



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Council Meeting

July 25, 2023

CALL TO ORDER

The meeting was called to order by Mayor Supple at 7:00 p.m. in the Council Chambers.

Council Members Present: Mary Supple, Mayor; Sharon Christensen; Simon Trautmann; Sean Hayford Oleary; and Ben Whalen

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; Chris Swanson, Management Analyst; Jennifer Anderson, Support Services Manager; and Dustin Leslie, City Clerk

PLEDGE OF ALLEGIANCE

Mayor Supple led the Pledge of Allegiance.

OPEN FORUM

Mayor Supple reviewed the options to participate:

- Participate live by calling 1-415-655-0001 during the open forum portion
- Call prior to meeting 612-861-9711
- Email prior to meeting kwynn@richfieldmn.gov

City Manager Rodriguez stated she had received five letters of which two of them requested be part of the open forum regarding the proposed ban on flavored tobacco. She indicated three letters from Free Alliance, the African American Tobacco Control Leadership Council, and Children's Minnesota supported the proposed ban. And The National Association of Tobacco Outlets and The National Hookah Community Association were against the ban. She read the National Hookah Community Association's reasons they were against the ban and indicated The National Association of Tobacco Outlets letter would be attached to the Minutes due to its length. All letters received prior to the 7/25 meeting are attached to the minutes.

APPROVAL OF MINUTES

M/Hayford Oleary, S/Christensen to approve the minutes of the: (1) City Council Work Session of July 11, 2023; (2) City Council Meeting of July 11, 2023.

Motion carried: 5-0.

ITEM #1	PROCLAMATION CELEBRATING THE PASSAGE OF THE AMERICANS WITH DISABILITIES ACT
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Mayor Supple invited Tim Garvey from the Richfield Human Rights Commission to accept and read aloud the proclamation.

Mr. Garvey stated the Americans with Disabilities Act was very important and it was right and proper they commemorate this. He indicated laws could only mandate compliance, but to truly accept those with disabilities required a community and Richfield was one of those communities.

ITEM #2	APPROVAL OF THE AGENDA
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M/Whalen, S/Trautmann to approve the agenda.

Motion carried: 5-0.

ITEM #3	CONSENT CALENDAR
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City Manager Rodriguez presented the consent calendar.

- A. Consider an interim ordinance repealing transitory ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products (Staff Report No. 89)

BILL NO. 2023-6

**AN INTERIM ORDINANCE REPEALING TRANSITORY ORDINANCE 19.26,
WHICH AUTHORIZED A STUDY AND IMPOSED A MORATORIUM ON THE SALE OF
EDIBLE CANNABINOID PRODUCTS**

M/Hayford Oleary, S/Christensen to approve the consent calendar.

Motion carried: 5-0.

ITEM #4	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
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None.

ITEM #5	CONSIDER APPROVAL OF THE FIRST READING OF AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES IN THE CITY UNTIL JANUARY 1, 2025, UNLESS REPEALED EARLIER AT AN EARLIER DATE BY THE CITY COUNCIL. (STAFF REPORT NO. 90)
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Council Member Trautmann presented Staff Report 90.

M/Trautmann, S/Christensen to approve the first reading of an Interim Ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City until January 1, 2025, unless repealed earlier at an earlier date by the City Council.

BILL NO. 2023-7

**AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A
MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES WITHIN THE CITY
OF RICHFIELD**

Council Member Whalen believed the intent of this suggestion and the desire of Council was to prevent an unlicensed business from opening before the State office was ready to actually license the businesses. He stated this would have some local enforcement up to a point, but not needlessly extend how long the moratorium lasted. He asked if Council would be open to an automatic repealing at the point either when a license was first received by the Office of Cannabis Management for Richfield, or when it was first issued. He noted that would not take away the City's ability to repeal it at any point, but removing the possibility if the office was up and running by March, there would be an additional nine months they could not have a cannabis business.

Council Member Hayford Oleary stated he supported this moratorium and preferred Council Member Whalen's suggestion that there be some sort of an automatic repeal rather than requiring Council's action. He noted his trigger would be as soon as the Office of Cannabis Management issued a license to anyone in the State that this became repealed.

