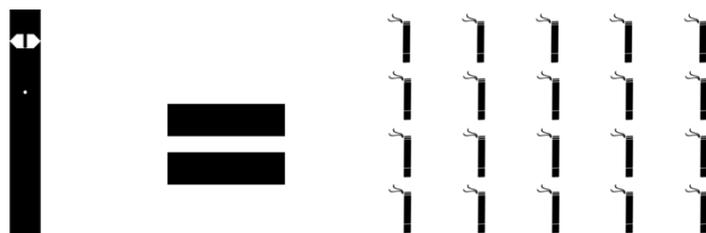
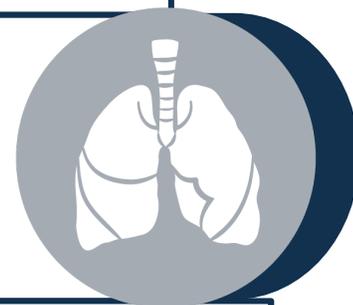
# TAKE ACTION: PROTECT YOUTH FROM TOBACCO

The Role of Electronic Smoking Devices & Flavored Tobacco on Youth Tobacco Use in Antioch



**Smoking harms nearly every organ in the body.** It can cause diseases including cancer, heart disease, stroke, diabetes, & COPD.

Vaping products are electronic and come in many shapes, sizes, and flavors to smoke. **When a person smokes an electronic device, they inhale compounds like acetone, ethanol and formaldehyde, and other harmful chemicals that have been know to cause lung damage.**



**12% of Antioch 7th graders** report having vaped an electronic cigarette. The wide range of flavors, targeted at youth, combined with the sleek appearance make e-cigarettes more popular than traditional cigarettes.

**By 9<sup>th</sup> grade, 29% of Anitoch youth will have vaped.**

**12%**



Despite the state ban on flavors, it will likely be up to voters in the 2022 election. **Local cities can still take action** and pass their own tobacco retail policies to protect youth and families in their community.



**Youth Tobacco Advocacy and Policy Project (YTAPP)**

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This material was prepared by Bay Area Community Resources.

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# ABCs of TRLs: Basics of a Model Tobacco Retail License for Antioch

## **Tobacco Retail License (TRL) Structure**

**What it does:** A local license would be required to sell tobacco products in Antioch and would be renewed annually by retailers. It would be revenue neutral, limited to the amount necessary for administration and compliance check expenses.

**Why it matters:** TRLs provide a framework for all retail-oriented tobacco policy. The fee provides a stable funding source to ensure consistent compliance with the policy, thus helping to keep tobacco products away from underage youth.

## **Flavor Restriction**

**What it does:** No flavored tobacco products can be sold. In addition to menthol cigarettes, e-liquids and flavored little cigars, this also includes flavored hookah, cigars, and pipe tobacco.

**Why it matters:** The state ban on the sale of most flavored tobacco products will be subjected to a tobacco industry sponsored referendum in 2022. As of 8/31/20, 81 cities and counties in CA have stopped the sale of all flavored tobacco products.[1] 80% of youth who use tobacco started with a flavored product.[2]

## **Minimum Pack Size**

**What it does:** Cigarettes, little cigars, and cigarillos must be sold in packs of at least 20. The minimum pack size for cigars is 6.

**Why it matters:** Federal law requires cigarettes to be sold in packs of 20. Cigarillos are easily available as singles or two packs for under \$1, making them more accessible to youth. Minimum pack requirements can increase the unit price but are more effective when combined with minimum price policies.

## **Minimum Price**

**What it does:** Cigarettes, little cigars, and cigarillos must cost above \$10 after taxes and fees. Single “premium” cigars cost at least \$12. These prices increase annually with the regional Consumer Price Index to remain a deterrent to price sensitive groups.

**Why it matters:** The Surgeon General recommends \$10.00 for a pack of cigarettes to make them less accessible to youth.[3] Comparable prices for other tobacco products removes loopholes. Over 100 studies show that increasing tobacco prices reduces tobacco use by underage youth.[4]

## **Electronic Cigarette Sales**

**What it does:** No electronic smoking devices or products for electronic smoking devices can be sold. This includes disposable e-cigarettes, e-cigarettes with pre-filled or refillable cartridge, tanks, mods, pod-mods and vaporizers and their liquids

**Why it matters:** Vapes, attractive to young people, often contain high levels of nicotine, addicting teens’ developing brains. The American Medical Association called for a ban on all e-cigarette and vaping products due to the novel lung disease, EVALI.

## **Tobacco-free Pharmacies**

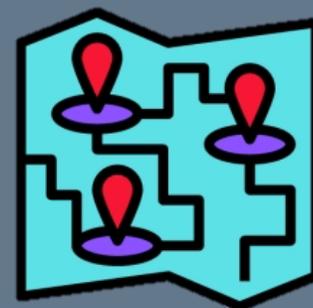
**What it does:** Pharmacies or larger retailers containing pharmacies, such as Walgreens and Walmart, cannot be issued a TRL or sell tobacco products.

**Why it matters:** A 2018 study showed 8% of pharmacies sold tobacco to minors.[5] It is ironic that people go to pharmacies to get healthy, and find tobacco on sale, often next to FDA approved smoking cessation products.

