



HEALTHY CHICAGO

TRANSFORMING THE HEALTH OF OUR CITY

Curbing the use of menthol-flavored cigarettes and other flavored tobacco products among youth: Policy recommendations and other strategies for local action.

Chicago Board of Health

Mayoral Report, November 2013



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Board of Health

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November 20, 2013

Mayor Emanuel:

On July 23, 2013, the U.S. Food and Drug Administration (FDA) released a scientific review that found that menthol cigarettes pose an even greater public health risk than regular cigarettes. Less than 48 hours later, you took bold and swift action — directing the Chicago Board of Health to seek community input and make policy recommendations in an effort to help you create more comprehensive tobacco control strategies aimed at curtailing menthol cigarette use among Chicago's youth.

The Chicago Board of Health is pleased to submit this report in response to your request.

The public health threat created by menthol-flavored cigarettes warrants a strong, comprehensive response. Our recommendations include a variety of policy proposals, as it is unlikely any one policy change alone will achieve the desired result.

Most of our recommendations focus on opportunities for local policy making. It is important for cities to act as incubators that create innovative policy solutions to the challenges we face. It is especially important for cities to innovate and lead on pressing health matters when state or federal-level action is delayed.

To date, no other city has attempted to regulate menthol-flavored cigarettes. Under your direction, the City of Chicago is charting a brand new path. It is our hope that this report will not only guide the City of Chicago in navigating uncharted waters, but also provide a paper trail for other cities and towns to follow.

We enthusiastically applaud your leadership and thank you for the opportunity to continue to serve in this advisory role. Together, we will save lives!

Carolyn C. Lopez, MD
President, Chicago Board of Health

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DEPARTMENT OF PUBLIC HEALTH
CITY OF CHICAGO

November 20, 2013

Mayor Emanuel:

In September 2013, the Chicago Board of Health called on Chicago's residents to offer innovative policy solutions that could be used to curb the use of menthol-flavored cigarettes among our youth.

Chicago residents, who are known for their ingenuity and innovation, rose to the challenge! During the course of four town hall meetings, residents offered substantive, new solutions for the City of Chicago to consider.

This report summarizes their feedback, as well as written commentary and policy recommendations from public health professionals, scientists and national content experts. In addition, this report outlines official policy recommendations from the Chicago Board of Health.

Chicago residents drove this innovation. It was collaborative. It was inspiring.

Much of the testimony we heard was heart-wrenching. Chicago residents shared personal stories about how their lives have been touched by tobacco and the collateral damage it causes. For example, we heard testimony about excessive death tolls in minority communities. Speakers also shared information about the financial toll smoking has had on their families. And, sadly, we heard about children growing up to become life-long addicts, or worse, growing up without a parent.

These personalized stories make inaction seem unthinkable. Moreover, I believe many of the solutions offered by Chicago residents are politically viable and will protect future generations from the lethal grip of tobacco, helping to make Chicago the healthiest city in the nation.

Bechara Choucair, M.D.
Commissioner

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ABOUT THE CHICAGO BOARD OF HEALTH

The Chicago Board of Health consists of nine members. Appointments to the Board of Health are made by the Mayor, with the approval of the City Council. “It shall be the duty of the board of health to...formulate policies and otherwise advise the mayor of the city and the commissioner of health on all health issues.” Chicago Municipal Code 2-112-020.

MEMBERS OF THE CHICAGO BOARD OF HEALTH

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ABOUT THIS REPORT

This report, entitled “*Curbing the use of menthol-flavored cigarettes and other flavored tobacco products among youth: Policy recommendations and other strategies for local action,*” was adopted by the Chicago Board of Health on October 16, 2013 and November 20, 2013.

The report summarizes nearly every policy option discussed during a series of town hall meetings held during September 2013, as well as comments submitted through an online portal and by U.S. Mail. The report also contains official recommendations from the Chicago Board of Health.

Many staff members, interns, and partners of the Chicago Department of Public Health contributed to the “*Curbing the use of menthol-flavored cigarettes and other flavored tobacco products among youth: Policy recommendations and other strategies for local action.*” The primary author — Kendall Stagg — was greatly assisted by the work of Melissa Buenger, Sheri Cohen, Jennifer Herd, Dr. Alicia Matthews, Dr. Juleigh Nowinski-Konchak, Brian Richardson, Erica Salem, and Janis Sayer. (Co-authors listed alphabetically.)

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Text, citations, and data summarized in this report are, to the best of the authors' knowledge, current as of the time this report was prepared and published. Subsequent developments, including recent legislative actions, may alter the information provided herein. This report does not constitute legal advice. Individuals and organizations considering legal actions should consult with their own counsel before deciding on a course of action.

MEDICAL DISCLAIMER

This report does not constitute medical advice. Individuals with health problems, questions, or concerns should consult an appropriate health care provider.

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EXECUTIVE SUMMARY

Menthol-flavored cigarettes are known to be a “starter” product for youth who begin smoking. In addition, mentholated cigarettes pose other problems to public health. For example, menthol-flavored cigarettes are more addictive and harder to quit. These products are disproportionately targeted to youth and minorities. Most importantly, mentholated cigarettes have slowed efforts to reduce youth smoking.

On July 23, 2013, the U.S. Food and Drug Administration (FDA) released a scientific report that validated what the public health community has known for many years — that menthol cigarettes pose an even greater risk to public health than regular cigarettes.

A new, scientific report released by the U.S. Food and Drug Administration confirms that menthol cigarettes are more addictive and harder to quit.

In response to a request from Mayor Rahm Emanuel, the Chicago Board of Health hosted four town hall meetings regarding menthol-flavored cigarettes — seeking input and innovative strategies from Chicago residents, especially from communities who are disproportionately impacted by menthol-flavored cigarettes.

Based on a review of the literature and ideas generated from Chicago residents and other experts, the Chicago Board of Health recommends a strong, comprehensive policy response in order curb the use of menthol-flavored cigarettes among kids.

Recognizing that cities and towns can act as incubators for innovative policy making, most of the recommendations contained in this report focus on opportunities for local policy changes.

In addition to the local policy options summarized on the following pages, this report outlines several federal and state policy options, other strategies for local action, including public education and programming, and an abbreviated policy analysis explaining the rationale for these recommendations.

The Chicago Board of Health urges the City to act expeditiously. Smoking kills more people than murders and other violent crimes, suicide, illegal drugs, alcohol, AIDS, and car crashes — COMBINED! A disproportionate number of these deaths occur in minority communities. If our goal is to save lives, time is of the essence.

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EXECUTIVE SUMMARY OF LOCAL POLICY RECOMMENDATIONS

- Limit the venues where menthol-flavored cigarettes can be sold — for example, away from schools and other youth-focused environments or in adult-only tobacco specialty shops.
- Enact reasonable “time, place, and manner” restrictions that are narrowly tailored to preventing youth exposure to the advertising and display of tobacco products. For example, restrictions near schools and other youth-focused environments during times of day when youth are present.
- Restrict or eliminate tobacco sampling, tobacco coupon redemption, and multi-pack discount offers, and other promotional allowances.
- Limit over-the-counter access to electronic cigarettes, which come in dozens of flavors including cotton candy, gummy bear, bubble gum, Atomic Fireball, cherry cola, cherry limeade, caramel candy, blueberry, and orange cream soda.
- Substantially increase fines and penalties for retailers who sell tobacco products to minors.
- Find unique ways to improve enforcement of existing laws. For example, use crowdsourcing (*e.g.*, tip hotline, 3-1-1, website, and/or smartphone app) as well as a rewards system to generate tips from the public to crack down on illegal sales.
- Explore the possibility of requiring a special license to sell flavored products, which should require completion of a retailer training program as a prerequisite to obtaining a license to sell flavored tobacco.
- Pursue policies to make more public places smoke-free.
- Seek opportunities to expand access to nicotine replacement therapy and cessation services.

Less than 48 hours after the FDA’s report was released, Mayor Rahm Emanuel took swift action, directing the Chicago Board of Health to seek local policy options for curbing the use of menthol-flavored cigarettes among youth.

