

From: Hayley Hodges <[REDACTED]>
Sent: Monday, September 12, 2022 3:41 PM
To: CityClerk <CityClerk@chulavistaca.gov>
Cc: Jaime Rojas <[REDACTED]>
Subject: Public Comment - Flavored Tobacco Ordinance

Warning:
External
Email

Good afternoon City Clerk,

Attached is a letter regarding the discussion on the flavored tobacco ordinance that will be discussion on behalf of the National Association of Tobacco Outlets as well as an excel sheet of data.

Thank you!

Hayley Hodges
National Association of Tobacco Outlets (NATO)



September 12, 2022

Mayor Mary Casillas Salas
Members of the Chula Vista City Council

RE: Proposed Flavored Tobacco Products Ban

Dear Mayor Salas and Members of the City Council:

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 numerous Chula Vista retail stores, I am writing to submit our comments and concerns regarding the proposed ordinance on your September 13, 2022, 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 and flavored pipe tobacco. This ban would include products that have been determined by the U.S. Food and Drug Administration to be “appropriate for the protection of the public health.” We would ask that the Chula Vista City Council not adopt this ordinance for the reasons explained below.

Chula Vista Should Focus on Youth Use of Alcohol and Marijuana

According to the 2018-2019 California Health Kids Survey, the most recent available, for the Sweetwater Union High School District, only 6% of 11th graders had *ever* smoked a cigarette and only 2% had *ever* tried smokeless tobacco, while *only 1% of 11th graders reported using either cigarettes or smokeless tobacco in the prior 30-day period.* With no significant youth use of traditional tobacco products, there is no justification for an across-the-board prohibition of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.

This same survey found that 12% of 11th graders had used alcohol in the most recent 30-day period, 5% were binge drinkers, and 12% had used marijuana. Chula Vista has a much more significant problem with youth drinking alcohol and smoking marijuana; a reasonable person can inquire why the Chula Vista City Council is not considering a ban on all flavored alcohol products and additional regulations to respond to the high marijuana use rates? Given the Council’s responsibility to protect the public health, the absence of any action on underage drinking and marijuana use is concerning.

It is not as if flavored alcohol products are uncommon; there are numerous alcohol flavors, such as cinnamon, whipped cream, chocolate, and cake, which are more youth-oriented than the traditional flavors of tobacco products, such as menthol, mint, or wintergreen, which would be banned under this proposal.

If the underlying reason for the bans is youth usage of electronic cigarette products, which the Survey found 8% of 11th graders had used in the previous 30 days (still one-third lower than alcohol or marijuana use,) the Council should focus its regulatory efforts on youth-oriented electronic cigarette vaping products and not, at the same time, all other traditional tobacco products that legal age adults choose to buy and use.

When considering restrictions on electronic cigarette products, it is important to understand that the Centers for Disease Control found that e-cigarette use nationally among high schoolers dropped about 60% from 2019 (which the most recent available Sweetwater Union survey covers) to 2021. See *E-Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021*, US Department of Health and Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, October 1, 2021, Vol. 70, No. 39. The empirical data showing very low underage use rates of traditional products by local high schoolers and the national trend of a 60% drop in e-cigarette use does not support depriving all 21 and over adults their freedom to choose flavored tobacco products they prefer.

It is also important to understand the facts about the public's use of and opinions about tobacco products. A Gallup poll issued in August 2022 noted that combustible cigarette smoking (both tobacco and menthol flavored) was at an historic low of 11% of the adult population, down from 16% (over a 30% drop) from 2021. Cigarette smoking, which everyone believes is on the higher end of the risk continuum, is rapidly fading out as newer, lower risk products, including electronic cigarettes and modern oral tobacco products, become more common. Many of these products have been found by the FDA to be "appropriate for the protection of the public health" and several of them have flavors that would be banned under the proposed ordinance. It is perhaps for this reason that the same Gallup poll found that only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. By contrast, a July 2022 Gallup poll found that 50% of adults think marijuana use has a negative effect on society.

The Council must also consider the study published online August 17, 2022, in *Nicotine and Tobacco Research*, funded by the National Institutes of Health, finding "that local [flavored tobacco sales restrictions] in the California Bay Area were not associated with a change in e-cigarette use one-year post-implementation." M.S. Dove, et al, *Flavored Tobacco Sales Restrictions and Teen E-cigarette Use: Quasi-experimental Evidence From California*, <https://doi.org/10.1093/ntr/ntac200>.

FDA Actions on Flavored Tobacco and Electronic Cigarette/Vaping Products

The U.S. Food and Drug Administration's recent regulatory actions have for all intents and purposes already enacted the kind of flavored electronic cigarette ban contained in the proposed ordinance. However, the FDA regulatory actions go far beyond just banning flavored electronic cigarettes. Due to all of the FDA's actions as outlined below, I urge the City Council to allow the FDA regulatory processes to continue in lieu of proceeding with a local flavored tobacco ban ordinance.

- On April 28, 2022, the FDA issued proposed regulations banning the sale of menthol cigarettes and all flavored cigars. If enacted, these proposed regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and even more brands of flavored cigars from the marketplace. The comment period on these regulations recently closed, and the rulemaking

process continues.