## **Density**

**What it does:** The jurisdiction will only issue a certain number of TRLs, proportional to the population of the area.

**Why it matters:** Low income and minority communities have larger numbers of tobacco retailers by population, exposing youth in those areas to greater risk of addiction. Retailers in excess of the density cap can be reduced over time though attrition.



## Proximity

**What it does:** Retailers must be >1000 feet away from areas youth frequent, such as parks and schools, and >600 feet from other tobacco retailers or cannabis dispensaries. This applies only to new retailers, who were not in business at ordinance adoption.

**Why it matters:** Youth tobacco use rates are higher in areas with more tobacco retailers near schools. Tobacco retailers near cannabis dispensaries encourage youth to use both products. Tobacco outlets will be reduced by attrition.

## On-site Sales

**What it does:** All sales of tobacco must be in-person and take place over-the-counter at the licensed location. Other manners of sale, such as over the phone, the internet, mobile app, delivery, and curbside pick-up are not allowed.

**Why it matters:** Internet sales can be used to circumvent local ordinances designed to stop youth access to tobacco.

## Coupon/Discounting

**What it does:** Tobacco retailers cannot honor coupons, promotions, or any other means of reducing the sale price of tobacco below the list price.

**Why it matters:** The tobacco industry uses discounts and coupons to blunt the impact of price increases that are intended to keep youth from getting addicted.

## Avoiding Purchase/Use/Possession (PUP) Penalties

**What it does:** Ensures that underage people, who have been targeted for years by big tobacco companies, are not penalized for purchasing, using, or possessing tobacco.

**Why it matters:** Penalizing youth for possession of tobacco doesn't reduce tobacco use and enforcement of such laws are often inequitable.

## Penalty Structure

**What it does:** Any violation results in suspension of the license, and therefore the ability to sell tobacco. The length of the suspension increases with subsequent violations within a 5-year period. Multiple violations can result in revocation. Fines are paid by the business owner. Sales clerks are not penalized.

**Why it matters:** The potential of a temporary loss of license acts as a sufficient incentive to retailers to ensure that they require clerks to check I.D. every time. Fines don't have the same impact, and warnings, given the infrequency of youth decoy operations, allow retailers to continue selling to youth for an extended period.

## Compliance Checks

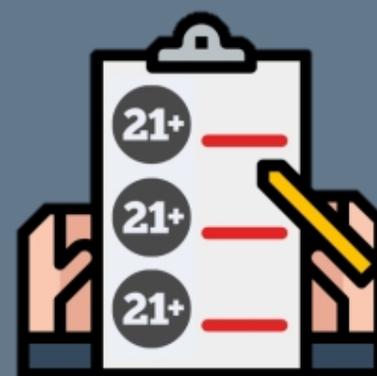
**What it does:** The enforcing agency makes at least 1 visit to each licensee each year to ensure that retailers are compliant and are not selling tobacco to people under 21. Violators should be rechecked within 3 months.

**Why it matters:** If youth decoy operation compliance checks are not performed at least yearly, retailers are less likely to guard against youth sales. Follow up checks to violators further incentivize changes in behavior.

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## Antioch

### Tobacco Retailers

Tobacco Retailers	71	
Retailers per 1,000 Population	0.6	
Retailers Within 500' of School	7	9.9 %
Retailers Within 1,000' of School	22	31.0 %

### Age

Total Population	111,200	
Under Age 5	6,839	6.2 %
Age 5 - 17	20,791	18.7 %
Under Age 21	31,701	28.5 %

### Race / Ethnicity

Total Population	111,200	
White	30,883	27.8 %
Hispanic / Latino	36,902	33.2 %
Asian & Pacific Islander	13,505	12.1 %
Black	23,431	21.1 %
All Other Races	6,479	5.8 %