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**Kids aged 12 to 17 smoke menthols at
a higher rate than any other age group.**

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TABLE OF CONTENTS

Local policy recommendations	1
Federal policy accolades and recommendations	3
State policy recommendations	4
Institutional policy / System changes	4
Other policy options worth exploring	5
Policy options that should be avoided.	6
Public education, programing, and other strategies for local action.	8
Background.	10
• <i>History of events leading up to town hall meetings</i>	
• <i>Overview of town hall meetings</i>	
• <i>The participants</i>	
• <i>Goal of the town hall meetings</i>	
• <i>This Report: a summary of ideas discussed</i>	
• <i>The most common theme: A call to action</i>	
Research and statistics: Making the case for action	15
• <i>Menthol-flavored cigarettes may increase the harm of smoking and are a threat to public health</i>	
• <i>Menthol cigarettes are more addictive and harder to quit</i>	
• <i>The tobacco industry specifically targets mentholated products to youth, African Americans, and other minority communities</i>	
• <i>Youth and minority populations are more likely to use menthol cigarettes</i>	
• <i>Restrictions on menthol-flavored cigarettes would be supported among many people in minority communities</i>	
Policy analysis: Rationale for policy making.	17
• <i>Regulation of menthol-flavored cigarettes is both a critical public health issue and an important social justice issue</i>	
• <i>The City should regulate menthol cigarettes and other flavored tobacco products</i>	
• <i>The City of Chicago has the legal authority to regulate menthol-flavored cigarettes and other flavored tobacco products</i>	
• <i>Expanded local control of “other tobacco products” is needed</i>	
• <i>The City of Chicago should restrict coupons, store discounts, and promotions</i>	
• <i>The threat of a black market cannot justify inaction</i>	
• <i>A track-and-trace system would cause immediate disruption to the illicit trade, trafficking and counterfeiting of cigarettes and reduce youth smoking</i>	
• <i>Expansion of coverage for tobacco cessation medications and treatments is needed</i>	
Acknowledgements / Collaborating Partners	25 / Back Cover



LOCAL POLICY RECOMMENDATIONS

Upon careful review of the literature and comments received through town hall meetings, the Chicago Board of Health met on October 16, 2013, to deliberate on and formally adopt policy recommendations aimed at curbing the use of menthol-flavored cigarettes and other flavored tobacco products among Chicago's youth. What follows is a list of official policy recommendations from the Chicago Board of Health.

Limit venues where flavored tobacco can be sold in Chicago

- Pass an ordinance to restrict the venues where flavored tobacco products — including menthol-flavored cigarettes — can be sold. For example, limit the sale of flavored tobacco products exclusively to adult-only, tobacco specialty shops.

Limit over-the-counter access to youth “starter” products

- Limit over-the-counter access to electronic cigarettes, which come in dozens of flavors including cotton candy, gummy bear, bubble gum, Atomic Fireball, cherry cola, cherry limeade, caramel candy, blueberry, and orange cream soda.

Change licensing policies

- Pass an ordinance to restrict the issuance of any new tobacco licenses within 500 feet of a school or day care center.
- Substantially increase fines and penalties for retailers who sell tobacco products to minors.
- Expand the City's existing tobacco license suspension and revocation consequences for retailers who repeatedly sell to minors.
- Ask the Department of Business Affairs and Consumer Protection to advise the City about the possibility of requiring a special license for flavored products with completion of the FDA retailer training program as a prerequisite to obtaining a license to sell flavored tobacco.¹

Place restrictions on the display and advertising of tobacco products

- Enact on the display and advertisement of tobacco products that would withstand a First Amendment challenge. For example, ask the Law Department to advise if it is possible to enact reasonable “time, place, and manner” restrictions that are narrowly tailored to preventing youth exposure to the advertising and display of tobacco products near schools and other youth-focused environments during times of day when youth are present.

1. For more information about the FDA's retailer training program, please see Draft Guidance for Industry: Tobacco Retailer Training Programs. Available at: <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm218898.htm>



LOCAL POLICY (Continued...)

Limit discounts, coupons, and other promotional offers

- Consider solutions that would increase sampling restrictions on flavored tobacco products, or completely outlaw distribution of flavored tobacco product samples.
- Pass an ordinance to eliminate tobacco industry coupon redemption, store discounts, and other promotional allowances.
- Ask the Law Department to advise the City whether it can legally outlaw distribution of coupons for free or nominally priced tobacco products (e.g., elimination of “any pack for \$1” coupons being distributed in Chicago’s LGBT venues) without violating the First Amendment.

Use new, innovative enforcement efforts

- Find unique ways to improve enforcement of existing laws. For example, use crowdsourcing (e.g., tip hotline, 3-1-1, website, and/or smartphone app) as well as a rewards system to generate tips from the public to crack down on illegal sales.

Expand services to help Chicagoans kick the habit

- Expand access to nicotine replacement therapy and cessation services provided by the Chicago Department of Public Health and partners organizations.

Other local policy changes

- Pursue policies to make more public places smoke-free.



FEDERAL POLICY ACCOLADES & RECOMMENDATIONS

The Chicago Board of Health enthusiastically applauds Mayor Emanuel for comments he recently submitted to the FDA in response to the agency's advance notice of rulemaking (Docket No: FDA-2013-N-0521).

Specifically, the Mayor and the Commissioner of Public Health have already provided visionary leadership with their comments that:

- Summarized the state of the science in an effort to help demonstrate that public health would benefit from regulation of menthol cigarettes and/or removing menthol cigarettes from the market;
- Urged the FDA to immediately open a rulemaking (under authority in 15 U.S.C. 1333 (b)(4)) to create new warning labels for any tobacco product that contains menthol;
- Called on the FDA to assert its authority to regulate all tobacco products; and
- Urged the FDA to fulfill the agency's existing statutory obligation, pursuant to the *Family Smoking Prevention and Tobacco Control Act of 2009*, to issue proposed rules on a national track-and-trace system that would disrupt the illicit trade, trafficking, and counterfeiting of cigarettes (see 21 U.S.C 387t (b)).

The Chicago Board of Health recommends additional federal advocacy, including the following:

- The City of Chicago should urge the federal government to require insurers to use a comprehensive and barrier-free definition of "cessation interventions" that are covered under preventive services expansion through the Patient Protection and Affordable Care Act (ACA).
- Pursuant to 21 USC § 387f-1(b)(2), the City of Chicago should request assistance from the FDA.² Such requests could include, but should not be limited to: (1) providing legal research and analysis, especially related to potential preemption problems that might arise with local policy making; (2) assist with tobacco retailer training; and/or (3) implement a media campaign regarding menthol cigarettes in Chicago.

2. Community assistance. At the request of communities seeking assistance to prevent underage tobacco use, the Secretary shall provide such assistance, including assistance with strategies to address the prevention of underage tobacco use in communities with a disproportionate use of menthol cigarettes by minors." 21 USC § 387f-1(b)(2)



STATE POLICY RECOMMENDATIONS

- The City of Chicago should urge the Illinois General Assembly to create local control / reverse state-level preemption for the City of Chicago and other home rule municipalities to establish minimum prices and close tax loopholes for “other tobacco products.” Specifically, amend the *Illinois Municipal Code* (65 ILCS 5/8-11-6a) to allow home rule municipalities to impose a tax on tobacco products, however measured.
- The City of Chicago should request the Illinois Department of Healthcare and Family Services Director to support a change in state Medicaid policy that results in expansion of services for tobacco cessation that includes comprehensive coverage for medications and behavioral treatments, has few barriers to access, and involves broad promotion.
- The City of Chicago should include the Illinois Office of the Attorney General (AG) in efforts to enforce youth access laws and work with the AG’s Office to pursue litigation strategies.

INSTITUTIONAL POLICY / SYSTEM CHANGES

- Gauge interest among insurance companies, perhaps through a multi-payer initiative, to collectively expand comprehensive coverage for tobacco cessation that includes coverage for medications and behavioral treatments, has few barriers to access, and involves broad promotion.
- Chicago Department of Public Health should work with local employers to voluntarily expand smoke-free workplace policies.
- Chicago Department of Public Health should work with the American Heart Association, Illinois Academy of Family Physicians, American Academy of Pediatrics, Illinois Hospital Association, and others to create institutional policies and system-level changes in the healthcare system that result in routine screening and education of all school-aged, adolescent, and adult patients about tobacco use, including menthol, and comprehensive smoking cessation counseling for tobacco users. Also, provide free Continuing Medical Education (CME) training for physicians on the above topics.



