

Martinez, Ruben

From: Jasmine McKinney >
Sent: Monday, August 16, 2021 5:35 AM
To: PublicComment-AutoResponse
Cc: Gordo, Victor; district1; Williams, Felicia; Kennedy, John J.; Masuda, Gene; Rivas, Jose; Madison, Steve; Wilson, Andy
Subject: Pasadena, CA Flavor Ban

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Dear members of the Pasadena City Council:

The ordinance the Council is considering banning all flavored tobacco products is well intended and admirable in its goal. However, I think that the scope of the ordinance goes too far and will actually have unintended consequences. The banning of all flavored tobacco products will in effect take some products off the shelves that actually help smokers quit using cigarettes. Specifically I'm referring to smokeless tobacco products and flavored non-tobacco nicotine products.

A blanket flavor ban is contrary to the scientific evidence that currently exists. The U.S. Food and Drug Administration's Office of Science has recognized that some flavors in tobacco products are not likely to appeal to youth. In a process that approved the marketing of certain flavored smokeless tobacco products, the Office of Science stated:

The proposed products are reported to have flavors such as mint, wintergreen, or tobacco character with citrus. These proposed flavors are consistent with traditionally available [smokeless tobacco] flavors and are not novel flavors that likely increase appeal to youth. Additionally, in that ruling the FDA stated that the smokeless tobacco product called snus is low risk. FDA assessed the risk posed to the individual as well as the population as a whole, and judged that the products met the standard in the 2009 US Tobacco Control Act. FDA also considered the fact that the products come in mint and wintergreen flavors. It is significant that the Swedish Match snus products are currently determined by FDA to be "appropriate to the protection of the public health", and that these products are flavored, and are smokeless.

A complete ban on all flavors is overbroad in at least two ways. First, a complete ban on flavors is not targeted to flavors that "increase appeal to youth" and will only affect legal, adult users of tobacco products who will simply patronize stores in neighboring cities or turn to the Internet as a source for their preferred tobacco products. Second, it applies the ban equally to all types of tobacco products. Some products (such as smokeless tobacco) are less likely to be used by youth.

Smokeless Tobacco Products are Less Harmful and Should Not be Restricted

In 2002 the Royal College of Physicians of London, one of the oldest and most prestigious medical societies in the world, issued a report called "Protecting Smokers, Saving Lives," which stated, "As a way of using nicotine, the consumption of non-combustible [smokeless] tobacco is on the order of 10–1,000 times less hazardous than smoking, depending on the product." A blanket flavor ban would take large portions of these products off the market, leaving adult tobacco users to choose only more harmful products like cigarettes.

As a matter of public health policy, the FDA has taken an approach to encourage harm reduction in the consumption of tobacco products. A recent (July 28, 2017) announcement from the FDA Commissioner focused on the need to view tobacco and nicotine products from a continuum of risk perspective. The continuum, according to the FDA Commissioner, ranges from cigarettes, the most dangerous form of nicotine delivery, at one end, to medicinal nicotine products at the other end. Recognizing that some risk comes from the use of any product, there remain compelling arguments that some products are less harmful and adult consumers should be able to choose these products. However, if those products are removed from the shelves because they are frequently flavored, those options are not available to adult consumers. Prohibiting the sale of less harmful products is a byproduct of blanket flavor bans. The interest of public health is not advanced when a total flavor ban removes all flavored product options from the marketplace for adult tobacco users to choose from, especially when the FDA has stated that some flavors do not “increase appeal to youth.”

The impact of a comprehensive tobacco products flavor ban in San Francisco among young adults: Could increase cigarette consumption

According to a June 2020 study from Addictive Behavior Reports which was funded by the National Institute of Drug Abuse of the National Institutes of Health. In the study they reported moderate usage rate drops in the 18-24 years and the 25—34 years old respectively. The findings suggest that comprehensive local flavor bans, by themselves, cannot sharply reduce the availability or use of flavored tobacco products among residents and may actually increase the amount of cigarette smoking which all tobacco control advocates would agree is the most deadly form of tobacco consumption.

Youth usage in California

According to the California Department of Public Health, only 1.7% of California teens have tried smokeless tobacco a single time in a period of 30 days.

Source: California Department of Public Health, California Tobacco Control Program. California Student Tobacco Survey, 2015-2016. Sacramento, CA: California Department of Public Health; February 2017.

According to the Los Angeles County Public Health, only 0.4% have reported using smokeless tobacco products.

Source: County of Los Angeles Public Health 2017-18 California Student Survey

I hope you will take these facts into consideration when you are deliberating this ordinance and exclude smokeless tobacco from the flavor ban.

