

From: Marlon Mansour <[REDACTED]>
Sent: Monday, September 12, 2022 3:48 PM
To: CityClerk <CityClerk@chulavistaca.gov>
Subject: NMA Letter in Opposition to Proposed Flavor Tobacco Ban

**Warning:
External
Email**

Good afternoon,

Please find attached the Neighborhood Market Association's Letter in opposition to the proposed ban on flavored tobacco, on the agenda for tomorrow's council meeting.

I also want to stress that the retailer community, a key stakeholder greatly affected by the ultimate action of the City Council on this proposed ordinance, was not reached out for thoughts or guidance on this proposed ordinance.

The Chula Vista business community is not aware that this ban is being proposed in 24 hours.

Delay this Vote till the proper stakeholder outreach is done! Passing this ordinance without proper outreach to this key stakeholder group is tantamount to silencing their voices.

Best regards,
Marlon Oram Mansour
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September 12th, 2022

Mayor Mary Casillas Salas
Chula Vista City Council
276 Fourth Ave,
Chula Vista, CA 91910

Re: Proposed Flavored Tobacco Ban

The Honorable Mayor Mary Casillas Salas,

On behalf of the Neighborhood Market Association (NMA) Executive Board and our members, we would like to submit our written testimony in opposition to the Flavored Tobacco Ban currently under your consideration. The NMA is a non-profit trade organization that represents over 700 family-owned businesses, including many operating in Chula Vista.

In recent years, use of e-cigarettes and vaping products has risen, largely as a less harmful alternative to traditional tobacco products.¹ Youth access to these products has become a concern for legislators. In recent years, the California state government as well as the Federal government, through the Food and Drug Administration (FDA), have taken powerful steps to prevent youth access and advertising of these products.^{2, 3, 4}

Issues of youth access is also paramount to our retailers. That is why they take every measure to assure these products never reach the hands of underage youth. Our retailers are not just business owners; they have families and kids of their own.

The NMA strongly opposes this proposed flavor ban for several reasons: the effect on small businesses, the unintended consequences similar flavor bans have had, and the recent State and Federal actions that have been taken on the issue.

Effect on Small Businesses

In a year of enforcement in the County-level, retailers have lost an average of around 50% of their sales due to the flavor ban. Some have shuttered their stores because they could not afford their rent. Others have had to lay off employees or raise prices of non-tobacco products (milk, bread, eggs, gas) just to offset the large revenue losses to try to remain afloat.

Prohibiting products and subjecting retailers and employees to civil and criminal penalties will only increase law enforcement presence on our local communities. Meanwhile, there is no data in the staff report suggesting that retailers are the source of youths getting tobacco and vaping products.

Many cities and localities in the greater San Diego area do not currently have flavored tobacco bans, creating a lack of uniform laws. Convenience stores are for convenience. They serve their communities and provide a one-stop shop for various purchases. Prohibiting them from selling products that are being permitted to sell a few streets away only drives away business to other districts.

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The Unintended Consequences of Similar Flavor Bans

Throughout history, bans on legal products have created previously unforeseen, more grave consequences. Black market and other unregulated sources, such as the internet, assume the market vacuums created from these bans and further endanger consumers. In prior flavor tobacco bans, studies showed great increases in traditional cigarette smoking.^{5, 6, 7} Finally, these bans cause negative impacts on businesses and local government tax revenue.

We have two relevant case studies to look to for guidance: San Francisco's flavor ban, which was made in effect in January 2019; and the County of San Diego's flavor ban, which started enforcement in July 2021. In San Francisco, the flavor ban resulted in an increase in youths smoking traditional tobacco cigarettes.^{5, 6} San Francisco saw devastating impacts to small businesses and their local tax revenue.^{8, 9}

Legislators cannot fail to adequately research and contemplate these unintended consequences when drafting a ban. Banning a product and taking it away from our regulatory bodies will only do more harms to youths, the local business communities, and the local government while making a *de minimis* impact on its intended goals.

Recent State and Federal Actions

In less than 2 months, the people of the State of California will vote on the State Referendum for SB 793, the statewide flavored tobacco ban Governor Gavin Newsom had signed into law in 2020.¹⁰ In recent years, the FDA has taken a big focus on the tobacco industry, reviewing applications for tobacco products with a focus on ensuring the public health of the entire population and focused on ensuring products do not cater to new users. To date, 6.7 million Pre-Market Tobacco Applications (PMTAs) have been submitted for the FDA's review.^{2, 3, 4} Without the FDA's approval, these products cannot come to market anywhere in the entire country. Of the 6.7 million PMTAs, only 22 have been approved. And these 22 are subject to yearly review and potential revocation if further data shows the products risk the population as a whole or that the product encourages new tobacco users.²

In sum, while the concerns of tobacco and vaping products catering to youth with artistic packaging and unique flavors is very serious, it has recently been addressed and continues to be addressed. Not only is it being taken care of, but each application is also being strictly scrutinized by the FDA under a wide federal scope. Passing this local law would ban tobacco products that even the FDA approves.

Conclusion

While the intentions behind this proposed law are noble, the measure is ill-conceived temporally, the language and scope are overly broad, and the unintended consequences from such a ban not deeply addressed. The unintended consequences of other flavor bans have only caused greater health harms to youths, which not only negates the primary purpose of this proposed ban; it exacerbates concerns of youth access and drives use of more harmful, traditional tobacco products.

It's also clear the adverse impact on local small businesses, a large stakeholder, were not contemplated, and our retailer community was not reached out to prior to the drafting of this legislation for feedback or guidance on the consequences of a proposed ban. Our retailer community is always ready and willing to discuss issues affecting our local and business communities with our elected representatives.

The state will have its answer on this issue through a democratic referendum process. The FDA has already taken immense steps to alleviate the primary concern underlying this proposed ban. Do not kill your own district's businesses, cause thousands of employees to lose their jobs, all to the advantage of

other localities, lacking in flavor bans, down the street when you can wait a few months for a potential uniform state-wide ban.

These stakeholders have already been cut out of the process and had their voices silenced. Do not continue to disregard these stakeholders.

Respectfully,



Marlon Oram Mansour
President

References

¹ <https://www.cbsnews.com/video/public-health-expert-worries-e-cigarette-panic-is-ruining-single-biggest-public-health-opportunity-in-120-years/>

² <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications>

³ <https://www.bloomberg.com/news/articles/2021-10-27/fda-official-says-tobacco-product-reviews-are-in-final-stages>

⁴ <https://www.fda.gov/tobacco-products/ctp-newsroom/perspective-fdas-progress-tobacco-product-application-review-and-related-enforcement>

⁵ “A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California” Abigail S. Friedman, Yale School of Public Health

⁶ “The impact of a comprehensive tobacco product flavor ban in San Francisco among young adults” Yong Yang, Eric N. Lindblom, Ramzi G. Salloum, and Kenneth D. Ward

⁷ https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey?linkId=133964541&utm_campaign=ctp-nyts&utm_medium=social&utm_source=CTPTwitter

⁸ Economic Impact of the Ban on Flavored Tobacco Products in San Francisco (California Fuels & Convenience Alliance)

⁹ Economic Mitigation Measures Responsive to City Bans on the Sales of Certain Tobacco Products (San Francisco Small Business Commission, 2019)

¹⁰ SB 793: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB793