


*Big Tobacco Tastes Defeat:
San Francisco Ended Sales of Flavored
Tobacco Products & You Can, Too!*

Wednesday, June 20, 2018
10:30-11:30 PST



Housekeeping:

- The slides and the link to the archived webinar will be shared via email.
- Feel free to ask questions via chat box.
 - Unanswered questions will be addressed via email.



Agenda and Presenters:



Historical context of flavored tobacco regulation
Liz Hendrix, Program Consultant, California Tobacco Control Program




Equity considerations of menthol and flavored tobacco products
Carol McGuder, Co-chair, African American Tobacco Control Leadership Council and Project Director, African American Statewide Coordinating Center




San Francisco's initial flavor ban and the referendum
Derek Smith, Director, San Francisco Tobacco Free Project



Agenda and Presenters:



Keeping up the momentum for flavors regulation
Derek Carr, Staff Attorney, ChangeLab Solutions



Q&A
Pratima Musburger, Senior Staff Attorney and Program Director, ChangeLab Solutions



Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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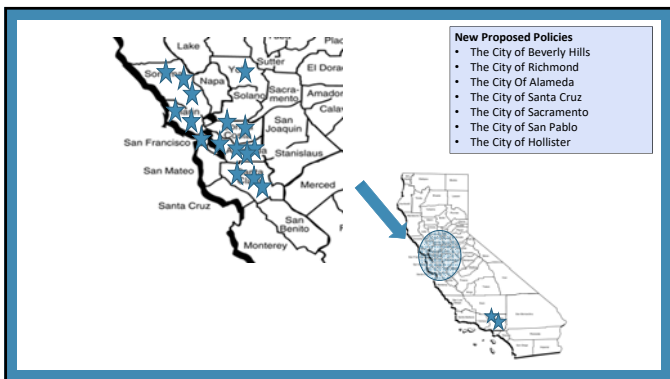
FLAVORED TOBACCO BANS IN THE U.S.

Liz Hendrix, MPP
 California Department of Public Health

2009 Tobacco Control Act







Past Legal Cases

- Lawsuits against New York City, NY (2009); Providence, RI (2012); Chicago, IL (2013)
- Industry argument: the Tobacco Control Act preempts a local ordinance
- Court decision: federal law did not preempt local ordinances because the ordinances regulate **the sale** of tobacco products, not **the manufacture** of those products
- Cases reaffirm the authority of state and local governments to restrict the sale of flavored tobacco products



San Francisco Policy



Big Tobacco Tastes Defeat

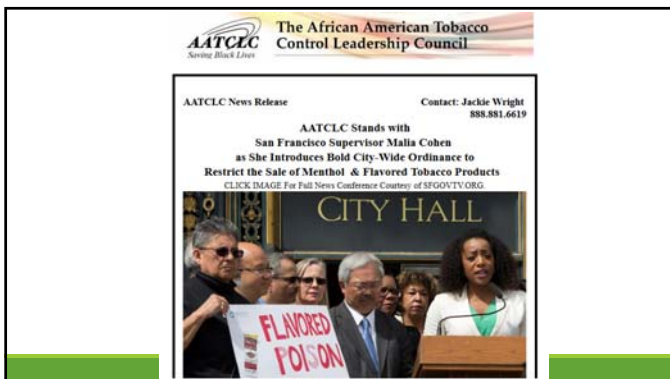
Equity Considerations for Flavored and Menthol Tobacco Products Campaigns

June 19, 2018

Carol McGruder, Co-Chair
African American Tobacco Control Leadership Council








2009~2010

MEMORIAL YEAR AT A GLANCE
 Since President Barack Obama signed the Family Smoking Prevention and Tobacco Control Act in 2009, FDA has made great strides to initiate tobacco product regulation.



JUN		Family Smoking Prevention and Tobacco Control Act signed by President Obama
JUL		Established the Collection of User Fees from Industry
AUG		Created the Tobacco Products Scientific Advisory Committee
SEP		Selected the Director of the Center for Tobacco Products
OCT		Issued Guidance on Registration and Product Listing
FEB		Announced Request for Proposals to Enhance Provisions of the Tobacco Control Act
MAR		Issued Final Rule Restricting Access and Marketing of Cigarettes and Smoking Tobacco Products to Youth Launched Call Center for Tobacco Product Inquiries: 1-877-CTQ-1373
APR		Announced Stakeholder Discussion Series
JUN		Issued Prohibition on Misleading Marketing Terms ("Lights," "Lows," and "Mild") for Tobacco Products Required Warning Labels for Smoking Tobacco Products

Family Smoking Prevention and Tobacco Control Act, 2009

A CIGARETTE ...SHALL NOT CONTAIN... AN ARTIFICIAL OR NATURAL FLAVOR (OTHER THAN TOBACCO OR MENTHOL) OR AN HERB OR SPICE, INCLUDING STRAWBERRY, GRAPE, ORANGE, CLOVE, CINNAMON, PINEAPPLE, VANILLA, COCONUT, LICORICE, COCOA, CHOCOLATE, CHERRY, OR COFFEE, THAT IS A CHARACTERIZING FLAVOR OF THE TOBACCO PRODUCT OR TOBACCO SMOKE.

