



SPECIAL AND REGULAR MEETING MINUTES

Date: 11/5/2019
Time: 5:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

A. Call To Order

Mayor Mueller called the meeting to order at 5:08 p.m.

B. Roll Call

Present: Carlton, Combs, Nash, Mueller, Taylor

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney William McClure, City Clerk Judi A. Herren

C. Pledge of Allegiance

Mayor Mueller lead the Pledge of Allegiance.

Mayor Mueller reordered the agenda.

5:00 p.m. Study Session

SS2. Discussion of proposed ordinance banning sale of flavored tobacco and e-cigarette devices
(Staff Report #19-238-CC)

Assistant City Attorney Cara Silver made the presentation (Attachment).

- Taja Henderson spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Aniya Majors spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Erik Burmeister, superintendent of Menlo Park City School District, spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Francesca Lomotan spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Tricia Barr spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices (Attachment).
- Nancy Prouty read a letter from her husband, a psychologist, in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Lillian Perazich, with donated time from Maria Balue, spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices (Attachment).
- Helen Fehoko -Kayla Lacey -Alahea Mahe spoke in support of an ordinance banning the sale of

flavored tobacco and e-cigarette devices.

- Vinita Verma spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Gloria Brown spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Adina Levin commented on the proposed complaint based enforcement.
- Fran Dehn spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices and requested the city attorney to review the current smoking ban ordinance.

The City Council discussed banning sales in vending machines and smoke shops, encouraging neighboring jurisdictions to adopt a similar ordinance, and enforcement.

By acclamation, the City Council requested the ordinance be returned for consideration.

SS1. Overview of recent State housing legislation and 2022 housing element update
(Staff Report #19-239-CC)

Interim Community Development Director Deanna Chow, Assistant City Attorney Cara Silver, and Goldfarb & Lipman representative Barbara Kautz made the presentation (Attachment).

- Crystal Leach, superintendent of the Sequoia High school District, requested that district be invited to participate in housing development discussions.
- Verle Aebi commented on how the new laws impact the job/housing imbalance (Attachment).
- Pamela Jones spoke on the job/housing imbalance and the opportunities available to Menlo Park for housing.
- Adina Levin commented that new laws allowing for more housing.
- Rachel Horst spoke in support of more housing and not just meeting the new law expectations.
- Chris Stock spoke on the costs of renting in the area and in support of higher density and more low-income housing.
- Jen Wolosin spoke in support of more housing and commented on the affordability crisis.
- Curt Conroy spoke in support of more housing.
- Karen Camacho, on Behalf Housing Leadership Counsel for San Mateo County, spoke in support of beginning the rezoning process.
- Lauren Bigelow spoke on the need for more housing.
- Nevada Merriman spoke in support of more housing

The City Council received clarification on new housing bills, including SB 330, accessory dwelling units (ADU), short-term rentals and residential density requirements. City Council received clarification on collecting historical analysis, housing density restrictions and rezoning restrictions.

D. Public Comment

- Bo Crane with donated time from Jim Lewis spoke on an upcoming event of the Menlo Park Historical Association November 9 (Attachment).

E. Consent Calendar

City Councilmember Nash pulled item E4.

Mayor Pro Tem Taylor pulled item E2.

- E1. Accept the City Council meeting minutes for October 15, 2019 ([Attachment](#))
- E2. Adopt Resolution No. 6524 authorizing the submittal of a grant application for the Senate Bill 2 planning grant program; authorize the city manager to execute required application documents; and amend the fiscal year 2019-20 budget to include grant revenues and corresponding expenditures ([Staff Report #19-232-CC](#))

The City Council discussed policy that could assist current residents.

ACTION: Motion and second (Taylor/ Carlton) to adopt Resolution No. 6524 authorizing the submittal of a grant application for the Senate Bill 2 planning grant program; authorize the city manager to execute required application documents; and amend the fiscal year 2019-20 budget to include grant revenues and corresponding expenditures, passed unanimously.

- E3. Approve response to San Mateo County grand jury's report regarding "Electric Vehicle Adoption in the Cities and County of San Mateo" ([Staff Report #19-231-CC](#))
- E4. Adopt Resolution No. 6525 proposing to abandon public right of way along the 600 block of Woodland Avenue ([Staff Report #19-233-CC](#))

- Chris Kummerer, applicant for the project, spoke in support of the abandonment.

The City Council discussed the benefits of abandoning the public right of way, impacts to future improvements, and the City's liability.

ACTION: Motion and second (Combs/ Taylor) to adopt Resolution No. 6525 proposing to abandon public right of way along the 600 block of Woodland Avenue, failed 2-3 (Carlton, Mueller and Nash dissenting).

- E5. Adopt Resolution No. 6526 to authorize a loan to MidPen Housing Corporation up to \$635,502 for the renovation of affordable housing properties at 1105 and 1141 Willow Road and authorize the city manager to execute any and all related agreements and loan documents ([Staff Report #19-234-CC](#))

ACTION: Motion and second (Carlton/ Nash) to approve the consent calendar except items E2. and E4., passed unanimously.

F. Regular Business

- F1. Direct City staff to work with Menlo Park Public Art nonprofit to develop a pilot public art project proposal to present to the Parks and Recreation Commission for their consideration and recommendation to City Council ([Staff Report #19-226-CC](#))

Assistant Community Services Director Adriane Lee Bird introduced the item.

The City Council discussed staffing alternatives and directed staff to negotiate terms of an

agreement and return with cost and staffing details in the next report.

ACTION: Motion and second (Mueller/ Carlton) to direct City staff to work with Menlo Park Public Art nonprofit to develop a pilot public art project proposal to present to the Parks and Recreation Commission for their consideration and recommendation to City Council, passed 4-1 (Nash dissenting).

- F2. Accept the transportation impact fee nexus study and review draft resolution and ordinance to update the transportation impact fee program ([Staff Report #19-235-CC](#))

Acting Transportation Manager Kristiann Choy and W-Trans Representative Mark Spencer made the presentation (Attachment).

The City Council clarified that the maximum buildout in ConnectMenlo was included in the nexus study. There was also discussion on the rates and how adjusting those could encourage or discourage specific types of development. City Council directed staff to work with Mayor Pro Tem Taylor and City Councilmember Nash on the fee rates.

ACTION: Motion and second (Mueller/ Carlton) to accept the transportation impact fee nexus study and review draft resolution and ordinance to update the transportation impact fee program, passed unanimously.

The City Council took a recess at 9:23 p.m.

The City Council reconvened at 9:30 p.m.

Mayor Mueller reordered the agenda.

G. Informational Items

- G2. Update on annexation application for West Menlo Triangle and potential creation of an annexation policy/procedure ([Staff Report #19-230-CC](#))

Deputy City Manager Justin Murphy introduced the item.

- Greg Faris with donated time from Nate Gardner commented on the dangers in and around the West Menlo Triangle (Attachment).
- Steve Bellamy spoke in support of the annexation.
- Dr. Leah Rogers spoke in support of the annexation.
- Laurel Leone spoke in support of the annexation.
- Jen Wolosin, Parents for Safe Routes representative, spoke in support of the annexation.

The City Council discussed the process of this item and received clarification on the next steps. The City Council requested that staff focus on this annexation specifically opposed to a framework for annexations. Staff was directed to return the timing of this project during the City Council goal setting.

I. City Councilmember Reports

- I1. Direct staff to negotiate an agreement with local entrepreneur and professional triathlete, Mr. Max Fennell, to provide a 12-week swim instruction program at Belle Haven pool ([Staff Report #19-241-CC](#))

Mayor Pro Tem Taylor introduced the item.

Max Fennell made a presentation.

The City Council discussed the cost of the proposed program and directed staff to work on a business plan with Mr. Fennell perhaps utilizing the annual community grant process.

F. Regular Business

- F3. Direct staff to bring Youth Advisory Committee proposal to the Parks and Recreation Commission for its consideration and recommendation ([Staff Report #19-227-CC](#))

The City Council discussed applicant requirements and member amounts. The City Council directed staff to return this to City Council December 10 and bring to the Park and Recreation Commission if time allows.

ACTION: Motion and second (Mueller/ Carlton) to direct staff to bring Youth Advisory Committee proposal to the Parks and Recreation Commission for its consideration and recommendation, passed unanimously.

- F4. Provide direction on the 2019 holiday lighting efforts ([Staff Report #19-236-CC](#))

Interim Public Works Director Nikki Nagaya introduced the item.

- Fran Dehn spoke in support of lightening the trees on Ravenswood and El Camino.

The City Council discussed options (locations and cost) for holiday lighting. The City Council provided direction to provide holiday lighting for trees at Fremont Park, the corner of El Camino Real and Ravenswood Avenue, and the Onetta Harris Community Center within the existing authorized budget. The Council directed staff to not proceed this year with a tree at City Hall, the clock tower at the Menlo Park Caltrain station and a snowflake skyline over downtown on Santa Cruz Avenue.

ACTION: Motion and second (Carlton/ Mueller) to authorize the City Manager to enter into an agreement on the 2019 holiday lighting efforts to light trees at Fremont Park, the corner of El Camino Real and Ravenswood Avenue, and the Onetta Harris Community Center within the existing authorized budget, passed unanimously.

- F5. Discuss triennial state building code update process and provide direction on local code amendments ([Staff Report #19-229-CC](#))

Assistant Community Development Director Chuck Andrews and Fire Marshall Jon Johnson made the presentation (Attachment).

The City Council received clarification on adoption requirements and state and staff recommendations. City Council directed staff to return to City Council with a redlined version of the ordinance.

By acclamation, the City Council extended the meeting past 11 p.m.

ACTION: Motion and second (Nash/ Taylor) to add an urgency ordinance implementing AB 1482 tenant protections discussion to this meeting, passed unanimously.

The City Council directed staff to prepare urgency ordinance implementing AB 1482 tenant protections to a special meeting November 12 at 5:30 p.m.

G. Informational Items

- G1. City Council agenda topics: November 2019 to January 2020 ([Staff Report #19-218-CC](#))
- G3. Update on small business roundtable and economic development consultant services ([Staff Report #19-237-CC](#))
- Fran Dehn expressed concerns on the Buxton proposal.
- G4. Downtown street café program update ([Staff Report #19-224-CC](#))
- Mayor Mueller continue items G3. and G4. To November 12.

H. City Manager's Report

None.

I. City Councilmember Reports

City Councilmember Carlton reported on the Sister Cities Northern California event, which was hosted by Menlo Park and expressed her appreciation for staff support and hard work.

Mayor Pro Tem Taylor announced the Black Student Union at Menlo Atherton is hosting the film Harriet November 8 at 5:30 p.m. in the Redwood City theatre. Taylor also reported on the Stanford general use permit meeting.

J. Adjournment

Mayor Mueller adjourned the meeting at 11:22 p.m.

Judi A. Herren, City Clerk

These minutes were approved at the City Council meeting of December 10, 2019.



STUDY SESSION ON FLAVORED TOBACCO AND E-CIGARETTE BAN



AGENDA

- Need for regulation
- Overview of current regulations
- Council options

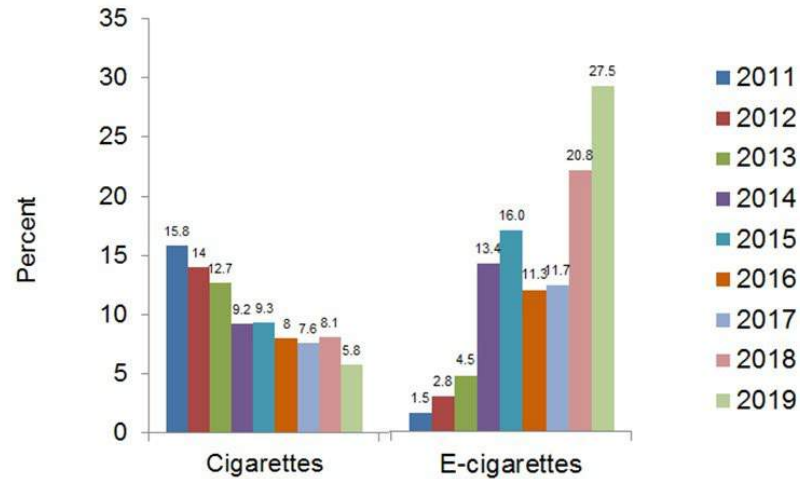




CURRENT HEALTH CRISIS

- Between 2017-2018, percentage of high school-age children reporting past 30-day use of e-cigarettes rose by more than 75 percent.
- Use among middle school-age children also increased nearly 50 percent.
- In December 2018, the surgeon general declared the use of e-cigarettes among youth an “epidemic.”
- Over 80 percent of kids who have used tobacco started with a flavored product

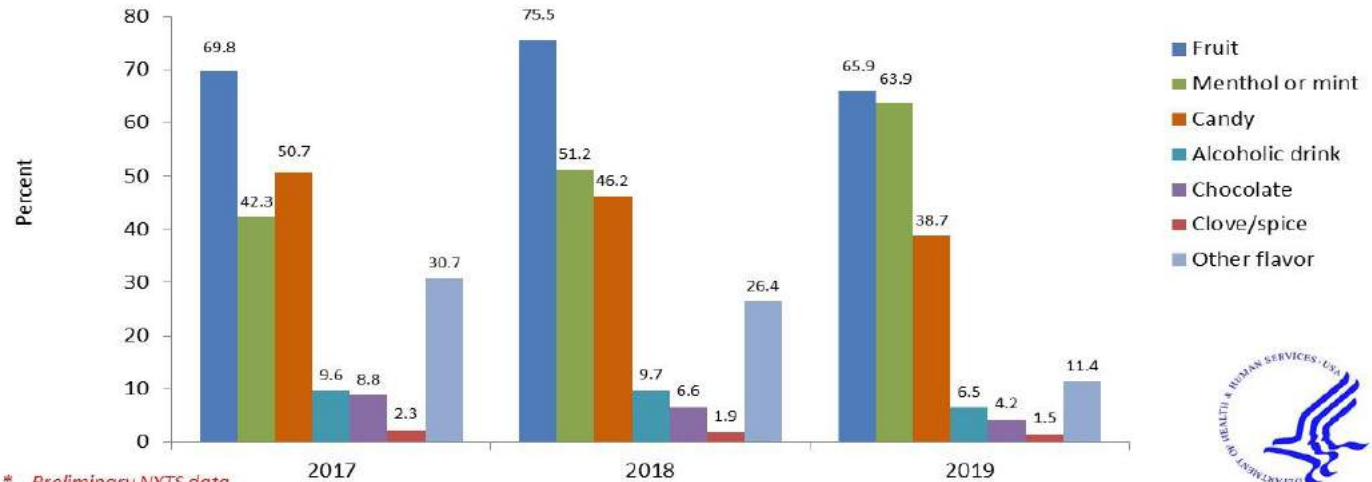
NATIONAL YOUTH TOBACCO SURVEY*: HIGH SCHOOL STUDENT USE OF E-CIGARETTES CONTINUES TO CLIMB



* *Preliminary data*
* Reported use within
30 days preceding
administration of survey.



FLAVORS POPULAR AMONG HIGH SCHOOL USERS OF E-CIGARETTES*



E-CIGARETTES





REGULATORY ENVIRONMENT

■ Federal Regulations

- Federal law contains some tobacco regulations, but currently permits more restrictive local regulation
- FDA recently announced its intent to ban e-cigarettes but has taken no action yet.

■ State Regulations

- Anti-vaping legislation introduced last session, but did not pass

■ Other jurisdictions

- San Mateo County – passed flavored tobacco ban in 2018; introduced e-cigarette ban today
- County of Santa Clara – introduced flavored tobacco and e-cigarette ban
- Portola Valley, Half Moon Bay and San Carlos – flavored tobacco ban
- San Francisco – e-cigarette ban referendum



PROPOSED MENLO PARK ORDINANCE



- Menlo Park flavored tobacco and e-cigarette ban
 - Utilizes existing tobacco retailer permit
 - Bans flavored tobacco products
 - Bans e-cigarettes
 - Anticipates initial outreach and complaint-based enforcement



POLICY CONSIDERATIONS

- Policy issues for Council
 - Should flavored tobacco ban extend to menthol and mint-flavored tobacco products? (San Mateo County ordinance does)
 - Should hookah tobacco and devices be excluded? (San Mateo County ordinance does)
 - Should e-cigarette ban only apply to non-FDA approved e-cigarettes or to all e-cigarettes, regardless of FDA approval. (San Mateo County's first reading expanded to all e-cigarettes.)
 - Should the sale of tobacco products be prohibited in pharmacies? (The San Mateo County ordinance prohibits sale of all tobacco products on the rationale that pharmacies are places of wellness.)
 - Should vending machine sales of tobacco products be banned?
 - How long should outreach period be?
 - Should there be a "smoke shop" exemption? (San Mateo County ordinance does not)



CONCLUSION

SEQUOIA UNION HIGH SCHOOL DISTRICT

480 JAMES AVENUE, REDWOOD CITY, CALIFORNIA 94062-1098

ADMINISTRATIVE OFFICES (650) 369-1411

BOARD OF TRUSTEES
CARRIE DU BOIS
GEORGIA JACK
ALAN SARVER
CHRIS THOMSEN
ALLEN WEINER

October 23, 2019

DR. MARY STRESHLY
SUPERINTENDENT

To: City Councils of Atherton, Belmont, East Palo Alto, Menlo Park, Portola Valley, Redwood City, San Carlos, and Woodside; and San Mateo County Board of Supervisors

The American Lung Association¹, Centers for Disease Control & Prevention², California Department of Public Health³ share similar messages about the dangers of flavored tobacco products and e-cigarettes:

"The youth e-cigarette epidemic is extremely alarming, especially in light of the recent investigations into growing reports of vaping-related deaths and illnesses. The inhalation of harmful chemicals found in e-cigarettes can cause irreversible lung damage and lung disease, and developing lungs are more at risk. We are facing a true public health emergency, and urgent action is required..."
"This action to end the sale of flavored e-cigarettes is essential to ending the youth e-cigarette epidemic. Preliminary data from the CDC's National Youth Tobacco Survey found 27.5 percent of high school students are vaping – a staggering increase of 135 percent over just the past two years." – Lung Association, October 3, 2019

We ask you to take urgent action to:

1. prohibit the sale, manufacture, and distribution of flavored tobacco products;
2. prohibit the sale, manufacture, and distribution of e-cigarettes and electronic vaping devices;
3. prohibit the sale of tobacco products in pharmacies, and
4. set a minimum price and minimum pack size for sale.

Here are the facts:

- This is an issue at the local level. According to the most recent California Healthy Kids Survey, which is already over a year old and likely doesn't reflect the extent of the issue, 15 percent of high school freshmen, 34 percent of high school seniors and 20 percent of youth had used e-cigarettes in the preceding 30 days.⁴
- Fruit, mint and menthol are the most popular flavors among high school students using e-cigarettes, with two-thirds of kids using fruit-flavored e-cigarettes and 64 percent using mint or menthol e-cigarette flavors. Menthol in cigarettes makes it easier for kids to start using tobacco products because it masks the harshness of the smoke.¹
- It is important to set both minimum prices and minimum pack sizes. The availability of inexpensive tobacco products in proximity to schools and youth sensitive areas leads to increased tobacco use as evidenced by more than one hundred academic studies. In other Bay Area communities that passed ordinances that only set minimum pack sizes, the tobacco industry responded by selling packs of five or six cigars for a dollar in those communities.

Please take immediate action to help end the youth e-cigarette epidemic.

Sincerely,


Mary E. Streshly, Ed.D.
Superintendent

¹ <https://www.lung.org/about-us/media/press-releases/CDC-MMWR-Flavored-Ecigs.html>, Oct 3, 2019.

² https://www.cdc.gov/mmwr/volumes/68/wr/mm6839a2.htm?s_cid=mm6839a2_w, Oct 4, 2019.

³ <https://www.cdph.ca.gov/Programs/CCDPHP/Pages/Vaping-Health-Advisory.aspx>, updated Oct 4, 2019.

⁴ [California Kids Survey, 2017-2018](#) San Mateo Union. California Department of Education and West Ed [no data for Seq Union]

**MENLO PARK CITY SCHOOL DISTRICT
RESOLUTION NO. 19.20.08**

**DECLARING PUBLIC HEALTH EMERGENCY NEEDING ACTION NOW: EPIDEMIC
YOUTH USE OF E-CIGARETTES**

WHEREAS, tobacco use remains the leading cause of preventable death in the US, killing more than 480,000 people each year; and

WHEREAS, youth e-cigarette use in the United States has skyrocketed to what the U.S. Surgeon General and the FDA have called “epidemic” levels.¹; and

WHEREAS, newly released data from the 2019 National Youth Tobacco Survey (NYTS) shows that e-cigarette use among high school students more than doubled from 2017 to 2019, to 27.5 percent of students, or more than 1 in 4 high schoolers.² Altogether, 5 million middle and high school students used e-cigarettes in 2019 – an increase of nearly 3 million users in two years.³ Another national study showed that e-cigarette use among 8th, 10th and 12th graders has more than doubled in the past two years⁴; and

WHEREAS, flavored tobacco products have fueled youth tobacco use. Flavors improve the taste and mask the harshness of tobacco products, making it easier for kids to try the product and ultimately become addicted. There is conclusive evidence that flavors – of which there are over 15,000 available – play a key role in youth initiation and continued use of tobacco products. In fact, over 80 percent of kids who have used tobacco started with a flavored product^{5,6}; and

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than one hundred academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use. Youth under 18 are particularly responsive to changes in tobacco prices. In the Cities of Hayward and Union City, which adopted ordinances requiring a minimum pack size of five for cigars, the tobacco industry has responded by selling packs of five or six for one dollar or less in those cities, making it important to set minimum prices; and,

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not dangerous to smoke; and

WHEREAS, the marketing of these products appeal to teens; and accessibility of these products within self-service displays at retailers, social media promotion from retailers, and coupons, discounts and other promotional materials make these products more available; and

WHEREAS, in nearby Santa Clara County, the Tobacco survey, which was funded by the Santa Clara County Public Health Department, found that “13.2% of Santa Clara County teens reported using e-cigarettes in the past month, meaning they were counted as current users...82.3% of teens currently using tobacco reported using a flavored product: use of flavored products was widespread across all tobacco products and all demographic categories...And more than 2 in 5 teens – 45.4% -- reported purchasing their own e-cigarettes, with over a quarter of this group saying they buy them directly from a local store. Among those who purchased e-cigarettes in a local store, 62.5% purchased them at a vape shop”⁷; and

WHEREAS, 76% of tobacco retailers located within 1000 ft of schools in San Mateo County sell flavored tobacco products other than menthol cigarettes and nearly all sell menthol cigarettes; and

WHEREAS, tobacco use rates are affected by where tobacco retailers are located and how concentrated, or dense, they are in a given area. Increased availability of tobacco products is associated with increases in both youth and adult smoking rates, even when other neighborhood factors like racial

composition and socioeconomic status are taken into consideration. In particular, studies have consistently shown that children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers; and

WHEREAS, local jurisdictions in California have the authority to enact regulations on the sale of tobacco products through local tobacco retail licensing in an effort to decrease availability and use of tobacco products by youth, including restrictions on the sale of flavored tobacco products (including electronic smoking devices and menthol cigarettes), establishing maximum thresholds of tobacco retailer densities, establishing distance requirements near schools and other youth-sensitive areas; and

NOW THEREFORE IT BE RESOLVED, the Governing Board of the Menlo Park City School District supports action by the Town of Atherton and the City of Menlo Park and the County of San Mateo, under their regulatory authority, to restrict the sale of tobacco products in order to prevent youth access and take urgent action to:

1. prohibit the sale, manufacture, and distribution of flavored tobacco products;
2. prohibit the sale, manufacture, and distribution of e-cigarettes and electronic vaping devices;
3. prohibit the sale of tobacco products in pharmacies;
4. set a minimum price and minimum pack size for sale; and
5. restrict the marketing (including social media marketing), product placement, coupons and promotional materials, and self-service displays of tobacco products in and from retailers; and
6. reduce the concentration and density of tobacco stores, particularly near schools and other youth sensitive areas.

