



Ways & Means

**New York Model Policy
for Tobacco Retail Licensing**

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Public Health and Tobacco Policy Center

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The Public Health and Tobacco Policy Center is a resource for the New York Department of Health. It is funded by the New York State Department of Health and works with the New York State Tobacco Control Program, the New York Cancer Prevention Program, as well as the programs' contractors and partners to develop and support policy initiatives that will reduce the incidence of cancer and tobacco-related morbidity and mortality.

This work provides educational materials and research support for policy initiatives. The legal information provided does not constitute and cannot be relied upon as legal advice.

Introducing the Model Policy for Tobacco Retail Licensing

With more than 28,000 smoking-related deaths in New York State each year, local New York governments have a strong interest in decreasing the current allure and availability of tobacco products. Tobacco companies profit from ubiquitous availability of their products in the retail environment—its own form of advertising and effective in initiating and continuing tobacco use. The prevalence of tobacco outlets, generally with highly visible tobacco ads and displays, influence community norms. Notably, there are more tobacco outlets in neighborhoods where lower-income groups and youth live. The strong tobacco retail presence in a community is by design: Tobacco companies spend more than 95 percent of their annual marketing budget to shape the retail environment.

New York and federal law empower communities to limit their community's exposure to tobacco products and sales. A local government may regulate the sale of tobacco products through policies that reduce the density of tobacco outlets and restrict sales of flavored tobacco products. These policies may be effectively implemented through a local tobacco retail license. Through this approach, a community requires a local license to sell tobacco products, identifies and limits eligibility for a local license, and restricts tobacco product sales by licensed retailers. The cumulative effect of these policies will reduce the industry's influence and advance health equity.

A local tobacco retail license supports effective local enforcement not only for the conditions tied to the license, but also for other tobacco control and business laws. A tobacco retail licensing system allows a locality to exercise prudent control over tobacco sales in the community, including by identifying and tracking the number of tobacco outlets within the jurisdiction. This information aids enforcement of existing tobacco controls, and can provide a better understanding of the current retail environment (and its potential influence on health behavior).

Licensing tobacco outlets may serve as an end to itself, or extend to additional sales restrictions. Incorporating multiple sales policies into the license requirements can more effectively reduce exposure to tobacco marketing by reducing tobacco outlet density, access to products and price promotions.

In sum, a governing locality may adopt policies to curtail the consuming presence of the tobacco industry. Tobacco retail licensing affords a community increased control over its retail environment, and transfers agency over the community's health from tobacco companies back to the community. A comprehensive tobacco retail license will restrict sales in several ways and have the greatest impact on community health.

The Policy Center is available to provide technical assistance, including policy drafting, to help accomplish the public health goals of individual communities. We may be reached at tobacco@tobaccopolicycenter.org, or visit our website at www.tobaccopolicycenter.org.

Model Policy Components

[Pages 3-9: Comprehensive Model Policy \(Appendix A in Tobacco Retail Licensing: Promoting Health Through Local Sales Regulations\)](#)

The Policy Center has prepared a *New York Model Policy for Comprehensive Tobacco Retail Licensing*. The comprehensive model licensing system imposes restrictions on the sale of tobacco products, along with a mechanism for issuing and enforcing the local requirements. The model limits the number and location of authorized tobacco outlets, as well as the sale of flavored tobacco products.

The comprehensive model policy may be modified to suit a community's objectives. Policy variables (e.g. names, dates, fees, outlet caps, buffer zones, agencies) are offset with bolded, bracketed text that is intended to be replaced with the variable appropriate for the implementing community. Other decision points are flagged throughout the model by the orange icon (shown left), indicating accompanying commentary that will appear in a speech bubble when hovering a cursor over the icon. Note that this function is supported by PDF viewers such as Adobe Acrobat and Google Chrome; when using other Internet browsers, a reader may need to first download the document in order to view the commentary.

[Pages 10-22: Findings of Fact \(Appendix B in Tobacco Retail Licensing: Promoting Health Through Local Sales Regulations\)](#)

The Policy Center has prepared a recitation of legislative findings that support each sales restriction. These findings are separately presented for ease of review, yet may ultimately comprise the first section of a local policy. An implementing jurisdiction may supplement or substitute findings with local data illustrating the public health and safety problem that the model policy addresses, such as the local tobacco retail environment or tobacco use rates.

