



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Magdalena  
Carrasco

**SUBJECT:** SEE BELOW

**DATE:** September 11th, 2019

**APPROVE:**

**DATE:**

9/12/19

**SUBJECT: FLAVORED TOBACCO AND E-CIGARETTES**

## RECOMMENDATION

1. Develop an ordinance prohibiting the sale by tobacco retail establishments of electronic cigarettes that require, but have not received, an order from the Food and Drug Administration (FDA) approving their marketing; and prohibiting the sale and distribution to any person in San José of flavored tobacco products and electronic cigarettes that require, but have not received, an FDA order approving their marketing.
2. Develop an ordinance that will limit any further overconcentration of tobacco businesses by:
  - a. Limiting the sale of tobacco products near schools and other youth-sensitive areas or/and;
  - b. Limiting the sale of tobacco products near existing businesses that sell tobacco product
3. Remove the tobacco retail license exemption from the San José Municipal Code 6.87.210 that allows eighteen and over tobacco retailers to obtain a City license exemption.
4. Support state and federal legislation to prohibit the sale of e-cigarettes and flavored tobacco products.

## BACKGROUND

Nearly 1 in 3 teens have tried vaping in Santa Clara County. While we have combatted the rise in cigarette use, vaping companies have been successful in recapturing their audience through the use of flavored products that are marketed towards children. About 6,700 eighth, 10th, and 12th grade students from 18 Santa Clara County schools took the survey this fall and winter. More than 31% of high school students surveyed said that they have tried e-cigarettes. According to the data at the Centers for Disease Control and Prevention in 2017, more than 2 million middle and high school students were regular users of e-cigarettes.

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In addition, these products have not been vetted by the US Food and Drug Administration (FDA) and are causing an alarming health crisis and even death throughout the nation. Local health officials are urging the FDA to speed up their investigation and ban e-cigarettes. Six vaping-related deaths have been confirmed in California, Illinois, Indiana, Minnesota, Oregon, and Kansas. CDC is reporting more than 450 possible cases of severe lung injury in 33 states and one jurisdiction. This week, the American Lung Association warned that "e-cigarettes are not safe" and can cause irreversible lung damage and disease.

While we wait for the federal investigation and outcomes, we must act locally. "E-cigarettes and other vape products contain many chemicals — some known to the consumer, and some not — and we don't fully know what the harms of these substances might be in the short and long term," Dr. Sara Cody, Santa Clara County health officer and director of the Public Health Department. A study released earlier this year in the journal *Tobacco Control* adds to the growing number of reasons the phenomenon is more risky than it might appear. "The take-home message is that electronic cigarettes are not safe when it comes to lung health," study author Deborah Ossip, Ph.D., said. "The changes we're seeing with vaping, both in laboratory experiments and studies of people who vape, are consistent with early signs of lung damage, which is very worrisome."

While it is illegal for any store to sell any tobacco products including e-cigarettes, to youth under the age of 21, locally a Young Adult Tobacco Purchase Survey (YATPS) attempted to purchase flavored tobacco products at 109 stores in San José. 23% of the retailers surveyed illegally sold tobacco products to underage youth. 11% of illegal sales came from a tobacco/vape shop. Of all the illegally sold tobacco products 28% were mint or menthol flavored and 68% were fruit flavored. I propose we act immediately to ban the sale of e-cigarettes and flavored tobacco products.

Our schools are being heavily impacted by youth e-cigarette use. Superintendent Dewan with the Santa Clara County Office of Education has collaborated with the county public health department and Stanford University to give the students tools to find creative ways to say no, engage in public speaking and articulate to their peers the dangers and misperceptions surrounding e-cigarettes.

Superintendent Dewan says, "I am very concerned about the use of e-cigarettes and vaping products by youth. It is a health crisis in our schools and communities. Youth are experiencing health consequences such as increased anxiety, seizures, illness, and withdrawal symptoms appearing during the school day. The data shows that youth under the age of 21 are gaining access to these products. I support the recommendations to restrict the sales of these products and remove the exemption to protect the health of our youth and ensure retailers comply with the law."

East San José and Downtown youth are more exposed to tobacco products and marketing. You can review a heat map of tobacco retailers here. Communities with lower household income, more single parent households, less education and more children in poverty have higher

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concentrations of tobacco retailers such as downtown and East San José. Flavored tobacco products are intentionally marketed towards youth and communities of color. Higher concentrations of tobacco retailers increase youth exposure and access to tobacco products, leading to higher rates of tobacco use among youth.

In fact, the Tobacco Industry has historically promoted and continues to market flavored tobacco, specifically menthol cigarettes, to the African American community. The minty flavor masks the harshness of tobacco and makes it much harder to quit. There are over 1,300 stores that sell tobacco products in Santa Clara County.

In San Jose, more than 1 in 4 stores that sell tobacco products are located within 2 blocks of a school. Exposure to tobacco marketing has been shown to impact tobacco use initiation among youth, especially when stores are close to schools. Additionally, multiple studies have shown that youth are more likely to smoke when they live or go to school in neighborhoods with a high concentration of tobacco retailers. This policy could restrict new tobacco retailers from being located within 1,000 feet of schools and other youth-sensitive areas, such as community centers, parks, and libraries.

Tobacco use rates are affected by where tobacco retailers are located and how concentrated, or dense they are in an area. Not only does this have an impact on youth and young adults, but studies have shown that adult smokers who are trying to quit and live within a short walking distance of tobacco retailers are less successful at quitting tobacco use. This policy could restricts new tobacco retailers from being located within 500 feet of existing tobacco retailers.

In addition, we must update our tobacco retail license ordinance to remove any exemptions for vaping and tobacco shops to ensure compliance with our city code enforcement regulations. Currently San Jose allows any vape shop or tobacco retailer to operate without a city license if they prohibit anyone from entering the store under the age of 18. As of 2016, you must be 21 to purchase and use tobacco products. Our ordinance does not align with state law and is allowing a loop hole for our youth to enter these shops and illegally purchase products without proper city monitoring. If an unlicensed vape shop sells tobacco to a person under the age of 21, we have little city recourse without the utilization of a licensing requirement.