¹ Office of the Surgeon General, "Surgeon General's Advisory on E-Cigarette Use Among Youth," December 18, 2018, <https://ecigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

² FDA, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, NonTobacco-Flavored E-Cigarette Products," September 11, 2019, <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>. Current use defined as any use in the past month.

³ Edney, A., et al., "Vaping Furor Intensifies as Trump Vows Tough U.S. Scrutiny", Bloomberg, September 11, 2019, <https://www.bloomberg.com/news/articles/2019-09-11/trump-to-hold-meeting-on-vaping-after-reports-of-u-s-illness>.

⁴ Miech, R, et al., "Trends in Adolescent Vaping, 2017-2019," New England Journal of Medicine, published online September 18, 2019.

⁵ 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.

⁶ Written Testimony of Matthew L. Myers President Campaign for Tobacco-Free Kids Before the House of Representatives Committee on Energy and Commerce Subcommittee on Health Hearing on "Legislation to Reverse the Youth Tobacco Epidemic" October 16, 2019. <https://docs.house.gov/meetings/IF/IF14/20191016/110091/HHRG-116-IF14-Wstate-MyersM-20191016.pdf>

⁷ "Tobacco Use among High School Students in Santa Clara County: Findings from the 2017-18 California Student Tobacco Survey" *California Student Tobacco Survey*, by Shu-Hong Zhu, PhD, Joan Lee, BS, Yue-Lin Zhuang, PhD, Katherine Braden, MPH, Adam G. Cole, PhD, Anthony Gamst, PhD.

PASSED AND ADOPTED by the Board of Education of the Menlo Park City School District, City of Atherton, County of San Mateo, State of California, on October 24, 2019 by the following vote:

AYES: _____ NOES: _____

David Ackerman _____ ABSENT: _____

ATTESTED: _____ DATE: 10/25/19
Erik Burmeister, Superintendent/Secretary to the Board

On consent agenda Nov 6

7.B.

**Joint Resolution No. 19-52
San Mateo County Board of Education
and
San Mateo County Superintendent of Schools
State of California**

**Supporting and Commending the Efforts of the County, Municipalities, and School Districts to
Reduce the Availability and Use of E-cigarettes by Youth in San Mateo County**

Whereas, the San Mateo County Board of Education and the San Mateo County Superintendent of Schools believe that schools and communities need to work collectively to ensure students learn and live in healthy and safe environments; and

Whereas, tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year; and

Whereas, youth e-cigarette use in the United States has skyrocketed to what the U.S. Surgeon General and the FDA have called “epidemic” levels; and

Whereas, newly released data from the 2019 National Youth Tobacco Survey shows that e-cigarette use among high school students more than doubled from 2017 to 2019, to 27.5 percent of students, or more than 1 in 4 high schoolers, and 5 million middle and high school students used e-cigarettes in 2019 – an increase of nearly 3 million users in two years; and

Whereas, the California Student Tobacco Survey found that 20.8% of teens in San Mateo County used e-cigarettes in 2018, up from 11.8% in 2017, and much higher than the state average of 10.9%; and

Whereas, flavored tobacco products play a key role in youth initiation and continued use of tobacco products, with over 80 percent of youth starting their tobacco use with a flavored product; and

Whereas, the marketing and accessibility of these products make them particularly appealing to teens;

Now, Therefore, Be It Resolved, that the San Mateo County Board of Education and County Superintendent support and commend the efforts of the County, municipalities, and school districts to reduce the availability and use of e-cigarettes by youth in San Mateo County.

**SAN MATEO COUNTY
SUPERINTENDENT OF SCHOOLS**

**SAN MATEO COUNTY
BOARD OF EDUCATION**

Passed and Adopted on this
Sixth Day of November 2019

President

October 24th, 2019

Dear Menlo Park City Council and San Mateo County Board of Supervisors:

The American Lung Association¹, Centers for Disease Control & Prevention², California Department of Public Health³ share similar messages about the dangers of flavored tobacco products and e-cigarettes:

"The youth e-cigarette epidemic is extremely alarming, especially in light of the recent investigations into growing reports of vaping related deaths and illnesses. The inhalation of harmful chemicals found in e-cigarettes can cause irreversible lung damage and lung disease, and developing lungs are more at risk. We are facing a true public health emergency, and urgent action is required...

"This action to end the sale of flavored e-cigarettes is essential to ending the youth e-cigarette epidemic. Preliminary data from the CDC's National Youth Tobacco Survey found 27.5 percent of high school students are vaping – a staggering increase of 135 percent over just the past two years." – Lung Association, Oct 3, 2019

We applaud actions the County has already taken and ask both the City and County to take further urgent action to:

- 1) prohibit the sale, manufacture, and distribution of flavored tobacco products,
- 2) prohibit the sale, manufacture, and distribution of e-cigarettes and electronic vaping devices,
- 3) prohibit the sale of tobacco products in pharmacies; and
- 4) set a minimum price and minimum pack size for sale;
- 5) restrict the marketing, product placement, and promotional items of tobacco products in retailers; and
- 6) reduce the concentration and density of tobacco stores, particularly near schools and other youth sensitive areas.

Here are the facts:

- This is an issue at the local level. According to the most recent California Healthy Kids Survey, which is already over a year old and likely doesn't reflect the extent of the issue, 15 percent of high school freshmen, 34 percent of high school seniors and 20 percent of youth had used e-cigarettes in the preceding 30 days.⁴
- Fruit, mint and menthol are the most popular flavors among high school students using e-cigarettes, with two thirds of kids using fruit flavored e-cigarettes and 64 percent using mint or menthol e-cigarette flavors. Menthol in cigarettes makes it easier for kids to start using tobacco products because it masks the harshness of the smoke.⁵
- It is important to set both minimum prices and minimum pack sizes. The availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than one hundred academic studies. In other Bay Area communities that passed ordinances that only set minimum pack sizes, the tobacco industry responded by selling packs of five or six cigars for a dollar in those communities.

Thank you for taking immediate action to help end the youth e-cigarette epidemic.

Sincerely,



Anna Vishnia & Susan Masetti
Sacred Heart Schools Pk Parent Association Presidents

¹ <https://www.lung.org/about-us/media/press-releases/CDC-WARNER-flavored-cigarettes>, Oct 3, 2019.

² <https://www.cdc.gov/tobacco/voices/stories/warning/menthol.html#:~:id=menthol&id=...>, Oct 4, 2019.

³ <https://www.cdph.ca/Programs/PID/DCDC/Pages/Vaping-Health-Advisory.aspx>, updated Oct 4, 2019.

⁴ California Kids Survey, 2017-2018 Survey Data Union, California Department of Education and West Ed [no data for Ling Union]

Testimony of Bonnie Halpern-Felsher, PhD, FSAHM

Professor of Pediatrics, Division of Adolescent Medicine, Stanford University

Founder and Executive Director, Tobacco Prevention Toolkit

November 5, 2019 City Council Meeting: Discussion of proposed ordinance banning sale of flavored tobacco and e-cigarette devices

Dear council members.

I thank you for the opportunity to provide testimony on this important and urgent topic, flavored tobacco and e-cigarette use. My name is Dr. Bonnie Halpern-Felsher. I am a Professor of Pediatrics and Director of Research in the Division of Adolescent Medicine, Department of Pediatrics at Stanford University. I am a developmental psychologist with additional training in adolescent and young adult health. I am also the Founder and Executive Director of the Stanford Tobacco Prevention Toolkit, an online educational tool about tobacco products including e-cigarettes. I have over 25 years of experience researching why youth use tobacco, with e-cigarettes at the core of my work.

I urge Menlo Park City Council to do the following:

- adopt the County ban on the sale of flavored tobacco, and the ban on the sale of all tobacco products in pharmacies;
- adopt the proposed County ban on the sale of e-cigarettes, or move forward with one; and
- urge the County to revise its Tobacco Retailer License to add provisions that strengthen it to prevent our youth from accessing tobacco products. If the County does not take action in the next 6 months, then Menlo Park should develop and approve its own ordinance.

In so doing, I urge the Menlo Park City Council to ensure that:

- the flavor ban is extended to include mint and menthol tobacco products.
- the flavor ban INCLUDES hookah
- tobacco product sales should be prohibited in pharmacies and in vending machines

after 22

I will provide 5 brief sets of information in support of these requested regulations:

- 1) Flavors hook kids, INCLUDING mint and menthol
- 2) Flavors mask tobacco-related risks
- 3) Flavors do NOT help adults quit smoking
- 4) Youth are using hookah as well, and using hookah because of the flavors
- 5) Youth continue to access tobacco from retail shops including vape shops

The two most common forms of tobacco use among youth are e-cigarettes and hookah, with well over 27% of youth admitting to using e-cigarettes in the last month, and over 20% using hookah, and these number are undoubtedly underestimates.

There are over 7,000 flavors available for e-cigarettes, and numerous flavors in other tobacco products, including flavors that attract young and new users, such as honey doo doo, unicorn poop, and sugar booger. These are NOT adult flavors. These flavors are for youth! Also, youth use mint, menthol, fruit, and candy flavors.

Most adolescent tobacco users cite flavors as a reason for use, as flavors mask the harsh taste of tobacco, resulting in a more pleasant smell than that found with tobacco alone.

Most youth report they would **quit** tobacco including e-cigarette use if flavors were not available.

Now, some people argue that youth don't use mint, yet studies clearly show that mint is a popular youth flavor. National data show that about 60% of youth e-cigarette users use mint or

menthol, and my own data from California show that between 25-30% of e-cigarette users use mint or menthol.

Also, flavors mask the risks that are inherent in tobacco, including the fact that many e-cigarettes and in particular the newer pod-based products have as much nicotine, and highly concentrated nicotine, as found in 1-2 packs of cigarettes.

Now, you will likely hear arguments that adults need flavors to successfully quit smoking conventional cigarettes. However, that is simply not borne out by research.

While adults may like flavors, they are more likely to quit smoking cigarettes without flavors, and the evidence that e-cigarettes help adults quit smoking conventional cigarettes is mixed, at best. If flavors truly help adults quit, then let them be regulated as a cessation product and given as a prescription, but not be readily available for youth. Further, we have FDA-approved and PROVEN ways to help adults quit smoking. We simply don't need e-cigarettes.

Finally, let's discuss access. I know from my own scientific publications and others, that youth are easily accessing e-cigarettes from retail and vape shops, and in pharmacies. Many local vape and retail shops are not IDing youth. We need better regulation and enforcement of these shops, and the only way to do that is to have stricter retail licensing fees, regulations and strict enforcement.

The evidence is clear. The extraordinarily high levels of nicotine get kids addicted, flavors including fruit, candy, mint and menthol, attract and keep kids addicted to tobacco, adults don't need flavored e-cigarettes to quit smoking, and we need to restrict youth access to all tobacco

products. I urge you to pass a flavor ban and other regulations to protect the health of our kids.

I have provided additional written materials with references in support of my claims.

Thank you.

**Public Health Emergency Needing Action Now:
Epidemic Youth Use of E-cigarettes**

Written Testimony of Bonnie Halpern-Felsher, PhD, FSAHM

Professor of Pediatrics, Division of Adolescent Medicine, Stanford University

Founder and Executive Director, Tobacco Prevention Toolkit

Submitted to the U.S. House of Representatives, Labor-HHS-Education Appropriations
Subcommittee, Congressional Hearing, *E-Cigarettes: An Emerging Public Health Threat*

Congresswoman Rosa DeLauro, Chair

October 16, 2019

I thank you for the opportunity to provide written and oral testimony on this important and urgent topic, youth e-cigarette use. As a developmental psychologist with additional training in adolescent and young adult health, my research, prevention, and policy work over the past 25 years has focused on factors promoting and preventing adolescent and young adult tobacco use. In my testimony, I will provide data on youth use of tobacco including e-cigarettes, health and social effects of e-cigarettes, risk factors for use, significant gaps in our knowledge, and needed policy, prevention, and cessation efforts.

Tobacco Usage Rates

We have seen a decline in youth use of conventional, combustible cigarettes over the past few years, with national data showing that far fewer than 10% of youth in the

US report use of cigarettes.¹ However, since 2014, we have seen an alarming increase in youth tobacco use, owing to e-cigarette use. The most recent data from the National Youth Tobacco Survey show that 27.5% of youth have reported using an e-cigarette in the past 30 days.² This translates to more than 1 in 5 high school students using e-cigarettes. Those who do use e-cigarettes do so more frequently than other tobacco products, in part because youth are able to use e-cigarettes all day and night.

However, I would argue that these statistics are vastly underestimated. I go around the country speaking to students, parents, and educators, all of whom tell me that **50%-75% of the students are using e-cigarettes**. In my 25 years of studying adolescent tobacco use, I have never seen such a quick surge in tobacco product use and related addiction outcomes as I have seen in the past 3 years. This surge, as explained below, is largely due to the increase in popularity of JUUL,³ which controls 70-80% of the e-cigarette market.⁴ We have also seen an uptick in the number of youth reporting cigarette use^{5,6,7} and overall tobacco use,⁸ likely due to numerous studies showing that youth who use e-cigarettes are as much as four times more likely to then go on to use

¹ <https://www.cdc.gov/vitalsigns/youth-tobacco-use/>

² <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>

³ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. *JAMA Netw Open*. 2018 Oct 05;1(6):e183535. PMID:30646249.

⁴ LaVito A. Popular e-cigarette Juul's sales have surged almost 800 percent over the past year. <https://www.cnn.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>. Published July 2, 2018. Accessed August 10, 2018.

⁵ Berry KM, Fetterman JL, Benjamin EJ, et al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Network Open*. 2019;2(2):e187794-e187794

⁶ Soneji S, Barrington-Trimis JL, Wills TA, et al. Association between initial use of e-cigarettes and subsequent cigarette smoking among adolescents and young adults: a systematic review and meta-analysis. *JAMA pediatrics*. 2017;171(8):788-797

⁷ Chaffee BW, Watkins SL, Glantz SA. Electronic cigarette use and progression from experimentation to established smoking. *Pediatrics*. 2018 Mar 5:e20173594

⁸ <https://www.cdc.gov/vitalsigns/youth-tobacco-use/>

cigarettes,^{9,10,11} placing them at risk for the same smoking-related illnesses and costs we have strived so hard to ameliorate.

Importantly, unlike recent data seen for cigarette, smokeless tobacco use, or cigar use, there is **no sociodemographic characteristic** or cluster of characteristics putting youth at more or less risk for e-cigarette or Juul use. That is, **there is no difference in Juul or e-cigarette use among adolescents based on sex, race/ethnicity, socioeconomic status, or geographic region.**¹²

Why I am concerned about e-cigarettes?

E-cigarettes have **nicotine**. While the original and earlier versions of e-cigarettes didn't have as much nicotine, with ranges between 0-36 milligrams per milliliter, the newer pod-based products, made popular by Juuls, have at least 41 milligrams per milliliter of nicotine. That translates into the amount of nicotine found in up to 1.5 to 2 packs of cigarettes.

It is important to discuss Juul's patented salt-based nicotine. Unlike cigarettes and other e-cigarette products which use ammonia and sugars to enhance the delivery and absorption of nicotine to the body, Juul has a salt-based nicotine. Benzoic acid is added to help deliver high amounts of nicotine rapidly and effectively to the brain.

Products with salt-based nicotine can allow for more frequent use, increasing their

⁹ Berry KM, Fetterman JL, Benjamin EJ, et al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Network Open*. 2019;2(2):e187794-e187794

¹⁰ Soneji S, Barrington-Trimis JL, Wills TA, et al. Association between initial use of e-cigarettes and subsequent cigarette smoking among adolescents and young adults: a systematic review and meta-analysis. *JAMA pediatrics*. 2017;171(8):788-797

¹¹ Chaffee BW, Watkins SL, Glantz SA. Electronic cigarette use and progression from experimentation to established smoking. *Pediatrics*. 2018 Mar 5:e20173594

¹² Kann L, McManus T, Harris WA, et al. Youth risk behavior surveillance—United States, 2017. *MMWR Surveillance Summaries*. 2018 Jun 15;67(8):1

potential for addiction because it feels less harsh on the throat. As such, Juul is engineered to easily deliver more nicotine to the brain, faster, with less harshness, making it more appealing for youth.

Nicotine is harmful. Aside from being a toxicant, nicotine is highly addictive. It actually causes changes to the brain chemistry.¹³ Given that brain development continues until the age of about 25, youth are significantly more likely to become addicted to nicotine than are adults. Data going back decades has shown that almost 90% of addicted adult cigarette smokers started using when they were younger than 18.¹⁴ Indeed, data as well as my personal experience from visiting with parents and schools throughout the country show that youth are addicted to e-cigarettes, with recent studies showing that youth who use Juuls use them more often and are more likely to show signs of addiction than youth using other tobacco products.¹⁵ Nicotine addiction is also related to depressive disorders and other mental health co-morbidities.^{16,17,18} Other effects of nicotine include poisoning and toxicity, vomiting, nausea, and tachycardia.¹⁹ We also know that there has been a significant increase in the number of calls to poison centers, as babies and children consume the e-liquid as it tastes and smells like candy.

¹³ Kandel ER, Kandel DB. A molecular basis for nicotine as a gateway drug. *New England Journal of Medicine*. 2014;371(10):932-943

¹⁴ <https://www.cdc.gov/vitalsigns/youth-tobacco-use/>

¹⁵ McKelvey, K., Baiocchi, M., **Halpern-Felsher, B.** Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. *JAMA Netw Open*. 2018 Oct 05;1(6):e183535. PMID:30646249.

¹⁶ King JL, Reboussin BA, Spangler J, Ross JC, Sutfin EL. Tobacco product use and mental health status among young adults. *Addictive behaviors*. 2018;77:67-72

¹⁷ WHO. ICD-11 for mortality and morbidity statistics. World Health Organization. Published 2018. Accessed April 22, 2019.

¹⁸ APA. *Diagnostic and statistical manual of mental disorders*. . Fifth Edition ed. Arlington: American Psychiatric Publishing; 2013.

¹⁹ Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tobacco control*. 2014 Jan 1;23(1):77-78

Use of e-cigarettes has also been associated with impaired blood vessels, increasing the risk of heart attacks²⁰ and progression of cancerous tumors.²¹

However, youth are unaware of the amount of nicotine in a Juul pod, and don't recognize the addictive potential or harm of nicotine found in Juuls or other e-cigarettes.²² This confusion is not surprising given that the Juul packaging simply says that the product contains 5% strength, and some saying 5% nicotine, but to a young person and even many adults, that 5% does not translate to the actual amount of nicotine contained within the Juul pod.

I also worry about the **other chemicals found in e-cigarettes**. E-cigarettes have flavorants such as diacetyl, a buttery flavor found in popcorn, as well as vanillin and cinnamaldehyde. These have been shown to cause respiratory, lung, and other illness and effects,^{23,24,25,26} as well as recent evidence that mint and menthol flavored e-cigs have pulegone, a carcinogen.²⁷ Further, Juuls have benzoic acid, which can irritate the

²⁰ Alzahrani T, Pena I, Temesgen N, Glantz SA. Association between electronic cigarette use and myocardial infarction. *American journal of preventive medicine*. 2018;55(4):455-461

²¹ Sanner T, Grimsrud TK. Nicotine: carcinogenicity and effects on response to cancer treatment—a review. *Frontiers in oncology*. 2015;5(196)

²² McKelvey, K., Baiocchi, M., **Halpern-Felsher, B.** Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. *JAMA Netw Open*. 2018 Oct 05;1(6):e183535. PMID:30646249.

²³ Lee, W. H., Ong, S.-G., Zhou, Y., Tian, L., Bae, H. R., Baker, N., ... Wu, J. C. (2019). Modeling Cardiovascular Risks of E-Cigarettes With Human-Induced Pluripotent Stem Cell-Derived Endothelial Cells. *Journal of the American College of Cardiology*, 73(21), 2722–2737. <https://doi.org/10.1016/j.jacc.2019.03.476>

²⁴ Fetterman, J. L., Weisbrod, R. M., Feng, B., Bastin, R., Tuttle, S. T., Holbrook, M., ... Hamburg, N. M. (2018). Flavorings in Tobacco Products Induce Endothelial Cell Dysfunction. *Arteriosclerosis, Thrombosis, and Vascular Biology*, 38(7), 1607–1615. <https://doi.org/10.1161/ATVBAHA.118.311156>

²⁵ Glynos, C., Bibli, S.-I., Katsaounou, P., Pavlidou, A., Magkou, C., Karavana, V., ... Papapetropoulos, A. (2018). Comparison of the effects of e-cigarette vapor with cigarette smoke on lung function and inflammation in mice. *American Journal of Physiology-Lung Cellular and Molecular Physiology*, 315(5), L662–L672. <https://doi.org/10.1152/ajplung.00389.2017>

²⁶ Madison, M. C., Landers, C. T., Gu, B.-H., Chang, C.-Y., Tung, H.-Y., You, R., ... Kheradmand, F. (2019). Electronic cigarettes disrupt lung lipid homeostasis and innate immunity independent of nicotine. *The Journal of Clinical Investigation*, 129(10), 4290–4304. <https://doi.org/10.1172/JCI128531>

²⁷ Jabba SV, Jordt SE, Risk Analysis for the Carcinogen Pulegone in Mint- and Menthol-Flavored e-Cigarettes and Smokeless Tobacco Products. *JAMA Intern Med*. 2019 Sep 16. doi: 10.1001/jamainternmed.2019.3649. [Epub ahead of print]

lungs, nose and throat, and cause coughing and shortness of breath. The levels of secondhand exposure vary across e-cigarette devices; however, bystanders may inhale up to 1/10th the levels of nicotine and aerosol as in a conventional cigarette.²⁸ **Taken together, aside from the current concern over the vaping-related lung illnesses and deaths that may or may not be caused by nicotine e-cigarettes, there is clear evidence that e-cigarettes do cause lung as well as heart and other health problems.**

It is also important to note that the e-cigarette companies are often misleading consumers and potential consumers as to what ingredients are in their products. For example, while Juul indicates that their e-liquids contains nicotine, benzoic acid, glycerol, propylene glycol, natural oils, and flavorants, an independent scientific study showed that there were 59 chemicals in Juul e-liquid.²⁹

There is also concern about the **impact of e-cigarette use on non-using students**. I am constantly told by youth and educators that the non-using students are frustrated by the constant disruptions of students using e-cigarettes, the needed disciplinary actions needed, and the stigma now placed on students **not** using.