Please Note:

This model provides guidance on policy language, and is intended for use in consultation with local counsel and a public health attorney. Check our website and contact the Policy Center for the most current legal and policy information, as well as how these impact the policy language.

New York Model Policy for Tobacco Retail Licensing

Regulating tobacco retailer number and location, and prohibiting the sale of flavored products

A LOCAL LAW

To amend the [referenced chapter], in relation to regulating the sale of tobacco products in the [Municipality]

Be it enacted by the [Council/Legislature] as follows:

Section 1. Findings of Fact *[see Page 10]*

§ 2. Definitions. As used in this local law, the following terms shall have the meanings indicated:

ACCESSORY means a product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System; or (2) is intended or reasonably expected to affect or maintain the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System but (a) solely controls moisture and/or temperature of a stored Tobacco Product or Electronic Aerosol Delivery System, or (b) solely provides an external heat source to initiate but not maintain combustion of a Tobacco Product. “Accessory” includes, but is not limited to, carrying cases, lanyards, lighters, and holsters.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

COMMISSIONER means the Commissioner of the Department.

COMPONENT OR PART means software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product’s or Electronic Aerosol Delivery System’s performance, composition, Constituents, or characteristics, or (2) to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System. “Component or Part” excludes a Constituent and an Accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software, rolling papers, and flavorings for Tobacco Products or Electronic Aerosol Delivery Systems, whether they are sold together or separately.

CONSTITUENT means an ingredient, substance, chemical, or compound, other than tobacco, water, reconstituted tobacco sheet, or propylene glycol or vegetable glycerin that is added by the manufacturer to a Covered Product during the processing, manufacture, or packing of the Covered Product.

COVERED PRODUCT means a Tobacco Product, Electronic Aerosol Delivery System, or another product regulated by section 1399-cc of the public health law.

DEPARTMENT means the **[Department of XXX]**.

ELECTRONIC AEROSOL DELIVERY SYSTEM means an electronic device that, when activated, produces an aerosol that may be inhaled, whether or not the aerosol contains nicotine. Electronic Aerosol Delivery System includes a Component or Part but not Accessory, and a liquid or other substance to be aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

EMISSION means a substance, chemical, or compound released or produced during use of a Covered Product. "Emission" includes, but is not limited to, smoke, aerosol, saliva, and sputum.

FLAVORED PRODUCT means a Tobacco Product or an Electronic Aerosol Delivery System containing a Constituent that imparts a Perceptible taste or aroma different from tobacco, or produces an Emission or byproduct that imparts a Perceptible taste or aroma different from tobacco.

A Tobacco Product or Electronic Aerosol Delivery System is presumed to be a Flavored Product if a Tobacco Retailer, manufacturer, or a manufacturer's agent or employee has: (1) made a statement or claim directed to consumers or the public, whether expressed or implied, that the Tobacco Product or Electronic Aerosol Delivery System, or an Emission or byproduct thereof, smells or tastes different from tobacco, or (2) taken action that would be reasonably expected to result in consumers receiving the message that the Tobacco Product or Electronic Aerosol Delivery System, or an Emission or byproduct thereof, smells or tastes different from tobacco. Provided that, however, no Tobacco Product or Electronic Aerosol Delivery System shall be determined to be a Flavored Product solely because of the use of additives or flavorings or the provision of ingredient information.

Flavored Products shall not include tobacco-flavored or flavorless products.

NEW TOBACCO RETAIL LICENSE means a Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERCEPTIBLE means perceivable by the sense of taste or smell.

PERSON means a natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous 12 months.

SCHOOL means a public or independent kindergarten, elementary, middle, junior high, or high school.

TOBACCO PRODUCT means a product made or derived from tobacco or which contains nicotine, marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco Product includes a Component or Part, but not

Accessory. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO RETAIL LICENSE means a license issued pursuant to Section 3 of this local law by the Department to a Person to engage in the retail sale in **[Municipality]** of a Covered Product.

TOBACCO RETAILER means a retailer licensed pursuant to this local law.