Respectfully,

Jasmine McKinney

Staff Attorney

Swedish Match North America

Martinez, Ruben

From: Mayra Bautista <
Sent: Monday, August 16, 2021 12:19 PM
To: Gordo, Victor; district1; Williams, Felicia; Kennedy, John J.; Masuda, Gene; Rivas, Jose; Madison, Steve; Wilson, Andy; PublicComment-AutoResponse
Cc: Jaime Rojas Jr; Mayra Bautista
Subject: Opposing Aug 16th Agenda Item #21 Flavor Tobacco Ban
Attachments: NATO Letter on Pasadena CA Tobacco Ordinance (August 2021).pdf

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NATO®

DATE: August 16, 2021

TO: Pasadena Mayor & City Council Members

FROM: Mayra Bautista, Local Advocacy Consultant

REGARDING: Opposing Agenda Item #21 on Flavor Tobacco Ban

To the Honorable Mayor & City of Pasadena City Councilmembers,

On behalf of NATO, National Association of Tobacco Outlets, we oppose any flavored tobacco product bans. Attached is our letter in which we divulge our stance. We would like the opportunity to further discuss this issue and work with the City of Pasadena to find a resolution.

Sincerely,



Mayra Bautista
NATO Local Advocacy Consultant
National Association of Tobacco Outlets

Pacific Time

08/16/2021
Item 21



August 16, 2021

Mayor Victor M. Gordo
Members of the Pasadena City Council
100 North Garfield Ave.
Pasadena, CA 91101

RE: Proposed Flavored Tobacco Products Ban

Dear Mayor Gordo and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 60,000 retail stores throughout the country including many Pasadena retail stores, I am writing to submit our comments and concerns regarding your Tobacco Retail Ordinance proposal in Item 21 of your August 16, 2021 agenda that would ban the sale of all flavored tobacco products, including the sale of menthol cigarettes, mint and wintergreen smokeless tobacco products, flavored cigars, flavored pipe tobacco and flavored electronic cigarettes. We would ask that the City council not adopt this ordinance for the reasons explained below.

Three Studies Find that Banning All Flavored Tobacco Products Increases Cigarette Smoking:
According to a growing number of studies, the banning of all flavored tobacco products can undermine the health-related purposes of an ordinance that prohibits the sale of all flavored tobacco products.

The first study published in June 2020 in *Science Direct-Addictive Behavior Reports* regarding the City of San Francisco flavored tobacco ban ordinance found that after the ban was in force for nearly a year, flavored tobacco product use was reduced, but *cigarette smoking among 18-24-year-olds increased by over 35%*. The study also found that most consumers of flavored tobacco find other sources for these products.

The second study published in May 2021 in *JAMA Pediatrics* on San Francisco's flavored tobacco ban ordinance compared youth smoking rates among high school students in the San Francisco School District to the smoking rates of high school students in seven other metropolitan school districts located in cities that did not have a flavored tobacco ban. That study concluded:

San Francisco's ban on flavored tobacco product sales was associated with increased smoking among underage high school students relative to other school districts. While the policy applied to all tobacco products, its outcome was likely greater for youths who vaped than those who smoked due to higher rates of flavored tobacco use among those who vaped. This raises concerns that reducing access to flavored electronic nicotine delivery systems may motivate youths who would otherwise vape to substitute smoking.

A third study was published July 31, 2021 in *Nicotine & Tobacco Research* and found similar implications of flavored vapor bans on young adult tobacco users. The study abstract included the following findings:

Moreover, if vape product sales were restricted to tobacco flavors, 39.1% of users reported being likely to continue using e-cigarettes but 33.2% were likely to switch to cigarettes. If vape product sales were entirely restricted, e-cigarette users were equally likely to switch to cigarettes versus not (~40%). Those most likely to report positive impact of such policies being implemented were less frequent users, never-smokers, and those with greater e-cigarette-related health concerns. This research should be considered in future tobacco control initiatives.

In short, the scientific research is becoming clearer with each new study that flavored tobacco bans are detrimental to the public health, particularly that of young people, because they revert to smoking cigarettes.