### Earnings and Poverty

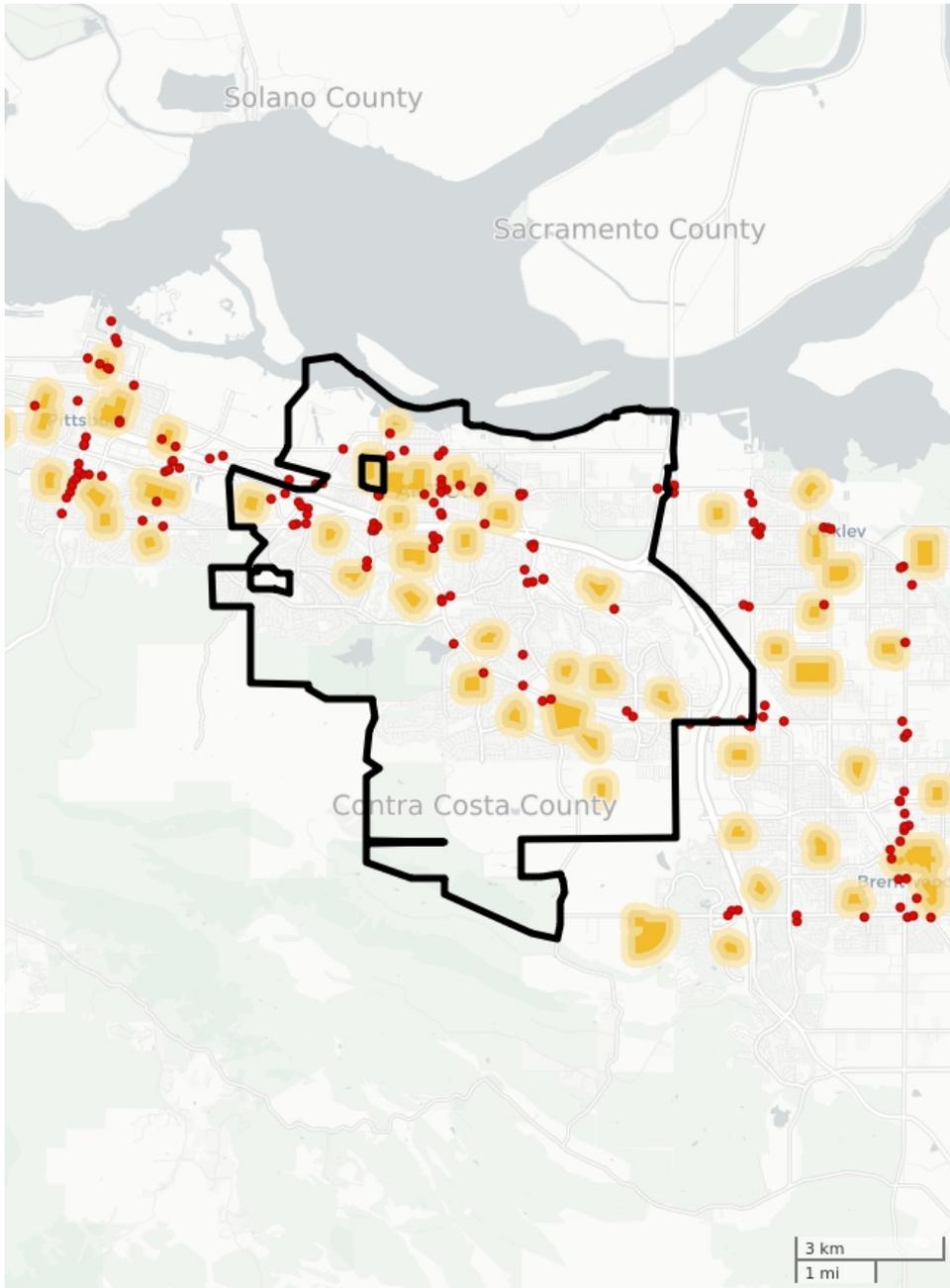
Households	34,028	
Median/Average Household Income	\$ 76601	
Receiving SNAP	4,896	14.4 %

### Public Schools

Schools	26	
High	7	26 %
Middle/Junior High	5	53 %
Elementary	14	53 %
Schools Within 500' of Tobacco	7	26 %
Schools Within 1,000' of Tobacco	14	53 %



## Antioch



# California Tobacco Health Assessment Tool

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## Sources & Methodologies

**Licensed Tobacco Retailers:** [California Department of Tax and Fee Administration \(CDTFA\) www.cdtfa.ca.gov/](http://www.cdtfa.ca.gov/). The map includes 30,075 retailers with valid addresses from a list of tobacco retail licenses obtained in 2020.

**Adult Smoking Rates:** [California Health Interview Survey \(CHIS\)](#). These statistics are point estimates and 95% confidence intervals for adult (18 yrs and older) current (past 30 day) smokers. Estimates are reported by county and statewide. Counties that are small in population size are computed by combining data from multiple counties, but are still reported per county. Grouped Counties:

- Alpine, Amador, Calaveras, Inyo, Mariposa, Mono, Tuolumne
- Colusa, Glenn, Tehama
- Del Norte, Lassen, Modoc, Plumas, Sierra, Siskiyou, Trinity
- Napa, Sonoma
- San Benito, Santa Cruz
- Santa Barbara, Ventura
- The remaining 35 counties estimates are county specific.

**School Boundaries, Centroids, University Lands, Community Colleges:** [California School Campus Database 2021](#)

**Total Retail Licensing (TRL) and Flavor Sales restriction data:** California Tobacco Control Program's Policy Evaluation Tracking System, in partnership with Americans for Nonsmokers' Rights Foundation, Policy data as of September, 2020 Source: [American Nonsmokers' Rights Foundation](#)

**School Districts:** TIGER 2020 [census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html](https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html)

**Demographics:** American Community Survey 2015-2019 5-year estimates. The following fields are used:

- Population: B01001\_001E
- Under 5: B01001\_003E + B01001\_027E
- Age 5 to 17: (B01001\_004E to B01001\_006E) + (B01001\_028E to B01001\_030E)
- Age 18 to 19: B01001\_007E + B01001\_031E
- Under 21 (Age 0 to 20): (B01001\_003E to B01001\_008E) + (B01001\_027E to B01001\_032E)
- White, not Hispanic or Latino: B03002\_003E
- Hispanic/Latino, of any race: B03002\_012E
- Asian/Pacific Islander, not Hispanic or Latino: B03002\_006E + B03002\_007E
- Black, not Hispanic or Latino: B03002\_004E
- All Other Races, not Hispanic or Latino [American Indian, Some other race, Two or more races]: B03002\_005E + B03002\_008E + B03002\_009E
- Households: B19001\_001E
- Median Household Income (block group, tract, city/place, county, ZCTA): B19013\_001E
- Median Household Income (unincorporated and half mile areas): B19001\_001E to B19001\_017E
- SNAP Benefits: B22010\_001E, B22010\_002E, B22010\_005E

**City, Designated Place, Zip Code Tabulation Area, Tract, Block Group:** TIGER 2019

**Parks and Open Space:** California Protected Areas Database [www.calands.org](http://www.calands.org) (CPAD 2020b), December 2020

Demographics for counties, cities, designated places, and ZCTAs were extracted from the Census API available from the Census Bureau. Distance measures for proximity of tobacco retailers and schools were calculated using ArcGIS Pro(2.7.2).