Why are youth using e-cigarettes?

There are a number of reasons why youth are attracted to using e-cigarettes. I will focus on **flavors, marketing, and cost**. There are over 7,000 **flavors** available for e-cigarettes, including flavors that attract young and new users, such as mint, menthol, fruit, and candy. These flavors appeal to new users by masking the harsh taste of

²⁸ Grana R, Benowitz N, Glantz SA. E-cigarettes: a scientific review. *Circulation*. 2014;129(19):1972-1986

²⁹ <https://pubs.acs.org/doi/10.1021/acs.chemrestox.8b00381>

tobacco, and in the case of e-cigarettes, resulting in a more pleasant smell than that found with tobacco alone.³⁰ The vast majority of youth in the US who use e-cigarettes initiate with flavored products, namely fruit and mint/menthol.³¹ Adolescents are more likely to report interest in trying an e-cigarette from a friend if it is menthol/mint-, candy-, or fruit-flavored than if unflavored. Most youth e-cigarette users reported they would quit if flavors were unavailable.^{18,19,20,21,22,23} Flavored (vs. unflavored) e-cigarette ads elicit greater appeal and interest in buying and trying e-cigarettes; and the appeal of ads marketing flavors is linked to rapid and persistent adoption of e-cigarettes among youth.^{32,33,34,35,36,37}

Cost. Youth are extremely price sensitive. Yet, the tobacco products youth use most, e-cigarettes, are often LESS expensive than other tobacco products including e-cigarettes. If we increase their price, through taxes on par with other tobacco products, we will reduce youth use.

Marketing of e-cigarettes is of major concern. Trendy, technologically-savvy, relaxed, sexualized words and images are used to advertise e-cigarettes, including Juul.

³⁰ Brown JE, Luo W, Isabelle LM, Pankow JF. Candy flavorings in tobacco. *N Engl J Med*. 2014;370(23):2250-2252.

³¹ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Youth Say Ads for Flavored E-liquids are for Them. *Addictive Behaviors*, in press.

³² Liang Y, Zheng X, Zeng DD, Zhou X. Impact of flavor on electronic cigarette marketing in social media. 2015:278-283.

³³ Vasiljevic M, Petrescu DC, Marteau TM. Impact of advertisements promoting candy-like flavoured e-cigarettes on appeal of tobacco smoking among children: An experimental study. *Tob Control*. 2016;25(e2):e107-e112.

³⁴ Ambrose B, Day H, Rostron B, et al. Flavored tobacco product use among us youth aged 12-17 years, 2013-2014. *J Am Med Assoc*. 2015;314(17):1-3. doi:10.1001/jama.2015.13802.

³⁵ Pepper JK, Ribisl KM, Brewer NT. Adolescents' interest in trying flavoured e-cigarettes. *Tob Control*. 2016;25(Suppl 2):ii62-ii66. doi:10.1136/tobaccocontrol-2016-053174.

³⁶ Morean ME, Butler ER, Bold KW, Kong G, Camenga DR, Cavallo DA, Simon P, O'Malley SS, Krishnan-Sarin S. Preferring more e-cigarette flavors is associated with e-cigarette use frequency among adolescents but not adults. *PloS one*. 2018 Jan 4;13(1):e0189015

³⁷ Loukas A, Jackson CD, Marti CN, Perry CL. Flavored tobacco product use among youth and young adults: What if flavors didn't exist? *Tob Regul Sci*. 2017;3(2):168-173.

To capitalize on e-cigarette popularity among youth, manufacturers use social media channels to promote their products. Often such social media is driven by adolescents, although nearly 80% of the social media is industry driven in some platforms.³⁸ JUUL's principal advertising themes were closely aligned with Marlboro advertising (pleasure/relaxation, socialization/romance, style/ identity, and satisfaction). JUUL's advertising was widely distributed on social media channels, amplified by hashtag extensions, and catalyzed by compensated influencers. Its social media channels, especially Instagram, have a viral presence although JUUL itself has disbanded use of social media in the United States. JUUL's success has led to the marketing of a number of copy-cat devices.³⁹

Misperceptions. Given the marketing, misleading labelling of e-cigarette packaging, flavors, and other messaging received by youth, it is not surprising that adolescents underestimate the health risks of Juul and other e-cigarettes. Youth don't always recognize that e-cigarettes including Juul contain any tobacco⁴⁰ or nicotine,⁴¹ many youth also believe that e-cigarettes are safer than cigarettes,⁴² and that e-cigarettes just contain water vapor.³¹ Further, adolescents believe that second-hand

³⁸ Clark EM, Jones CA, Williams JR, et al. Vaporous marketing: uncovering pervasive electronic cigarette advertisements on Twitter. *PLoS One*. 2016;11(7):e0157304

³⁹ Jackler RK, Ramamurthi D. Nicotine arms race: JUUL and the high-nicotine product market. *Tob Control*. February 2019;tobaccocontrol-2018-054796. doi:10.1136/tobaccocontrol-2018-054796

⁴⁰ Gorukanti A, Delucchi K, Ling P, Fisher-Travis R, Halpern-Felsher B. Adolescents' attitudes towards e-cigarette ingredients, safety, addictive properties, social norms, and regulation. *Preventive medicine*. 2017;94:65-71

⁴¹ Roditis ML, Halpern-Felsher B. Adolescents' perceptions of risks and benefits of conventional cigarettes, e-cigarettes, and marijuana: a qualitative analysis. *Journal of Adolescent Health*. 2015;57(2):179-185

⁴² Gorukanti A, Delucchi K, Ling P, Fisher-Travis R, Halpern-Felsher B. Adolescents' attitudes towards e-cigarette ingredients, safety, addictive properties, social norms, and regulation. *Preventive medicine*. 2017;94:65-71

smoke from e-cigarettes is not a risk,⁴² and find it more acceptable to use e-cigarettes indoors and outdoors compared to cigarettes.⁴³

Are e-cigarettes important for adult cigarette cessation?

It is important to emphasize that, while some smokers have successfully quit smoking using e-cigarettes (notably daily users of high nicotine delivery systems), most smokers who use e-cigarettes are *less* not more likely to quit smoking. In fact, the overall effect of e-cigarette use is to depress smoking cessation, and thus flavored e-cigarettes do not increase likelihood of cigarette cessation. Moreover, adults **don't need e-cigarettes to stop smoking** conventional cigarettes. There are numerous studies showing that nicotine replacement therapy, cognitive behavioral or other therapy, and other non-electronic cigarette cessation techniques are effective. If Juul or other e-cigarette companies really wanted a device that would help adults quit smoking, they would have made them only in tobacco flavor, would not have made them small and sleek so youth can hide their use, and would have a step-down nicotine plan whereby people can titrate down the amount of nicotine they use.

Further Evidence of Immediacy of the e-cigarette Problem: Requests for Education, Prevention, and Cessation across the US

I am the Founder and Executive Director of the Tobacco Prevention Toolkit, an online, free set of curriculums and materials for educators and parents to use with middle and high school students to prevent and reduce youth use of all tobacco products. We have an entire section of the Toolkit just on e-cigarettes. The Toolkit was

⁴³ Gorukanti A, Delucchi K, Ling P, Fisher-Travis R, Halpern-Felsher B. Adolescents' attitudes towards e-cigarette ingredients, safety, addictive properties, social norms, and regulation. *Preventive medicine*. 2017;94:65-71

launched in September 2016. We receive **daily** requests for more information about our Toolkit, and in particular our e-cigarette and Juul prevention curriculum. Schools are aware of the e-cigarette and in particular Juul use epidemic in their schools and are frantically trying to find ways to help prevent and reduce such use in their schools and communities.

Schools are spending an enormous amount of time, money, and resources directly related to the e-cigarette epidemic. Schools have served as an effective venue for the delivery of drug education and awareness programming. Drug treatment services, however, are not commonly provided at schools due to legal and/or staffing constraints. Schools and parents need resources, funding, and immediate action. Many schools don't have a nurse or counselor on site to help with students caught vaping or needing help stopping their addiction. Further, many students don't have adequate access to health care or treatment aids including medication, and schools don't have the resources or feel comfortable intervening between parents and their children. Further, we have NO data to inform e-cigarette cessation for youth. Currently there are no nicotine replacement therapies (NRT) or other medicines approved by the FDA for use with anyone under the age of 18. While many healthcare providers are nevertheless prescribing NRTs, clinicians lack guidance on the NRT dosage to provide; this gap is especially salient if you consider the extreme amount of nicotine in a Juul pod or other pod-based e-cigarettes. The need to provide students, schools, and parents with education, prevention, and cessation resources is immediate and critical.

As evidence of the dramatic increase in requests by schools for e-cigarette and in particular Juul-related prevention education, in 2018 we conducted 28 educator

trainings across the US, with 730 educators trained. In just the first 9 months of 2019, we have already conducted 38 trainings across the US, and trained over 1,300 educators. In total, we have reached over **1,133,884 youth**.

Summary, Conclusions, and Policy Needs. In sum, the evidence is clear. Youth are using e-cigarettes, including Juul and other pod-based products, in record numbers. The increase in use of e-cigarettes is undermining and repealing the great progress that has been made by tobacco control efforts over the past two decades. Such increases in e-cigarette use come at a time when youth have negative views of cigarettes, and were unlikely to have initiated nicotine use with cigarettes.⁴⁴ **Immediate efforts are needed to reduce the epidemic of youth e-cigarette use.** Several **actions** should be considered, including raising the purchase age to 21, eliminating access to flavored tobacco products, and raising taxes to ensure that e-cigarette devices and e-liquids have the same price point as other tobacco products. We also need to enact a nicotine standard that applies to e-cigarettes (and all tobacco products). In the US, there is no maximum amount, concentration, or percentage of nicotine that can be in a tobacco product. Allowing a single tobacco product that has the amount of nicotine found in 1.5 to 2 packs of cigarettes is unacceptable, especially when the formula of the nicotine is easier to inhale and absorb. If e-cigarette companies want to propose higher levels of nicotine, they can be then used in prescription form, after the companies apply for and receive FDA authorization to be sold as cessation (drug) products. There is also an urgent need for education, prevention, and cessation programs. We have an

⁴⁴ McKelvey, K. & Halpern-Felsher, BL. Adolescent cigarette-smoking perceptions and behavior: Tobacco control gains and gaps amidst the rapidly expanding tobacco market 2001-2015. *Journal of Adolescent Health*. 2017 Feb;60(2):226-228. PMID: 27939880.

unprecedented number of youth addicted to nicotine through e-cigarette use, with no evidence-based medicine or guidelines for nicotine replacement therapy, behavioral therapies, or other help to provide schools, healthcare providers, educators, or youth. There is a real need for increased tobacco control program funding to fight the youth e-cigarette epidemic generally, but also to provide more education, prevention, and cessation services in schools. It is important to note that such education, prevention, and cessation programs should NOT be conducted by the tobacco/e-cigarette companies. There has been a history of these companies providing ineffective and often inappropriate, misleading, and harmful messages to youth.⁴⁵

Other solutions to the youth e-cigarette epidemic for which the FDA or other governmental agencies have authority include: prohibiting the online marketing and advertisements of e-cigarettes including prohibiting celebrity sponsorships and sponsorships at sporting and music events, where youth attend; prohibiting coupons and other promotional materials;⁴⁶ and regulating the design of e-cigarettes so they are less appealing to youth. It is also important that the FDA not allow any claims made that e-cigarettes are safe or less harmful than cigarettes, and that all e-cigarettes be pulled from the market until they have received pre-marketing authorization from the FDA.

The FDA has the authority to do these actions now.

Thank you.

⁴⁵ Liu, J. & H-F, B. *The Juul Curriculum is Not the Jewel of Tobacco Prevention-Curriculum*. Journal of Adolescent Health, 63, 527-528, 2018. PMID 30348276

⁴⁶ Magid, H., Bradshaw, P.T., Ling, P. and **Halpern-Felsher, B.** Ownership of promotional materials predicts initiation of alternative tobacco products used among adolescents and young adults. JAMA Network Open. 2019 May 03;2(5):e194006. PMID: 31099874

FDA must use its existing authority to combat the youth e-cigarette use epidemic by preventing addiction now, rather than by seeking to treat it after the fact

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Docket No. FDA-2018-N-3952

February 1, 2019

The number of youth using e-cigarettes and other new vaping products (herein: e-cigarettes) has reversed progress in reducing youth nicotine addiction, and continues to grow. Over the past year, high school students' use of e-cigarettes including pod-based products has increased by 78%, with 1 in 5 high school students reporting current use. Middle school students' use increased by 48%, with 1 in 20 middle school students reporting recent use.^{1,2}

FDA's public statements about the growing epidemic of youth e-cigarette use suggest the agency recognizes the enormity of the problem. For example, speaking of the proposed new steps to reduce youth vaping by preventing their access to flavored tobacco products, FDA Commissioner Scott Gottlieb, MD, said:

"Today, I'm pursuing actions aimed at addressing the disturbing trend of youth nicotine use and continuing to advance the historic declines we've achieved in recent years in the rates of combustible cigarette use among kids."

"[A]ny policy accommodation to advance the innovations that could present an alternative to smoking – particularly as it relates to e-cigarettes – cannot, and will not, come at the expense of addicting a generation of children to nicotine through these same delivery vehicles. This simply will not happen. I will take whatever steps I must to prevent this."³

¹ CDC, National Youth Tobacco Survey (NYTS). Cullen KA, Ambrose BK, Gentske AS, Apelberg BJ, Jamal A, King BA. Notes from the field; Use of electronic cigarettes and any tobacco product among middle and high school students – United States, 2011-2018. MMWR Morb Mortal Wkly Rep 2018; 67:1276-1277. DOI: <http://dx.doi.org/10.15585/mmwr.mm6745a5>

² Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. Tobacco product use among middle and high school students — United States, 2011-2017. MMWR Morb Mortal Wkly Rep. 2018;67(22).

³November 15, 2018;<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>

While helping youth who are already addicted to e-cigarettes is a necessary part of any response, it is not sufficient, particularly since ***there are not yet any treatments for nicotine addiction that have been demonstrated to be effective for youth.*** As a result, ***FDA's immediate and primary focus should be on quickly using its regulatory authority to prevent youth from becoming addicted in the first place.***

In particular, ***FDA should use its current enforcement authority*** to prohibit the sale of any e-cigarette product (including mint, menthol, and tobacco-flavored e-cigarettes and e-liquids) that has not received FDA premarket review and authorization based on demonstrated public health benefits. Further, the FDA should aggressively enforce against unauthorized modified risk and cessation claims; prohibit all flavors in e-cigarettes, including mint and menthol; prohibit Internet sales of e-cigarettes; and prohibit e-cigarette advertising that targets youth.⁴

FDA should also stop making unsupported statements that (1) e-cigarettes are safer than conventional cigarettes (an MTRP claim), and that (2) e-cigarettes help adults quit smoking (a therapeutic claim) unless evidence to support these claims has been submitted and properly vetted. While many e-cigarette companies are making or implying such claims, they violate the law. FDA should not be making statements that, if made by a company, would be illegal. As discussed in detail below, ***these statements by the FDA are making the problem worse by inadvertently promoting youth use of e-cigarettes.***

If FDA's ultimate goal is to eliminate e-cigarette and other tobacco product use among youth, it must take these immediate steps to prevent youth from initiating tobacco or other nicotine use with e-cigarettes by making them less appealing to youth. The first question posed by FDA in its request for comments acknowledges that "the factors driving e-cigarette use among youth likely differ from those in the adult population." FDA must take these factors into consideration to achieve regulatory solutions that are evidence-based and most effective.

The steps outlined above do not require any additional rulemaking and can and should be taken immediately.

This public comment discusses the following in support of these critical steps that the FDA can and should take immediately:

- the lack of effective pharmacological approaches for youth e-cigarette cessation
- the problems inherent in discussing addiction with youth, including their lack of acknowledgement that they are addicted, and their lack of understanding of what "addiction" actually means
- why it is important for the FDA to stop its unfounded messaging that e-cigarettes, and in particular flavored e-cigarettes, help adults quit smoking cigarettes

⁴We have submitted another comment that details these regulatory tools which we incorporate by reference. Lempert LK, Halpern-Felsher B, Glantz S. FDA should use its regulatory authority and take immediate steps to tackle the youth e-cigarette epidemic. Docket No. FDA-2018-N-3952.

- the importance of sound regulation that will be instrumental in preventing youth addiction in the first place, including banning all flavors including mint and menthol
- prohibiting Internet sales of e-cigarettes
- prohibiting e-cigarette advertising targeting kids
- removing from the market all e-cigarettes that have not obtained FDA premarket review and authorization
- the importance of education

1. There is No Evidence for Using Pharmacological Approaches for Youth E-cigarette Cessation

Currently, there are no FDA-approved pharmacological approaches for youth e-cigarette cessation, including no studies examining the effectiveness of nicotine replacement therapies (NRTs) on reducing e-cigarette use. While there are studies showing that NRTs are effective at reducing adult cigarette smoking,⁵ *when used in conjunction with counselling* such as cognitive behavior therapy,⁶ there are currently no studies conducted on the effectiveness of NRTs with youth under age 18.

We can also look to the young adult literature for further information. Studies have shown that young adult smokers who try to quit smoking cigarettes are less likely to use evidence-based cessation strategies than their older adult counterparts and more likely to try to quit unassisted.^{7,8,9,10,11,12} It is likely that youth would be even less likely to use suggested cessation devices, in part because they do not recognize that they are addicted, as noted below. Further, young adults trying to quit cigarettes used e-cigarettes substantially more than any other

⁵ West R, Zhou X. Is nicotine replacement therapy for smoking cessation effective in the “real world”? Findings from a prospective multinational cohort study. *Thorax*. 2007;62(11):998-1002. doi:10.1136/thx.2007.078758.

⁶ Kotz D, Brown J, West R. “Real-world” effectiveness of smoking cessation treatments: a population study. *Addiction*. 2014;109(3):491-499. doi:10.1111/add.12429

⁷ Watkins SL, Thrul J, Max W, Ling P. Cold Turkey and Hot Vapes? A national study of young adult cigarette cessation strategies. *Nicotine Tob Res*. 2018;1-9. doi:10.1093/ntr/nty270.

⁸ Curry SJ, Sporer AK, Pugach O, Campbell RT, Emery S. Use of tobacco cessation treatments among young adult smokers: 2005 National Health Interview Survey. *Am J Public Health*. 2007;97(8):1464-1469. doi:10.2105/AJPH.2006.103788.

⁹ Hughes JR, Cohen B, Callas PW. Treatment seeking for smoking cessation among young adults. *J Subst Abuse Treat*. 2009;37(2):211-213.

¹⁰ McCarthy M, Siahpush M, Shaikh RA, Kessler AS, Tibbits M. Social disparities in unaided quit attempts among daily current and former smokers: Results from the 2010-2011 tobacco use supplement to the current population survey. *Nicotine Tob Res*. 2016;18(8):1705-1710. doi:10.1093/ntr/ntw007.

¹¹ McCarthy M, Siahpush M, Shaikh RA, Kessler AS, Tibbits M. Social disparities in unaided quit attempts among daily current and former smokers: Results from the 2010-2011 tobacco use supplement to the current population survey. *Nicotine Tob Res*. 2016;18(8):1705-1710. doi:10.1093/ntr/ntw007.

¹² Solberg LI, Asche SE, Boyle R, McCarty MC, Thoele MJ. Smoking and cessation behaviors among young adults of various educational backgrounds. *Am J Public Health*. 2007;97(8):1421-1426. doi:10.2105/AJPH.2006.098491.

cessation therapy¹³ despite the fact that population-based studies of actual use show that, overall, smokers who use e-cigarettes are less likely to quit than smokers who do not use e-cigarettes.¹⁴

Given concerns about providing nicotine to adolescents whose brains are still developing and therefore most susceptible to addiction, use of non-nicotine pharmacological therapy would probably be best. Based on mechanism of action, varenicline is intriguing because it has agonist effects, which relieves withdrawal symptoms, but also has antagonist effects, potentially making nicotine from an e-cigarette less rewarding.¹⁵ Varenicline is, however, meant for heavily addicted users and many youth using e-cigarettes may not meet this standard. Varenicline also may not be as effective a cessation aid for non-cigarette tobacco products. Recent trials suggest mixed effectiveness for varenicline as a cessation for conventional smokeless tobacco.¹⁶ As it stands, any rationale for varenicline use by nicotine addicted adolescent e-cigarette users is largely theoretical and not supported by actual clinical data.

2. FDA Must Recognize that Youth Do Not Understand Nicotine Addiction, Nor Do They Acknowledge their Own Addiction

Studies clearly show that adolescents have a poor understanding of what addiction – and in particular nicotine addiction – means. In a mixed-methods study in which adolescents were surveyed and interviewed about their perceptions and understandings of addiction, the authors found that adolescent participants did not recognize the association between being addicted, the chance of still being a smoker in five years, and the ability to quit. Further, the qualitative data describing how youth conceptualize and understand addiction revealed skepticism and uncertainty about addiction.¹⁷ While adolescents have received the message that tobacco products can be addictive, they are uncertain regarding the definition of addiction and have not recognized that addiction means experiencing difficulty quitting and continuing to smoke longer than expected.

Further, in a study of youth's use of and attitudes towards Juuls, McKelvey, Baiocchi, and Halpern-Felsher found that youth perceive Juuls as less addictive than other e-cigarettes and cigarettes, although they contain equal or greater amounts of nicotine. Further, despite perceiving lower levels of nicotine in these products, and not identifying themselves as addicted,

¹³ Watkins, S. L., Thrul, J., Max, W., & Ling, P. (2018). Cold Turkey and Hot Vapes? A national study of young adult cigarette cessation strategies. *Nicotine & Tobacco Research*.

¹⁴ Kalkhoran S, Glantz SA. E-cigarettes and smoking cessation in real-world and clinical settings: A systematic review and meta-analysis. *Lancet Respir Med* 2016 Feb;4(2):116-28.