OTHER POLICY OPTIONS WORTH EXPLORING

Youth experimentation with, and addiction to, dangerous tobacco products is a multifaceted problem. As outlined in policy analysis contained in pages 17 – 24, the Chicago Board of Health is cognizant that there are no “silver bullets” that will save youth from a lifetime of tobacco addiction. While menthol is clearly the biggest culprit, we must pursue a comprehensive approach to tobacco control.

During town hall meetings, the Chicago Board of Health heard a broad range of ideas that were not specific to menthol cigarettes. Although we did not fully analyze the policy options that follow, they are worth sharing. What follows is a list of strong tobacco control ideas that were discussed at town hall meetings. We encourage policy makers from Chicago, as well as policy makers from other jurisdictions, to explore these innovative ideas.

Chicago Board of Health believes the following ideas from Chicago residents are worth exploring:

- For flavored tobacco products, including flavored e-cigarettes, raise the minimum age of purchase to 21 years old.
- Raise the minimum age of purchase for all tobacco products (not just flavored products) to 21 years of age.
- Research new opportunities to disrupt illicit trade in tobacco products, including single-sale cigarettes also known as “loosies” and “square patches.”
- Research the viability of requiring wholesalers to use only tamper-resistant invoices to ensure tobacco retailers are not tampering with invoices in an effort to evade consumer protection inspections / taxes.
- Encourage Cook County to continue its efforts to enhance authentication and verification of tax stamps with digital tax stamps, using anti-counterfeit taggant (*i.e.*, microscopic) technologies rather than physical tax stamps.
- Define electronic cigarettes as a tobacco product. Require a tobacco license for retailers that sell electronic cigarettes.
- Increase taxes on all tobacco products (not just menthol cigarettes) and earmark at least half of the money for prevention and cessation efforts targeted to the communities that are disproportionately impacted by menthol-flavored cigarettes.
- Substantially increase funding for clinical and educational services.
- Establish a minimum pricing policy for tobacco products.
- Restrict the new tobacco licenses on “Safe Passage” routes.
- Prohibit the sale of tobacco products in pharmacies and other health-focused environments.



OTHER CONSIDERATIONS

- The policy development process should continue to pay attention to the concerns of special constituencies or populations who are disproportionately targeted and impacted by menthol.
- For example, to obtain “buy-in” from the African American community, it will be essential to communicate with the public that the policy does not add a new layer of punishment or penalties on youth. “The African American community has been the victims of predatory marketing... They use these products heavily... Do not criminalize our youth... Do not make this a new pipeline [to prisons].”
- If menthol is regulated as a characterizing flavor, de facto categorization should occur so that terms such as “blue,” “green,” “smooth,” “fresh,” “cool,” “mint,” and “wintergreen” will be deemed to have a characterizing flavor of menthol. (Drafting should pay special attention to potential preemption concerns.)
- If menthol is regulated as a characterizing flavor, the City should delegate ongoing rule-making authority to the Chicago Board of Health to publish updated lists of what products they deem to have a “characterizing flavor” so that rules can be easily updated when the tobacco industry seeks to exploit legal loopholes.
- There is no silver bullet. The City ought to continue to engage in collective policy making to curb the use of menthol and other flavored tobacco products among Chicago’s youth.
- Whatever policy is created, the “policy needs to be enforceable.”

POLICY OPTIONS THAT SHOULD BE AVOIDED

Not all policy options, even if a good idea, are viable. What follows is a list of ideas discussed at town hall meetings that are unlikely to be viable and/or should be avoided.

Caution! The Chicago Board of Health recommends avoiding the following pitfalls:

- ⊘ **Don’t** create broad restrictions on all tobacco advertisements. First Amendment case law makes it clear such restrictions must be very narrowly tailored. Broad restrictions would be struck down and result in the City paying substantial legal fees.
- ⊘ **Don’t** apply a disproportionate tax exclusively on menthol-flavored cigarettes to make these “starter” products less attractive to kids, who are the most price sensitive consumers. Such a tax would place a disproportionate burden on minority communities that have already been the target of predatory marketing.
- ⊘ **Don’t** pass an ordinance that prohibits the distribution of tobacco coupons in Chicago. Such a restriction would trigger a First Amendment analysis. An easier course of action would be to merely restrict redemption of coupons.
- ⊘ **Don’t** create product standards for menthol cigarettes and/or restrictions on additives. Such an action is



preempted by Federal law and falls squarely in the province of the FDA.

POLICY OPTIONS THAT SHOULD BE AVOIDED (Continued...)

- ∅ **Don't** require packs of menthol cigarettes to bear large “danger signs” with graphic images that make products less appealing. Such an action would likely be struck down based on existing First Amendment case law and/or preempted by Federal law.
- ∅ **Don't** require graphic point-of-sale signage that warns about the dangers of smoking. This approach was recently found to be preempted by Federal law and arguably violates the First Amendment.
- ∅ **Don't** make youth possession illegal and penalize youth who illegally possess tobacco. Neither Chicago Board of Health, nor the Chicago Department of Public Health, supports teen penalties for tobacco possession, use, and purchase because: (1) they are not effective in reducing youth smoking; (2) teen penalties stigmatize children as ‘wrong doers’ and unnecessarily introduce otherwise good kids to the criminal justice system, which has the potential to change their life trajectory forever; (3) teen penalties divert attention and resources from tobacco control strategies that are already proven to have benefit in reducing population smoking, including youth smoking; and (4) it is socially unjust to penalize youth for possessing widely available, otherwise legal, and highly addictive products when the tobacco industry aggressively markets these products toward youth.

Teen penalties for tobacco possession and use are not effective in reducing youth smoking. Teen penalties unnecessarily introduce youth to the criminal justice system, which can change their life trajectory forever.

- ∅ **Don't** completely outlaw all tobacco products.
- ∅ **Don't** make suspensions of a license for those who sell to youth only temporary (e.g., 90 days for a third violation).
- ∅ **Don't** make the possession of tobacco in schools a suspendable offense.
- ∅ **Don't** follow the lead of other cities that have opted out of local policy making regarding menthol.
- ∅ **Don't** wait to take action until a study is conducted that explores who is selling to minors and then direct policy making to those people alone. Regardless of the outcome of such a study, we believe the recommended policy changes contained herein will still be needed.
- ∅ **Don't** wait for an FDA response on menthol before doing anything.
- ∅ **Don't** “forget about tobacco...[and] focus [exclusively] on drugs, alcohol, guns, and employment.”



PUBLIC EDUCATION, PROGRAMING, AND OTHER STRATEGIES

In addition to providing innovative policy solutions, a common concern expressed at all of the town hall meetings was the need for education and marketing campaigns. Overall, emphasis was on bold campaigns.

In response to strong demand from the public, the Chicago Board of Health recommends the City, its partners, and other health groups engage in daring education and marketing campaigns, specifically targeting youth and populations that are disproportionately targeted and impacted by menthol.

When engaging in public education efforts, consider the following advice from Chicago residents:

- Follow examples of striking and truthful images and messages such as CDC’s “Tips From A Former Smoker” ads, the truth® campaign, and other bold campaigns that show the harsh truth about smoking and unscrupulous industry tactics.
- Communicate in a culturally appropriate manner with messages that are tailored to women, youth, African Americans, Hispanic Americans, Asian Americans, and the LGBT community.
- Include the most vulnerable populations, including people with mental health issues.
- Incorporate social media such as Twitter, Facebook, and Instagram.
- Utilize advances in technology, such as smart phone apps, to “push” the messages out to the community.
- Include Chicago Public Schools in expanded public education campaigns.