Demographics for school selections and half-mile buffers, are estimated based on the census block groups intersecting the displayed area. For statistics other than median household income, this is a weighted proportion based on the population of each block group and the area which intersects the block group. The income figure is the median of block groups with their centroid within the buffer. These data should be interpreted with caution.

ZIP Codes are mail routes and do not have an associated polygon geometry. ZCTAs are a generalized representation of service areas. More information and resources are available at: [www.census.gov/programs-surveys/geography/guidance/geo-areas/zctas.html](https://www.census.gov/programs-surveys/geography/guidance/geo-areas/zctas.html) ZIP Codes are a trademark of the US Postal Service, ZIP Code Tabulation Areas are a trademark of the United States Census Bureau.

**Additional information on analysis, methods, and data processing are available at:** <https://cthat.org/#methods>

**Developed by the Stanford Prevention Research Center** [prevention.stanford.edu](http://prevention.stanford.edu) and **GreenInfo Network** [greeninfo.org](http://greeninfo.org).

Last updated: April 2021

- Harvard Health Blog - <https://www.health.harvard.edu/blog> -

## **EVALI: New information on vaping-induced lung injury**

Posted By [Molly Wolf, MD](#) & [Laura K. Rock, MD](#) On April 3, 2020 @ 6:30 am In [Addiction, Health, Lung disease, Smoking cessation](#) | [Comments Disabled](#)

E-cigarettes (vapes) first made headlines due to skyrocketing sales and popularity. Then reports of serious illnesses and deaths related to vaping tobacco and other substances began mounting in summer 2019. By mid-February 2020, [the CDC reported](#) more than 2,800 cases of lung injuries requiring hospitalization across all 50 states, and 68 deaths. EVALI, as this illness is now called, continues to generate questions, although emergency department visits related to vaping have been declining.

Why did vaping injuries, and even deaths, seem to occur so suddenly, even though e-cigarettes have been in use for years? Why is EVALI difficult to diagnose? What sort of lung injuries occur and what might be causing them? Why are only some people affected, while others continue to use vape products without apparent illness? And what do we know so far about possible long-term consequences of vaping?

### **A jump in popularity for vaping**

Especially among young adults, e-cigarette use rose quickly in recent years. Among high school seniors, for example, use rates rose from nearly zero in 2011 to almost 29% in 2019, according to the Centers for Disease Control and Prevention (CDC). An estimated 9% of adults 18 and over use vaping products, according to a 2018 [Gallup poll](#).

### **What is EVALI?**

EVALI (e-cigarette or vaping product use associated lung injury) is an inflammatory response in the lungs triggered by inhaled substances. Given a huge range of products — many illicit or counterfeit — and many different ingredients, it's not surprising that EVALI varies, too. It may occur as pneumonia, damage to tiny air sacs in the lungs (alveoli), or an inflammatory reaction called fibrinous pneumonitis.

### **Why is EVALI hard to diagnose?**

Confirming a diagnosis of EVALI has been difficult because no simple lab test for it is available. Right now, doctors diagnose EVALI based on symptoms, recent use of vaping products, abnormalities found on lung scans, and no evidence of infection. Unfortunately, direct lung examination requires a bronchoscopy, which most patients are too sick to tolerate safely. Data from patients who did undergo bronchoscopy has so far failed to identify the mechanism causing lung injuries.

### **What do we know about what causes EVALI?**

It has been hard to pinpoint the causes of EVALI. There are thousands of vaping products with varying ingredients, including illicit substances. Most likely, more than one specific product or substance is causing severe lung problems. No one knows why some people get EVALI and others do not, but part of this is probably due to the different ingredients they have inhaled.

- The most common brand associated with EVALI is Dank Vape, a brand of products containing THC, the principal psychoactive ingredient in marijuana.
- Exclusively using products with THC increases risk for EVALI. (It's unclear whether people who used nicotine-only vapes also were exposed to vape products with THC, or whether other ingredients caused the lung injury.)
- Vitamin E acetate is strongly associated with EVALI. It is found largely in counterfeit brands (and recently in Juul products from South Korea). Vitamin E is a supplement considered safe when ingested or applied to the skin. Vitamin E acetate is an oil derivative used in vaping products as a thickener. It is found in about half of the products associated with EVALI. A recent small study found vitamin E deposits in the lung tissue of EVALI patients.
- Other chemical components, including triglycerides, plant oils, petroleum distillates, and diluent terpenes have been found in bronchoscopy specimens of EVALI patients. But none are present in all patients.