City Attorney Tietjen clarified the correct verbiage would be an expiration of the moratorium and not an automatic repeal. She indicated it was important to be very specific about what the act was that triggered the automatic expiration.

Council Member Trautmann stated he also supported the automatic expiration of the moratorium as soon as the Office of Cannabis Management was ready.

City Attorney Tietjen stated the City had some options such as upon issuance by the Office of Cannabis Management license to a Richfield business. She noted there were probably other options also, but she would need to think through those.

Council Member Whalen stated he was comfortable with Attorney Tietjen's suggestion.

City Manager Rodriguez noted when the application was received from the Office of Cannabis Management, the City would have time to respond to it.

Mayor Supple indicated this was a first reading and it would come back to Council for a second reading along with a public hearing at the August 8 Council meeting.

Motion carried: 5-0

ITEM #6	CONSIDER THE APPROVAL OF THE FIRST READING OF AN ORDINANCE AMENDING CHAPTER 11, SECTION 1146 OF THE RICHFIELD CITY CODE TO INCLUDE ELIMINATING THE SALE OF FLAVORED PRODUCTS AND CAPPING THE NUMBER OF TOBACCO LICENSES (STAFF REPORT NO. 91)
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Council Member Hayford Oleary presented Staff Report 91.

M/Hayford Oleary, S/Whalen to approve the first reading of an Ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include eliminating the sale of flavored products and capping the number of tobacco licenses.

BILL NO. 2023-8

**AN ORDINANCE MODIFYING SECTION 1146 OF THE RICHFIELD CITY CODE
IN RELATION TO FLAVORED PRODUCTS**

Mayor Supple inquired when the effective date would be. Health Administrator Anderson responded that the businesses would have ample time to sell down their product and they were discussing December 31 as the deadline.

Mayor Supple noted a letter had been read at the Open Forum from the National Hookah Community Association in opposition to this. She asked if staff had any feedback. Administrator Anderson responded she appreciated the cultural sensitivity, but hookah was tobacco which exposed people to addictive chemicals and contains many of the same toxins within cigarettes.

Mayor Supple inquired if there was an estate and the businesses passed down to the children, what happened in that situation. Administrator Anderson responded the license would be revoked, but the business could still be passed down to one generation. She noted tobacco licenses were renewed at the end of the year and Council voted to approve those licenses and family members could be added at that time.

Mayor Supple stated she eventually wanted to limit how many licenses they had but the City was allowing licenses to be passed to one generation. However, she also didn't want to have a situation with an entire family's wealth in a business and the City not licensing them at the last minute. She asked could this be amended later to allow families to pass on one generation. Attorney Tietjen responded the Council could always amend an ordinance at any time. She stated if Council wanted this it could be done for the second reading.

Council Member Trautmann noted he was struggling with them saying this was a public health concern, but they want to continue this on for another generation which seemed at odds with the policy. He also noted the City derived a lot of revenue from this and they had to live with some internal contradictions about how they raised revenue for things sold in the City that had a negative public health consequence. He stated however he would support continuing it for another generation.

Council Member Whalen believed the public health benefit outweighed the single owner or family benefit and he would not support that kind of exemption. He stated the way this was currently written was both actions relating to flavored tobacco and limiting licenses were in the same resolution. He recommended they split them up entirely so they can have two effective dates or writing it in such a way that the limit on licenses could be effective as soon as possible.

Council Member Hayford Oleary agreed with Council Member Trautmann's about the liquor store, but he believed the benefit was greater when they were there for public health first and economic development second in this case. After further thought, he believed it was fine as written do everything on December 31. He indicated he was concerned about the rush for licenses though.

Mayor Supple stated she also supported it as written with a December 31 effective date.

Motion carried: 5-0

ITEM #7	CONSIDER THE APPROVAL OF A RESOLUTION APPROVING 2023 STATE LEGISLATION FOR A LOCAL OPTION SALES TAX IN RICHFIELD (STAFF REPORT NO. 92)
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Council Member Whalen presented Staff Report 92.

M/Whalen, S/Hayford Oleary to approve a Resolution approving 2023 State Legislation for a local option sales tax in Richfield.