For implementation of education and messaging campaigns, the Board of Health recommends exploring the following suggestions:

- Change the culture around menthol for youth through anti-tobacco messaging in and around schools with branded school supplies, youth-centric accessories like bracelets, and billboards.
- Create a youth-focused anti-tobacco use brand, such as the Heart Truth/Red Dress campaign to promote women’s heart health.
- Explore the potential influence of hip-hop and pop culture on youth on anti-smoking messages.
- Involve youth in the development of new campaigns. For example, youth can be part of a Mayoral contest (perhaps expanding on the Mayor’s #NoMoreMenthol hashtag) where kids compete for cash and prizes by developing funny or provocative new social media campaigns that teach their peers about the dangers of smoking menthol.
- Include tobacco in education programs on sex, alcohol, and drugs.

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To address additional comments provided on education-focused efforts, the Board of Health recommends the following:

- Chicago Department of Public Health should encourage the American Academy of Pediatrics, American Heart Association, Illinois Academy of Family Physicians, Illinois Hospital Association, and other partners to increase patient awareness of the added public health risk of menthol cigarettes, that mentholated products are not a healthier alternative, and that menthol-flavored cigarettes may be more addictive and harder to quit. Explore using continuing medical education (CME) training to expand this education among health care professionals. Also, explore providing CMEs to physicians who participate in educational programs for youth, such as American Academy of Family Physicians' Tar Wars program — a tobacco-free education program for 4th and 5th graders.
- Chicago Department of Public Health and Chicago Public Schools should expand their existing partnership and incorporate education programs starting in middle school, with consideration of a curriculum on the dangers of smoking, especially mentholated cigarettes.
- The City should seek opportunities to work with the FDA to expand education efforts for clerks who work for tobacco retail outlets to prevent illegal sales to youth.
- Also, explore public-private partnerships with the business community to establish comprehensive tobacco cessation efforts in Chicago workplaces.

OTHER CONSIDERATIONS

- Traditional, population-based tobacco control efforts typically neglect important racial/ethnic and LGBT communities. For example, while the industry is going directly into gay venues in Boystown to distribute \$1 per pack coupons for menthol cigarettes, only 5% (or less) of population-based tobacco control efforts are directed at LGBT populations.
- Public health has traditionally allocated tobacco control resources on a population-based model that neglects minority communities (*i.e.*, the same amount of resources go proportionally everywhere). This might not be the most effective model.
- In contrast, the Big Tobacco companies do not target all populations equally. Menthol-flavored cigarettes are more addictive, harder to quit, and aggressively targeted to communities that are less likely to have health insurance.
- The fairest way to allocate resources is in proportion to need. Funding and resources should be prioritized so that interventions are aimed at eradicating large health disparities by disproportionately targeting efforts where they are most needed.
- Act expeditiously. Smoking kills more people than murders and other violent crimes, suicide, illegal drugs, alcohol, AIDS, and car crashes — COMBINED! A disproportionate number of these deaths occur



BACKGROUND

During his first 100 days in office, Mayor Rahm Emanuel released “*Healthy Chicago*,” the City’s first-ever comprehensive public health agenda. *Healthy Chicago* is a blueprint for action that serves as a framework for a focused, yet comprehensive, approach to how the Chicago Department of Public Health will lead and collaborate with community partners to improve the health and well-being of Chicagoans.

Tobacco control is one of the top priorities of *Healthy Chicago* — and for good reason. Tobacco use is the leading cause of premature death in Chicago, killing thousands of Chicagoans every year. For each tobacco-related death, more than 20 other people struggle with one or more serious tobacco-related illnesses, including lung, oral, and pharyngeal cancer; many other forms of cancer; heart disease; stroke; asthma; bronchitis; emphysema; pre-term delivery; and low birth weight. In addition to the disease and death caused directly by tobacco use, secondhand smoke causes many health problems, including heart disease, lung cancer and chronic obstructive pulmonary disease in adults, severe asthma attacks, respiratory infections, and sudden infant death syndrome among infants and children.

The connection between children and tobacco is so strong that the Commissioner of the FDA has declared “smoking is fundamentally a pediatric disease.”³ Young kids engage in naïve experimentation with tobacco products, which in turn develops into regular smoking. Lifetime smoking and other tobacco use almost always begins before kids graduate from high school.⁴ According to the U.S. Surgeon General, approximately 90% of adult smokers started by age 18.⁵ Almost no one picks up the habit after age 21.

Unfortunately, progress in reducing smoking among youth is beginning to plateau. New research published just this summer concluded that menthol-flavored cigarettes have likely slowed efforts to reduce youth smoking.^{6,7}

History of events leading up to town hall meetings

Historically, tobacco manufacturers have added fruity and sweet flavors to cigarettes in an effort to mask the harsh taste of tobacco. These flavors make tobacco products more appealing, especially to kids. In 2009, Congress passed the *Family Smoking Prevention and Tobacco Control Act*. While this landmark law banned other flavors in cigarettes, menthol-flavored cigarettes remain on the market while the FDA deliberates regulatory action.

3. Hiltz, P. (1995, March 9). FDA Head Calls Smoking a Pediatric Disease. *The New York Times*, p. A22.
4. Substance Abuse and Mental Health Services Administration. (2001). *Results from the 2001 National Household Survey on Drug Abuse: Volume I. Summary of National Findings*. (Office of Applied Studies, NHSDA Series H-17, DHHS Publication No. SMA 02-3758). Rockville, MD. Retrieved from <http://www.samhsa.gov/data/nhsda/2k1nhsda/pdf/cover.pdf>. See also, Department of Health and Human Services (2012). *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Retrieved from <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>
5. Department of Health and Human Services. (n.d.). Preventing Tobacco Use Among Youth and Young Adults. Retrieved from <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/factsheet.html>
6. Giovino, G., Villanti, A., Mowery, P., Sevilimedu, V., Niaura, R., Vallone, D., & Abrams, D. (2013). Differential trends in cigarette smoking in the USA: is menthol slowing progress? *Tobacco Control*, DOI: 10.1136/tobaccocontrol-2013-051159
7. Saldi, S. (2013, August 30). Increased use menthol cigarette found among young people. *ScienceDaily*. Retrieved October 4, 2013, from <http://www.sciencedaily.com/releases/2013/08/130830131038.htm>.



With 30% of the market share,⁸ menthol is the most commonly used flavored-tobacco product in the United States. Menthol not only masks the harsh flavor of tobacco with its minty flavor, just as the banned flavors do, but it also provides a cooling sensation that is appealing to new, young smokers, according to the U.S. Surgeon General.⁹ Though not banned at the time, the *Tobacco Control Act of 2009* gave the FDA the power to ban menthol if “appropriate for the public health” and made menthol-flavored cigarettes a priority of the FDA.¹⁰

To ensure that menthol was addressed, the Act established the Tobacco Products Scientific Advisory Committee (TPSAC), which advised the FDA on menthol and other scientific information. On July 21, 2011, TPSAC released a report entitled “*Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations.*” The report outlined the TPSAC’s findings on menthol cigarettes, concluding that it is “biologically plausible” that menthol makes cigarette smoking more addictive, and “removal of menthol cigarettes from the marketplace would benefit public health in the United States.”¹¹

Even though TPSAC found convincing evidence of the dangers of menthol cigarettes, they had “no specific suggestions for follow-up by the FDA to this recommendation.” As a result, on April 12, 2013, 20 public health organizations from around the nation filed a citizen petition “urging the FDA to exercise its regulatory power” and protect Americans’ health by banning menthol.¹²

Soon after, on July 23, 2013, the FDA released their own report titled “*Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes.*” The FDA’s own report concluded that menthol cigarette use is associated with increased smoking initiation, greater addiction, greater signs of nicotine dependence, and less success with quitting, thus validating TPSAC’s findings from two years earlier. In addition, significant racial, gender and socioeconomic disparities were found.¹³

Recognizing significant public health issues associated with mentholated cigarettes, on July 25, 2013 — just two days after the FDA’s report was released — Mayor Emanuel directed the Chicago Board of Health to seek local policy options for curbing the use of menthol-flavored cigarettes among youth.¹⁴

Overview of town hall meetings

In collaboration with more than 24 Chicago-based community organizations and a handful of local policy makers, the Chicago Board of Health hosted four town hall meetings regarding menthol-flavored cigarettes in September 2013.