## Potential long-term health concerns related to vaping

Naturally, severe illness and death from vaping-related lung injury has received a lot of attention. But there are other causes for concern about the long-term health effects of inhaled vapors, including humectants, flavorings, the heating process, and metallic coil corrosion.

- **Humectants** are additives used to produce vapor, such as propylene glycol or glycerol. Human respiratory cells exposed to humectants in lab experiments show increased inflammation and decreased survival. This raises concern about lung damage when people inhale humectants.
- Thousands of vape **flavoring products** have been reported. Because these are inhaled, not ingested, they are not regulated by the Flavor and Extract Manufacturers Association (FEMA). Diacetyl, which gives food a buttery or creamy flavor, is one example. Factory workers exposed to high levels of diacetyl in popcorn factories have developed lung injury known as “popcorn lung,” so it is regulated in the workplace by OSHA. Yet diacetyl is used in over 60% of sweet-flavored vapes, and just three to four puffs a day far exceeds exposure limits set by OSHA.
- **Heating ingredients** to create vapor causes their chemical components to decompose, which may also be a health hazard. For example, heating propylene glycol produces aldehydes, which expose users to five to 15 times the levels of formaldehyde vapor — a known carcinogen — found in tobacco cigarettes.
- Additionally, repeated use of refillable cartridges can **cause metal heating coils to decompose**, which could lead to inhaling or ingesting heavy metals. The toxic metals manganese and zinc have been isolated from used vaping devices. These can cause illness when ingested at high levels. There are also case reports of lung injury linked with cobalt in vaping liquid. This has been attributed to coil corrosion.

### The bottom line

For now, the CDC and FDA strongly recommend that people avoid use of e-cigarettes or vaping products containing THC, especially from the illicit market. Health care workers must report any suspected cases of EVALI to their state department of health. In Massachusetts, new legislation bans the sale of all flavored tobacco products starting in June 2020, and imposes a tax on nicotine vaping products. The United States House and Senate have passed a bill prohibiting sales of tobacco and e-cigarettes to anyone under 21 years old. While these measures are a start, it’s also necessary to regulate the safety of the ingredients in e-cigarettes.

### Related Information: [Quit Smoking for Good](#)

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URL to article: <https://www.health.harvard.edu/blog/evali-new-information-on-vaping-induced-lung-injury-2020040319359>

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# Decriminalizing Commercial Tobacco

## Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control

This joint statement from a consortium of public health organizations sets forth aspirational principles to help local and state health departments, decisionmakers, advocates, and other stakeholders advance equitable enforcement<sup>i</sup> practices related to the purchase, possession, sale, and distribution of all tobacco products.<sup>ii</sup> These principles can also help address tobacco addiction and reduce tobacco-related harms while maintaining and improving the efficacy of enforcement of commercial tobacco laws and policies.



<sup>i</sup> This document adopts the definition of equitable enforcement set forth in the ChangeLab Solutions resource [Equitable Enforcement to Achieve Health Equity: An Introductory Guide for Policymakers and Practitioners](#):

*“Equitable enforcement is a process of ensuring compliance with law and policy that considers and minimizes harms to underserved communities. An equitable enforcement approach means considering equity – both at the level of the public entity’s overall enforcement strategy and at the level of individual enforcement actions. It also means considering equity at all stages of enforcement, from determining when to undertake an enforcement action – and against whom – to deciding which enforcement tools to use.”*

<sup>ii</sup> We recognize the important role of ceremonial and traditional tobacco for many indigenous communities. This document is intended to address commercial tobacco, not the provision, possession, or use of tobacco products as part of an indigenous practice or other recognized religious or spiritual ceremony or practice. All references to tobacco and tobacco products in this document refer to commercial tobacco, including e-cigarettes.

*This statement is for informational purposes only and does not constitute legal advice. Readers should consult with an attorney licensed to practice in their state before adopting any recommendations in this statement.*

## BACKGROUND

Despite an overall decline in the prevalence of tobacco use, not all populations are equally protected by the laws, policies, and resources that are intended to reduce tobacco use and tobacco-related harm. Tobacco industry documents reveal how disparities in the burden of tobacco-related disease and death outcomes among certain communities are no coincidence. On the contrary, the tobacco industry strategically markets and perniciously targets its deadly products in underserved communities.<sup>1,2</sup> As a result, certain racial and ethnic communities, low-income communities, and LGBTQ+ communities, among others, are exposed to more point-of-sale advertising, live in places with a greater concentration of retailers that sell tobacco products, and have a higher prevalence of tobacco use.

Indeed, tobacco use, particularly menthol cigarettes and flavored little cigars, are a main vector of death and disease in economically disadvantaged Black and Brown communities. Mentholated tobacco products are not only linked to higher rates of tobacco initiation but are also more heavily marketed in areas with greater numbers of low-income and Black residents and cheaper in geographic areas with greater proportions of Black residents.<sup>3,4,5,6,7</sup> As disparities in tobacco advertising, access, and use persist, so do disparities in the enforcement of commercial tobacco control laws and policies.