Low and Declining Use Rates of Traditional Tobacco Products Require Caution in Flavor Bans:

According to the 2020 National Youth Tobacco Survey published by the Centers for Disease Control (CDC), current tobacco product use rates among high school students nationwide are:

Cigarettes:	4.6%	Cigars:	5.0%
Pipe Tobacco:	0.7%	Smokeless Tobacco:	3.1%

As the author of the JAMA study concluded, policies that lead to increases in youth use of traditional tobacco products are a threat to the public health. Any consideration of an ordinance banning all flavored tobacco products needs to take this threat into account. While the CDC data demonstrates historically low and falling youth use of traditional tobacco products, California's Healthy Kids Survey for 2017-2019 shows even lower usage in Pasadena Unified School District, with only 3% of 11th graders using cigarettes and 2% using smokeless tobacco. This means that the empirical data showing very low and declining underage use rates does not support the wholesale banning of all flavored tobacco products that legal age adults prefer to use. The ordinance purports to be based in part on the "proliferation of tobacco product usage by youth", but these data conclusively show that "proliferation" of youth usage is a false premise.

FDA to Ban Menthol Cigarettes and Flavored Cigars: The City of Pasadena should not pursue a flavored tobacco ban ordinance because the Food and Drug Administration announced in April that the agency will be issuing a new regulation banning the sale of menthol cigarettes and all flavored cigars. With such a sweeping regulation, the city council should pause and allow the FDA to proceed with its proposed regulation which would ban some of the same flavored tobacco products that would be prohibited under the proposed ordinance.

FDA Congressional Actions on Electronic Cigarettes and Nicotine Vapor Products: If the genesis of the ordinance is the underage use of electronic cigarettes and nicotine vaping products, council members need to be aware that, according to the CDC, youth usage of electronic cigarettes has also decreased by 33% from 2019 to 2020. Moreover, the FDA and Congress have taken significant actions that have resulted in the removal of a substantial number of flavored electronic nicotine vapor products from the market and curbed youth accessibility via the Internet. These strong measures should be allowed to work to further reduce youth access to and use of electronic nicotine vapor products.

Specifically, in February 2020, the FDA adopted a ban on the sale of all flavored cartridge-based and pod-based electronic cigarettes, except for tobacco and menthol flavored products. This action removed hundreds of electronic nicotine products from the market. In addition, the FDA required that

manufacturers of all electronic cigarette products file what is known as a pre-market tobacco product application with the agency by September 9, 2020, to keep their products on the market. Since some manufacturers did not file these applications, even more electronic nicotine products were removed from the market. Moreover, just last week, the FDA issued a “Refuse to File” letter to JD Nova Group rejecting the company’s applications for 4.5 million liquid nicotine products.

Then, as a part of the economic stimulus bill that Congress passed and which was signed into law in December, a federal law known as the Prevent All Cigarette Trafficking Act was expanded to place new restrictions on the sale of electronic cigarettes and nicotine vapor products over the Internet. These restrictions include age verification at the time of purchase, a signature of an adult 21 or older when the products are delivered, and collection and remittance of state excise and sales taxes on the products. This new law will further restrict access by anyone to electronic nicotine vapor products.

Voters Want to Decide Whether Flavor Bans Make Sense: California Senate Bill 793, which would have banned most flavored tobacco products statewide, has been referred to the voters who will vote in November 2022 whether to allow the statewide flavor ban bill to go into effect. Voters want their say on flavor bans. We respectfully suggest that deferring action until the voters have spoken is in the best interests of Pasadena and its retailers.

Pandemic Impact and Economic Crisis Will Be Magnified by a Flavored Tobacco Product Ban: In the wake of the COVID-19 pandemic, now is not the time for the city council to consider prohibiting the sale of legal tobacco products. Our convenience store members have experienced losses of up to 45% in gasoline sales and 20% or more in grocery, snack, beverage, and tobacco product sales, significant numbers because convenience stores usually rely on tobacco product sales for approximately 36% of in-store sales. Tobacco specialty stores that rely on tobacco product sales for up to 90% of total sales will be devastated by the loss of hundreds of products. Additionally, these stores have recently found it difficult to attract and retain employees, causing their payroll costs to rise.

Retailers have done everything possible to survive the pandemic, but if Pasadena retailers must remove hundreds of flavored products from their shelves, it will be very difficult to compete with retailers in neighboring localities, and employee layoffs and even store closures are real possibilities.

NATO and its Pasadena retail members share everyone’s interest in keeping tobacco and electronic nicotine vapor products out of the hands of persons under 21 years old, but banning all these flavored products makes no sense from a health standpoint or economic point of view.

We urge the Pasadena City Council not to move forward with the proposed ban on flavored tobacco and electronic cigarette products. Thank you for your consideration.