MEANT TO PROTECT CHILDREN, BUT IT DIDN'T PROTECT OUR BLACK CHILDREN.





Trickle Down Public Health Policy

Emerging menthol tobacco products:
These are NOT cigarettes



Small/Little Cigars and Other Tobacco Products



Cigarillos



Cigarillos are included in "large cigar" category despite significant differences in their marketing and packaging from that of typical large cigars

Carpenter CM, et al. New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies. Health Affairs, 2005, 24(6): 1601-1610.

Swisher Sweets



African Americans-Menthol

- Perniciously targeted by all major tobacco companies
- "Urban" programs included
 - Co-optation of Black leadership, heavy media campaigns, free giveaways to children, van programs, retailers programs, event sponsorship
- Over 80% of African Americans smoke mentholated cigarettes
- Over 90% of Black youth initiate with menthol cigarettes
- Addiction is about science and opportunity
- Menthol is a Human Rights and Social Justice Issue

The "Inner City" Youth Marie Evans

- Grew up in Boston public housing
- Given free Newports at the age of nine
- Addicted to cigarettes at age 13
- Dead at 54
- Family awarded \$152 million judgment
- Settled last year for \$79 million

Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities

Valerie B. Yergler, Jennifer Przewoznik, Ruth E. Malone

From: *Journal of Health Care for the Poor and Underserved*
 Volume 18, Number 4 Supplement, November 2007
 pp. 15-28 | 10.1203/hpu.2007.0120

Abstract

Industry has played a complex role in the rise of tobacco-related diseases in the United States. The tobacco industry's activities, including targeted marketing, are arguably among the most powerful corporate influences on health and health policy. We analyzed over 400 internal tobacco industry documents to explore how, during the past several decades, the industry targeted inner cities populated predominantly by low-income African American residents with highly concentrated menthol cigarette marketing. We study how major tobacco companies competed against one another in menthol wars fought within these urban cores. Little previous work has analyzed the way in which the inner city's complex geography of race, class, and place shaped the avenues used by tobacco corporations to increase tobacco use in low-income, predominantly African American urban cores in the 1970s-1990s. Our analysis shows how the industry's activities contributed to the racialized geography of today's tobacco-related health disparities.

Yergler, V. B. & Activity, and Health DisparitiesPrzewoznik, J. & Malone, R. E. (2007). Racialized Geography, Corporate Ties: Tobacco Industry Targeting of Inner Cities. *Journal of Health Care for the Poor and Underserved* 18(6), 10-38. The Johns Hopkins University Press. Retrieved April 21, 2014, from Project MUSE database. <http://www.ncbi.nlm.nih.gov/pubmed/18065850>

Inner Cities became the Battlefield for “Menthol Wars”

Major tobacco companies aggressively competed against one another

Promotion of menthol brands intensified during the 1980s and 1990s

Inner city communities were exploited by the entire tobacco industry

Chemistry + Access = ADDICTION

**FRAME
MENTHOL AS
A SOCIAL
INJUSTICE**



Healthy communities facilitate the individual's ability to make healthy choices



Engaging Affected Communities

Engaging The Community

- Community Forums
- Spoken Word Events-Giving Voice
- Resolutions
- Meaningful Engagement
- Honesty

DELTA SIGMA THETA SORORITY, INC.
A SERVICE SORORITY
Grand Chapter

PROHIBTING THE USE OF MENTHOL AS A
CHARACTERIZING FLAVOR IN CIGARETTES

Passed at the 51st National Convention July 2013 with 40,000 members in attendance.