Meetings were held on the North, South, and West sides of Chicago. In an effort to gather input from the populations who are disproportionately impacted by menthol-flavored cigarettes, meeting locations were held in neighborhoods with large African American, Latino, or LGBT populations. Spanish translation was offered at one of the meetings held on the South Side.

8. Regan, AK., Dube, SR., & Arrazola, R. (2012). Smokeless and flavored tobacco products in the US: 2009 Styles survey results. *American Journal of Preventive Medicine*, 42(1), 29-36.
9. Respiratory Health Association. (2013). Respiratory Health Association Stands with Mayor, Board of Health and Health Department taking on Youth Menthol Cigarette Use. Retrieved from http://www.lungchicago.org/site/files/487/86039/310207/666966/07-25-2013_Respiratory_Health_Association_menthol
10. Tobacco Control Legal Consortium. (2013). Public Health Leaders Petition the FDA to Act on Menthol, Citizen Petition Highlights. Retrieved from <http://publichealthlawcenter.org/sites/default/files/tclc-highlights-fdacitizenpetition-menthol-2013.pdf>
11. Tobacco Products Scientific Advisory Committee, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011.
12. Tobacco Control Legal Consortium, Citizen Petition Asking the U.S. Food and Drug Administration to Prohibit Menthol as a Characterizing Flavor in Cigarettes, April 12, 2013.
13. U.S. Food and Drug Administration, Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes, July 23, 2013.
14. City of Chicago, Mayor Emanuel Asks Board of Health To Take Action Aimed at Curtailing Menthol Cigarette Use Among Chicago Youth, July 25, 2013.





<i>Town hall meeting time and locations</i>		
Date / Time	Location	Community Area
Thursday September 5, 2013 6:30 – 8:00 pm	Chicago State University Library Auditorium 9501 S. King Drive	Roseland (South Side)
Tuesday September 10, 2013 6:30 – 8:00 pm	General Robert E. Wood Boys and Girls Club* 2950 W. 25 th Street	South Lawndale (South Side)
Tuesday September 17, 2013 6:30 – 8:00 pm	Center on Halsted Senior Center 3656 N. Halsted Street	Lakeview (North Side)
Thursday September 19, 2013 6:30 – 8:00 pm	Austin Town Hall Park Field House 5610 W. Lake Street	Austin (West Side)

* Bilingual (English / Spanish)

The participants

Approximately 200 Chicago residents attended the town hall meetings including youth, health care clinicians, social service providers, leaders in the faith community, elected officials, and hospital staff. A handful of national experts flew in from across the country to provide in-person testimony.

Participants in the town hall meetings also included a broad range of interest groups, including national public health organizations, as well as tobacco retailers and representatives from the tobacco industry.

Those who were unable to attend were able to submit written comments. Chicago residents submitted comments through an online portal and by U.S. Mail. Several national content experts also provided comments in writing.

Goal of the town hall meetings

The goal of this community-driven process was to identify “winnable” battles that will curb the use of flavored tobacco products among Chicago children.

This report: A summary of ideas discussed

This report touches upon nearly every idea discussed during town hall meetings. Although the report outlines numerous policy options and other strategies that the City of Chicago can take in its efforts to reduce smoking among youth, the list is not meant to be an exhaustive account of all possible opportunities for local action.



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The most common theme: A call to action

A total of six letters were received that urged the City to do nothing.¹⁵ During town hall meetings, even fewer numbers of people came to the podium and insisted the City should not engage in any policy making to curb youth consumption of menthol-flavored cigarettes.

Almost everyone who participated in town hall meetings — even retailers and industry representatives — expressed the importance of addressing youth smoking and advocated for doing something. At the time the town hall meetings occurred, the FDA was also deliberating regulatory action, including a potential ban on menthol cigarettes at the federal level. Whether or not menthol cigarettes should be taken off the market was the most divisive topic discussed. Yet, even those who expressed opposition to banning menthol-flavored cigarettes generally agreed the City of Chicago should take some local action to restrict youth access to menthol cigarettes.

RESEARCH AND STATISTICS: MAKING THE CASE FOR ACTION

To aid the Board of Health and policy makers in their deliberations, a review of the literature was conducted, with special attention being given to the unique public health threat caused by menthol-flavored cigarettes and how these products impact youth and communities of color. What follows is a summary of existing literature.

Menthol-flavored cigarettes are known to be a “starter” product for youth who begin smoking and have likely slowed efforts to reduce youth smoking.

Menthol-flavored cigarettes may increase the harm of smoking and are a threat to public health.

Menthol-flavored cigarettes are known to be a “starter” product for youth who begin smoking.^{16, 17, 18} Moreover, a study published earlier this year found that mentholated cigarettes, including emerging varieties of established youth brands, have likely slowed efforts to reduce youth smoking.

Derived from the peppermint plant, menthol provides a minty flavor and cooling sensation that covers up the tobacco taste and reduces the throat irritation associated with smoking, particularly among first-time users. The anesthetic cooling effect of menthol facilitates initiation and early persistence of smoking by youth.¹⁹ Menthol

15. All six letters urging no action appear to be part of a just one coordinated letter writing campaign, with all six letters providing nearly identical information and all of them with a postmark that reads “S SUBURBAN IL 604 | 13 SEP 2013 PM.”
16. Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (2009). *The NSDUH Report: Use of Menthol Cigarettes*, Nov. 19, 2009, available at: <http://oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.
17. Hershey, J. et al. (2006). Are Menthol Cigarettes a Starter Product for Youth?. *Nicotine & Tobacco Res.* 8(3), 403-13.
18. Wackowski, O. & Delnevo, C.(2007). Menthol Cigarettes and Indicators of Tobacco Dependence Among Adolescents, *Addictive Behav.* 1964, 1964-69.
19. Hershey J, et al. (2006). Are Menthol Cigarettes a Starter Product for Youth?. *Nicotine & Tobacco Res.* 8(3), 403-13.

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A new FDA report confirms menthol-flavored cigarettes are more addictive and harder to quit.

may also inhibit the metabolism of nicotine, resulting in higher rates of addiction.²⁰ Through suppression of respiratory irritation, menthol may facilitate smoke inhalation and promote nicotine addiction and smoking-related morbidities.²¹

Menthol cigarettes are more addictive and harder to quit.

Among adult menthol users, menthol cigarette use (vs. non-menthol) is associated with both a lower likelihood of making a quitting attempt and higher relapse rates.²² In addition, menthol smokers exhibit higher physical nicotine dependence and smoking urge, despite smoking the same number of cigarettes as non-menthol users.²³ Though these findings have been known in the public health sphere for a few years, the FDA's 2013 report reaffirmed these findings through TPSAC's report and a compilation of other studies. The report found that menthol in cigarettes is likely associated with increased smoking initiation and greater addiction. The FDA also stated that "menthol smokers show greater signs of nicotine dependence and are less likely to successfully quit smoking."²⁴

The tobacco industry specifically targets mentholated products to youth and minority communities.

Publicly available tobacco industry documents provide evidence of these products being targeted aggressively toward the African American community.²⁵ Before cigarette billboards were outlawed in 1998, there were more than twice as many cigarette billboards in predominately African American neighborhoods than in predominately Caucasian neighborhoods.²⁶ Today, the industry strategically focuses efforts within minority communities using population-specific branding, marketing, and strategic point-of-sale promotions.²⁷ For example, almost two-thirds of the cigarette ads in African American publications are for menthol cigarettes.²⁸

20. Brody, A.L., et al. (2012). Up-regulation of nicotinic acetylcholine receptors in menthol cigarette smokers. *The international journal of neuropsychopharmacology/official scientific journal of the Collegium Internationale Neuropsychopharmacologicum (CINP)*, 1-10.
21. Willis, D.N., et al. (2011). Menthol attenuates respiratory irritation responses to multiple cigarette smoke irritants. *The FASEB Journal*, 25(12), 4434-4444.
22. Foulds, J., et al. (2010). Do smokers of menthol cigarettes find it harder to quit smoking? *Nicotine & Tobacco Research*, 12(suppl 2): p. S102-S109.
23. Ahijevych, K. & Ford, J. (2010). The relationships between menthol cigarette preference and state tobacco control policies on smoking behaviors of young adult smokers in the 2006-07 Tobacco Use Supplements to the Current Population Surveys (TUS CPS). *Addiction*, 105(s1), 46-54.
24. U.S. Food and Drug Administration, Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes, July 23, 2013.
25. U.S. Food and Drug Administration. (2003). Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes. Retrieved from <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.
26. Gardiner, P.S. (2004). The African Americanization of menthol cigarette use in the United States. *Nicotine & Tobacco Research* 6(Suppl 1), S55-S65.
27. Moreland-Russell S, Harris J, Snider D, Walsh H, Cyr J, Barnoya J. (2013). Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies. *International Journal of Environmental Research and Public Health*, 10(10), 4571-4583.
28. Gardiner, P.S. (2004). The African Americanization of menthol cigarette use in the United States. *Nicotine & Tobacco Research*, 6 (Suppl 1), S55-S65.