¹⁵ Coe JW, Brooks PR, Vetelino MG, Wirtz MC, Arnold EP, Huang J, Sands SB, Davis TI, Lebel LA, Fox CB, Shrikhande A. Varenicline: an $\alpha 4\beta 2$ nicotinic receptor partial agonist for smoking cessation. *Journal of medicinal chemistry*. 2005 May 19;48(10):3474-7.

¹⁶ Schwartz J, Fadahunsi O, Hingorani R, Mainali NR, Oluwasanjo A, Aryal MR, Donato A. Use of varenicline in smokeless tobacco cessation: a systematic review and meta-analysis. *Nicotine & Tobacco Research*. 2015 Feb 2;18(1):10-6.

¹⁷ Reditis, M, Lee, J., Halpern-Felsher, B. (2015). Adolescent (Mis)Perceptions About Nicotine Addiction: Results From a Mixed-Methods Study. *Health Educ Behav*. 2016 Apr;43(2):156-64. doi: 10.1177/1090198115598985.

youth themselves were showing signs of addiction as measured by the Hooked on Nicotine Checklist.¹⁸

Taken together, these studies and others show that youth do not fully understand the addictive nature of nicotine, do not recognize the level of nicotine in the various e-cigarette devices, and are therefore more subject to misperceptions and usage of e-cigarettes. ***The FDA therefore needs to take steps to ensure that labels and packaging clearly explain what addiction means in terms that are meaningful to youth.*** For example, the legally mandated¹⁹ warning label shown on a Juul package in Figure 1 will not be fully understood by youth, and can lead to their initiation and usage with this product. Further, the 5.0% strength noted on the package is misleading, as nowhere on the Juul package is it made clear that the 5% is referring to nicotine or what amount of nicotine 5% entails.

3. The FDA should prohibit all flavors, including mint and menthol, in all e-cigarette products, not only in pod-style e-cigarettes

In order to attract young and new users, the tobacco industry adds characterizing flavors like mint, menthol, fruit, and candy to tobacco, often using the same flavorants that are in fruit-flavored candy, and sometimes at higher doses.²⁰ These flavors appeal to new users by masking the harsh taste of tobacco, and in the case of e-cigarettes, resulting in a more pleasant smell than that found with tobacco alone.

Flavor or “taste” is one of the most common persuasive marketing techniques used to promote food (mostly candy and snacks) to children on TV.²¹ Exposure to ads for flavored products is positively associated with youth consumption,²² and most money spent by youth is on food or beverages, particularly sweets.²³ Research on e-cigarettes is consistent with these findings, concluding: flavors play an important role for online e-cigarette marketing and boosts user



Figure 1. Warning that simply says a product is addictive or contains an addictive chemical will not be understood by youth.

¹⁸WheelerKC,FletcherKE,WellmanRJ,DifranzaJR.Screeningadolescentsfor nicotinedependence:the Hooked On Nicotine Checklist. *J Adolesc Health*. 2004;35(3):225-230. doi:10.1016/S1054-139X(03)00531-7

¹⁹ 21 CFR 1143.3(a)

²⁰ Brown JE, Luo W, Isabelle LM, Pankow JF. Candy flavorings in tobacco. *N Engl J Med*. 2014;370(23):2250-2252.

²¹ Jenkin G, Madhvani N, Signal L, Bowers S. A systematic review of persuasive marketing techniques to promote food to children on television. *Obesity reviews*. 2014;15(4):281-293.

²² Cairns G, Angus K, Hastings G, Caraher M. Systematic reviews of the evidence on the nature, extent and effects of food marketing to children. A retrospective summary. *Appetite*. 2013;62:209-215.

²³ Kraak VI, Gootman JA, McGinnis JM. *Food marketing to children and youth: Threat or opportunity?* National Academies Press; 2006.

interaction and positive emotion;²⁴ flavored (vs. unflavored) e-cigarette ads elicit greater appeal and interest in buying and trying e-cigarettes; and the appeal of ads marketing flavors is linked to rapid and persistent adoption of e-cigarettes among youth.²⁵

Youth are Attracted to Flavored Tobacco Products

The vast majority of youth in the US who try tobacco initiate with flavored tobacco products, including 81% of e-cigarette ever users, 65% of cigar ever users, and 50% of cigarette ever smokers.²⁶ Adolescents are more likely to report interest in trying an e-cigarette from a friend if it is menthol-, candy-, or fruit-flavored than if unflavored.²⁷ Flavor preferences are associated with higher e-cigarette use among adolescents.²⁸ Most adolescent current tobacco users cite flavors as a reason for use (including 81% for past 30-day e-cigarette users; 74% for past 30-day cigar users).¹⁰ Three quarters of adolescent and young adult flavored tobacco product users reported they would quit if flavors were unavailable.²⁹

Youth and young adult tobacco users are more likely than older adult tobacco users to use flavored products, including menthol cigarettes,³⁰ flavored smokeless tobacco,³¹ and flavored cigars.³² Young smokers (12-17 years of age) are three times as likely to smoke menthol cigarettes than smokers 35 years and older.³³ Research among approximately 4000 school-going youth shows that for 98% of them, first e-cigarettes used were flavored to taste like something other than tobacco, compared to 44.1% of older adults nationwide. Fruit and candy flavors predominated for all groups; and, for youth, flavors were an especially salient reason to use e-

²⁴ Liang Y, Zheng X, Zeng DD, Zhou X. Impact of flavor on electronic cigarette marketing in social media. 2015;278-283.

²⁵ Vasiljevic M, Petrescu DC, Marteau TM. Impact of advertisements promoting candy-like flavoured e-cigarettes on appeal of tobacco smoking among children: An experimental study. *Tob Control*. 2016;25(e2):e107-e112.

²⁶ Ambrose B, Day H, Rostron B, et al. Flavored tobacco product use among us youth aged 12-17 years, 2013-2014. *J Am Med Assoc*. 2015;314(17):1-3. doi:10.1001/jama.2015.13802.

²⁷ Pepper JK, Ribisl KM, Brewer NT. Adolescents' interest in trying flavoured e-cigarettes. *Tob Control*. 2016;25(Suppl 2):ii62-ii66. doi:10.1136/tobaccocontrol-2016-053174.

²⁸ Morean ME, Butler ER, Bold KW, Kong G, Camenga DR, Cavallo DA, Simon P, O'Malley SS, Krishnan-Sarin S. Preferring more e-cigarette flavors is associated with e-cigarette use frequency among adolescents but not adults. *PloS one*. 2018 Jan 4;13(1):e0189015

²⁹ Loukas A, Jackson CD, Marti CN, Perry CL. Flavored tobacco product use among youth and young adults: What if flavors didn't exist? *Tob Regul Sci*. 2017;3(2):168-173.

³⁰ Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016;25(Suppl 2):ii14-ii20. doi:10.1136/tobaccocontrol-2016-053329.

³¹ Oliver AJ, Jensen JA, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: Rate, pattern of use, and effects. *Nicotine Tob Res*. 2013;15(1):88-92. doi:10.1093/ntr/nts093.

³² Delnevo CD, Giovenco DP, Ambrose BK, Corey CG, Conway KP. Preference for flavoured cigar brands among youth, young adults and adults in the USA. *Tob Control*. 2014;24(4):389-394. doi:10.1136/tobaccocontrol-2013-051408.

³³ Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016:1-7. doi:10.1136/tobaccocontrol-2016-053329.

cigarettes.³⁴ Finally, a recent study showed that only 1.5% of adolescent and young adult e-cigarette users used tobacco flavored-Juuls and .9% used tobacco-flavored other e-cigarette products. Instead, the majority used fruit or dessert flavors (33% for Juul users and 64% for other e-cigarette users) and 27% of Juul users and 12% of other e-cigarette users used mint or menthol flavors.³⁵

Youth Believe Ads for Flavored E-cigarettes Target Them

Using flavors in e-cigarettes is a key marketing strategy to reach and recruit youth. In 2014, over 7,700 flavors for e-cigarettes were available, with greater than 240 new flavors being added per month.³⁶ What is most important is that youth believe flavored e-cigarette ads target them.

In a study³⁷ of California youth and young adults (mean age 17.5, SD = 1.7), participants were asked to indicate whether eight different ads for flavored e-cigarette products (Figure 2), randomly displayed, target someone younger than them, their age, someone a little older, or someone much older like their parents. Participants felt the ads were for someone just a little older than them (age 18 – 26; not for someone much older). More than half of participants felt ads for *cherry*, *vanilla cupcake*, *caramel*, and *smoothie* flavors were for someone their age. Ads were also seen as targeting an audience younger than them. These findings suggest that while the tobacco industry argues that flavored tobacco products, including sweet and fruit flavored products, are not meant to attract youth, youth see them as aimed at them. ***These and similar findings indicate that the FDA should immediately stop exercising enforcement discretion that allows these products to remain on the market without FDA premarket review. FDA should instead remove from the market all e-cigarettes that have not submitted premarket approval applications and have not obtained FDA authorization based on a demonstration that these flavors are good for the public health.***³⁸

³⁴ Harrell MB, Weaver SR, Loukas A, Creamer M, Marti CN, Jackson CD, Heath JW, Nayak P, Perry CL, Pechacek TF, Eriksen MP. Flavored e-cigarette use: Characterizing youth, young adult, and adult users. *Preventive medicine reports*. 2017 Mar 1;5:33-40

³⁵ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. *JAMA Network Open*, 2018;1(6):e183535. doi:10.1001/jamanetworkopen.2018.3535

³⁶ Zhu SH, Sun JY, Bonnevie E, Cummins SE, Gamst A, Yin L, Lee M. Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation. *Tobacco control*. 2014 Jul 1;23(suppl 3):iii3-9

³⁷ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Youth Say Ads for Flavored E-liquids are for Them. *Addictive Behaviors*, in press.

³⁸ Had the premarket review and authorization provisions of the Tobacco Control Act been enforced as intended, all e-cigarettes would have been removed from the market by the effective date of the Deeming Rule (i.e., August 8, 2016). Instead, the FDA submitted to the OMB a proposed Deeming Rule that included a compliance or grace period of 12 months from the date a final rule is promulgated. However, OMB doubled the length of the compliance period to twenty-four months from the date a final rule is promulgated, i.e., to August 8, 2018. We submitted public comments to the Deeming Rule docket opposing that extension.

[https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/FDA-comment-2014-06-](https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/FDA-comment-2014-06-06%20Dutra%20Glantz%20cost%20of%202-year%20compliance%20period-%201jy-8cis-skj5.pdf)

[06%20Dutra%20Glantz%20cost%20of%202-year%20compliance%20period-%201jy-8cis-skj5.pdf](https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/FDA-comment-2014-06-06%20Dutra%20Glantz%20cost%20of%202-year%20compliance%20period-%201jy-8cis-skj5.pdf)

<https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/FDA%20comment-Substantial%20Equiv-%201jy-8cos-3k4o.pdf>



Figure 2. Flavored e-cigarette ads shown to adolescents and young adults to elicit perceptions of the age of audience being targeted for each ad.

FDA Should Use its Regulatory Authority to Ban All Flavors in E-cigarettes, Including Mint and Menthol

Over the longer term, FDA should use its authority under section 907 of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) to prohibit *all* flavors in electronic cigarettes, *including mint and menthol*.

On November 15, 2018, FDA announced³⁹ a proposed policy that would restrict youth access to flavored e-cigarettes and e-liquids, but the proposed policy specifically excluded mint, menthol, and tobacco-flavored e-cigarette products. Specifically, FDA Commissioner Gottlieb said:

“These changes will not include mint- and menthol-flavored ENDS. This reflects a careful balancing of public health considerations. Among all ENDS users, data suggests that mint- and menthol-flavored ENDS are more popular with adults than with kids. One nationally representative survey showed that, among ENDS users aged 12-17 years old, 20 percent used mint- and menthol-flavored ENDS while, among adult ENDS users, 41 percent used mint- and menthol-flavored ENDS. Any approach to mint- and menthol-flavored ENDS must acknowledge the possibility that the availability of these flavors in ENDS may be important to adult smokers seeking to transition away from cigarettes. Moreover, I recognize that combustible cigarettes are still sold in menthol flavor, including in convenience stores. I don’t want to create a situation where the combustible products have features that make them more attractive than the non-combustible products. Or a situation where those who currently use menthol-flavored cigarettes might

In August 2017, FDA announced that it would use its discretion and further extend the compliance date for e-cigarettes to August 8, 2022.

<https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM557716.pdf>

³⁹ FDA, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes, November 15, 2018. <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>

find it less attractive to switch completely to an e-cigarette. This is a difficult compromise that I'm trying to strike, recognizing the public health risk posed by cigarettes still being available in menthol flavor."⁴⁰

This proposed policy is inadequate.

Data from the most recent National Youth Tobacco Survey released on that same day show that "Among high school students, during 2017–2018, current use of any flavored e-cigarettes increased among current e-cigarette users (from 60.9% to 67.8%, $p = 0.02$); current use of menthol- or mint-flavored e-cigarettes increased among all current e-cigarette users (from 42.3% to 51.2%, $p = 0.04$) and current exclusive e-cigarette users (from 21.4% to 38.1%, $p = 0.002$)."⁴¹ Finally, there is compelling recent evidence showing that youth use mint and menthol e-cigarettes. In a recent study published in JAMA Online Network, the authors found that almost 27% of youth in their study used mint or menthol flavored Juuls, and 12% used mint or menthol other e-cigarette styles.⁴² McKelvey and colleagues also showed that mint and menthol are used widely by youth, as noted earlier.⁴³

Under FDA's proposal, mint and menthol flavored e-cigarettes and e-liquids would still be widely available to youth, despite these data showing that the majority of high school students who use e-cigarettes use mint- or menthol-flavored products.

There is no scientific basis to keep mint and menthol flavored e-cigarettes and e-liquids on the market.

To successfully tackle youth e-cigarette use, FDA must ensure that all flavored e-cigarettes are prohibited. FDA should immediately propose, finalize, and enforce regulations banning all flavors in all products as part of its overall effort to protect youth.

Despite historic tobacco industry claims that menthol simply adds flavor, tobacco industry documents have revealed that the industry manipulates menthol levels to control a cigarette's intensity to cater to new and long-term smokers.⁴⁴

Menthol and other characterizing flavors appeal to new users by masking the harsh taste of tobacco, and bright packaging associates flavored tobacco products with candy and other

⁴⁰ <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>

⁴¹ CDC, National Youth Tobacco Survey (NYTS). Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. *Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018*. MMWR Morb Mortal Wkly Rep 2018;67:1276–1277. DOI: <http://dx.doi.org/10.15585/mmwr.mm6745a5>

⁴² McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. JAMA Network Open, 2018;1(6):e183535. doi:10.1001/jamanetworkopen.2018.3535

⁴³ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. JAMA Network Open, 2018;1(6):e183535. doi:10.1001/jamanetworkopen.2018.3535

⁴⁴ Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. Am J Public Health. 2008;98(9):1685-1692. doi:10.2105/AJPH.2007.125542.

flavors.^{45,46} Additionally, tobacco products with a characterizing flavor including fruit-flavored e-cigarettes⁴⁷ and menthol cigarettes¹⁴ are perceived to be less harmful than unflavored or tobacco-flavored products. In addition, there is some evidence that menthol cigarettes are harder to quit.^{48,49}

Mint and menthol target vulnerable youth. In the general population, differences in menthol use exist across race, gender, age, and sexual orientation. Rates of use of menthol flavored tobacco products are often higher in marginalized populations. African American smokers consistently have the highest menthol use rate.⁵⁰ Menthol use is also higher among female smokers;²⁷ Lesbian, Gay, and Bisexual smokers⁵¹ (although see Rath et al 2013⁵²); people with severe psychological distress; people with fewer years of education and lower income; and those who are unmarried or uninsured.⁵³

The tobacco industry cultivated menthol use among African Americans by manipulating social factors of the civil rights era,⁵⁴ advertising menthol brand cigarettes, little cigars, and cigarillos in African American media and retail settings in African American neighborhoods,^{55,56} and donating to African American leadership organizations.⁵⁷ The strategy has been so successful

⁴⁵ Yerger VB. Menthol's potential effects on nicotine dependence: a tobacco industry perspective. *Tob Control*. 2011;20(Suppl 2):ii29-ii36. doi:10.1136/tc.2010.041970.

⁴⁶ 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.

⁴⁷ Pepper JK, Ribisl KM, Brewer NT. Adolescents' interest in trying flavoured e-cigarettes. *Tob Control*. 2016;25(Suppl 2):ii62-ii66. doi:10.1136/tobaccocontrol-2016-053174.

⁴⁸ Pletcher MJ, Hulley BJ, Houston T, Kiefe CI, Benowitz N, Sidney S. Menthol cigarettes, smoking cessation, atherosclerosis, and pulmonary function. 2006;166.

⁴⁹ Trinidad DR, Pérez-Stable EJ, Messer K, White MM, Pierce JP. Menthol cigarettes and smoking cessation among racial/ethnic groups in the United States. *Addiction*. 2010;105(SUPPL.1):84-94. doi:10.1111/j.1360-0443.2010.03187.x.

⁵⁰ Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014. *Tob Control*. 2016;1-7. doi:10.1136/tobaccocontrol-2016-053329.

⁵¹ Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med*. 2015;48(1):93-97. doi:10.1016/j.amepre.2014.07.044.

⁵² Rath JM, Villanti AC, Rubenstein RA, Vallone DM. Tobacco use by sexual identity among young adults in the united states. *Nicotine Tob Res*. 2013;15(11):1822-1831. doi:10.1093/ntr/ntt062.

⁵³ Hickman NJ, Delucchi KL, Prochaska JJ. Menthol use among smokers with psychological distress: findings from the 2008 and 2009 National Survey on Drug Use and Health. *Tob Control*. 2014;23(1):7-13. doi:10.1136/tobaccocontrol-2012-050479.

⁵⁴ Gardiner PS. The African Americanization of menthol cigarette use in the United States. *Nicotine Tob Res*. 2004;6 Suppl 1:S55-65. doi:10.1080/14622200310001649478.

⁵⁵ Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res*. 2012;14(1):116-121. doi:10.1093/ntr/ntr122.

⁵⁶ Kostygina G, Glantz SA, Ling PM. Tobacco industry use of flavours to recruit new users of little cigars and cigarillos. *Tob Control*. 2014;tobaccocontrol-2014-051830-. doi:10.1136/tobaccocontrol-2014-051830.

⁵⁷ Yerger VB, Malone RE. African American leadership groups: Smoking with the enemy. *Tob Control*. 2002;11(4):336-345. doi:10.1136/tc.11.4.336.

that even by 6th grade, African American youth were three times more likely to recognize menthol brands than their peers.⁵⁸

FDA had stated in its Deeming Rule submitted to the Obama Office of Management and Budget (OMB) that menthol products would be treated the same as other flavored products, and therefore all newly deemed menthol products would have been ordered off the market by November 6, 2016. FDA presented overwhelming evidence, supported by comments it received on the then-proposed deeming rule, that menthol, as well as candy and fruit-flavored tobacco products attract youth to tobacco use and deter quitting. In particular, FDA presented evidence in the draft submitted to the Obama OMB demonstrating the impact of menthol and other flavors in enticing African Americans to begin and continue smoking:

“FDA expects that the tobacco flavor in a tobacco product need not be naturally inherent to the product in order for a manufacturer to fall within the compliance policy described here, but rather may result from the addition of ingredients or other measures by the manufacturer to result in the presence of tobacco as a characterizing flavor. However, menthol flavored products will be treated the same as products with characterizing flavors other than tobacco for the purpose of this policy, because when it is used as a characterizing flavor, menthol has a similar impact on a product’s appeal to youth and young adults as such other characterizing flavors. We note that newly-deemed flavored tobacco products that are not grandfathered may still need to address the public health implications of any added flavors, including tobacco flavor, in their pre-market review submissions.”⁵⁹

Taken together, these data clearly show that youth do use mint and menthol flavors, that such flavorants are purposely added to attract both users and non-users, and that mint and menthol attract youth. As such, a ban on flavored e-cigarette products must include mint and menthol.

The Evidence that Flavors Attract Youth is Strong

As discussed above, the evidence that flavors attract youth is very strong and consistent. In contrast, the evidence to the contrary is limited to industry-funded research that has an obvious conflict of interest. Shiffman et al.⁶⁰ reported the results of an online survey in which they concluded that “interest in e-cigarettes is very low among nonsmoking teens and is not affected by flavor descriptors.” This conclusion is unlikely to be reliable because it is based on responses to a single question on interest in flavors that makes the results likely affected by floor (and

⁵⁸ Dauphinee AL, Doxey JR, Schleicher NC, Fortmann SP, Henriksen L. Racial differences in cigarette brand recognition and impact on youth smoking. *BMC Public Health*. 2013;13(1):170. doi:10.1186/1471-2458-13-170.

⁵⁹ TAB B 2014-850 Deeming Final Rule Redline Changes, p.169. Available at: <https://www.regulations.gov/document?D=FDA-2014-N-0189-83193>

⁶⁰ Shiffman S, Sembower MA, Pillitteri JL, Gerlach KK, Gitchell JG. The impact of flavor descriptors on nonsmoking teens’ and adult smokers’ interest in electronic cigarettes. *Nicotine Tob Res* 2015:ntu333. doi: 10.1093/ntr/ntu333

ceiling) effects.^{61,62} This paper was funded by the NJOY e-cigarette company and whose authors all work for Pinney Associates on projects with Reynolds American Inc. on smoking cessation and reduced risk tobacco products.⁶³ The paper suffers from serious methodological problems that biased the results against finding an effect of flavors. Contrary to Shiffman et al.'s findings, the impact of flavor descriptors on nonsmoking teens' and adult smokers' interest in e-cigarettes is not a reliable estimate of the effects of e-cigarette flavors on product desirability.

One of the largest problems with the findings from Shiffman et al. was the measures used. Floor and ceiling effects occur when a measuring instrument is not sensitive enough to detect the real differences between participants when their answers are clumped at the low or high end of the possible range of values. An example of a floor effect would be testing mathematical knowledge using a problem that is so difficult that no one can solve it; thus, it will not reveal the true differences in mathematical knowledge. Shiffman et al. found almost no interest in any flavors of electronic cigarettes among teenagers who have never tried tobacco products (including e-cigarettes) and very low interest among adult smokers based on responses to a single question (albeit about 24 different flavors/products): "How interested would you be in using a [flavor] [product]?" The problem with just using a single question is that most people (especially those who are not yet tobacco users) are not interested in using a product even though they might be interested in trying it or using it in a specific situation, thus resulting in a floor effect.

To avoid the problem of a single question not measuring the variable of interest, surveys typically use more than one question to assess smoking behavior and intentions. For example, openness to smoking (or interest in smoking) is typically measured by at least two questions in most large surveys, such as the following questions from the National Youth Tobacco Survey:⁶⁴

"Do you think you will smoke a cigarette anytime during the next year? If one of your best friends offered you a cigarette, would you smoke it?"