- May 14, 2022, was the deadline for manufacturers of tobacco products and electronic cigarette/vaping products that contain *synthetic* nicotine to file an application with the FDA seeking an order from the agency to market their synthetic nicotine products. To date, the FDA has not authorized a single electronic cigarette product with synthetic nicotine to be on the market and has announced that 88,000 such products are now illegal to sell.
- The FDA continues to review and act on pre-market tobacco product applications (PMTAs) that manufacturers had to file with the agency by September 9, 2020, to keep their other tobacco products on the market while the FDA reviewed the applications. To date, PMTA applications covering 8,092,129 electronic cigarette and nicotine vaping products have been submitted to the FDA. The FDA has refused to accept 1,402,226 applications, refused to file 5,091,368 applications, or issued marketing denial orders for 1,234,848 electronic cigarette and nicotine vapor products. These actions add up to denying a total of 7,729,309 electronic cigarette and nicotine vapor products from being sold in the marketplace.
- To date, the FDA has issued marketing granted orders allowing only 23 electronic cigarette and vapor products to remain on the market, and not a single one of the 23 products has a characterizing flavor.
- 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 thousands of flavored cartridge-based and pod-based electronic vaping products from the market.

With all of these past, current, and pending actions being taken by the FDA, we urge the City Council not to adopt a ban on the sale of flavored tobacco and electronic cigarette products.

Voters Want to Decide Whether Flavor Bans Make Sense

California Senate Bill 793, which would ban most flavored tobacco products statewide, has been referred to the November ballot as Proposition 31 to let the voters decide 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 in November is in the best interests of Chula Vista and its retailers.

Store Closures and Layoffs May Follow the Enactment of the Ordinance

NATO's convenience store members experienced losses of up to 45% in gasoline sales and 20% or more in grocery, snack, beverage, and tobacco product sales during the past couple of years during the pandemic. With convenience stores relying on tobacco product sales for approximately 36% of in-store sales, a ban on all flavored tobacco products would eliminate an important product category that is an integral part of a store's business model. Also, 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 flavored tobacco products. Additionally, retailers have recently found it difficult to attract and retain employees and combined with the effects of inflation, stores payroll costs continue to rise.

If Chula Vista retailers must remove hundreds of products from their shelves, it will be very difficult to compete with retailers in neighboring localities or with illicit sellers who do not care to whom they sell their products. Employee layoffs and even store closures are real possibilities.

NATO and its Chula Vista retail members share everyone's interest in keeping tobacco and electronic smoking devices out of the hands of persons under 21 years old but banning all these products for 21 and older adults makes no sense from a health standpoint or economic point of view. According to the FDA, there have been 26 attempts to induce Chula Vista retailers to sell tobacco products to underage persons; only once did a retailer make the sale, a 96% compliance rate. Why would the City Council want to harm responsible, legitimate retailers and force their 21 and older adult customers to drive to other cities or to buy from illicit sellers?

We urge the Chula Vista City Council not to move forward with the proposed ban on flavored tobacco products and single use electronic cigarettes. Thank you for your consideration.

Sincerely,

Thomas A. Briant

NATO Executive Director

Compliance Check Inspections of Tobacco Product Retailers Through 8/31/22 - Search Results														
You searched for:														
City contains: chula vista														
State is CA														
Retailer Name	Street Address	City	State	Zip	Minor Involved	Sale to Minor	Product Type	Brand	Flavor	Inspection Date	Decision Date	Inspection Result	Link	Charges
VAPE AND SMOKE	4360 MAIN ST	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	5/24/2022	No Violations Observed		N/A
PINE PALACE LIQUOR	11 3RD AVE STE C	CHULA VISTA	CA	91910	Yes	No	N/A	N/A		Not available	5/18/2022	No Violations Observed		N/A
PURE SMOKE	1037 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	1/19/2022	No Violations Observed		N/A
AMIGOS SMOKE SHOP & MINI MARKET	1285 BROADWAY # 102	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	7/22/2021	No Violations Observed		N/A
VAPE AND SMOKE	4360 MAIN ST	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/19/2020	No Violations Observed		N/A
VAPE AND SMOKE	4360 MAIN ST	CHULA VISTA	CA	91911	Yes	Yes	ENDS / E-liquid	Other	Mint	7/31/2019	8/29/2019	Warning Letter Issued		1140.14(b)(1)-Sale to a Minor; 1140.14(b)(2)(i)-Failure to verify age
VAPE ELEMENTS	2015 BIRCH RD	CHULA VISTA	CA	91915	Yes	No	N/A	N/A		Not available	11/1/2018	No Violations Observed		N/A
APPLE TREE SUPERMARKET	1193 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	3/5/2018	No Violations Observed		N/A
VALERO FOOD MART	873 PALOMAR ST	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	3/5/2018	No Violations Observed		N/A
SUNSET LIQUOR	985 BROADWAY STE L	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	3/5/2018	No Violations Observed		N/A
FOOD 4 LESS #780	660 PALOMAR ST	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	3/1/2018	No Violations Observed		N/A
AMIGOS SMOKE SHOP & MINI MARKET	1285 BROADWAY # 102	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	3/1/2018	No Violations Observed		N/A
SOUTH BAY LIQUOR	1355 BROADWAY STE L M	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	3/1/2018	No Violations Observed		N/A
7-ELEVEN 13569	796 BROADWAY	CHULA VISTA	CA	91910	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
711 STORE 2131 13590D	1097 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
7-ELEVEN STORE #202121604C	899 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
NORTGATE MARKET # 27	1058 3RD AVE	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
7-ELEVEN STORE #33715A2131	689 PALOMAR ST	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
WAL-MART STORE # 5305	1150 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
L STREET 76	898 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
PALOMAR ARCO	800 PALOMAR ST	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
BROADWAY SMOKE SHOP	1067 BROADWAY STE 101	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
L STREET SHELL	902 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
MIRAGE LIQUOR	1096 BROADWAY STE 101	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
U.S.A. LIQUOR MARKET	947 BROADWAY	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A
VISHIONS SMOKE SHOP	1037 BROADWAY STE F	CHULA VISTA	CA	91911	Yes	No	N/A	N/A		Not available	2/28/2018	No Violations Observed		N/A