The COVID-19 pandemic has exposed the underlying health inequities and systemic racism that have gripped Black and Brown communities for hundreds of years. Law enforcement should not approach, harass, or arrest structurally marginalized communities, especially children of color, because they have a tobacco product in their possession. In fact, it's the exact opposite of what is needed. To save lives, especially Black and Brown lives, local and state tobacco prevention and control partners must address where and how public health laws contribute to systemic racism and discrimination. This includes not only working to eliminate the sale of mentholated tobacco products but also addressing inequities in the enforcement of commercial tobacco control laws and policies.

The outlined values and recommendations are intended to address state and local enforcement practices related to the purchase, possession, sale, and distribution of commercial tobacco products. These values and recommendations may also apply to other tobacco control laws and policies (e.g. smoke-free and tobacco-free places) and public health efforts more broadly. Importantly, efforts to decriminalize the purchase, possession, sale, and distribution of commercial tobacco products and enact broader reforms to enforcement practices must be accompanied by free, accessible, confidential, and culturally appropriate cessation and counseling services.

## VALUES AND RECOMMENDATIONS

**VALUE 1:** Commercial tobacco control laws and policies, including regulations on the sale and distribution of commercial tobacco products, are first and foremost public health measures.

**I. Vest enforcement authority for commercial tobacco control laws in public health or other non-police officials (e.g. civil code enforcement officers).<sup>iii</sup>**

- Ultimately, states and localities that currently rely on police or other traditional law enforcement entities to enforce commercial tobacco control laws should shift enforcement to public health or other non-police entities. Proactive efforts necessary to facilitate this shift may include amending state and local laws, building capacity, and developing guidance.
- States and localities should appropriate funding to build local government capacity to shift the enforcement of commercial tobacco control laws to entities other than local police officers.
- Stakeholders should develop guidance for local jurisdictions without a viable non-police entity presently able to enforce commercial tobacco control laws.

**II. Ensure revenues from commercial tobacco control laws, including tobacco taxes, are used to support public health objectives and advance health equity.**

- All funding should be directed to health entities to support:
  - The adoption, implementation, and non-police enforcement of commercial tobacco control laws.
  - Laws, policies, initiatives, and interventions designed to prevent and reduce commercial tobacco use, including those focused on the social and structural determinants of health.
  - Comprehensive tobacco control programs, including the provision of evidence-based counseling and cessation services.
- If legally feasible, states and localities should amend existing measures (e.g. tobacco taxes) to redirect funding to public health entities.

**III. Conduct systematic, evidence-based research on the implementation and enforcement of commercial tobacco control laws with a particular focus on how implementation and enforcement practices affect underserved populations in urban, suburban, and rural communities such as youth, persons of color, persons with low-incomes, persons who identify as LGBTQ+, and persons with disabilities.**

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<sup>iii</sup> Large-scale tobacco trafficking or tax evasion may necessitate the continued involvement of traditional law enforcement entities such as the state's attorney general. However, states and localities should ensure that the involvement of such entities is limited to the most serious offenses, with public health and/or other non-police officials enforcing the overwhelming majority of commercial tobacco control laws.

**VALUE 2:** State and local governments should reform or eliminate laws, policies, and enforcement practices that target individuals, especially youth, rather than businesses and industry actors.

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**I. Eliminate youth purchase, use, and possession penalties (“youth PUP laws”).**

- States and localities should abolish laws, policies, and enforcement practices that target persons under twenty-one (21) years old, including laws that impose criminal, civil, administrative, or any other penalties on youth for the purchase, use, or possession of tobacco products.
- States and localities should repeal existing and resist efforts to enact new youth PUP laws.
- If a youth PUP law exists at the state level, localities within the state should:
  - Repeal any local youth PUP laws.
  - Advocate for the repeal of the state youth PUP law.
  - Prohibit local officials, including local law enforcement, from enforcing the state youth PUP law.

**II. Eliminate criminal penalties for individuals, including retail clerks, that unlawfully sell, give, barter, distribute, or otherwise exchange tobacco products.** State and local laws should focus on holding businesses and industry actors accountable for violations of tobacco control laws.

**III. Ensure laws and policies that prohibit students and/or staff from possessing or using commercial tobacco products in school address violations in a manner consistent with restorative justice principles.**

- Enforcement of tobacco-free school laws and policies should not involve law enforcement personnel, including school resource officers.
- Student violations should never result in suspension, expulsion, criminal referral, or any other punitive response.
- Students who possess or use commercial tobacco products in school should have the product confiscated and be referred to free, evidence-based education, counseling, and cessation support services. Students who do not engage with education, counseling, and cessation support services should not face additional penalties or disciplinary action.

**VALUE 3:** Enforcement practices and penalties for violations of commercial tobacco control laws should be proportional to the alleged violation and address health, equity, and social justice considerations.

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- I. **Eliminate the use of physical force against people suspected or guilty of violating commercial tobacco control laws.**
- II. **Prohibit enforcement officials from initiating contact with an individual based on the individual's possession of a tobacco product.**
- III. **Ensure that if commercial tobacco control laws are enforced against individuals, as opposed to businesses, they should not include punitive measures such as criminal penalties, fines, or mandatory community service.**
  - If state or local law regulates the possession of tobacco products, violations should result in a referral for evidence-based counseling and cessation support. Individuals who do not engage with the counseling and cessation services should not be subject to any additional penalties.
  - If state or local commercial tobacco control laws do impose punitive measures such as fines or mandatory community service for violations:
    - The amount of the fine should be based on an individual's ability to pay.
    - Individuals who do not pay the fines or complete community service should not be subject to any additional penalties.
    - Fines and mandatory community service should never be imposed on underage youth who violate commercial tobacco control laws.