As a result, Shiffman et al.'s findings of limited interest in flavors, especially among youth, is likely to be the result of an insensitive measurement method rather than a real effect.

A study of smokers' interest in smokeless tobacco illustrates the importance of how the question is worded.⁶⁵ Smokers reported very low interest in smokeless tobacco products (mean 1.5 on a 1-9 scale) when asked about use in general. However, when they were asked about smokeless tobacco use in specific situations, such as "How interested would you be in using this product when in a smokefree environment?" (mean=3.2) or for a specific reason, such as "to reduce health risk," they reported greater interest (mean interest=4.2).

⁶¹ Martin P, Bateson PPG. *Measuring behaviour: An introductory guide*: Cambridge University Press; 1993.

⁶² Newman AB, Cauley JA. *The epidemiology of aging*: Springer; 2012.

⁶³ Pinney Associates. Tobacco harm reduction. <http://www.pinneyassociates.com/our-practices/tobacco-harm-reduction/>

⁶⁴ Centers for Disease Control and Prevention. National Youth Tobacco Survey (NYTS). Retrieved January 15, 2015 from http://www.cdc.gov/tobacco/data_statistics/surveys/nyts/index.htm.

⁶⁵ Popova L, Ling P. Alternative tobacco product use and smoking cessation: A national study. *Am J Pub Health*. 2013;103:923-930. doi: 10.2105/AJPH.2012.3010

In contrast to the hypothetical interest Shiffman et al. assessed, real world behavior indicates that while under 10% of the of adults who ever tried e-cigarettes reported that they tried them because of “appealing flavors,”⁶⁶ 43.8% of youth listed “good flavors” as the reason they tried e-cigarettes.⁶⁷

There are also serious concerns about the ethics of the study. The authors state that the work was “exempt” from human subjects because they were using de-identified data collected by a third-party internet survey firm. While subject confidentiality is certainly an issue, so is the fact that Shiffman et al. were subjecting youth (as well as adults) to stimuli that could increase the respondents’ likelihood to try an e-cigarette, thereby possibly introducing them to nicotine addiction. There is no acknowledgement of this risk to the subjects or steps taken after the survey was completed to mitigate these risks. Further, there is no discussion that informed consent from the minors’ parents or the adults participating in the study was not obtained. The Shiffman study also suffers from poor quality because it fails to report or describe of any of these issues as limitations. Such studies typically include anti-tobacco education at the end to try and blunt the effect of any pro-tobacco or pro-e-cigarette effects of collecting the data. Finally, even studies conducted using a third-party and with data collected using Internet-based surveys usually have some form of IRB approval and consent process.

For these reasons, the FDA should not rely on the results in Shiffman et al.’s paper to dismiss the overwhelming evidence that flavors attract youth to e-cigarette use.

4. FDA’s Messaging that E-cigarettes are Good for Adults Has The Unintended Consequence of Attracting Kids

FDA has issued a variety of statements characterizing e-cigarettes as less harmful nicotine delivery devices. These statements may be misinterpreted by youth to suggest that youth should use e-cigarettes to help them quit smoking, or that e-cigarettes are generally safe for youth to use.

For example, on March 15, 2018, FDA Commissioner Scott Gottlieb said, “... to successfully address cigarette addiction, we must make it possible for current adult smokers who still seek nicotine to get it from alternative and *less harmful sources*.”⁶⁸ On November 15, 2018, Dr. Gottlieb said, “We must recognize the potential for innovative, *less harmful products* that can efficiently deliver satisfying levels of nicotine to adults who want them.”⁶⁹

The claims that e-cigarettes are “less harmful” nicotine delivery devices have not been substantiated. In fact, as discussed above, if e-cigarette companies made these exact statements,

⁶⁶ Pepper JK, Ribisl KM, Emery SL, Brewer NT. Reasons for starting and stopping electronic cigarette use. *Int J Environ Res Pub Health* 2014;11(10):10345-10361. doi: 10.3390/ijerph111010345

⁶⁷ Kong G, Morean ME, Cavallo DA, Camenga DR, Krishnan-Sarin S. Reasons for Electronic Cigarette Experimentation and Discontinuation Among Adolescents and Young Adults. *Nicotine Tob Res* 2014;ntu257. doi: 10.1093/ntr/ntu257

⁶⁸ <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm601039.htm>

⁶⁹ <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>

they would be illegal modified risk claims because they have not been proven with rigorous scientific evidence.

FDA should not assume that e-cigarettes help adult smokers quit

Before discussing the evidence related to FDA's presumption that flavorings help adult tobacco smokers quit smoking combustible tobacco products, it is important to emphasize that, while some smokers have successfully quit smoking using e-cigarettes (notably daily users of high nicotine delivery systems), most smokers who use e-cigarettes are *less* not more likely to quit smoking. A meta-analysis of existing studies reports that the odds of quitting cigarettes are significantly reduced (OR 0.77, 95% CI 0.06-0.99) among smokers who use e-cigarettes compared to smokers who do not use e-cigarettes.⁷⁰ ***In other words, the overall effect of e-cigarette use is to depress smoking cessation, and thus flavored e-cigarettes do not increase likelihood of cigarette cessation.***

A recent randomized control trial⁷¹ randomized adult cigarette smokers to either nicotine replacement therapy or second-generation e-cigarettes, both coupled with behavioral support, to determine which product best helped adults quit smoking. They did find that while neither NRTs or the e-cigarettes helped the majority of adult smokers quit, the e-cigarettes were more effective overall, compared to the NRTs. Overall, the results suggest that e-cigarettes, ***used as part of a structured cessation program along with intensive counseling***, could be effective at reducing cigarette use among adults already seeking or interested in cessation.

These recent findings argue that e-cigarettes should be used only in structured medically supervised environments and only through a prescription. This would keep e-cigarettes out of the hands of youth and ensure that only adult smokers are using the products, and are doing so under a providers' care. As such, the FDA should require that e-cigarette companies apply to FDA's Center for Drug Evaluation and Research to have them approved as cessation devices. Importantly, this study does not suggest that e-cigarettes are effective at helping all adult smokers quit smoking, nor does it support having e-cigarettes available on the mass market.

The FDA must stop saying that flavors help adults quit smoking cigarettes until there has been a formal regulatory decision to support this claim

FDA notes the existence of preliminary data that some adults may use flavored noncombusted tobacco products (e.g., flavored e-cigarettes) to transition away from combusted tobacco, and

⁷⁰ Glantz S. While several studies have been published showing some e-cig users quit more, the overall picture remains negative. <https://tobacco.ucsf.edu/while-several-studies-have-been-published-showing-some-e-cig-users-quit-more-overall-picture-remains-negative> April 9, 2018; Kalkhoran S, Glantz SA. E-cigarettes and smoking cessation in real-world and clinical settings: A systematic review and meta-analysis. *Lancet Respir Med* 2016 Feb;4(2):116-28. The 2018 analysis updates the Kalkhoran, Glantz meta-analysis published in 2016, which is updated every time a new study is published. The conclusion that, overall, e-cigarettes depress quitting has remained stable.

⁷¹ Hajek, P, Phillips-Waller, A., Przulj, D., Pesola, F., Myers Smith, K., Bisal, N., Li, J, Parrott, S., Sasieni, P., Dawkins, L., Ross, L., Goniewicz, M., Wu, Q, and McRobbie, H. A randomized trial of e-cigarettes versus nicotine replacement therapy. *NEJM*, January 29, 2019

believes that “under a properly regulated framework that protects youth,”⁷² flavors may help some currently addicted adult cigarette smokers switch to non-combustible forms of tobacco products.

In a nationally-representative sample of US tobacco users, Smith and colleagues found that among current users of non-cigarette tobacco products, those who reported using a flavored a flavored tobacco product were less likely to have made a past-year quit attempt than those who used unflavored tobacco.⁷³ Tackett et al.⁷⁴ conducted a cross-sectional study of a convenience sample of 215 adult e- cigarette users recruited in vape shops in “a large metropolitan city in the Midwestern United States” in 2013. They found that most customers (86%) started using e-cigarettes as an aid to stopping smoking. While most started with tobacco flavored e-liquids, the authors found that those using non-tobacco and non-menthol flavored e-liquids (fruity, coffee, candy, etc.) were significantly more likely to have stopped smoking cigarettes (OR 2.95, 95% CI 1.04-8.40) compared to e-cigarette users who used tobacco or menthol flavored e-liquids. Strengths of this study are that it observed the relationship between smoking behavior and flavors, and that most participants had their smoking status verified with exhaled CO. Weaknesses are that the study was cross-sectional and that there was no control group of smokers who did not use e-cigarettes. In addition, the authors note that “specialty vapor stores may be serving individuals with vaping characteristics distinct from those purchasing their products from convenience stores, gas stations, or online.”

A PubMed search using “(e-cigarette or ENDS) and flavor and (quit or cessation)” conducted on May 1, 2018 identified 32 papers. Only two included evidence on the effect of flavors on adult cigarette cessation. Chen⁷⁵ found that young adults (age 18-34) in Waves 1 and 2 of the Population Assessment of Tobacco and Health (PATH) Study who used e- cigarette flavors (sweet and fruity or tobacco and menthol/mint) were more likely to have reduced or stopped smoking cigarettes. In particular, e-cigarette users with one (AOR = 2.5, $p < 0.001$) and multiple nontobacco or menthol flavors (AOR = 3.0, $p < 0.001$) were more likely to have reduced or quit smoking over the past year compared to non-e-cigarette users. (It is not clear how “smoking reduction” was defined.) While the longitudinal nature of this study is a strength, the failure to distinguish between reduction of number of cigarettes smoked and smoking cessation is a serious limitation.

⁷² <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm601690.htm>

⁷³ Smith DM, Bansal-Travers M, Huang J, Barker D, Hyland AJ, Chaloupka F. Association between use of flavoured tobacco products and quit behaviours: findings from a cross-sectional survey of US adult tobacco users. *Tob Control*. 2016 Nov;25(Suppl 2):ii73-ii80.

⁷⁴ Tackett AP, Lechner WV, Meier E, Grant DM, Driskill LM, Tahirkheli NN, Wagener TL. Biochemically verified smoking cessation and vaping beliefs among vape store customers. *Addiction*. 2015 May;110(5):868-74. doi: 10.1111/add.12878

⁷⁵ Chen J. Flavored E-cigarette Use and Cigarette Smoking Reduction and Cessation-A Large National Study among Young Adult Smokers. *Subst Use Misuse*. 2018 Apr 6:1-15. doi: 10.1080/10826084.2018.1455704. [Epub ahead of print]

Smith et al.⁷⁶ reported results of a nationally representative, telephone-based survey completed in 2012 by 1443 US adult tobacco users asked about use of 9 tobacco products: cigarettes, e-cigarettes, cigars, cigarillos, little filtered cigars, pipes, hookah, smokeless tobacco and snus. They found that first use of a flavored tobacco product was associated with current flavored tobacco use and polytobacco use. Users of flavored non-cigarette products were less likely to have made a cigarette quit attempt than those who did not use flavored non-cigarette products (OR 0.45 95% CI 0.30-0.67), and were more likely to be current cigarette smokers (OR 1.55, 95% CI 1.08-2.22) than people who used non-flavored tobacco products (including cigarettes). Thus, this cross-sectional study shows that ***the presence of flavors was associated with less cigarette cessation.***

The FDA noted in the version of its Deeming rule submitted to the Obama OMB⁷⁷ and posted in May 2016 that flavored tobacco products have the potential to lower barriers to nicotine addiction for youth and young adults. At page 170, FDA stated, “Flavoring also can make these products easier to use and increases their appeal among new users, most notably among young people (Ref. 9, Carpenter; Ref. 10, Cummings; Ref. 11, Manning).”⁷⁸

As noted above, the OMB deleted the provisions ending the use of menthol and other flavors from the final Deeming Rule. ***The FDA’s conclusions were correct then and remain correct now. Precisely the same logic and even more scientific evidence should be used today to advance a rule eliminating menthol and other flavors from all tobacco products, except in cases where a manufacturer makes a good case that using a specific flavor would promote public health.***

5) All forms of E-cigarettes Must be Regulated.

If only pod-style e-cigarettes are regulated, kids who currently use pods might switch to tanks and other kinds of e-cigarettes. Figure 3, which shows rates of youth use of cigarettes, e-cigarettes (excluding Juul), and Juuls, separately and in combination, clearly shows that youth who use Juul style pod-based e-cigarettes also use other forms of e-cigarettes.⁷⁹

Other studies also demonstrate the range of e-cigarette products used. In a study using eight local and national datasets, Barrington-Trimis and colleagues showed that among adolescent and

⁷⁶ Smith DM, Bansal-Travers M, Huang J, Barker D, Hyland AJ, Chaloupka F. Association between use of flavoured tobacco products and quit behaviours: findings from a cross-sectional survey of US adult tobacco users. *Tob Control*. 2016 Nov;25(Suppl 2):ii73-ii80. doi: 10.1136/tobaccocontrol-2016-053313. Epub 2016 Oct 5.

⁷⁷ TAB B 2014-850 Deeming Final Rule Redline Changes, pp. 167-183. Available at: <https://www.regulations.gov/document?D=FDA-2014-N-0189-83193>

⁷⁸ TAB B 2014-850 Deeming Final Rule Redline Changes, p. 170. Available at: <https://www.regulations.gov/document?D=FDA-2014-N-0189-83193>

⁷⁹ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Adolescents’ and young adults’ use and perceptions of pod-based electronic cigarettes. *JAMA Network Open*, 2018;1(6):e183535. doi:10.1001/jamanetworkopen.2018.3535

young adult users of e-cigarettes, use of the disposable or cigalike devices was rare. Instead, most youth used later generation device such as mods and tanks.⁸⁰

6) FDA Should Restrict Marketing that Appeals to Kids.

The FDA must restrict ads that obviously target youth, and must address social media forms of advertising. As was done with respect to combustible cigarettes,⁸² the FDA should ban all forms of e-cigarette ads, including those on television, radio, print, the Internet, and social media, that can in any way entice youth. This includes banning ads for flavored e-cigarette products,⁸³ ads that use youthful images and colors, and ads that use models who appear to be under the legal age of tobacco purchase (age 21 to be safe).

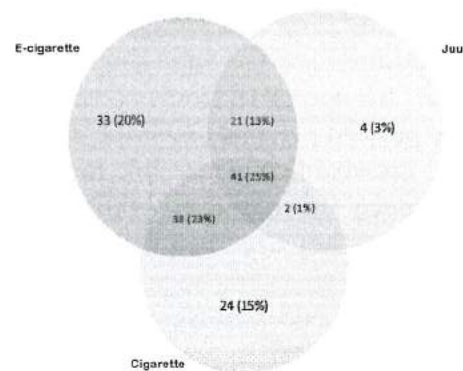


Figure 3. Adolescents' and young adults' use of e-cigarettes, Juuls, and cigarettes.⁸¹

The FDA should also ban the use of “influencers,” or people who are paid to blog or post on social media or otherwise influence use of a product.⁸⁴

In a recent study of polyuser young adults, it was found that showing younger models (vs. older adults) in e-cigarette ad was a definite cue for greater identification and liking the ad. Restricting showing youthful models and activities in the ad on channels often used by youth (including social media) needs to be considered.⁸⁵

7) The FDA Should Regulate and Ban Sales of E-cigarettes on the Internet

⁸⁰ Barrington-Trimis, J., Gibson, L.A., Halpern-Felsher, B., Harrell, M., Kong, G., Krishnan-Sarin, S., Leventhal, A.M., Loukas, A., McConnell, R., Weaver, S.R. Type of E-Cigarette Device Used Among Adolescents and Young Adults: Findings From a Pooled Analysis of Eight Studies of 2166 Vapers. *Nicotine and Tobacco Research*, 2018; 271-274.

⁸¹ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Adolescents' and young adults' use and perceptions of pod-based electronic cigarettes. *JAMA Network Open*, 2018;1(6):e183535. doi:10.1001/jamanetworkopen.2018.3535

⁸² Federal Cigarette Labeling and Advertising Act, <https://www.govinfo.gov/content/pkg/USCODE-2008-title15/html/USCODE-2008-title15-chap36.htm>; Master Settlement Agreement, <https://www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf>

⁸³ McKelvey, K., Baiocchi, M., Halpern-Felsher, B. Youth Say Ads for Flavored E-liquids are for Them. *Addictive Behaviors*, in press.

⁸⁴ <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>

⁸⁵ Kim, M., Rosen, S., Jordan, J., Ling, P. (2017) Recognizing Peer Crowd-Based Targeting in E-Cigarette Advertisements: Interviews with Poly-Tobacco Users. Annual Conference of International Communication Association. Prague, Czech Republic.

FDA announced in November 2018⁸⁶ that it would propose a policy requiring that certain flavored e-cigarettes and e-liquids could be sold only in age-restricted in-person locations. ***Notably, mint, menthol, and tobacco-flavored e-cigarettes and e-liquids are specifically excluded from the proposed policy.*** Also, the proposed policy does not apply to so-called “age-restricted locations” such as vape shops and stand alone retailers that “adequately prevent persons under the age of 18 from entering” or from sections of retail establishments that “adequately prevent persons under the age of 18 from entering” AND the flavored e-cigarette products are not visible or accessible to under-age customers at any time. **Of particular concern, tobacco, mint, and menthol flavored e-cigarettes products may continue to be sold online so long as they use “heightened age verification processes” that FDA has yet to describe.** While a good first step, FDA’s proposed policy is inadequate. There is ample evidence that youth access e-cigarettes mostly from their friends, but then from smoke/vape shops and online.⁸⁷

Youth Under Age 18 Purchase Tobacco on the Internet.

There is strong evidence demonstrating that youth under age 18 purchase tobacco products on the Internet.^{88,89} Indeed, the Internet serves as a significant means of acquiring tobacco for youth, with Internet sales serving as a way to circumvent the age restrictions and face-to-face age verification requirements. Fix et al. (2006) showed that Internet sales of tobacco increased significantly among 9th grade students living in New York State. In 2004- 2005, youth were 2.6 times more likely to purchase cigarettes over the Internet than were similar students just 4-5 years earlier. The rates went from 1.6% in 2001 to 5.2% in 2005. Moreover, 9% reported that they intended on purchasing cigarettes through the Internet (see also Abrams et al., 2003). Using a large representative sample of 10th and 12th graders in California, Unger and colleagues showed that 2.2% of the youth had tried to buy cigarettes on the Internet, and 32% of those who had tried cigarettes rated the Internet as their most recent source for cigarettes. Internet sales were highest among younger adolescents, males and frequent smokers. As Internet use explodes among youth, these numbers are almost certainly much larger today.

Additional evidence for the importance of full restriction of Internet sales of tobacco products has been provided to the FDA over the past year (Docket Number: FDA-2011- N-0467; <http://www.regulations.gov/#!docketDetail;D=FDA-2011-N-0467>). In particular, Williams, Ribisl, and Jo, from the University of North Carolina, provide ample evidence that youth do

⁸⁶ Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes, November 15, 2018. <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>

⁸⁷ Meyers, M.J., Delucchi, K., Halpern-Felsher, B. Access to Tobacco Among California High School Students: The Role of Family Members, Peers, and Retail Venues. *J of Adol Hlth*, 61 (2017) 385e388

⁸⁸ Pepper, J. K., Coats, E. M., Nonnemaker, J. M., & Loomis, B. R. (2018). How Do Adolescents Get Their E-Cigarettes and Other Electronic Vaping Devices? *American Journal of Health Promotion*, 0890117118790366

⁸⁹ Kong, G., Morean, M. E., Cavallo, D. A., Camenga, D. R., & Krishnan-Sarin, S. (2017). Sources of electronic cigarette acquisition among adolescents in Connecticut. *Tobacco regulatory science*, 3(1), 10-16.

purchase tobacco on the Internet, and can do so easily without age verification. The FDA has had this evidence, yet did not apply the findings to their deeming rule.

It is Easy to Circumvent Age Restrictions

While age verification for Internet sales can occur in a number of ways, it is extremely easy for an adolescent under age 18 to circumvent these age restrictions. For example, some websites simply require the user to click on a button verifying that he/she is over 18, or to enter his/her birth date and click on a button to verify or certify this date. These processes are the most common methods for age verification; however, it is easy for anyone under age 18 to bypass the age restriction by simply lying about their age. Other websites require online age verification via entering a driver's license number, or copying their actual license and submitting those through the website. While somewhat more effective than the simple check or click system, this process is used and enforced less often, and still allows for an adolescent under age 18 to submit a false driver's license or ID card. Still other Internet tobacco sales websites require age verification at the time of delivery. However, these policies are rarely enforced, and when they are, it is still easy for an adolescent to provide false proof of age (see Ribisl et al., 2002;⁹⁰ Williams, 2014⁹¹).

Williams and colleagues (2006)⁹² examined compliance with state laws explicitly regulating the sales of cigarettes via the Internet, and found little compliance of the law. Another study noted that almost all (96.7%) of underage youth were easily able to purchase tobacco online, compared with 12%-17% being able to purchase tobacco from other commercial venues (Jensen et al., 2004). Malone and Bero (2000)⁹³ reported that only 36 of the 141 Internet sites examined prohibited the purchase of cigars to minors. Adolescents 11-15 years old were easily able to purchase cigarettes on the Internet, 93.6% were successful at obtaining cigarettes on the Internet using credit cards, and 88.9% were able to complete their Internet sales using money orders. Age was never verified in these transactions (Ribisl et al., 2003).⁹⁴ Ribisl and colleagues (2002)⁹⁵ reported that almost 20% of cigarette-selling websites do not say sales to minors are prohibited, more than half require only that the buyer say they are of legal age (e.g., by clicking a button that says "I am over age 18"), another 15% require only that the buyer types in their date of birth, and only 7% require any driver's license information. Attorneys general from at least 15 states have conducted Internet stings and found that children as young as 9 years old were able to purchase cigarettes easily, with a New York sting operation finding that 24 of 26 websites sold to kids

⁹⁰ Ribisl KM, Kim AE, Williams RS. 2002. Are the sales practices of Internet cigarette vendors good enough to present sales to minors? *American Journal of Public Health* 92(6):940-941

⁹¹ Williams RS, Ribisl KM. 2014. Internet cigarette vendor compliance with credit card payment and shipping bans. *Nicotine & Tobacco Research* 16(2): 243-246.