Bay Area Black Nurses
Association

Jan, 2016
Calling on FDA to
ban menthol; and
requesting state and
local governments
to restrict sale of
menthol cigarettes
and other flavored
tobacco products



NAACP Adopts Menthol Resolution

July 19, 2016
Calling on chapters to
support state and local
efforts to regulate menthol
cigarettes and other
flavored tobacco products



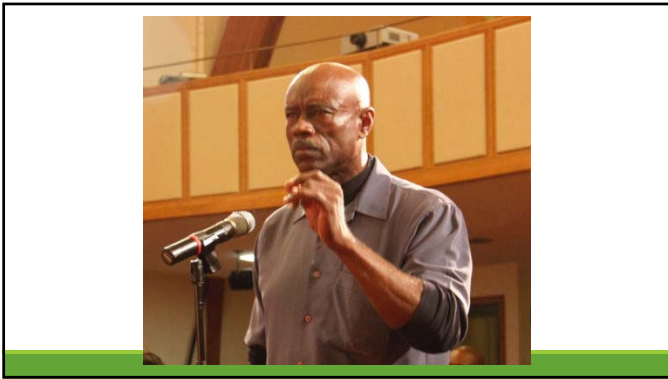
October 15, 2016
National Board of Directors
ratified resolution

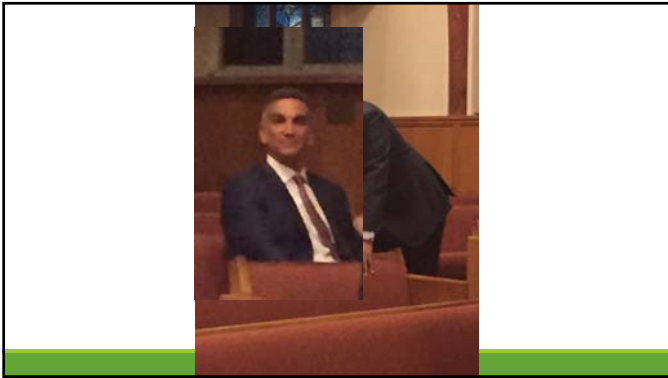












Legitimate Concerns of the African American Community

- Racism
- Police Brutality
- Officer Involved Killings

Eric Garner- "I Can't Breathe"

BLACK LIVES MATTER

July 17, 2014, choked and left to die in handcuffs for allegedly selling "loose" single cigarettes in Staten Island, New York City.



Trayvon, Oscar, and Jordan



Jordan
with his father
Odell



Silent Predators- T.I. Executives-1994
Federally Adjudicated Racketeers



In 2006, Judge Gladys Kessler of the United States District Court for the District of Columbia found Philip Morris (Altria), R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Co., British American Tobacco Ltd., Lorillard Tobacco Co., and Counsel for Tobacco Research-U.S.A. **guilty of federal racketeering** under the Racketeer Influenced and Corrupt Organizations Act (RICO). The only difference between these tobacco companies and the MAFIA is that Big Tobacco is incorporated and that they use the magic of marketing and the power of addiction to get their victims to voluntarily kill themselves. In her 1,653 page ruling, Judge Kessler wrote that the **"defendants have marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted."** She stated further, "The evidence clearly establishes that the Defendants have not ceased engaging in unlawful activity..." Big Tobacco sought to appeal her decision, but it was upheld in 2009.

“defendants have marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.”





SF CAN San Francisco
Cancer Initiative **sfcancer.org**



Goal: Educate the public about the need for an ordinance that restricts selling and distributing menthol cigarettes and other flavored tobacco products in San Francisco

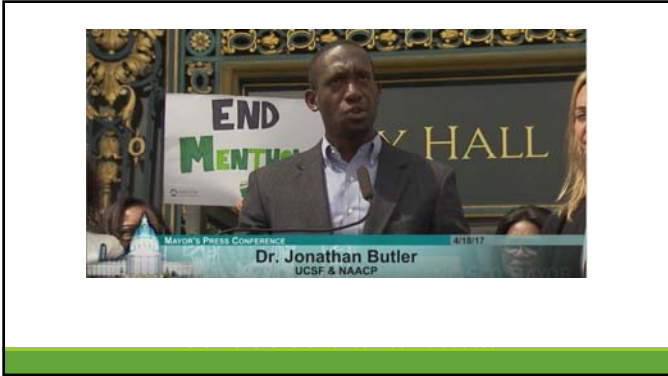
Method: Engage those communities disproportionately affected by menthol, leveraging relationships with community advocates/activists