**VALUE 4:** State and local governments should adopt legal and policy frameworks that facilitate the effective, equitable enforcement of commercial tobacco control laws by holding businesses and other industry actors accountable for violations.

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- I. **Ensure all retailers that sell commercial tobacco products, including e-cigarettes, are required to obtain and maintain a valid tobacco retailer license.**
  - Tobacco retailer licensing is an effective, evidence-based approach to hold businesses accountable for violations of commercial tobacco control laws.
  - Licensing can provide a dedicated funding stream to support the implementation and enforcement of commercial tobacco control laws by public health officials. States and localities should establish tobacco retailer licensing fees sufficient to cover the full cost of implementation and enforcement, including retailer education initiatives and regular compliance checks of all retailers that sell tobacco products.

**II. Hold business owners accountable for violations committed by their employees.**

- States and localities should hold business owners accountable by imposing penalties for violations of commercial tobacco control laws by the businesses' agents or employees.
- All penalties for violations of laws regulating the sale and distribution of commercial tobacco products should be imposed on business owners and other industry actors.
- If state or local law penalizes retail clerks for violations, business owners must also be penalized for the violation. The penalties applicable to business owners should be substantially greater than those applicable to retail clerks.

**III. Establish tiered penalties for businesses that violate commercial tobacco control laws.**

- States and localities should suspend or revoke the ability of a business to sell tobacco products if the business violates commercial tobacco control laws. The suspension and/or revocation period should increase based on the number of violations a business has committed within the previous five years.
- Civil and/or administrative fines should increase based on the number of violations a business has committed within the previous five years.
- Criminal penalties should be reserved only for businesses that repeatedly violate commercial tobacco control laws.

**IV. Ensure that enforcement practices aimed at commercial tobacco retail sales establishments occur in a data-driven, evidence-based, and equitable manner.**

- States and localities should conduct at least one unannounced compliance check annually of each business that sells or distributes commercial tobacco products. A business found in violation of commercial tobacco control laws should be subject to an additional compliance check within six months of the violation.
- Collect and evaluate data regarding compliance checks of and enforcement actions against tobacco retail sales establishments to ensure that enforcement practices do not unfairly target underserved communities. If businesses in certain communities have a greater number or rate of violations, public health officials should seek to identify compliance barriers and offer technical assistance to help businesses comply with applicable laws.
- Conduct empirical studies evaluating the adoption and implementation of these recommendations to ensure the recommendations accomplish their intended public health and equity goals. If research identifies any unintended consequences, states and localities should adjust commercial tobacco control laws and policies as necessary to ensure their efficacy and equitableness.

## ENDORISING ORGANIZATIONS\*

Action on Smoking & Health  
African American Tobacco Control Leadership Council  
American Cancer Society Cancer Action Network  
American Heart Association  
American Lung Association  
American Public Health Association  
Americans for Nonsmokers' Rights  
Asian Pacific Islander Coalition Advocating Together for Health  
Asian Pacific Partners for Empowerment, Advocacy and Leadership  
Association of Schools and Programs of Public Health  
Campaign for Tobacco Free Kids  
The Center for Black Health & Equity  
The Center for Tobacco Control Research and Education  
ChangeLab Solutions  
ClearWay Minnesota<sup>SM</sup>  
Community Advocates  
Counter Tools  
Eta Sigma Gamma, Inc.  
Hawai'i Public Health Association  
Healthy King County Coalition (WA)

IFF Health  
Jump at the Sun Consultants, LLC  
Minnesota Public Health Association  
Missouri Eliminate Tobacco Use Initiative  
Missouri Foundation for Health  
Missouri Public Health Association  
National LGBT Cancer Network  
National Network of Public Health Institutes  
Neighborhood House  
New Mexico Allied Council on Tobacco  
New York State Public Health Association  
Ohio Public Health Association  
Partnership for a Tobacco Free Wisconsin  
Pennsylvania Public Health Association  
Preventing Tobacco Addiction Foundation  
Public Health Law Center  
SelfMade Health Network  
Tobacco Control Network  
Truth Initiative  
Twin Cities Medical Society  
Washington State Public Health Association  
Wisconsin Public Health Association  
Wisconsin Association of Local Health Departments and Boards

\* **Organizational endorsements received by November 11, 2020.**

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## ACKNOWLEDGMENTS

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## SUGGESTED CITATION

Tobacco Control Enforcement for Racial Equity: Decriminalizing Commercial Tobacco Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control. November 2020.