YOUTH-CENTERED FACILITY means a School, park, playground, recreation center and **[any other facility frequented by youth]**.

§ 3. Tobacco Retail License Required.

(A) No Person shall sell, offer for sale, or permit the sale of a Covered Product by retail within **[Municipality]** without a valid Tobacco Retail License. A Tobacco Retail License is not required for a wholesale dealer who sells products to retail dealers for the purpose of resale only and does not sell a Covered Product directly to consumers.

(B) Notwithstanding the requirements set forth in **Section 3(A)**, this local law shall not apply to registered organizations pursuant to section 3364 of the public health law.

(C) A Tobacco Retail License issued pursuant to this local law is nontransferable and non-assignable and valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address where a Covered Product is sold or offered for sale. A change in business ownership or business address requires a New Tobacco Retail License.

§ 4. License Application and Application Fee.

(A) An application for a New Tobacco Retail License or a Renewed Tobacco Retail License shall be submitted to the Department in writing upon a form provided by the Department and shall contain information as required by the Department. The Department may require the forms to be signed and verified by the Applicant or an authorized agent thereof.

(B) Each application for a Tobacco Retail License shall be accompanied by a nonrefundable application fee of **[\$ApplicationFeeAmount]**, or as determined by the Commissioner.

(C) Upon the receipt of a completed application for a Tobacco Retail License and the application fee required by **Section 4(B)**, the Department shall inspect the location at which sales of a Covered Product are to be permitted. The Department may ask the Applicant to provide additional information that is reasonably related to the determination of whether a Tobacco Retail License may issue.

§ 5. Issuance of Licenses.

- (A) No Tobacco Retail License shall be issued to a seller of a Covered Product that is not in a fixed, permanent location.
- (B) The issuance of a Tobacco Retail License pursuant to this local law is done in **[Municipality's]** discretion and shall not confer upon licensee any property rights in the continued possession of the license.
- (C) The Department shall collect from the Applicant the Tobacco Retail License fee proscribed in **Section 6(B)** prior to issuing a Tobacco Retail License.
- (D) The Department may refuse to issue a Tobacco Retail License to an Applicant if it finds that one or more of the following bases for denial exists:
- (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
 - (2) The fee for the application has not been paid as required;
 - (3) The Applicant does not possess a valid certificate of registration required by state or federal law for the sale of a Covered Product;
 - (4) The Department has previously revoked a Tobacco Retail License issued under this local law to the Applicant;
 - (5) The Department has previously revoked a Tobacco Retail License issued under this local law for the same address or location;
 - (6) The Applicant has been found by a court of law or administrative body to have violated a federal, state, or local law pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on a Covered Product, (c) the display of a Covered Product or of health warnings pertaining to a Covered Product, or (d) the sale of a Covered Product;
 - (7) The Applicant has not paid to **[Municipality]** outstanding fees, fines, penalties, or other charges owed to **[Municipality]**, including the fee for the Tobacco Retail License required by **Section 6(B)**; or
 - (8) The Department determines, in accordance with written criteria established to further the purposes of this local law, that the Applicant is otherwise not fit to hold a Tobacco Retail License.

§ 6. License Term and Annual Fee.

- (A) A Tobacco Retail License issued pursuant to this local law shall be valid for no more than one year and shall expire on **[Date]**. As set forth in **Section 14**, a Tobacco Retail License may be revoked for cause by the Department prior to its expiration.
- (B) The Department shall charge an annual Tobacco Retail License fee of **[\$LicenseFeeAmt]**.
- (C) The Commissioner may discount the Tobacco Retail License fee required by **Section 6(B)** for an application received within **[10]** months of the expiration date.

(D) Beginning two years from the effective date of this local law, the Department may annually revisit and modify the Tobacco Retail License fee required pursuant to **Section 6(B)**. This fee shall be calculated so as to recover the cost of administration and enforcement of this local law. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

§ 7. License Display.

(A) A Tobacco Retail License issued pursuant to this local law shall be conspicuously displayed at the location where a Covered Product is sold so that it is readily visible to customers.

(B) Selling, offering for sale, or permitting the sale of a Covered Product without a valid Tobacco Retail License displayed in accordance with **Section 7(A)** constitutes a violation of this local law.