Companies that sell menthol cigarettes have a well-documented history of developing and marketing menthol-flavored brands to racial and ethnic minorities, especially youth.^{29, 30, 31, 32, 33} There is evidence of the continued advertisement of menthol products to youth.³⁴ Researchers at the Harvard School of Public Health found the tobacco industry employed “a deliberate strategy to recruit and addict young smokers by adjusting menthol to create a milder experience for the first-time smoker.”³⁵ A recent study also reveals that the tobacco industry engages in predatory targeting of African American youth by increasing promotions for Newport cigarettes by as much as 42% in areas surrounding high schools with predominantly African American students.³⁶ This research also reveals that the industry lowers their prices for menthol-flavored cigarettes near schools where African American students attend. Not surprisingly, the most popular tobacco product among youth is “Menthol Crush.”³⁷

The successful model of predatory marketing of African American youth has been expanded to include Asian and Pacific Islander Americans, and women.

Youth and minority populations are more likely to use menthol cigarettes.

Menthol contributes to the appeal and addiction potential of smoking in youth. It has an anesthetic effect and by reducing the harshness of tobacco smoke, menthol facilitates initiation and early persistence of smoking by youth. The National Survey on Drug Use and Health found that 47.7% of all adolescent smokers smoke menthol cigarettes. In fact, kids aged 12 to 17 smoke menthols at a higher rate than any other age group.⁴²

More than 72% of Black adolescent smokers and about 48% of Hispanic and 52% of Asian-American adolescent smokers use menthol cigarettes,⁴³ while only 41% of White adolescent smokers use menthol.⁴⁴ Of adolescent LGBT smokers, 71% smoke menthols.⁴⁵

29. *United States v. Philip Morris*, 449 F. Supp. 2d 1, 71 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C. Cir. 2009).
30. Yerger V, et al. (2007). Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities. *Journal of Health Care for the Poor & Underserved* 18(4), 10-38.
31. Henriksen, L., et al. (2012). Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine & Tobacco Research*, 14(1): p. 116-121.
32. Iglesias-Rios, L., Parascandola, M. (2013). A Historical Review of RJ Reynolds' Strategies for Marketing Tobacco to Hispanics in the United States. *American Journal of Public Health*, 103(5), 15-27.
33. Dauphinee, A.L., et al. (2013). Racial differences in cigarette brand recognition and impact on youth smoking. *BMC Public Health*, 13(170).
34. Villanti, A.C., Richardson, A., Vallone, DM., Rath, JM. (2013). Flavored Tobacco Product Use Among US Young Adults. *American Journal of Preventive Medicine*, 44(4), 388-391.
35. Kreslake et al. (2008). Tobacco Industry Control of Menthol in Cigarettes and Targeting of Adolescents and Young Adults. 98 *American Journal of Public Health* 1685, 1685-1692.
36. Henriksen L, et al. (2012). Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine & Tobacco Research*. 14(1), 116-121.
37. Series, R. (2010). Menthol Capsules in Cigarette Filters—Increasing the Attractiveness of a Harmful Product.
38. U.S. Department of Health and Human Services. (2003). The first conference on Menthol Cigarettes Executive Summary. Retrieved from http://dcccps.nci.nih.gov/terb/MentholExecSumRprt4_10-16.pdf
39. Hersey, J.C., J.M. Nonnemaker, & Homs, G. (2010). Menthol cigarettes contribute to the appeal and addiction potential of smoking for youth. *Nicotine & Tobacco Research*, 12(suppl 2), S136-S146.
40. Hersey, J.C., et al. (2006). Are menthol cigarettes a starter product for youth? *Nicotine & Tobacco Research*, 8(3), 403-413.
41. Respiratory Health Association. (2013). Respiratory Health Association Stands with Mayor, Board of Health and Health Department taking on Youth Menthol Cigarette Use. Retrieved from http://www.lungchicago.org/site/files/487/86039/310207/666966/07-25-2013_Respiratory_Health_Association_menthol_.
42. Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (2009). Use of Menthol Cigarettes. The NSDUH Report. Retrieved from <http://oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.
43. Caraballo, R.S., Asman, K. (2011). Epidemiology of menthol cigarette use in the United States. *Tob Induc Dis*, 9(Suppl 1), S1.
44. Tobacco Control Legal Consortium. (2013). Public Health Leaders Petition the FDA to Act on Menthol, Citizen Petition Highlights. Retrieved from <http://publichealthlawcenter.org/sites/default/files/tclc-highlights-fdcitizenpetition-menthol-2013.pdf>
45. Cubbin, C., Soobader, M-J., & LeClere, F. B. (2010). The intersection of gender and race/ethnicity in smoking behaviors among menthol and non-menthol smokers in the United States. *Addiction*, 105(s1) 32–38.



The tobacco industry engages in predatory targeting of minorities, especially African American youth.

Among adults, menthol-flavored cigarettes are also disproportionately used by women, racial minorities, the LGBT community, and people of low socio-economic status.⁴⁶ For example, more than 80% of African American smokers smoke a mentholated brand.⁴⁷

Restrictions on menthol-flavored cigarettes would be supported among many people in minority communities.

Whether or not menthol cigarettes should be “banned” was the most controversial topic discussed at the town hall meetings. However, even those who testified during town hall meetings that they were opposed to a ban usually indicated they were in favor some other policy change to restrict youth access to menthol cigarettes. Across the board, everyone supported coupling any policy change that might occur with complimentary public education campaigns and expanded cessation resources.

Although we are unable to generalize commentary given during town hall meetings to the general public, a national survey of menthol smokers is illustrative. When asked how they might respond to a federal ban on menthol cigarettes, 40% of current menthol smokers said they would stop smoking, 12.5% would switch to a non-menthol brand, and 25.2% would both switch and try to quit. Another opinion poll found that 28.2% of adults opposed, 20.0% supported, and 51.9% lacked a strong opinion about a menthol ban. It also found that support for a ban was highest among Hispanics (36.4%), African Americans (29.0%), non-smokers (26.8%), and participants with less than a high school education (28.8%).⁴⁸

Because support for a menthol ban is strongest among populations with the highest prevalence of menthol cigarette use, a ban could motivate many menthol smokers to quit.

Support for regulating menthol-flavored cigarettes is highest among populations with the highest prevalence of menthol use.

46. Cubbin C, Soobader M-J, & LeClere FB. (2010). The intersection of gender and race/ethnicity in smoking behaviors among menthol and non-menthol smokers in the United States. *Addiction*, 105(s1) 32–38.
47. Gundersen, D.A., C.D. Delnevo, & O. Wackowski. (2009). Exploring the relationship between race/ethnicity, menthol smoking, and cessation, in a nationally representative sample of adults. *Preventive medicine*, 49(6), 553-557.
48. Pearson, J.L., et al. (2012). A Ban on Menthol Cigarettes: Impact on Public Opinion and Smokers' Intention to Quit. *American Journal of Public Health*, 102(11), e107-e114.



POLICY ANALYSIS: RATIONALE FOR POLICY MAKING

After reviewing the literature and written comments submitted by residents and content experts, as well as oral testimony provided during town hall meetings, staff of the Chicago Department of Public Health, Office of Policy and Planning, conducted a policy analysis of several contemporary issues related to the regulation of flavored tobacco products. The pages that follow summarize their conclusions and provide a strong rationale for policy making.