**RESOLUTION OF THE ANTIOCH COUNCIL OF TEENS URGING THE ANTIOCH CITY COUNCIL TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS, INCLUDING ELECTRONIC CIGARETTES AND MENTHOL CIGARETTES; TO ESTABLISH A MINIMUM PACK SIZE AND PRICE FOR LITTLE CIGARS AND CIGARILLOS; TO PROHIBIT THE LOCATION OF NEW TOBACCO RETAILERS WITHIN AT LEAST 1,000 FEET OF SCHOOLS AND OTHER YOUTH SENSITIVE AREAS AND WITHIN AT LEAST 600 FEET OF ANOTHER TOBACCO RETAILER; AND TO ENFORCE THESE MEASURES THROUGH TOBACCO RETAILER LICENSING.**

**WHEREAS**, tobacco use is the number one cause of preventable death in the United States. In the U.S., tobacco use kills more than 480,000 people per year — more than AIDS, alcohol, car accidents, illegal drugs, homicide, and suicides combined. In 2012, the tobacco industry spent 1.13 billion dollars on marketing and advertising in California.<sup>1</sup> Nearly 80 percent of all adult smokers begin smoking by age 18.<sup>2</sup> The Campaign for Tobacco Free Kids estimates that 441,000 youth now under the age of 18 in CA will ultimately die prematurely from smoking.

**WHEREAS**, a 2015 study of adolescents ages 12 to 17 found that among those who self-reported ever experimenting with tobacco, the majority started with a flavored product. It also found that most current youth tobacco users reported use of flavored products.<sup>3</sup>

**WHEREAS**, countywide, two-thirds of all stores in Contra Costa sell e-cigarettes. The number of stores selling e-cigarettes statewide has increased from 46% in 2013 to 57% in 2019.<sup>4</sup> Many of these products are attractive to youth because they are relatively cheap and come in flavors like cherry lime-ade and mint.

**WHEREAS**, of stores surveyed in the 2020 Antioch Community Walk Around Store Survey 48% of stores sold e-cigarettes and flavored e-liquid and over 83% of stores sold flavored cigarillos and little cigars in flavors like grape, unicorn milk, and THOT juice.

**WHEREAS**, cigarillos and little cigars can be purchased for as little as \$1 — less than the price of a candy bar.<sup>5</sup>

**WHEREAS**, cigarillos such as Swisher Sweets and Black & Mild, often sold in packs of 5 or less, can have up to four times as much nicotine as a cigarette.<sup>6</sup>

**WHEREAS**, although the sale of flavored and individual cigarettes is banned by federal law, neither federal nor California law restrict the sale of flavored cigar products or the sale of individual cigar products.<sup>7</sup>

<sup>1</sup> Schleicher, Nina C., et al. 2013. "Tobacco Marketing in California's Retail Environment." Final report for the California Tobacco Advertising Survey (2014) Submitted to the California Tobacco Control Program, California Department of Public Health

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<sup>3</sup> Ambrose, B.K., et al., Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. JAMA, 2015: p. 1-3.

<sup>4</sup> Healthy Stores for a Healthy Community. 2019. Contra Costa County Local Data.

<sup>5</sup> Antioch Community Walk Around Survey. 2020. Bay Area Community Resources Data.

<sup>6</sup> Health Effects and Trends. Smoking and Tobacco Control Monograph No. 9. NIH Pub. No. 98-4302, February 1998. Chapter 3, Table 4a. Available at: [http://cancercontrol.cancer.gov/tcrb/monographs/9/m9\\_3.PDF](http://cancercontrol.cancer.gov/tcrb/monographs/9/m9_3.PDF).

<sup>7</sup> 21 Code of Federal Regulations § 1140.14(d).

**WHEREAS**, menthol cigarettes are not safer than regular cigarettes. Menthol cigarettes have been shown to increase youth initiation, inhibit cessation, and promote relapse. Scientific studies have shown that because of its sensory effects and flavor, menthol may enhance the addictiveness of cigarettes.<sup>8</sup>

**WHEREAS**, 93% of stores surveyed in the 2020 Antioch Community Walk Around survey sold menthol cigarettes.<sup>9</sup>

**WHEREAS**, reducing tobacco retailer density prevents youth from starting, and helps former smokers stay quit. High density of tobacco retailers has been associated with increased smoking rates, particularly among youth.<sup>10</sup>

**WHEREAS**, the tobacco industry targets low-income communities, and studies show that the number and density of tobacco retailers are disproportionately high in low-income communities.<sup>11</sup>

**WHEREAS**, in Contra Costa County, six in 10 stores selling tobacco near schools in Contra Costa are in low income cities and unincorporated communities. People living in low-income areas have high rates of smoking and chronic diseases like heart disease, cancers, and stroke.<sup>12</sup>

**WHEREAS**, there are 35 Antioch stores selling tobacco within 1,000 feet of Antioch schools.<sup>13</sup>

**NOW, THEREFORE BE IT RESOLVED THAT** the Antioch Council on Teens urges the Antioch City Council to:

- 1) prohibit the sale of flavored tobacco products, including menthol, throughout the city;
- 2) establish a minimum pack size and price for little cigars and cigarillos;
- 3) prohibit the location of NEW tobacco retailers within at least 1,000 feet of schools and other youth sensitive areas and within at least 600 feet of another tobacco retailer;
- 4) institute a mechanism through Tobacco Retail Licensing to enforce the new policies in the city.

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

<sup>8</sup> Tobacco Product Scientific Advisory Committee (TPSAC), *Menthol cigarettes and the public health: Review of the scientific evidence and recommendations.*, US Department of Health and Human Services Food and Drug Administration, Editor. 2011: Rockville, MD.

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<sup>13</sup> Community Walk Around Store List: Antioch. 2019. Contra Costa County Health and Human Services.