§ 8. Number of Issued Licenses.

(A) The Department shall not issue more than **[X]** New Tobacco Retail Licenses within the first year of the effective date of this local law.

(B) For the first year after the effective date of this local law, the Department shall accept an application for a Tobacco Retail License only from:

(1) an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer or vapor products dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this local law; or

(2) an Applicant for a location at which the Applicant exclusively sells non-tobacco shisha (hookah) and was in operation 180 days prior to the effective date of this local law.

(C) Thereafter, whenever the number of valid applications for a New Tobacco Retail License exceeds the maximum number of New Tobacco Retail Licenses that may be issued pursuant to this section, the Department shall grant Tobacco Retail Licenses using the following priorities:

(1) A Tobacco Retail License shall be granted, first, to an Applicant who will sell a Covered Product at an establishment where the operator takes reasonable steps to restrict entry to persons 21 years and older. If there are more valid applications from these Applicants than the number of available New Tobacco Retail Licenses, the New Tobacco Retail License(s) shall be granted to these Applicants by lottery;

(2) A Tobacco Retail License shall be granted, second, to an Applicant located **[1000]** feet or more from an existing Tobacco Retailer. If there are more valid applications from these Applicants than the number of available New Tobacco Retail Licenses, the New Tobacco Retail License(s) shall be granted to these Applicants by lottery;

(3) Any remaining New Tobacco Retail Licenses shall be granted to Applicants by lottery.

(D) Beginning one year from the effective date, the Department shall issue only one New Tobacco Retail License for every two Tobacco Retail Licenses that are not renewed.

§ 9. Retailer Location.

(A) The Department shall not issue a Tobacco Retail License to an Applicant within **[1000 feet]** of the nearest point of the property line of a Youth-Centered Facility.

(B) Beginning one year from the effective date of this local law, the Department shall not issue a New Tobacco Retail License to an Applicant within **[1500 feet]** of the nearest point of the property line of another Tobacco Retailer.

§ 10. Flavored Product Sales.

No Tobacco Retailer shall distribute without charge, sell, offer for sale, or possess with intent to sell a Flavored Product.

§ 11 Violations and Enforcement.

(A) The Department or its authorized designee(s) shall enforce the provisions of this local law. The Department may conduct periodic inspections to ensure compliance with this local law.

(B) In addition to the penalties provided for in **Section 12**, a Person found to be in violation of this local law shall be liable for a civil penalty of not more than **[\$250]** for the first violation, not more than **[\$500]** for the second violation within a two-year period, and **not more than [\$1000]** for the third and each subsequent violation within a two-year period, or as determined by the Commissioner. Each day on which a violation occurs shall be considered a separate and distinct violation

§ 12. Revocation of Licenses.

(A) The Department may suspend or revoke a Tobacco Retail License issued pursuant to this local law for violations of the terms and conditions of this local law or for violation of a federal, state, or local law or regulation pertaining to (a) trafficking a contraband Covered Product or illegal drug, (b) the payment or collection of taxes on a Covered Product, (c) the display of a Covered Product or of health warnings pertaining to a Covered Product, or (d) the sale of a Covered Product.

(B) The Department may revoke a Tobacco Retail License if the Department finds that one or more of the bases for denial of a license under **Section 5** existed at the time application was made or at any time before the license issued.

§ 13. Rules and Regulations.

The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this local law.

§ 14. Severability.

The provisions of this local law are declared to be severable, and if a section of this local law is held to be invalid, the invalidity shall not affect the other provisions of this local law that can be given effect without the invalidated provision.

§ 15. Effective Date.

This local law shall take effect [45] days after filing with the Secretary of State as required by section 27 of the municipal home rule law.