⁹² Williams, RS, et al., "Internet cigarette vendors' lack of compliance with a California state law designed to prevent tobacco sales to minors," *Archives of Pediatrics and Adolescent Medicine* 2006; 160:988-989

⁹³ Malone RE, Bero LA (2000). Cigars, youth and the Internet link. *American Journal of Public Health*, 90:790-792

⁹⁴ Ribisl KM, Williams RS, Kim AE. 2003. Internet sales of cigarettes to minors. *JAMA* 290: 1356-1359

⁹⁵ Ribisl KM, Kim AE, Williams RS. 2002. Are the sales practices of Internet cigarette vendors good enough to present sales to minors? *American Journal of Public Health* 92(6):940-941

under 18 (Unger et al., 2001).⁹⁶ A *JAMA* study found that more than 96% of minors aged 15-16 were able to find an Internet cigarette vendor and place an order in less than 25 minutes, with most completing the order in seven minutes (Jensen et al., 2004).⁹⁷

Internet Advertisement is Pervasive

Failing to restrict Internet sales of all tobacco products is also problematic given that youth are constantly exposed to advertising of these products on the Internet. Of particular concern is the advertisement of e-cigarettes, and especially ads with particular appeal to youth, such as those promoting candy and other flavored e-cigarettes (see also the Stanford Research into the Impact of Tobacco Advertising (SRITA); <http://srita.stanford.edu>).

Internet and social media marketing of tobacco products, including the more recent addition of e-cigarettes and other new products, is exploding, causing Internet sales of e-cigarettes and other tobacco products to skyrocket. Most social media content is industry-generated, which is carefully planned with specific keywords and mostly directed at youth to adopt a particular lifestyle. For example, a study found that 80% of all tweets were automated or promotional in nature.⁹⁸

Further, there is pervasive false or unsubstantiated claims on products received online, that youth may not have the health literacy or access to information to be able to see through. Another study showed that the contents of packages received through online sales were rarely indicated on package exteriors. More than half of products received online did not include a health warning, and some had unsupported claims, such as lack of secondhand smoke exposure.⁹⁹

Finally, internet marketing appeals to sensations. All e-cigarette liquids included a description that promotes flavor. Most descriptions included images that are associated with a sensation (e.g., 43% of menthol E-cig liquid images included mint leaves or ice). Menthol and apple descriptions or images were more likely than tobacco descriptions or images to promote appeals related to chemesthesis (e.g., cool, warm, moist; $p < .05$).¹⁰⁰

⁹⁶ Unger, JB, et al., "Are adolescents attempting to buy cigarettes on the Internet," *Tobacco Control* 2001; 10:360-63 [citing Sherer, R, "States crack down on Web tobacco sales," *The Christian Science Monitor*, Nov. 8, 2000 and ABC News, "Getting smokes online: Children buying cigarette with click of mouse," March 6, 2001]

⁹⁷ Jensen JA, Hickman NJ, Landrine H, Klonoff EA (2004). Letters: Availability of tobacco to youth via the Internet *JAMA*: 291(15):1837

⁹⁸ Clark EM, Jones CA, Williams JR, et al. Vaporized marketing: uncovering pervasive electronic cigarette advertisements on Twitter. *PLoS One*. 2016;11(7):e0157304.) and (Vandewater EA, Clendennen SL, Hébert ET, Bigman G, Jackson CD, Wilkinson AV, Perry CL. Whose Post Is It? Predicting E-cigarette Brand from Social Media Posts. *Tobacco Regulatory Science*. 2018 Mar 1;4(2):30-43

⁹⁹ Kong AY, Derrick JC, Abrantes AS, Williams RS. What is included with your online e-cigarette order? An analysis of e-cigarette shipping, product and packaging features. *Tobacco control*. 2018 Nov 1;27(6):699-702

¹⁰⁰ Soule EK, Sakuma KL, Palafox S, Pokhrel P, Herzog TA, Thompson N, Fagan P. Content analysis of internet marketing strategies used to promote flavored electronic cigarettes. *Addictive behaviors*. 2018 Nov 14

8) FDA should use education and advertising techniques similar to Truth Initiative's to denormalize the industry, change the social environment, and get youth to recognize that the companies are trying to addict them

The most effective forms of tobacco-prevention education involves showing youth that they are being manipulated by the tobacco industry to use their product, and that the industry is using colors, appealing packaging, flavors, and youthful looking models to attract them. Programs that use counter-marketing techniques to change attitudes towards the tobacco industry are also effective.¹⁰¹

No tobacco company should do their own education

At no time should ANY tobacco industry do their own education.^{102,103} There is ample evidence that when the industry does their own education, they omit critical components of successful education, such as discussing the role of flavors and marketing in attracting new youth initiates. Tobacco-industry produced curriculums also fail to discuss the role that these industries have played in promoting tobacco/nicotine use, nor do they use any counter-marketing techniques to change attitudes towards the tobacco/nicotine industry.¹⁰⁴

Summary

The evidence is clear. Youth are using e-cigarettes, including pod-based products, in record numbers. The increase in use of e-cigarettes is undermining and repealing the great progress that has been made by tobacco control efforts over the past two decades. Such increases in e-cigarette use come at a time when youth have negative views of cigarettes, compared to even 10 years ago.¹⁰⁵

Treating e-cigarette addiction in youth, while necessary, is an insufficient response to the e-cigarette epidemic, particularly since there are currently no treatments for nicotine addiction that have been demonstrated to be effective for youth. ***FDA has the regulatory authority to take immediate actions that will reduce and prevent youth e-cigarette use.*** FDA should:

¹⁰¹ Hershey JC, Niederdeppe J, Evans WD, et al. The theory of "truth": how counter industry campaigns affect smoking behavior among teens. *Health Psychol* 2005;24(1):22–31. Jan.

¹⁰² Liu, J., & Halpern-Felsher, B. The Juul Curriculum is not the Jewel of Tobacco Prevention Education. *J of Adolescent Health*, 63, 527-528 (2018).

¹⁰³ Landman A, Ling PM, Glantz SA. Tobacco industry youth smoking prevention programs: protecting the industry and hurting tobacco control. *Am J Public Health* 2002;92(6):917–30.

<https://doi.org/10.2105/ajph.92.6.917>

¹⁰⁴ Hershey JC, Niederdeppe J, Evans WD, et al. The theory of "truth": how counterindustry campaigns affect smoking behavior among teens. *Health Psychol* 2005;24(1):22–31. Jan.

¹⁰⁵ McKelvey, K., & Halpern-Felsher, B. Adolescent cigarette smoking perceptions and behavior: Tobacco control gains and gaps amidst the rapidly expanding tobacco products market from 2001-2015. *J of Adol Health*, 60 (2017) 226e228

- Ensure that all messaging and warning labels regarding addiction are clear and include terms understood by youth;
- Stop messaging that e-cigarettes, and in particular flavored e-cigarettes, help adults stop smoking until we have ample, generalizable, and well-vetted studies to make these claims. Allowing such claims of reduced harm and exposure has unintended consequences of increasing youth use;
- Ban all flavored e-cigarettes – including mint and menthol – because these flavors are used by youth;
- Ban Internet sales. It is false to believe that banning sales in gas stations and convenience stores will have much benefit on youth, when they are most likely getting them from peers, vape shops, and the Internet;
- Regulate all ads that appeal to youth;
- Enforce FDA premarket rules; and
- Ensure that any and all education campaigns use techniques that help youth understand that the tobacco industry is targeting them, and prohibit the industry from conducting its own education programs.

GET READY, GET SET, GO!

Preparing for 1-1-20

November 5, 2019

City of Menlo Park

Barbara E. Kautz (bkautz@goldfarblipman.com)

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2019 LEGISLATION:

HOUSING, HOUSING, HOUSING

2

- 'Streamlining' Bills
- ADUs
- Affordable Housing Bonus
- Impact Fees
- Surplus Lands

[Also Tenant Protections/Rent Control]

'STREAMLINING': SB 330

3

Processing Planning Applications

□ **New Preliminary Application**

- Applicant submits a limited list of information
- Planning policies and City fees 'frozen' on date submitted

□ **Application Must be 'Completed' Within 270 Days**

- **City Can't Ask for Information Not Included on Checklist and Can't Ask for Information Not Included in First Incomplete Letter**
- **City Must Post Application Forms on the Internet**



‘STREAMLINING’: SB 330

4

Processing Planning Applications

- Must Provide List of All Inconsistencies with City Standards within 30 – 60 Days
- Can Only Deny or Reduce Density Based on Lack of Compliance with “Objective” Standards
- CEQA Review Still Required



'STREAMLINING': SB 330

5

- ❑ **Must Determine Historic Significance When Application Determined to be Complete**
- ❑ Need to Add Requirement for Historic Determination to Application Form and Complete Determination Before Project Can Be Considered to be Complete



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'STREAMLINING': SB 330

6

Limitation on Public Hearings

- No More Than 5 Hearings AFTER Project Found Complete IF Consistent with GP and Zoning Standards
 - 'Hearing' is any meeting conducted by City including workshops, continued meetings, most appeals
- Doesn't Apply If Legislative Approval Required or If Project Inconsistent with Objective Standards
- CEQA Hearings May Be Excluded

‘HOUSING CRISIS ACT: SB 330

7

Limitation on Downzoning

- Council and Initiatives Cannot Change General Plan, Specific Plan, or Zoning to “Lessen the Intensity of Housing” Below That in Effect on 1-1-2018 Unless Upzone Concurrently
- No Housing Moratoria Unless “Imminent Health & Safety Threat” and Approved by HCD
- Cannot Adopt Any ‘Subjective’ Design Standards

'HOUSING CRISIS ACT: SB 330

8

Exceptions:

- ▣ May Limit Short-Term Rentals or Other Commercial Use of Residential Property
- ▣ May Downzone a Mobilehome Park
- ▣ May Impose Measures Needed to Comply with CEQA
- ▣ May Adopt Rent Control & Inclusionary Measures
- ▣ Nothing Supersedes CEQA or the Coastal Act

'HOUSING CRISIS ACT: SB 330

9

Replacement Housing (ALL Housing Projects Complete after 1-1-20)

- Developer Must Create at Least the Same Number of Units as Will Be Demolished
- Developer Must 'Replace' All Existing or Demolished 'Protected' Units
 - Occupied by Lower Income Households or Subject to Rent Control in Past 5 Years
 - Vacated Under Ellis Act in Last 10 Years
- Developer Must Provide Residents with State Relocation Benefits

‘HOUSING CRISIS ACT: SB 330

10

What Does ‘Replace’ Mean?

- ▣ Provide the Same Number of Low Income and Very Low Income Units of “Equivalent Size” as *Occupied (or Formerly Occupied)* by Low and VLI Households
- If Don’t Know Current Income, Use HUD Data; Usually Requires 40 – 60% of Units be Replaced
- If Rent-Controlled, May Require Low Income Units in Place of *All* Units, Regardless of Tenant Income

ACCESSORY DWELLING UNITS

11

□ Where Is There Still Discretion?

- ▣ Location – but only based on health/safety, sewer, water
- ▣ Some standards
 - Parking
 - Landscaping
 - Design (objective)
 - Setbacks
 - Size
- ▣ Short-term rentals



ACCESSORY DWELLING UNITS

12

Limitations: Location

- ▣ No Minimum Lot Size
- ▣ Must Allow Some ADUs Everywhere:
 - 'Interior' ADUs (with 150 sf Addition)
 - New 800 SF ADU/JADU w/4' Setbacks 16' High
(could contain both)
 - Multifamily ADUs

ACCESSORY DWELLING UNITS

13

Limitations: Parking

- ▣ One Space Maximum (regardless of size)
- ▣ Cannot Require Replacement of Lost Parking
- ▣ No Parking Within ½ Mile Walking Distance of Any Bus Stop or Other Transit Stop

ACCESSORY DWELLING UNITS

14

Limitations: Setbacks

- ❑ No More Than 4' Side and Rear Setbacks
- ❑ No Setback if Within Existing Structure or Reconstructed within Footprint of Existing Structure



ACCESSORY DWELLING UNITS

15

Limitations: Size

- Must Allow *Maximum* Size of 850 sf or 1,000 sf if 2 or more bedrooms; *Minimum* 150 sf
- All Other Standards Must Allow 800 sf ADU with 4' Side/Rear Setbacks, 16 feet high

ACCESSORY DWELLING UNITS

16

Owner-Occupancy and Short-Term Rentals

- NO Owner-Occupancy Requirements for 5 Years in New ADUs; but Required in JADUs
- Short-Term Rentals NOT Allowed in Interior ADUs, Detached ADUs up to 800 sf, or Multifamily ADUs
- City May Decide Whether to Ban Short-Term Rentals in Remaining ADUs

ACCESSORY DWELLING UNITS

17

Limitations: Fees

- **Impact Fees and Quimby Act Fees:** NONE If Less Than 750 sf; Otherwise Proportional to SF of Primary Dwelling
- Capacity Fees and Connection Charges (Sewer & Water): None for 'Interior' ADU; Otherwise Based on SF or Fixture Units
 - If With New Home, May Charge All Units

ACCESSORY DWELLING UNITS

18

Processing and Enforcement

- Must Be Processed Ministerially within 60 Days of Complete Application
- Enforcement of ADU Housing Code Violations:
 - Owner May Request 5-Year Delay
 - Granted If City Determines Not Necessary to Protect Health & Safety
- CC& Rs in S-F Zones Can No Longer Prohibit ADUs

AFFORDABLE HOUSING APPROVALS

19

AB 1763: Super Density Bonus

- 80% Bonus, 4 Concessions If 80% Lower Income, 20% Moderate Income
- No Density Limit + 33' Height Increase Within 1/2 Mile of Major Transit Stop (no other waivers)



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AFFORDABLE HOUSING APPROVALS

20

Additional CEQA Exemptions:

- Motels Converted to Supportive/Transitional Housing
- No Place Like Home Projects
- Navigation Centers
- Agricultural Employee Housing
 - ▣ On Land Zoned for Primarily Agricultural Use
 - ▣ Up to 36 Units

IMPACT FEES ETC. FOR HOUSING

21

AB 1483: City Must Have on Its Website by 1-1-20:

- ☐ Zoning, Design, & Other Development Standards
- ☐ Fees
- ☐ Affordability Requirements
- ☐ Public Art/Mello-Roos Fees
- ☐ Application Forms
- ☐ Current and Five Annual MFA Reports
- ☐ Archive of Nexus and Fee Studies Done After 1-1-18

SURPLUS LAND

22

AB 1486: Major Changes to Surplus Lands Act

- Applies to Almost All Land Dispositions
 - ▣ Including Successor Agencies
- Priority for Residential; Cannot Negotiate for Reduced Density or Design Features or Non-Residential Use
- Must Notify HCD
- Penalty of 30% of Price if Violate Act

GOT SITES?

Getting Ready For Sixth Cycle Housing Elements

November 5, 2019
City of Menlo Park

Barbara E. Kautz (bkautz@goldfarblipman.com)

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San Diego

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SIXTH CYCLE HOUSING ELEMENTS:

A PERFECT STORM

24

- RHNA Likely Higher
- **Harder To Identify Acceptable Sites**
- “Affirmatively Furthering Fair Housing”
- Comply With ‘No Net Loss’
- No More Streamlined HCD Review
- Fifth Cycle Sites Used Up



THE KEY HOUSING ELEMENT CONCEPT

25

- Cities and counties must show adequate land zoned for housing to accommodate Regional Housing Need Allocation (RHNA)



SITE INVENTORY

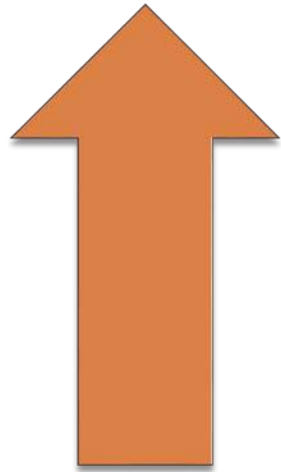
26

- Specific sites for each income level
- Lower income sites at 20 -30 du/A

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

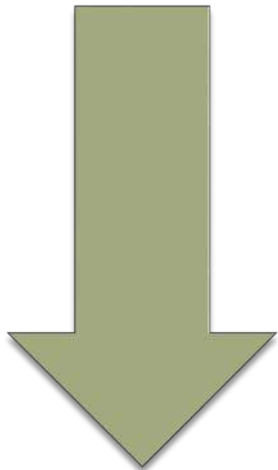
Rezoning Obligation

27



R-30

- If not enough sites available, Housing Element must identify specific sites for rezoning



R-6

- Must complete rezoning within 3 years

MUCH HARDER TO FIND ACCEPTABLE SITES

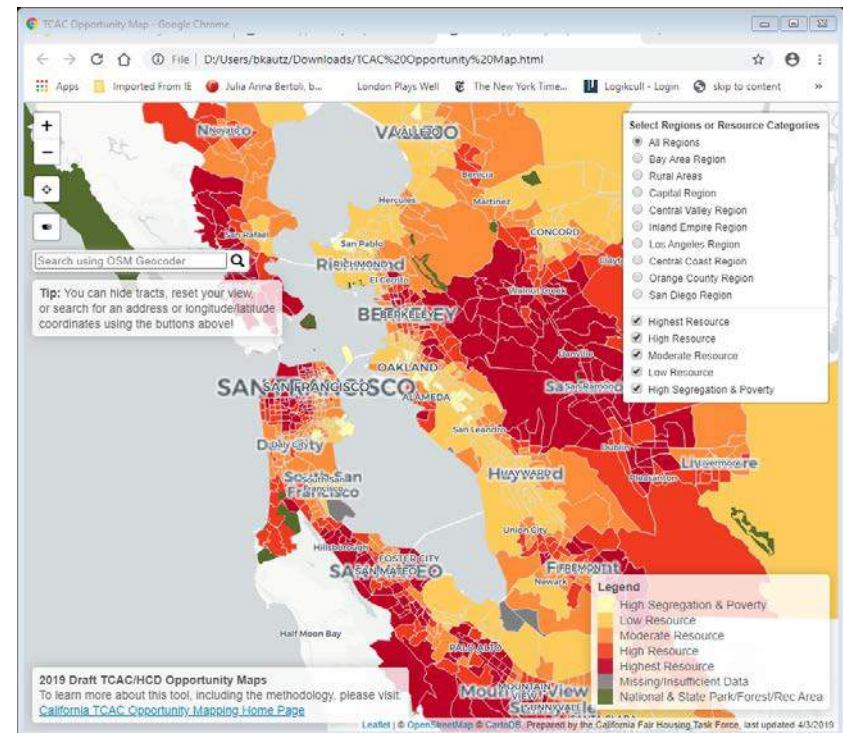
28

- **“Affirmatively Further Fair Housing”**
- **If More Than 50% Non-Vacant:**
 - ▣ Existing Use Presumed to Impede Development
- **Can’t Use Sites Smaller than 0.5A or Larger than 10A Without Substantial Evidence**
- **Can’t ‘Reuse’ Sites Unless Provide ‘By Right’ Zoning**
- **More Scrutiny on Site Capacity**

Must Affirmatively Further Fair Housing

29

- ❑ **“Encourage Affordable Housing in Areas of Opportunity”**
- ❑ **Decrease Segregation**
- ❑ **TCAC Maps**
- ❑ **High HCD Priority**



NON-VACANT SITES ANALYSIS

30

- Detailed analysis required of each non-vacant site, including extent to which existing uses are an impediment, and even *leases and existing contracts for current use*
- *If more than 50% non-vacant for lower income housing, existing uses presumed to be impediment*

STRICT DEFINITION OF VACANT V. NON-VACANT

31



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“GOLDILOCKS” SITE SIZE

32



□ Site Size

Presumed *inappropriate* for lower income households IF:

- Less than 1/2 Acre
- Greater than 10 Acres

NO NET LOSS PROVISIONS (SECTION 65863)

33

- Applies when:
 - ▣ Any site in inventory either downzoned to reduce density below housing element density; or approved at **lower density** than shown; OR
 - ▣ **Site approved with fewer units at the income level shown in the inventory.**
- Now applicable to all jurisdictions, including charter cities (SB 1333)

NO NET LOSS EXAMPLE

34

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

OPTIONS FOR AGENCY ACTIONS

35

- Remaining sites in Element adequate; or
- Other sites NOT in Element can make up difference;
or
- Another site “identified and made available.” Time limit of 180 days for income category only.

NO NET LOSS IMPLICATIONS

36

- **Surplus of properly zoned sites needed**
- **Maximize inclusionary percentages**
 - ▣ Limit in-lieu fee options in favor of actual production of units
- **Consider all options to create actual affordable units**
 - ▣ ADUs and ADU surveys
 - ▣ Conversion and preservation options

HCD REVIEW AND PENALTIES

37

- **Expect more HCD scrutiny**
 - ▣ Especially if letters are sent by advocates, etc.
- **The due date: December 2022**
 - ▣ If not adopted within 120 days, on a 4-year cycle
 - ▣ NO 120-day grace period if on a 4-year cycle
- **Penalties**
 - ▣ No SB 2 funds if not certified by HCD
 - ▣ Referral to AG
 - ▣ Fines of up to \$600,000/month if don't comply

SOME CONCLUDING THOUGHTS

38

Begin planning for next cycle now

- Access available SB 2 funding for rezoning now
- Begin site identification process
- CEQA challenges need to be built into timeline

Educate the public!!

Statement to City Council Study Session SS1 on Recent State Housing Legislation

I would like to thank the Council for conducting this Study Session on the new State Laws related to housing and their impact on Menlo Park. I have been a Menlo Park resident and home owner since 1980 and I have certainly seen the growing impact of the jobs / housing impact on our town over the years.
imbalance

My comments are only related to the 4 bills enacted into law by the Governor on October 9 that relate to Accessory Dwelling Units – also known as Secondary Dwelling Units (SDUs) in our ordinances.

First, SDUs are an easy way to organically address the housing shortage in Menlo Park in a distributed way across the entire town in all districts.

SDUs by their nature naturally add to the stock of housing available to low and moderate income people. My comments mainly relate to bills SB13, AB68 and AB881 which require relaxation of restrictions on SDU construction now in our Menlo Park SDU ordinances. However, I do note that AB671 does require the City to develop a plan to incentivize construction of SDUs for low to moderate income renters and I urge the city to quickly develop a plan to do this.

The key provisions of the new laws are relaxation of the maximum size limit on ADUs, up to 850 sq ft from 600 sq ft., reduction in off street parking requirements, reduce some mandatory fees, require rapid approval of a building permit, and a requirement to allow an SDU in all zoning areas that either have an existing single family home or allow the construction of a new single family home.

The last point directly relates to a situation that my wife and I are very familiar with and I think is illustrative of Menlo Park's approach to limit use of SDUs to address our housing needs.

We own a lot with an old single family home – where my wife grew up – in the multi-family R3 zoning district. We are in the process of designing our retirement home for that location. In 2018 when we began the process we wanted to include a detached SDU. We have a close friend who recently retired after teaching for 17 years at Laurel School. In recent years we would often discuss the struggle that young teachers have in finding an affordable place to live in Menlo Park. Our thought was that our ADU would be a way to help a young teacher and then later could be used to house a caregiver for us – caregivers also cannot afford to live here.