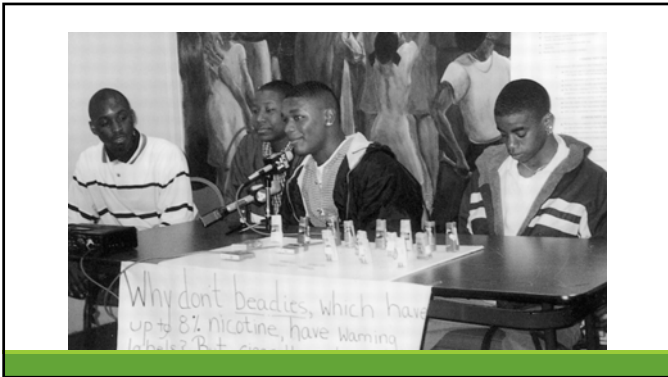
All Hands Were On Deck

- Michael Bloomberg
- Tobacco Free Kids
- American Heart Association
- American Lung Association
- American Cancer Society
- BREATHE California
- Truth Initiative
- Larry Tramatola



Oakland Vice Mayor Annie Campbell Washington,
San Francisco Chief of Police William "Bill" Scott and Supervisor Malia Cohen


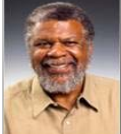









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San Francisco's Flavored Tobacco Policy



DEREK SMITH
 DIRECTOR, TOBACCO FREE PROJECT
 COMMUNITY HEALTH EQUITY & PROMOTION BRANCH
 SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

In San Francisco, Tobacco Products are...

Slide 6a

Brief overview of action on flavored tobacco

- July 2009: President Obama signs Family Smoking Prevention and Tobacco Control Act
- 2016: UCSF Cancer Initiative Launches White SF Tobacco-Free Coalition prioritizes tackling flavors
- Feb 2017: Led by African American Tobacco Control Leadership Council and SF Tobacco-Free Coalition, issue proceeds to local leaders
- June-July 2017: Local ordinance adopted by the Board and signed by Mayor Lee set to be effective April 2, 2018
- Sept 2017: Ordinance is suspended until June 5, 2018 voter referendum. RJ Reynolds floods local media with over \$1m spent, about \$120 per vote received
- Nov 2013: SF Health Commission resolution on FDA and menthol
- 2017: SF DPH funds a community based org using the Community Action Model to investigate flavors in their community
- March-May 2017: Public hearings as a result of Sup-Cohen introduction. Small Business, Health, Youth, and Public Safety Commissioners
- July-Aug 2017: RJ Reynolds Tobacco Company launches a whitewash referendum signature campaign, paying people to gather over 30,000
- June 5 2018: With 68% voting in support, the ordinance is upheld!

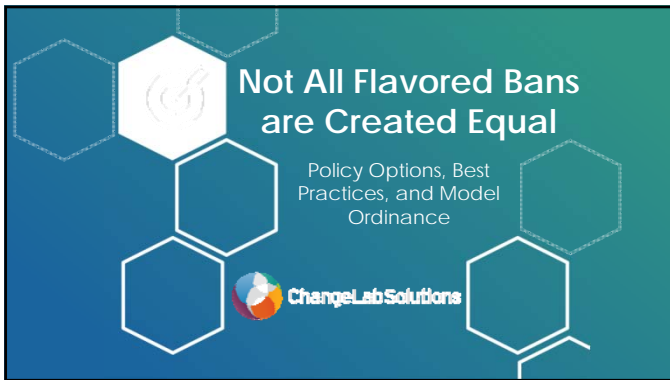
Ending the Sale of Menthol and Flavored Tobacco Products in San Francisco (Health Code 19Q)

Adds to the current Tobacco Retail License ordinance:

1. Sale or distribution by a retailer of any flavored tobacco product is prohibited
2. Enforcement will be at the Retail Sales level; not about individual possession or use of tobacco product
3. Effective date 10 days after election certification, July 2018

Slide 6b







Policy Solutions

- Complete Sales Prohibition
- Buffer Zones
- Adult-only, Significant Tobacco Retailers

 *Not all flavored tobacco bans*
Are created equal

- Cigarettes
- Other Tobacco Products
- Electronic Smoking Devices and E-Juice

Not all flavored Tobacco bans
Are created equal

MENTHOL

Marlboro


20 FILTER CIGARETTES

Wikipedia Commons



Grandfathering
It's not a binary choice!

- Is grandfathering *required*?
- *Who* to grandfather?
- *How long* to grandfather?
- Is the grandfathering *transferable*?



Available Now!
<http://changelabsolutions.org/publications/flavored-tobacco>

Model Ordinance Key Provisions

- Covers all tobacco products, including:
 - Cigarettes
 - Components, Parts, and Accessories
- Covers all flavors, including menthol
- Applies to all tobacco retailers - no exceptions!
- 6-month grace period for all tobacco retailers
- Optional, additional 6-month grace period for significant tobacco retailers.