Sincerely,

Thomas A. Briant

NATO Executive Director

Appendix of Studies

Link to Science Direct-Addictive Behavior Reports (June, 2020):

(<https://www.sciencedirect.com/science/article/pii/S2352853220300134?via%3Dihub>)

Link to JAMA Pediatrics Study:

(https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248?utm_source=twitter&utm_campaign=content-shareicons&utm_content=article_engagement&utm_medium=social&utm_term=052421&s=03#.YKwb0ZyP66Y.twitter)

Link to Nicotine and Tobacco Research Study:

<https://doi.org/10.1093/ntr/ntab154>

Martinez, Ruben

From: Rima Khoury ~
Sent: Monday, August 16, 2021 1:14 PM
To: PublicComment-AutoResponse
Subject: Pasadena Flavored Tobacco Ban, Agenda Item #21
Attachments: 20200707 SB 793 Hookah Exemption Senator Hill.mp4

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Dear Mayor and City Council Members,

My name is Rima S. Khoury and I am one of the founding members of the National Hookah Community Association which was established to protect and preserve the cultural tradition of hookah. <https://www.nationalhookah.com/>

Before you inadvertently vote to ban the thousand year cultural tradition of hookah in the City of Pasadena, please understand the facts.

Please see presentation link below for your consideration.

https://docs.google.com/presentation/d/1FyXsNR4rWD6fkJ4_qQrAswNjKFJle2TbtC1DfQGUhKM/present?usp=sharing

There is no teen hookah epidemic. The FDA and CDC reports have made it clear that hookah is not the problem with youth. There are no facts to support a ban on hookah.

Hookahs are not being confiscated in schools. Hookahs are 3 feet tall and cannot be easily concealed in your pocket or backpack like vape. Hookahs take 25 – 30 minutes to set up and need hot coals, therefore it cannot be smoked during recess in the bathroom at school. Hookah's cost over \$200 for all the parts and accessories, making it out of reach for most kids.

California Gov. Gavin Newsom stated in his executive order address on September 16, 2019 that "hookah is not the problem in classrooms". See video link <https://youtu.be/XWjL4r8TWaU>

Furthermore, FDA recently stated in their Guidance for the Industry dated January 2020 that although data shows that flavored tobacco entice youth, that such data does NOT appear to raise comparably urgent public health concerns with youth usage of hookah products because the lower prevalence of youth use of these products suggests that they do NOT appear to be as appealing to youth at this time. Emphasis added.

Hookah is not the problem.

Yet hookah is becoming collateral damage in the war against vape. Hookah is not vape. Hookah has been practiced for over a thousand years by Persians, Arabs, Armenians, Turks, Indians, and other minority groups

many of which have immigrated to America and still practice their cultural traditions. Hookah is the center piece of social gatherings and is often offered to guests as a sign of hospitality and respect.

Many immigrant small business owners have built their business doing what they know from their home country. Often times they work 20 hour days, seven days a week to support multiple generations of their family. Rather than banning hookah and crippling these immigrant small business owners who are already struggling due to COVID-19, please consider passing reasonable regulations that address youth usage and access. Many of these business owners that have been operating legally for years would be happy to work with law makers to address youth access issues. These hookah lounge and retailer owners often have several years remaining on their leases and have personally guaranteed their leases. They will not only lose their business, but their homes and no longer be able to support their family and extended family.

A tobacco flavor ban is a ban on hookah because it only comes in flavors. Even hundreds of years ago hookah was made with molasses and honey.

The federal government has recently passed a 21 and over minimum for tobacco products across all fifty states. In addition, the FDA has passed an e-cigg ban on flavored cartridges. September 9, 2020 was the FDA deadline for all vape and hookah products to be accepted for FDA review, after which any products without FDA authorization will be unlawfully on the market and their products seized and injunctions restricting sales will be issued along with fines and penalties. Just recently the FDA announced that they will be banning menthol. The federal government is addressing the youth access issue and also providing legislation across the board, eliminating the patchwork of laws from city to city and closing loop holes for bad actors to skirt the law.

Hookah has been exempted from the California State flavored tobacco ban, SB793, because of its cultural significance and its fundamental difference from vape. Please see attached video of Senator Hill, author of the bill, explaining why hookah was exempted from SB793 at the Senate Appropriations hearing on June 25th, 2020. Senator Hill learned the difference between vape and hookah and understood that hookah was not the problem and took steps to exempt it due to its cultural significance. We ask that the City of Pasadena do the same.

SB793, which, as amended and revised, prohibits the sale of all flavored tobacco products and flavored tobacco product enhancers, exempting hookah tobacco, cigars with a wholesale price of \$12.00 or more, loose leaf pipe tobacco in 21 and over establishments was signed by Governor Gavin Newsom on August 28, 2020. SB793 was referendized and is expected to be on the November 2022 general election ballot.