Unfortunately, the Planning Department informed our Architect last year that SDUs are not allowed in R3 zoned districts in Menlo Park. Our City's ordinance took the most restrictive view that was compliant with State Law: State Law said that towns "May" allow SDUs in multi-family zoned districts not "Shall" allow SDUs in a multi-family district. As a result, we modified the plans for our new retirement home and eliminated the SDU. Our plans were approved by the Planning Commission on October 21. The Commissioners were surprised to learn that Menlo Park does not allow detached SDUs in multi-family zoned districts.

Verle and Carol Aebi
220 Laurel Street
Menlo Park, CA

After review of the new State Laws, I believe that the City will have to allow SDUs in multi-
~~zoned~~ family districts to come into compliance with the law after January 1, 2020. We are now
considering going back to the Planning Commission for approval of a modified design including
an SDU. I urge the City to quickly relax our restrictive SDU ordinance to bring it into compliance
with the new State Law not only for our case, but to encourage construction of SDUs
throughout Menlo Park as an important element of our Housing Policy.

For:
City Clerk**Menlo Park
CHAMBER OF
COMMERCE**[About](#)[Membership](#)[Events](#)[Business in Menlo Park](#)[Life in Menlo Park](#)**Visit Menlo Park**

Ohlone-Portola talk

Share:

Name: Ohlone-Portola talk**Date:** November 9, 2019**Time:** 11:00 AM - 12:00 PM PST**Website:** <http://sites.google.com/site/mphistorical>**Event Description:**

Menlo Park Historical Association will host an hour long 250th anniversary event of the Portola Expedition campsite, identified by California Landmark #2.

[Back to Calendar](#)**Location:**

Intersection of the 100 block of E. Creek Dr and the 100 block of Alma St, Menlo Park, at San Francisquito Creek.

Date/Time Information:

Saturday November 9, 11 am to Noon.

Contact Information:

Menlo Park Historical Association

[Send an Email](#)**Fees/Admission:**

Free and open to the public, no RSVP required.

Set a Reminder:

Enter your email address below to receive a reminder message.

-- Select Days Before Event --

[Back to Calendar](#)[Chamber Events](#)[Menlo Summer Fest](#)[Downtown Block Party](#)[Sidewalk Art Stroll](#)[Golden Acorn Awards](#)[Calendar](#)

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Local businesses and organizations are encouraged to **submit their events** to the Chamber's community calendar. Please adhere to the following guidelines for all event submissions:

- Preference will be given to those events taking place in the cities of Menlo Park, Atherton, Woodside, and Portola Valley. Large scale events of influence outside the city of Menlo Park will be considered for inclusion on an individual basis.
- The Menlo Park Chamber of Commerce reserves the right to publish events at their discretion.

Questions? Contact the Chamber at info@menloparkchamber.com

CONTACT US

1100 Merrill Street
Menlo Park, CA 94025
Phone: 650-325-2818
Fax: 650-325-0920
info@menloparkchamber.com

OFFICE HOURS

Monday 9am - 4pm
Tuesday 9am - 4pm
Wednesday 9am - 4pm
Thursday 9am - 4pm
Friday by appointment

Search ...

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PORTOLA JOURNEY'S END NOVEMBER 6-10, 1769

Near El Palo Alto, the Tall Tree, the Portola Expedition of 63 men and 200 horses and mules camped. They had traveled from San Diego in search of Monterey Bay, but discovered instead the Bay of San Francisco. Finding the Bay too large to go around and deciding that Monterey had been by-passed, they ended the search and returned to San Diego.

California Registered Historical Landmark No. 2

Plaque placed by the State Department of Parks and Recreation in cooperation with the Portola Expedition Bicentennial Foundation, November 9, 1968.

LOCATION:

**Alma Street and East Creek Drive, Menlo Park, CA 94025
near the bridge over San Francisco Creek to the City of Palo Alto, and adjacent to the railroad tracks.**

DESCRIPTION:

Mounted on a large stone monument. It is very attractive and very impressive. Mounted on a stone monument that is very tall.





TRANSPORTATION IMPACT FEE UPDATE

City Council Meeting
November 5, 2019



WHAT IS A TRANSPORTATION IMPACT FEE (TIF)?

- California Assembly Bill 1600 requires municipalities to establish a reasonable nexus between impact fees and development expected.
- TIFs ensure that new developments and redevelopment projects pay a proportional share of new transportation infrastructure costs to reduce impacts generated by demand.

WHAT ARE TIF FUNDS USED FOR?

TIF projects can include:

- New arterial streets
 - Sidewalks
 - Bicycle lanes
 - Multi-modal projects
-
- Revenue collected from TIFs may not be used for:
 - Existing roadway needs
 - Existing roadway deficiencies
 - Operations & maintenance



MENLO PARK TIF

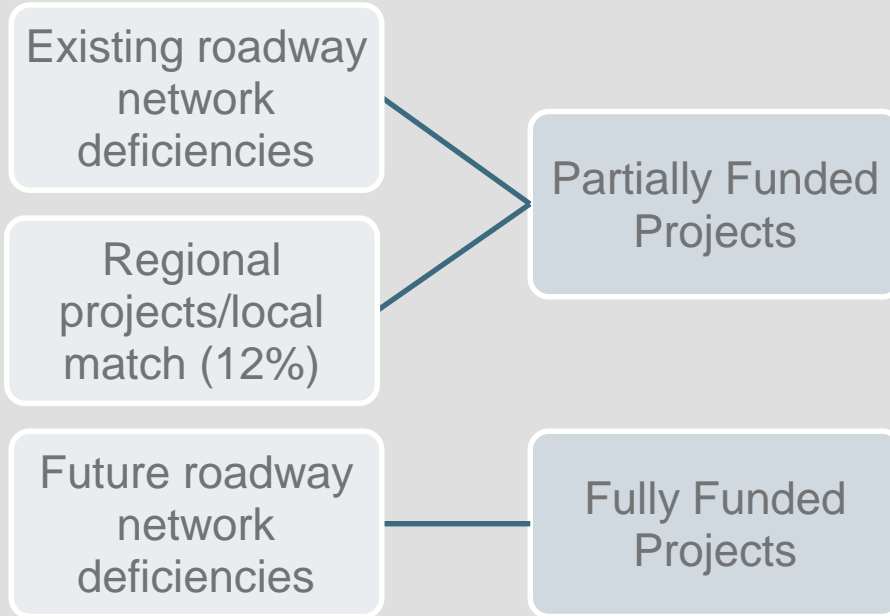
- Adopted by City ordinance, section 13.26
- TIFs for the City of Menlo Park are typically applied to:
 - New development
 - Redevelopment
 - New single-family and multifamily residential units
 - Changes in land use
- TIF fees are paid before building permits are issued



RELATIONSHIP BETWEEN TIF AND TMP

- Projects currently identified in TMP process included
 - Pedestrian
 - Bicycle
 - Transit
 - Automobile

PARTIAL VS FULLY FUNDED PROJECTS





MENLO PARK TIF AMOUNTS

- Menlo Park currently imposes two TIFs
- Citywide Fee (2009)
- Supplemental Fee (2015)
 - El Camino/Downtown Specific Plan Area
 - Currently \$404.06 per PM peak hour trip

Citywide Transportation Impact Fee		
Land Use	Unit	2019 Current Fee
Office	Sq. Ft.	\$5.01
Restaurant ¹	Sq. Ft.	\$5.01
Retail ¹	Sq. Ft.	\$5.01
Research and Development	Sq. Ft.	\$3.60
Manufacturing	Sq. Ft.	\$2.46
Warehousing	Sq. Ft.	\$1.08
Medical Office	Sq. Ft.	\$11.62
Single Family	Dwelling Units	\$3,393.74
Multi-family	Dwelling Units	\$2,083.08
Hotel	Room	\$1,982.23
Childcare ¹	Sq. Ft.	\$5.01
Secondary Dwelling Unit	Units	\$772.43
Does not fall in one of the above land uses	PM Peak Hour Trips	\$3,359.56

¹ Fees for restaurant, retail and childcare land use categories are currently tied to the office fees.



METHODOLOGY

1. Project the growth in trips
2. Estimate TMP project costs and TIF eligibility
3. Establish a maximum TIF fee
4. Refine Transportation Impact Fee Program



2009 TIF EXAMPLE

Cost of improvements

- Identify Improvements
- Determine total cost of needed infrastructure

\$40M

Allocate to new development

- Determine future growth
- Divide into portion that benefits
 - New **25%** development
 - Existing users **75%**

Determine fee by use

- E.g., by housing unit or square foot of office space
- Can lower or waive fees to incentivize certain uses

\$3,400 per home
\$5.01 / sf office



2019 TIF RESULTS

Cost of improvements

- Identify Improvements
- Determine total cost of needed infrastructure

\$164M

Allocate to new development

- Determine future growth
- Divide into portion that benefits
 - New development **17%**
 - Existing users **83%**

Determine fee by use

- E.g., by housing unit or square foot of office space
- Can lower or waive fees to incentivize certain uses



MAXIMUM ALLOWABLE TIF RATES

Maximum Allowable Transportation Impact Fee		
Land Use	Unit	Maximum Allowable Fee
Office	Sq. Ft.	\$17.60
Restaurant	Sq. Ft.	\$152.16
Retail	Sq. Ft.	\$58.32
Research and Development	Sq. Ft.	\$7.50
Manufacturing	Sq. Ft.	\$10.26
Warehousing	Sq. Ft.	\$2.91
Medical Office	Sq. Ft.	\$52.97
Single Family	Dwelling Units	\$15,155.24
Multi-family	Dwelling Units	\$8,572.66
Hotel	Room	\$9,184.99
Childcare	Sq. Ft.	\$170.23
Secondary Dwelling Unit	Units	\$3,449.40
Does not fall in one of the above land uses	PM Peak Hour Trips	\$15,308.32



RECOMMENDED TIF REDUCTIONS AND CREDITS

- Recommended fee reductions for certain land uses
 - Retail and restaurant uses have higher trip rate than office uses, but the fee recommended to be the same as office to encourage development
 - Reduced rate for child care and tie to warehousing use
 - Reduced rates for residential projects, waive fees for secondary dwelling units

- Continued TIF credits
 - Existing uses
 - When new development constructs TIF projects



PROPOSED TIF RATES

Table 3: Proposed Transportation Impact Fee		
Land Use	Unit	2019 Fee Amount
Office	Sq. Ft.	\$17.60
Restaurant ¹	Sq. Ft.	\$17.60
Retail ¹	Sq. Ft.	\$17.60
Research and Development	Sq. Ft.	\$7.50
Manufacturing	Sq. Ft.	\$10.26
Warehousing	Sq. Ft.	\$2.91
Medical Office	Sq. Ft.	\$52.97
Single Family ¹	Dwelling Units	\$7,577.62
Multi-family ¹	Dwelling Units	\$4,286.33
Hotel	Room	\$9,184.99
Childcare ¹	Sq. Ft.	\$2.91
Secondary Dwelling Unit	Units	\$0

¹ Fees for restaurant, retail, childcare, and residential land use categories include the direction from City Council received on May 14, 2019 to provide incentives for these uses as described above.



NEXT STEPS & SCHEDULE

Schedule	Task
November 5, 2019	City Council review of Draft Transportation Impact Fee nexus study
November 19, 2019	City Council public hearing of updated Transportation Impact Fee and first reading of the ordinance update
December 10, 2019	City Council adoption of updated Transportation Impact Fee and second reading of the ordinance update
January 9, 2018	Ordinance changes go into effect
February 8, 2020	New Transportation Impact Fee rates go into effect



PUBLIC NOTIFICATION

- Outreach to Property Owners
 - Attended Chamber Business and Transportation Issues Committee Meeting
 - Held Info Session on October 29
 - Communication with current applicants

- Notice of Public Hearing
 - Published on November 1 and 8



COUNCIL ACTION REQUESTED

- Accept the Nexus Study
- Provide direction on proposed rates and ordinance language for public hearing on November 19



THANK YOU

ANALYSIS METHODS

Transportation Master Plan

*General Plan
Circulation – 2.C*

- Community engagement on key issues
- Identify projects
- Cost estimates
- Prioritize improvements

Adopt Impact Fee program

*General Plan
Circulation – 6.C*

- Establish connection between new development and new infrastructure
- Update fee program
- Set fee rates by land use

Development pays new fees

- Fees due at building permit stage
- Improvements constructed as funds accumulate



OTHER CITIES TRANSPORTATION IMPACT FEES

Table 2: Other Cities Transportation Impact Fees

City	Residential (per dwelling unit)	Office (per sq. ft.)	Retail (per sq. ft.)	Last Updated
Redwood City, Downtown Area	\$1,212.00	\$1.79	\$2.96	2012
Redwood City, Non-Downtown	\$1,615.00	\$2.38	\$3.94	2012
San Carlos	\$3,052.00	\$4.55	\$11.32	2015
Sunnyvale, South of Route 237	\$3,114.00	\$4.64	\$5.78	2017
Sunnyvale, Moffett Park Area ¹	n/a	\$6.38	\$5.53	2017
San Mateo	\$3,422.00	\$3.14	\$5.89	2014
Mountain View	\$4,671.00	\$4.99	\$12.83	2018
East Palo Alto	\$2,358.00	\$7.33	\$7.33	2019
Palo Alto	\$7,886.00	\$11.75	\$29.26	2019
Menlo Park Maximum Allowable	\$15,155.24	\$17.60	\$58.32	2019

¹ Moffett Park Area of Sunnyvale does not have any residential or office rates and separates retail into destination and neighborhood retail. The rate for research & development uses is shown under office and the rate for neighborhood retail is shown under retail.



GRANDFATHERING OF PROJECTS

Table 4: Projects with Entitlements but have not yet paid TIF

Address	Type of Use	Size
840 Menlo Ave	Residential/Office	3 du, 6.6 ksf
40 Middlefield Road	Office	3.6 ksf
1540 El Camino Real	Residential/Office	27 du, 40.8 ksf
250 Middlefield Road	Office	3.9 ksf
409 Glenwood Avenue ¹	Residential	5 du
1345 Willow Road ¹	Residential	58 du
975 Florence Lane ¹	Residential	2 du
115 El Camino Real ¹	Residential/Retail	4 du, 1.5 ksf
301 Constitution Drive ²	Hotel	200 rooms

du= dwelling units, ksf = 1,000 square feet

¹Residential only or two-thirds residential projects (based on square footage)

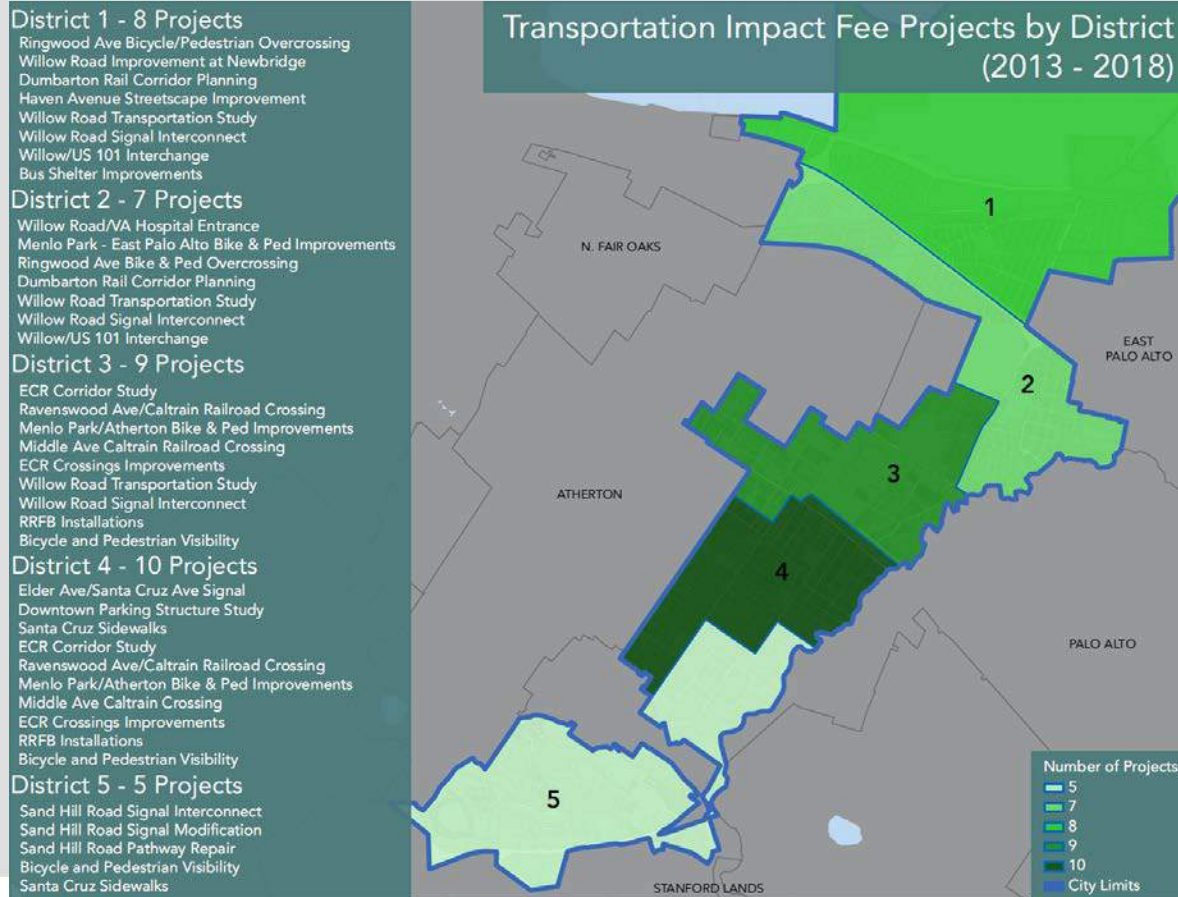
² As outlined under the terms of the development agreement, this project will remain under the current fee program.



OVERALL SCHEDULE

Schedule	Task
May 23, 2017	Council authorizes agreement with W-Trans to prepare TMP and TIF update
May 14, 2019	City Council study session of Draft Transportation Impact Fee Program update
June 13, 2019	Attended Chamber Business Issues & Transportation (BIT) committee meeting
October 29, 2019	Info session held for property owners
November 5, 2019	City Council review of Draft Transportation Impact Fee nexus study
November 19, 2019	City Council public hearing of updated Transportation Impact Fee and first reading of the ordinance update
December 10, 2019	City Council adoption of updated Transportation Impact Fee and second reading of the ordinance update
February 8, 2020	New Transportation Impact Fee rates go into effect

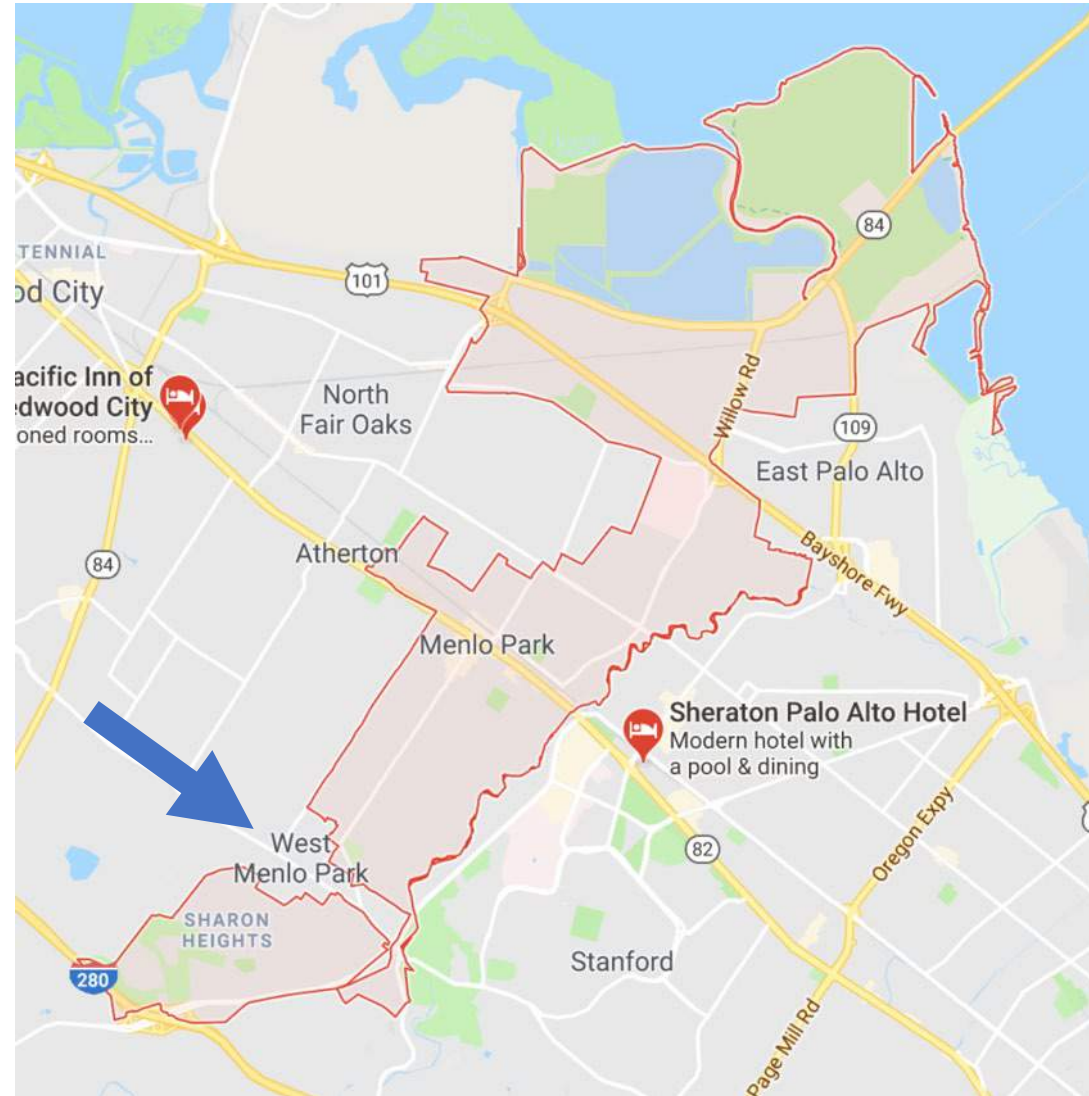
MAP OF PAST TIF EXPENDITURES



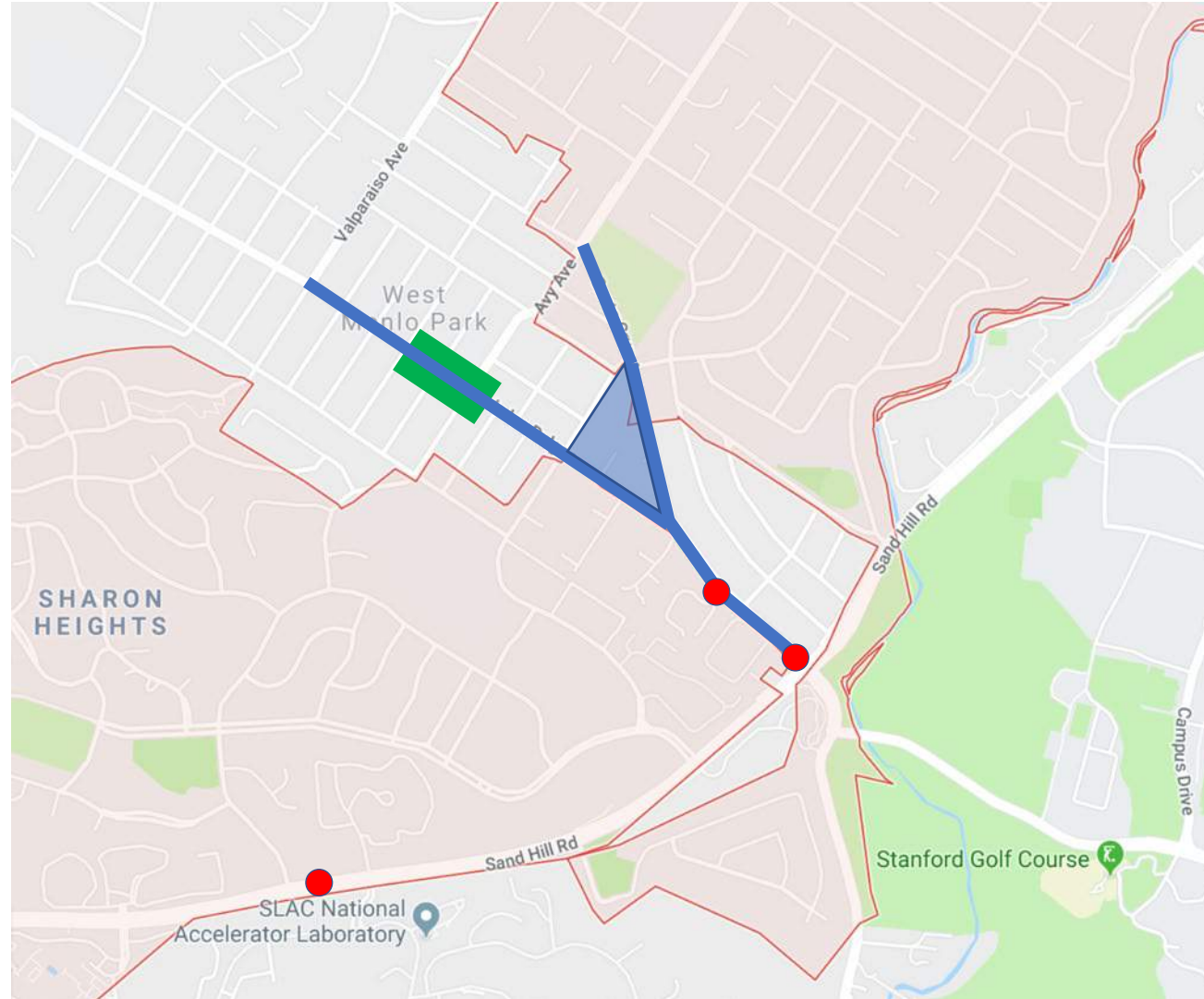
In Support of West Menlo Park Triangle Annexation