Regulation of menthol cigarettes is both a critical public health issue and an important social justice issue.

Regulation of menthol-flavored cigarettes is not only a critical public health issue — it is also a social justice issue. Menthol-flavored cigarettes are disproportionately used by populations such as young people, women, racial minorities, the LGBT community and people of low socio-economic status.⁴⁹

Scientists have documented ethnic differences in smoking behavior, and evidence is emerging that suggests that health disparities can be linked to rates of menthol-flavored cigarette use.^{50, 51, 52} At the federal level, a menthol ban could prevent up to 600,000 smoking-related deaths by 2050, a third of these from the African American community.⁵³

It is socially unjust to allow a flavored tobacco product, that is aggressively targeted to minority children, to remain largely unregulated years after all other flavored cigarettes were removed from the market.

We know the populations aggressively targeted by the tobacco industry are less likely to have health insurance; less likely to see a doctor; less likely to receive a medical intervention; and even if they are insured, they are less likely to have coverage for tobacco cessation products — all of which makes them more attractive target markets because they are more likely to be life-long customers.

Regulating menthol-flavored cigarettes is essential for protecting the health of all of our children, and especially minority children. It is socially unjust to allow menthol-flavored cigarettes, which are aggressively targeted to minority communities, to remain largely unregulated years after all other flavored cigarettes were removed from the market.

49. Cubbin C, Soobader M-J, & LeClere FB. (2010). The intersection of gender and race/ethnicity in smoking behaviors among menthol and non-menthol smokers in the United States. *Addiction*, 105(s1) 32–38.
50. See, e.g., Gandhi KK, Foulds J, Steinberg MB, Lu SE, & Williams JM. (2009). Lower quit rates among African American and Latino menthol cigarette smokers at a tobacco treatment clinic. *Int J Clin Pract*. 63(3), 360-7.
51. See, also, Murphy AB, Akereyeni F, Nyame YA, Guy MC, Martin IK, Hollowell CM, Walker K, Kittles RA, & Ahaghotu C. (2013). Smoking and prostate cancer in a multi-ethnic cohort. *Prostate*. 73(14), 1518-28.
52. Gardiner, P.S. (2004). The African Americanization of menthol cigarette use in the United States. *Nicotine & Tobacco Research* 6(Suppl 1), S55-S65
53. Legacy Foundation (2012). *Legacy Foundation Annual Report*.



The City should regulate menthol cigarettes and other flavored tobacco products.

Many flavored tobacco products — such as smokeless tobacco, flavored cigars, little cigars, hookah tobacco, dissolvable tobacco products, and menthol-flavored cigarettes — are not included in the existing ban on candy, fruit, spice or other characterizing flavors.

Flavored tobacco products — including menthol-flavored cigarettes — are a proven tobacco industry tactic to hook kids.

As far as youth “starter” products go, menthol is the biggest culprit. But our focus cannot be singularly on menthol. Regulating and/or banning menthols is not a silver bullet. Creating candy- and fruit-flavored tobacco products is a proven industry tactic to hook kids on tobacco products. In 2009, after candy-flavored cigarettes were removed from the market, the tobacco industry immediately created candy- and fruit-flavored cigarillos and cigars, as well as e-cigarettes that now come in flavors like gummy bear, cotton candy, bubble gum, Atomic Fireball, cherry cola, cherry limeade, caramel candy, and orange cream soda.

The tobacco industry is constantly evolving. Products such as cigars, little cigars, e-cigarettes, hookah and pipe tobacco are the next generation of tobacco products used to target kids. Without regulation, the tobacco industry is free to operate un-checked when it comes to the marketing and manufacturing of these dangerous and addictive products.

The City of Chicago has the legal authority to regulate menthol-flavored cigarettes and other flavored tobacco products.

Providence, Rhode Island, and the City of New York were both sued by tobacco companies for passing laws restricting the sale of flavored tobacco products in their communities.

During town hall meetings, the Chicago Board of Health heard comments that implied the City of Chicago might be sued if it sought to restrict the sale of flavored tobacco. Moreover, the National Association of Tobacco Outlets put very similar comments in writing, specifically citing the lawsuit they filed against Providence, Rhode Island. (This and all other written testimony and letters received by the Board of Health are attached in the Appendix.)

The U.S. Court of Appeals for the First Circuit and Second Circuit have upheld local ordinances that regulate the sale of flavored tobacco products.

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In its comment, the National Association of Tobacco Retailers recommended the City of Chicago postpone any decision until the Rhode Island case is resolved. Fortunately, waiting is not needed.

In a major victory for public health, the U.S. Court of Appeals for the First Circuit (Providence)⁵⁴ and Second Circuit (New York)⁵⁵ has affirmed lower court rulings upholding the legality of ordinances that restricted the sale of flavored tobacco products. Taken together, these decisions reaffirm the historical power of state and local governments to enact laws restricting the sale and distribution of tobacco products and to adopt restrictions that are more stringent than those contained in federal law.

Of course, case law from the First and Second Circuits is not legally binding authority in Illinois. However, our federal circuit court — the Seventh Circuit — would likely find these well-reasoned decisions persuasive. If the City of Chicago were to pass ordinances similar to those upheld in New York City and Providence, chances are good that the federal courts in this jurisdiction would reach the same outcome.

Moreover, the Mayor and members of the City Council should know the Chicago Department of Public Health, in contemplation of litigation, has conducted comprehensive legal research on this issue. To maintain the privileged nature of their legal research, documents containing comprehensive legal analysis have not been shared with the Board of Health, nor will they be published publicly.



Local control of “other tobacco products” is needed.

Smokeless tobacco, flavored cigars, little cigars, hookah tobacco, and dissolvable tobacco products, come in many flavors, including menthol, candy, fruit, spice, and other characterizing flavors that appeal to kids. Like menthol-flavored cigarettes, other flavored tobacco products serve as a “starter” product for teenagers because they are easier to smoke and a less expensive alternative to cigarettes.

White Owl blunts and cigarillos come in a variety of flavors including grape, strawberry, wild apple, pineapple, peach, and watermelon. Phillie Sugarillo

54. National Association of Tobacco Outlets v. City of Providence, No. 13-1053 (1st Cir. Sept. 30, 2013).

55. U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428 (2d Cir. 2013).





Cigarillos are advertised with the tagline, “when sweet isn’t enough.” Swisher Sweets flavors include kid-friendly flavors like peach, strawberry, tropical fusion, chocolate, grape, and blueberry. Not surprisingly, flavored cigars are more popular among youth than adults.

Fantasia Shisha Tobacco encourages their customers to be a “Trendsettah” with “DA Bomb Blueberry.” “Pinkberry” cigars come in bright pink wrapping that is shockingly similar in color and flare to the Barbie™ PinkBerry and other accessories and playsets for young girls.

With colorful packaging and sweet flavors, these products are often hard to distinguish from the candy displays which they are frequently placed near in retail outlets. These products are often sold individually or in 2-packs, increasing their affordability and appeal to children.

With colorful packaging and sweet flavors, these products are often hard to distinguish from candy. Menthol cigarettes and other kid-friendly tobacco products are leading youth to a lifetime of addiction.

At less than \$1.00 a piece, some flavored cigars are accessible to even the youngest smokers and are an impulse purchase for many consumers. Moreover, these dangerous and addictive products cost less than a candy bar or an ice cream cone.

In Illinois, other flavored tobacco products are especially cheap because they are not taxed like cigarettes, which enhances the appeal of these products with kids because children are the most price-sensitive consumers. Currently, Illinois law preempts cities and towns from closing the loophole that allows children to buy inexpensive tobacco products. Repealing this state-level preemption would give cities and towns the ability to craft local solutions to this on-going problem. For example, Chicago could tackle problems it has with youth consumption of little cigars while jurisdictions that have a problem with youth consumption of smokeless tobacco could craft local policy solutions that make sense for them.