Please see the hookah exemption language from SB793 below:

(c) Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

- (1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.
- (2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.
- (3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

(4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

SB793 balances the interests of law makers by addressing youth access and usage of flavored tobacco products, while protecting the cultural tradition of hookah. The SB793 hookah exemption limits sales to 21 and over establishments, meaning you have to be 21 and over to enter a retail establishment or lounge in order to purchase hookah and requires these establishments to comply with local and state laws. This shows that law makers can reach their regulatory goals without creating unintended consequences like eliminating the rich cultural tradition of hookah.

Please do not eliminate the rich cultural tradition of hookah without understanding what the real issues are. There is a way to achieve regulatory goals while balancing the interests of minority communities, such as Armenians, Persians, Middle Easterners, Turks, and Indians, that practice hookah. We respectfully request the City of Pasadena consider adopting the language of SB793 for their proposed city flavor ban just as Los Angeles City, West Hollywood, Burbank, Glendale, Irvine, Long Beach, San Diego County, El Cajon, Ventura and Culver City have done. Please feel free to contact me with any questions or to discuss further. Thank you.

<https://www.youtube.com/watch?v=9qIUH3hmvUc>

The Culture of Hookah | An Exploration of History and Tradition



RIMA KHOURY, ESQ.
GENERAL COUNSEL
(L)
FUMARI INC.

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Martinez, Ruben

From: kelly chun
Sent: Monday, August 16, 2021 4:32 PM
To: PublicComment-AutoResponse; Gordo, Victor; district1; Williams, Felicia; Kennedy, John J.; Masuda, Gene; Rivas, Jose; Madison, Steve; Wilson, Andy

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Dear Pasadena Councilmembers,

I literally found out today that the councilmembers were considering banning flavored tobacco products. This proposal is completely one sided and has the potential to destroy the growth and viability of our industry. This industry provides revenue and services for business owners, employees, residents, and most importantly the city of Pasadena. We provide goods and services that range from different products, and each product is important because it involves cross selling. If you eliminate our freedom to sell flavored tobacco products, you not only eliminate revenue from this source but also our ability to sell other products. It would be similar to fast food burger businesses banning the sale of French fries because of acrylamide (cancer causing chemical in oil). The great people of Pasadena rely on our business to provide a wide variety of goods and products, including tobacco products. You must allow Pasadena citizens to speak on this referendum vote. It should ultimately be their right to invoke a flavor ban.

If you ban flavored tobacco, you will hinder Pasadena's economy. When businesses across the city are impacted from the pandemic's economic effects, we need our councilmembers to implement business-friendly policies, not restricting people's right to choose.

Passing this one sided ban on flavored tobacco products will only serve today's feel good agenda. The ones who will lose is the city of Pasadena, business owners, employees, residents, and patrons. Neighboring cities who choose to see this issue from a wholistic and community inclusive perspective will gain from our losses in various ways. Where will the residents and patrons shop for gas and products if businesses are forced to close as a result of this vote? Wouldnt this create a monopoly with businesses that survive and limit options to residents and patrons of Pasadena? There are so many ways that this will negatively affect us.

Please reconsider this proposal.

Sincerely,

Kelly Chun
Joes Ice (owner)

**08/16/2021
Item 21**

Martinez, Ruben

From: Christy Zamani <om>
Sent: Monday, August 16, 2021 7:58 PM
To: PublicComment-AutoResponse
Subject: Item 21- Support

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Mayor Gordo and Members of the City Council,

My name is Christy Zamani, a resident of the city of Pasadena and Executive Director of local nonprofit

Day One, Where we have provided alcohol, tobacco and drug prevention services to the City of Pasadena

for over 30 years.

As of January 1, 2021, tobacco products with a 'characterizing flavor', defined as the presence of a distinguishable taste or aroma other than tobacco, can no longer be sold in retail stores across the state; this includes flavored e-cigarettes, smokeless tobacco, and cigars in all flavors from fruit to mint to candy, as well as menthol cigarettes. Exempt from the bill are flavored hookah tobacco (also called shisha), "premium" cigars, loose leaf/pipe tobacco, and marijuana.

The removal of menthol cigarettes from the marketplace can lead to 39% of all people who smoke menthol cigarettes quitting and 47% of Black and African American individuals who smoke menthol cigarettes quitting; plus, in a nine year time span, an estimated 17,000 premature deaths would be prevented and nearly 2.3 million fewer Americans would initiate smoking.

More than 85% of young adults who vape e-cigarettes or smoke cigars choose a flavored version and, across the US, over half of youth and young adults who smoke choose menthol cigarettes.

By supporting such a ban, Pasadena is standing up for youth and our communities of color.

By supporting this we are doing the right thing.

Thank you for your time.

**08/16/2021
Item 21**