Greg Faris
2042 Santa Cruz Avenue
Menlo Park

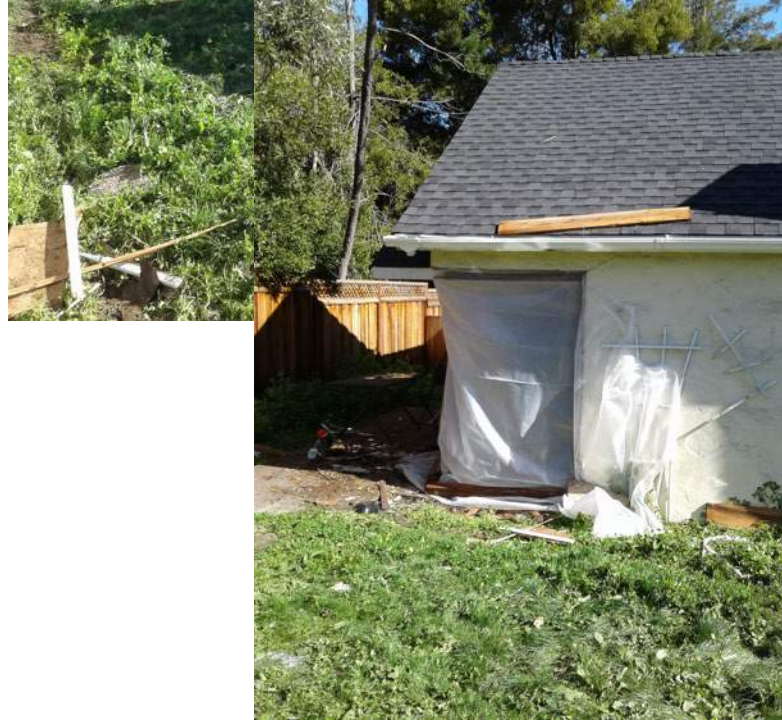
City of Menlo Park



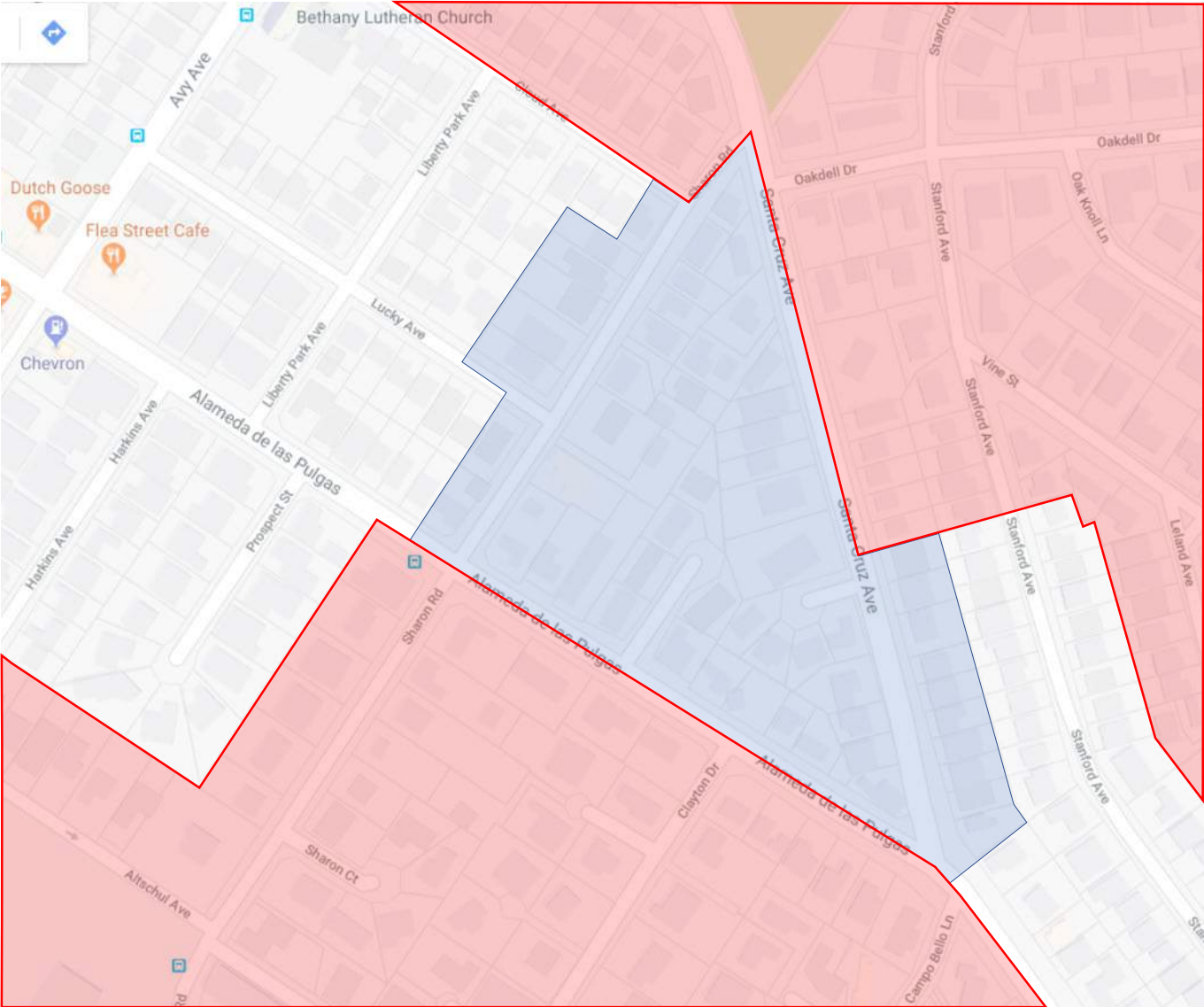
West Menlo Park

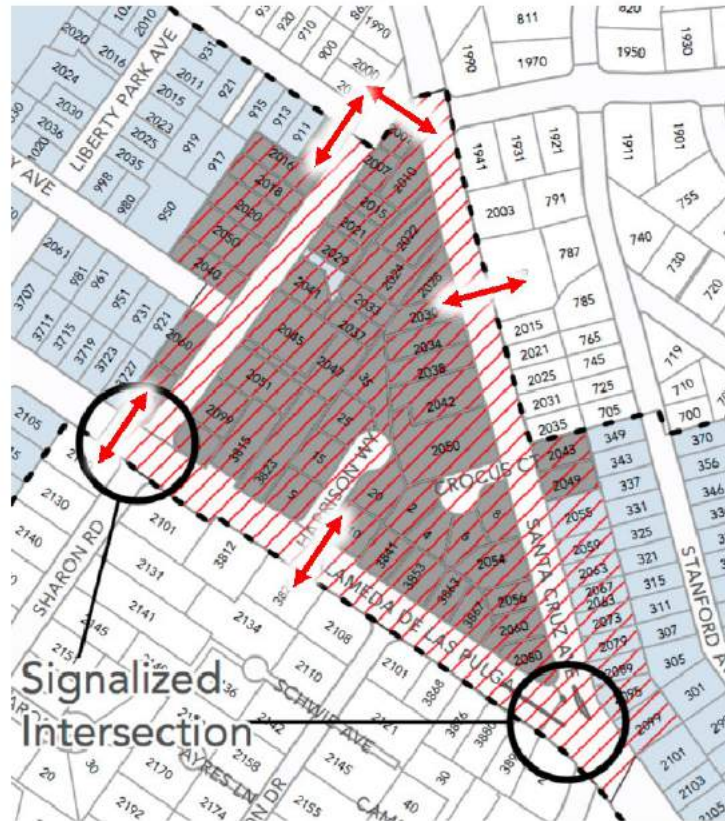


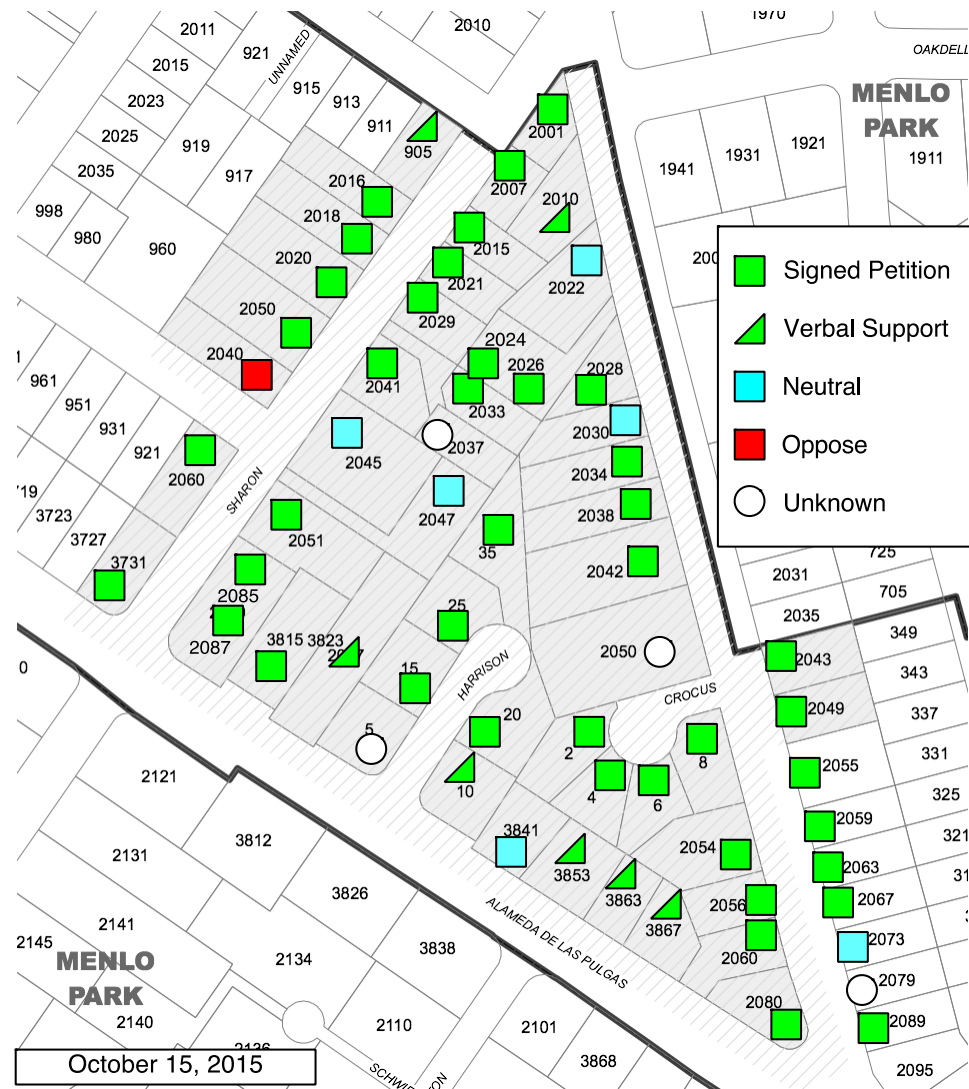
Hazards in the Triangle



The Triangle







Better tree protections in the City of Menlo Park

2099 Sharon Road

2013



2016



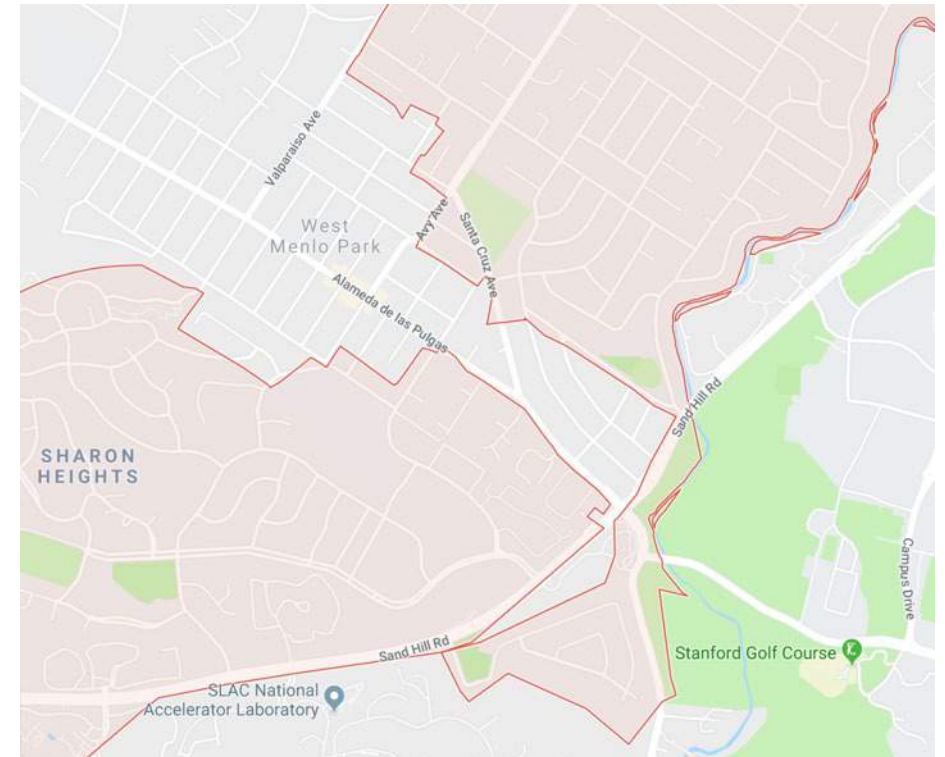
Valley Oak Diameter to be a Heritage tree

City – 10 inches

County – 48 inches

Advantages

- Better coordinate traffic
- Better coordinate business districts
- Better coordinate pedestrian and bicycle safety
- Better local governance
- Better coordinate law enforcement
- Better tree protection
- Better coordinate development





ADOPTION OF THE 2019 CALIFORNIA BUILDING STANDARDS CODE

City Council November 5, 2019



OVERVIEW

- Inform City Council on process for adopting local amendments to the Building Standards Code
- City Council to provide direction on any additional local amendments they would like to incorporate into proposed ordinance



POLICY

- The California Building Standards Code regulates the construction of buildings in the State
- The State adopts and publishes a new California Building Standards Code every three years (last code cycle was adopted in 2016)



POLICY

- The City of Menlo Park adopted the 2019 California Building Standards Code and Reach Code September 24, 2019
- This ordinance implements local amendments to the remaining building codes



BACKGROUND OF THE BUILDING STANDARDS CODE





THE CALIFORNIA CODE OF REGULATIONS

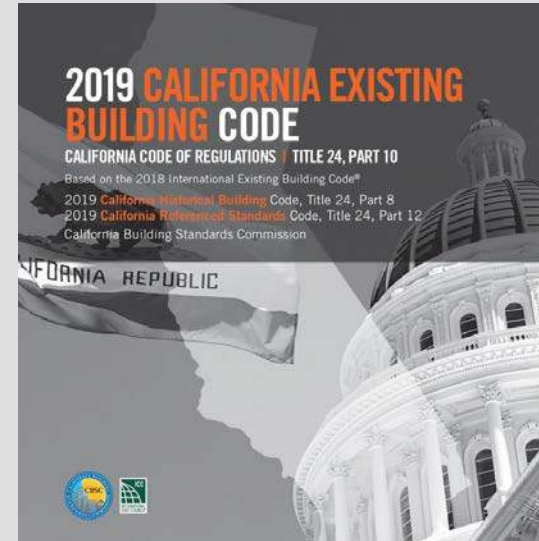
- Comprised of 28 Titles
- Title 24 is California Building Standards Code
 - ❖ Title 1: General Provisions
 - ❖ Title 2: Administration
 - ❖ Title 3: Food and Agriculture
 - ❖ Title 4: Business Regulations
 - ❖ Title 5: Education
 - ❖ Title 6: Governor's Regulations (empty)
 - ❖ Title 7: Harbors and Navigation
 - ❖ Title 8: Industrial Regulations
 - ❖ Title 9: Rehabilitative and Developmental Services
 - ❖ Title 10: Investment
 - ❖ Title 11: Law
 - ❖ Title 12: Military and Veterans
 - ❖ Title 13: Motor Vehicles
 - ❖ Title 14: Natural Resources
 - ❖ Title 15: Crime Prevention and Corrections
 - ❖ Title 16: Professional and Vocational Regulations
 - ❖ Title 17: Public Health
 - ❖ Title 18: Public Revenues
 - ❖ Title 19: Public Safety
 - ❖ Title 20: Public Utilities and Energy
 - ❖ Title 21: Public Works
 - ❖ Title 22: Social Security
 - ❖ Title 23: Waters
 - ❖ **Title 24: California Building Standards Code**
 - ❖ Title 25: Housing and Community Development
 - ❖ Title 26: Toxics
 - ❖ Title 27: Environmental Protection
 - ❖ Title 28: Managed Health Care



THE CALIFORNIA BUILDING STANDARDS CODE IS COMPRISED OF 12 PARTS



- Part 1 Administrative Code
- Part 2 Building Code
- Part 2.5 Residential Code
- Part 3 Electrical Code
- Part 4 Mechanical Code
- Part 5 Plumbing Code
- Part 6 Energy Code
- Part 7 Vacant
- Part 8 Historical Building Code
- Part 9 Fire Code
- Part 10 Existing Building Code
- Part 11 Green Building Standards (Cal Green)
- Part 12 Reference Standards



BUILDING STANDARDS CODE

- Building Standards codes are developed by professional organizations
- State considers their recommendations for adoption



BUILDING STANDARDS CODE ADOPTION

- Adopted Building Standards Codes become available on July 1, 2019 and are effective 180 days after its publication
- Applies to all new Building permit applications made after January 1, 2020





LOCAL AMENDMENTS

- The California Health and Safety Code allows local jurisdictions to amend Code
 - The local modifications must be substantially equivalent to, or more stringent than the new Code
 - The local jurisdiction is required to make specific findings based local geological, climactic, or topographic conditions
- Local amendments are developed by City Staff following review of:
 - The newly published State Code
 - Previously adopted local amendments

CALIFORNIA FIRE CODE REVIEW PROCESS



- The Menlo Park Fire Protection District (MPFPD) is an independent agency
- MPFPD has adopted the 2019 fire code and has authority to amend to meet the needs of Menlo Park
- All MPFPD adopted amendments are required to be ratified by City Council for them to become enforceable
 - Life safety and maintenance code
 - Residential fire sprinklers for additions and alterations
 - No significant changes from three years ago keeping with Council direction

PROPOSED LOCAL AMENDMENTS TO READOPT



- 12.06 (California Building Code Amendments)
- 12.08 (California Residential Code Amendments)
- 12.14 (Single Pass Cooling Water system Prohibited)
- 12.18 (All Green Code Standards in Construction Waste Management, EV Chargers, EV ready for all occupancies).
- 12.28 (Numbering of Buildings)
- 12.36 (Swimming Pools)
- 12.48 (Recycling and Salvaging of Construction and Demolition Debris)



NEW PROPOSED LOCAL AMENDMENTS



- 12.04 - Senate Bill 1226 – Requires building permit issuance for a housing project when original permit does not exist.
- 12.08 - Clarification of Building Standards Code on the definition of new construction versus alteration. Reach Code driven.
- 12.48 – Cal Green Construction Material Diversion Requirement (Recommend the current deposit system to be converted into a fine system at the end of the project).
- 12.28 – Standards for Address Identification to maintain consistency with MPFD.
- Tiny Homes (Recommend the adoption of California Residential Code Appendix Q) to provide additional housing options.

PRESENTATION OF LOCAL AMENDMENTS TO THE CITY COUNCIL FOR ADOPTION



■ Next Steps

- Introduce proposed local amendments to City Council on November 19th
- Adopt resolution ratifying Fire District Ordinance adopting Fire Code
- Adopt local amendments on December 10th



THANK YOU