New York Model Policy for Tobacco Retail Licensing: Findings of Fact

Section 1: Findings

The **[Common Council]** of **[City]** hereby finds and declares that:

Tobacco use causes death and disease and continues to be an urgent public health challenge:

- Tobacco-related illness is the leading cause of preventable death in the United States,¹ accounting for about 480,000 deaths each year;²
- Each day in the United States, more than 3,200 youth smoke their first cigarette, and another 2,100 youth and young adults become daily smokers;³
- Smoking kills about 28,000 New York adults each year;⁴
- Tobacco use can cause chronic disease, such as lung, heart, and eye disease; diabetes, stroke, ectopic pregnancy, arthritis, infertility; and leukemia and cancers of the lungs, larynx, colon, liver, esophagus, pancreas, kidney, cervix, bladder, stomach, mouth;⁵
- About 750,000 New York adults live with serious smoking-caused illness and disability;⁶
- While smoking rates have declined steadily in New York, there are persistent disparities that reveal higher tobacco use among those of lower socioeconomic (low-SES) status;⁷
- Tobacco-related health care annually costs New Yorkers \$10.4 billion, including \$3.3 billion in Medicaid expenses.⁸

Tobacco companies sell and aggressively market products that are addictive and unreasonably dangerous,⁹ causing cancer, heart disease, and other serious illnesses:¹⁰

- Cigarettes are designed and manufactured to be addictive, such that smoking initiation leads to dependence and difficulty quitting;¹¹
- Cigarette and smokeless tobacco manufacturers spent a combined \$9.36 billion marketing their products in 2017;¹²
- Tobacco marketing is a cause of youth smoking initiation;¹³
- Retail marketing may contribute to socioeconomic and racial disparities in tobacco use.¹⁴

Tobacco product marketing causes youth initiation¹⁵ and thwarts cessation attempts by the majority of users who want to quit:

- Youth frequently exposed to retail tobacco promotions are 1.6 times more likely to try smoking and 1.3 times more likely to be susceptible to smoking in the future;¹⁶
- The odds of beginning to smoke may double for teens who visit a store with retail tobacco advertising at least twice per week;¹⁷
- Tobacco product displays and other retail marketing trigger impulse purchases both among current smokers and recent quitters (those trying to avoid use).¹⁸

Tobacco use is a pediatric epidemic:

- An overwhelming majority of Americans who use tobacco products begin use during adolescence and become addicted to the product before reaching the age of 18;¹⁹
- The average age of a new smoker in New York State is 13 years;²⁰
- E-cigarette use among high schoolers in New York is rapidly increasing, and is far more prevalent than cigarette use;²¹
- Nearly 1 in 10 adolescents in New York State use tobacco products other than cigarettes or e-cigarettes;²²

- 37 percent of high school seniors in 2018 nationwide reported using an e-cigarette in the past year,²³ and the U.S. Surgeon General and U.S Food and Drug Administration (FDA) have identified youth e-cigarette use as an epidemic;
- The rise in vapor product use by high school students from 2017 to 2018 represents an unprecedented spike in youth use of any monitored substance or drug.²⁴

E-cigarettes may contribute to youth smoking and reduce cessation success:

- Nicotine-containing e-cigarettes are the most common nicotine products used by students, and 3.6 million middle and high school students reported using them in 2018;²⁵
- Nicotine is a highly addictive drug, and interferes with adolescent brain development;²⁶
- Youth nicotine addiction can develop at low levels of exposure, well before established daily smoking;²⁷
- Adolescents are particularly susceptible to the “rewarding” effects of nicotine.²⁸ Evidence shows the younger the age of nicotine initiation, the greater the risk of addiction, heavy daily smoking, and difficulty quitting, and also of developing other health problems;²⁹
- Youth use of e-cigarettes is associated with future cigarette use;³⁰
- E-cigarette companies aggressively and successfully market their products to youth, using tactics now unavailable to cigarette companies precisely because they were found to recruit youth;³¹
- Adults who might otherwise quit smoking combustible cigarettes instead dually use e-cigarettes and cigarettes;³²
- E-cigarettes are often marketed for use in places where traditional smoking is prohibited, facilitating continued addiction;³³
- E-cigarettes are not approved by the FDA as smoking cessation aids;³⁴
- In fact, the FDA extended its regulatory authority over e-cigarettes in part because of the health risks of adolescent nicotine exposure and the agency’s concern that youth are initiating tobacco use with e-cigarettes.³⁵

E-cigarettes and similar devices pose health hazards and renormalize tobacco use, regardless of nicotine content:

- E-cigarettes and similar devices contain or produce chemicals other than nicotine known to be toxic, carcinogenic, and causative of respiratory and heart distress;³⁶
- E-cigarettes can be filled with substances other than nicotine; no matter their constituents, their use renormalizes tobacco addiction and use of tobacco products;
- Normalization undermines tobacco control efforts and may contribute to smoking initiation and reduced cessation;
- E-cigarette manufacturers currently enjoy minimal oversight and some products labeled as “nicotine-free” contain nicotine.³⁷

Hookah is not a safe alternative to cigarette smoking:

- Hookah smokers are exposed to doses of nicotine sufficient to cause addiction;³⁸
- A one-hour hookah use session generates secondhand smoke that contains carcinogens and toxicants equal to the amount generated by 2-10 cigarette smokers during the same period;³⁹
- Charcoal used to heat shisha releases carbon monoxide and other toxic agents known to increase the risks for cancer and chronic diseases;⁴⁰
- Infectious disease can be spread if the hookah is not cleaned properly.

Tobacco products are highly addictive and inherently toxic and should not be treated as a benign consumer product, readily available in every store;⁴¹

- Reducing the density of retail outlets reduces exposure to tobacco marketing, and helps to de-normalize both the purchase and sale of tobacco products;
- Higher tobacco retail density increases the susceptibility of young people to future tobacco use;⁴²
- Restricting the number of tobacco retailers in **[City]** will reduce tobacco outlet density and is necessary for the public health, safety, and welfare of our residents;⁴³
- Restricting the location of tobacco retailers will reduce density and exposure to sales in **[City]** and is necessary to protect the public health, safety, and welfare of our youth;⁴⁴
- Tobacco retailers are concentrated near schools and other areas with more youth;⁴⁵
- Studies have found a higher prevalence of current smoking among students at schools near tobacco outlets, and researchers suggest that limiting the proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates;⁴⁶
- Nearly 75 percent of New York retailers were located within 1,000 feet of an elementary or secondary school in 2016;⁴⁷
- In addition to decreasing access to tobacco products, the absence of tobacco retailers in areas children frequent may help prevent young people from picking up on “environmental cues” to start smoking sent by an abundance of retail outlets that offer access to tobacco and exposure to tobacco marketing.⁴⁸

Tobacco sales and marketing are concentrated in low-SES and minority neighborhoods:

- Low-SES youth are twice as likely as their more affluent counterparts to live within walking distance of a tobacco retailer⁴⁹ and are at higher risk of starting to smoke;⁵⁰
- There is a higher density of tobacco outlets in communities with lower income and higher proportions of ethnic/racial minorities than in more affluent, white communities,⁵¹ even when accounting for population density, and in both urban and rural communities;⁵²
- Retailers located in minority and low-income neighborhoods display substantially more storefront advertising and offer more price promotions compared with retailers located in more affluent, non-minority neighborhoods;⁵³
- Two to three times more cigarette advertisements, particularly those for menthol products, are found in minority and low-SES communities than in more affluent, non-minority communities;⁵⁴
- Stores located in low-income, predominantly Black neighborhoods receive more discount incentives from tobacco manufacturers than those in other communities.⁵⁵

Flavors appeal to youth and drive youth tobacco experimentation with tobacco products:

- Flavors mask the harsh taste of tobacco, making flavored products easier to use;
- Beyond improving palatability, characterizing flavors provide an avenue for youth marketing;⁵⁶
- Youth tobacco users typically begin with flavored products and, overall, use flavored products at higher rates than their older peers;⁵⁷
- The majority of youth who use tobacco choose flavored tobacco products;⁵⁸
- 81 percent of youth who have tried a tobacco product report their first product was flavored;⁵⁹
- Flavored tobacco products promote youth tobacco initiation and drive young occasional smokers to daily smoking.

