



**Bay Area Division**

December 8th, 2020

San Jose Neighborhood Services & Education  
Committee  
200 E. Santa Clara St.  
San Jose, CA

426 17<sup>th</sup> St, Ste. 300, Oakland, CA 94612  
Phone (510) 903-4050 Fax (510) 903-4049

[www.heart.org](http://www.heart.org)

Dear Committee Members:

The American Heart Association supports the proposal to prohibit the sale of all flavored tobacco products in the City of San Jose without exemption. This proposed policy will reduce access to the products that are the tobacco industry's key strategy for targeting and addicting new smokers, San Jose's youth.

We know policy is only as strong as enforcement and flavored tobacco restriction needs a strong Tobacco Retail License (TRL) to be effective. Strong TRLs include: a fee that is high enough to cover the cost of enforcement, a minimum number of compliance checks per year with rechecks upon violation, a designated enforcement body and a penalty structure that applies to the owner/licensee (see attached best practices document).

This summer, Governor Newsom signed SB793 to restrict flavored products at the state level. The tobacco industry has filed signatures to overturn SB793 via the November 2022 ballot. Should they qualify for the ballot, it will delay implementation for the next two years. Hence, Cities must continue to codify their own flavored tobacco policies at the local level. San Jose's youth cannot afford the delay.

The tobacco industry is actively and aggressively working to addict new young people, particularly those from communities of color, with flavored tobacco products. They know that flavors like grape, mint (menthol), cotton candy, bubble gum and gummy bears mask the harsh taste of tobacco and are highly appealing to youth.

Cigarette smoking is the leading cause of preventable disease and death in the United States, claiming on average 480,000 lives each year. Evidence shows that smoking increases the risk for heart disease and stroke.

Ending the sale of all flavored tobacco products will help protect our community from tobacco addiction and is crucial to preventing tobacco-related death and disease. The American Heart Association respectfully asks for your support of this vital health policy.

Sincerely,

A handwritten signature in black ink that reads "John Maa".

Dr. John Maa, Board Member  
Bay Area Division, American Heart Association

# Elements of a Strong Policy:

## Restricting the Sale of Flavored Tobacco with a Tobacco Retail License

The American Heart Association (AHA) recommends the following elements be included in a policy tobacco retail license that restricts the sale of flavored tobacco. A strong and comprehensive tobacco control policy can help reduce youth usage of tobacco.

### End the sale of all flavored tobacco products in all locations.

**Rationale:** Flavors draw kids to all tobacco products—that includes traditional cigarettes, e-cigarettes, cigars, cigarillos, smokeless tobacco, and others. It's no accident that tobacco companies have flooded the market with flavors like fruit, mint, and candy—these flavors are specifically designed to hook kids, and that's exactly what's happened. According to the National Youth Tobacco Survey, nearly 75% of youth that tried to buy tobacco products stated they were not refused sale. Exempting adult-only stores from a flavored tobacco sales restriction policy has kept the door open for youth access to these deadly, addictive products.

### Require multiple (3) compliance checks per year and recheck violators within three months.

**Rationale:** Requiring multiple compliance checks helps ensure year-round enforcement. The number of inspections should depend on the number of Tobacco Retailers in a community and the level of funding established through the license fee. Communities should also re-check retailers found in violation of the law to ensure subsequent compliance.

### Violation penalties should be levied on the owner/operator of the retail establishment.

**Rationale:** Retail shop owners must be ultimately responsible for the sales/distribution of products by their employees in their tobacco retail establishment. The violation penalties of the retail license must, therefore, fall on the owner/licensee who is profiting from the sales of the tobacco products and not the non-management employee.

### Other Key Considerations:

- There should be an annual retail license fee, paid by all tobacco retailers, that goes towards the enforcement of licensure requirements. Fees should be high enough to cover all enforcement and operations costs.
- For violations of the minimum legal sales age, penalties should include an escalating monetary penalty paid by the store or business owner. Suspensions and ultimately license revocation should also be part of the structure, with a minimum of 15-day suspension by the third violation. Licenses should be revoked by the fourth violation in a time period of at a minimum two years.
- The process by which the tobacco retailer applies, receives, and maintains permission to sell tobacco products or electronic smoking devices should be specified.
- Tobacco retail establishments should be required to comply with all federal, state and local laws, and subject to relevant fines or penalties for violations.
- There should be a penalty for selling tobacco products without a license.
- Licensure for electronic smoking devices should meet all the same requirements as licensure for tobacco products.
- There should be no penalty for purchase, use, or possession of a tobacco product.
- Additional restrictions, such as on retail advertising and minimum distances from youth-oriented facilities are preferred.

For more information on how to build a strong and comprehensive policy, see [Change Lab Solution's Comprehensive Tobacco Retailer Licensing Ordinance](#). The AHA is also available for technical assistance. Contact Blythe Young, Community Advocacy Director for the Greater Bay Area Division of the AHA, at [blythe.young@heart.org](mailto:blythe.young@heart.org) for further support.