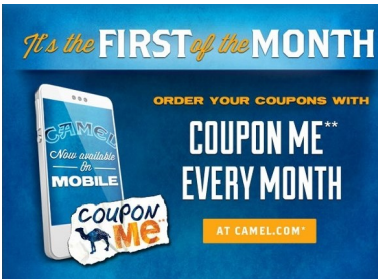
The City should restrict coupons and store discounts.

The most powerful intervention to reduce youth smoking is raising the price of tobacco; adolescents and young adults are two to three times more price sensitive than adults. However, price-subsidizing promotions, especially coupons, have effectively neutralized the impact of price increases for this price-sensitive segment of the population.⁵⁶ Prohibiting couponing for tobacco products discourages youth from experimenting with their use.⁵⁷



Prohibiting discounts is proven to discourage youth from experimenting with tobacco. A smoker who receives coupons is 84% less likely to kick the habit.

Research shows that tobacco companies target women, young people, and heavy smokers with coupons. Nearly half of smokers report receiving coupons, ensuring that they continue to purchase and stay addicted to the products. Eighty percent (80%) of those who receive coupons use them, making them 84% less likely to quit smoking.⁵⁸



Other states, counties, and cities have banned sampling and coupon distribution in public, near a school, or to a minor. In an effort to protect children against the harmful effects of tobacco, Providence, Rhode Island, adopted an ordinance aimed at protecting children from store discounts and promotions.⁵⁹ In a major victory for public health, on September 30, 2013, a three-judge panel of the First Circuit Court of Appeals unanimously upheld Providence's pricing ordinance, which prohibits retailers from using coupons and certain multi-pack discounts to lower the price of tobacco products.

This summer, RJ Reynolds began circulating coupons: "\$1 for any pack" — more than a 90% discount. Chicagoans who redeemed the coupons report receiving coupons and promotions at least weekly.

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The threat of a black market cannot justify inaction.

The underground trade of any dangerous and addictive product — whether it be heroin or tobacco — is always a serious concern. Yet, the threat of a black market cannot justify inaction.⁶⁰

There is very little evidence to support tobacco industry claims that restricting the sale of menthol-flavored cigarettes would lead to a massive expansion of the underground trade for cigarettes.^{61, 62}

In contrast, there is ample evidence that Big Tobacco companies already profit from the existence of a multi-billion dollar underground cigarette trade.^{63, 64, 65, 66, 67} Academic research on smuggling overseas demonstrates the tobacco industry likely plays a strong role in determining whether or not such a black market arises.^{68, 69, 70,}⁷¹ Moreover, menthol-flavored cigarettes are produced almost exclusively in the United States, which means the only current supplier for a so-called “black market” would be the very companies who are sounding the alarms about smuggling in an effort to avoid regulation.

Official statements, made on the record by Big Tobacco companies, unapologetically confirm that the industry is uninterested in ensuring retailers are not evading taxes by selling illegal cigarettes.⁷² In 2008, the Republican staff of the House Committee on Homeland Security issued a report that confirmed that black market sale of tobacco products boosts the bottom line of Big Tobacco companies.⁷³

Implementation of a track and trace system, coupled with additional enforcement efforts, is the proper way to deal with the underground cigarette trade.

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When Mayor Emanuel served in Congress, he strongly supported the *Family Smoking Prevention and Tobacco Control Act*, which calls for a national track-and-trace system.

The industry's potential involvement with black market sales suggests that national track-and-trace regulations would immediately disrupt the illicit trade, trafficking, and counterfeiting of cigarettes.⁷⁴ Moreover, anti-smuggling measures to control the supply chain have been successful in Italy, Spain, and the United Kingdom.⁷⁵

Implementation of a track and trace system — coupled with additional enforcement efforts, increased penalties for smugglers, and strict record keeping requirements — is the proper way to deal with any concerns regarding a black market.

A track-and-trace system would cause immediate disruption to the illicit trade, trafficking and counterfeiting of cigarettes and reduce youth smoking.

When Mayor Emanuel served in Congress, recognizing that Big Tobacco companies had little interest in ensuring their cigarettes are not smuggled, he strongly supported the *Family Smoking Prevention and Tobacco Control Act of 2009*, which President Obama signed into law. Among other things, the *Tobacco Control Act of 2009* mandates that the FDA implement a national track-and-trace system to monitor the manufacture and flow of tobacco products from production through distribution to retail outlets.

Tracking and tracing is the capacity to track goods from the point of manufacture through each stage in the supply chain to the ultimate point of retail sale, as well as the capacity to trace back those goods to identify points along the chain where the goods changed hands. In the context of cigarettes, for example, it would consist of a mandate that each pack of cigarettes bear a unique counterfeit-resistant identifying code that allows its origin to be identified, with links to a secure computer database of required records that permits each pack to be tracked and traced. The technology exists to scan the identifying code at each point along the supply chain to establish a chain of custody for each pack of cigarettes. Such a system would be analogous to tracking and tracing functions already used by various industries, including pharmaceuticals, consumer products, delivery and postal services and airlines. The tobacco products database would be accessible by

A track-and-trace system would immediately disrupt the underground cigarette trade. Most importantly, it would curb youth smoking.

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local, state and federal law enforcement to aid in determining the point at which any illicit products were diverted from the legal into the illegal market.

In the United States, a track-and-trace system would immediately disrupt the black market. A national track-and-trace system would increase much needed tax revenue, which will help the government offset substantial economic and health burdens it bears because of smoking. Most importantly, a national track-and-trace system will decrease smoking among the most price-sensitive consumers — our children.

Expansion of coverage for tobacco cessation medications and treatments is needed.

Health plans that are now available on the Health Insurance Marketplace as part of the Affordable Care Act will have basic coverage for tobacco cessation. The Medicaid Expansion Alternative Benefit Plan is also expected to cover some level of tobacco cessation treatment.⁷⁶ However, to improve quit rates, health insurance plans must be required to cover more intensive treatments. Many studies show that intensive treatments for tobacco use (counseling and medications) are highly effective in clinical settings and double or even triple the likelihood of the individual staying tobacco-free over a long term period.⁷⁷



A win-win! Expanded, comprehensive coverage for tobacco cessation saves money and saves lives.

This strategy is included as one of the tobacco cessation recommendations in the Community Preventive Services Task Force’s *Guide to Community Preventive Services*. The *Community Guide* supports this policy because reducing tobacco users’ costs for tobacco cessation through coverage in their health plan increases access and impact of these interventions.⁷⁸ In addition, the Subcommittee on Cessation of the Interagency Committee on Smoking and Health also included coverage for intensive treatment as one of their recommendations in its “National Action Plan for Tobacco Cessation.”⁷⁹

By covering intensive evidence-based tobacco cessation interventions, both Medicaid and the Marketplace will make strides to impact many vulnerable individuals who previously have not had access to insurance and have higher tobacco usage rates.⁸⁰ In addition, cessation treatments are cost effective, which will save money for the insurance company and government with reduced hospitalizations and chronic disease direct and indirect costs, and will also improve quality of life and life expectancy.⁸¹

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Appendix A

(Written Testimony Submitted at Town Hall Meetings)

Most people who testified during town hall meetings only provided oral testimony. However, some people who testified — usually those representing professional organizations — also provided their comments in writing, too. This appendix contains written commentary received during town hall meetings.

Staff from Chicago Department of Public Health have highlighted key themes and policy options presented.

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Appendix B

(Comments Submitted by U.S. Mail)

Almost all testimony presented to the Chicago Board of Health was received during town hall meetings. However, a handful of people who did not attend the town hall meetings sent comments via U.S. Mail. This appendix contains written commentary received apart from the town hall meetings.

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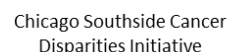
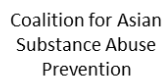
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Collaborating Partners

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*Aldermen James Cappleman
Alderman George Cardenas
Alderman Roberto Maldonado
Alderman Tom Tunney
Representative LaShawn Ford*



Disclaimer

This document summarizes virtually all of the policy ideas heard during town hall meetings. However, the policy analysis and recommendations outlined in this document are policy positions adopted by the Board of Health. Collaborating partners were not asked to officially endorse policy recommendations contained herein. Their support in the planning process and engagement of stakeholders should not be misconstrued to imply an endorsement of any particular policy recommendation contained in this report.

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