Menthol drives lifelong tobacco use and tobacco-attributable health disparities:⁶⁰

- Menthol products are more addictive,⁶¹ and both youth and racial/ethnic minorities find it harder to quit smoking menthol cigarettes;⁶²
- More than half of youth who use cigarettes use mentholated cigarettes;⁶³
- Racial/ethnic minorities, LGBT groups, groups with severe psychological distress and/or substance abuse disorders, and groups with fewer years of education and lower income use menthol products at far higher rates;⁶⁴
- In recognition of predatory Tobacco Industry marketing practices, in 2016 the NAACP adopted a unanimous resolution supporting state and local efforts to restrict the sale of menthol cigarettes and other flavored tobacco products.⁶⁵

Non-menthol flavors drive lifelong tobacco use, across product categories:

- Flavorants seem to likewise facilitate maintenance of non-cigarette tobacco product use (impeding cessation by making products more appealing);⁶⁶
- Flavorants mask the harsh taste of tobacco and e-cigarette liquid solvents and facilitate deeper inhalation, longer duration of use and more frequent use, and thereby, increased nicotine dependence, across product categories.⁶⁷

Flavors themselves may be hazardous to human health, and consumers incorrectly perceive flavored tobacco products to be less harmful:

- Sweet and fruit flavor compounds found in e-cigarettes induce oxidative stress and inflammatory responses in lung cells;⁶⁸
- The FDA evaluates only the health risks of ingesting flavor compounds, and not risks of inhaling them, which is how exposure occurs with e-cigarette use;⁶⁹
- Flavoring compounds appear to be the primary toxicants within e-cigarettes.⁷⁰
- The presence of characterizing flavors signals product palatability, which is incorrectly associated with lower relative harm, influencing consumer brand preference and use;⁷¹
- Adolescents are more likely to believe that fruit and chocolate or other sweet flavors are less harmful than flavors like alcohol, tobacco, and spice flavors;⁷²
- Youth e-cigarette users perceive lower harm from flavored e-cigarettes than from unflavored e-cigarettes despite research documenting harmful constituents present in e-cigarette flavorants.⁷³

[City] has a substantial interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use;⁷⁴

[City] has a substantial and important interest in ensuring that existing state and local tobacco sales regulation is effectively enforced:⁷⁵

- Although it is unlawful to sell tobacco products to minors, more than 4 percent of New York retailers sold to minors between 2015 and 2016;⁷⁶
- A local tobacco retail licensing system will help ensure that tobacco sales comply with the Adolescent Tobacco Use Prevention Act, other tobacco control laws, and the business standards of the **[City]**;⁷⁷
- Licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors.⁷⁸

A local licensing system for retailers of tobacco products, electronic cigarettes, and other products regulated by Article 13-F of New York State Public Health Law is necessary and appropriate for the public health, safety, and welfare of our residents;

It is the intent of the [City] to implement effective measures through this Chapter to stop sales to youth of tobacco products, e-cigarettes, and other products regulated by the New York Adolescent Tobacco Use Prevention Act, prevent the sale or distribution of contraband tobacco products, reduce the proliferation of tobacco outlets and marketing, prohibit the sale of flavored tobacco products, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General, 11 (2014).

² U.S. DEP'T OF HEALTH & HUMAN SERVS., The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General, 678 (2014).

³ U.S. DEP'T OF HEALTH & HUMAN SERVS., The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General, Message from Howard Koh (2014); CTRS FOR DISEASE CONTROL & PREVENTION, Youth and Tobacco Use, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/ (last visited July 23, 2020).

⁴ N. Y. STATE DEP'T OF HEALTH, Information about Tobacco Use, Smoking and Secondhand Smoke, https://www.health.ny.gov/prevention/tobacco_control/ (last visited July 23, 2020).

⁵ U.S. DEP'T OF HEALTH & HUMAN SERVS., The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General, 8-11 (2014).

⁶ N. Y. STATE DEP'T OF HEALTH, Information about Tobacco Use, Smoking and Secondhand Smoke, https://www.health.ny.gov/prevention/tobacco_control/ (last visited July 23, 2020).

⁷ N. Y. STATE DEP'T OF HEALTH, Cigarette Smoking Among New York Adults, 2016, BRFSS Brief, No. 1802 (2019), https://www.health.ny.gov/statistics/brfss/reports/docs/1802_brfss_smoking.pdf.

⁸ N. Y. STATE DEP'T OF HEALTH, Information about Tobacco Use, Smoking and Secondhand Smoke, https://www.health.ny.gov/prevention/tobacco_control/ (last visited Apr 17, 2019).

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