RESOLUTION NO. 12111

RESOLUTION APPROVING LAWS OF MINNESOTA 2023, CHAPTER 64, ARTICLE 10, SECTION 44 RELATING TO A LOCAL SALES TAX

Council Member Whalen stated cities around Richfield already had a local sales tax and over half of this local sales tax would be paid by people who lived elsewhere but come into Richfield to use the amenities of the community and he supported this as a way to have visitors to the City pay for the amenities that needed to be kept up.

Council Member Trautmann agreed the majority of the people who would pay this tax would be people outside of Richfield. He noted he did not feel the City was at a competitive advantage to other cities and they were losing an opportunity to get revenue and putting that burden on property tax owners in Richfield. He indicated a lot of the City's infrastructure was built in the 1960's that was getting old and it was to the City's advantage to rebuild and maintain that infrastructure, which would be possible having a local sales tax.

Mayor Supple thanked everyone for their research and work on this.

Motion carried: 5-0.

ITEM #8	CITY MANAGER'S REPORT
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City Manager Rodriguez shared information regarding Ruane Onesirosan questions about document for bond issue the Richfield HRA approved. She explained the process for dating the documents and noted it was common practice for bond attorneys to use the date the first day of the month for these types of documents. She confirmed that all actions required by State law and the Internal Revenue Code relating to the issuance of the bonds were taken.

City Manager Rodriguez indicated Ms. Onesirosan had also inquired about the Council salaries. She detailed what the Mayor and Council Members were being paid along with their participation in the Minnesota Public Employees Retirement Association defined contribution plan, and any payroll taxes the City paid on their behalf.

ITEM #9	CLAIMS AND PAYROLL
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M/Trautmann, S/Whalen that the following claims and payrolls be approved:

<u>U.S. BANK</u>	<u>07/21/2023</u>
A/P Checks: 322608-322890	<u>\$1,707,389.53</u>
Payroll: 180118 – 180493, 43655, 43656, 43657	<u>\$ 557,351.71</u>
TOTAL	<u>\$2,264,741.24</u>

Motion carried: 5-0

ITEM #10	HATS OFF TO HOMETOWN HITS
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Council Member Whalen stated next week was Night to Unite with many block parties planned.

Council Member Christensen gave hats off to the Richfield Symphonic Band for their concert at Veterans Park last week. She noted their next performance would be on August 15 also at Veterans Park.

Council Member Hayford Oleary gave hats off to Will Wlitzlo from the school district who left the school district to work for the State Department of Transportation.

Council Member Trautmann gave a reminder that the Urban Wildlife half marathon was coming up. He encouraged people to attend their Night to Unite events next week.

Mayor Supple stated they reopened the HRA application process through July 30. She gave hats off to the Richfield Leadership Network for their basketball tournament. She noted she was honored to speak with the residents that lived at Main Street Village today. She gave hats off to Representative Michael Howard for being named a League of Minnesota Cities Legislator of Distinction.

ITEM #11	ADJOURNMENT
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M/Trautmann, S/Whalen to adjourn the meeting at 8:06 p.m.

Motion carried: 5-0

Date Approved: August 8, 2023



Dustin Leslie
City Clerk



Mary B. Supple
Mayor



Katie Rodriguez
City Manager



ADVOCATES FOR
BETTER HEALTH

*ABH is dedicated to creating a healthy,
equitable, and thriving state by engaging
physicians and medical students in
community-driven public health
initiatives.*

July 26th, 2023

RE: Please eliminate the sale of flavored tobacco products, and cap tobacco retail licenses in Richfield

Dear Mayor Supple and the Richfield City Council,

I am writing on behalf of Advocates for Better Health, an organization dedicated to creating a healthy, equitable, and thriving state by engaging physicians and medical students in community-driven public health initiatives. Our medical providers share all too often that commercial tobacco is still a matter of huge concern when it comes to the health of their patients. Tobacco use and tobacco-related illnesses are still the number one cause of death in Minnesota—and in the United States as a whole.

Flavored tobacco products, including menthol, mask the harsh taste of tobacco which makes smoking easy to start and harder to quit. Flavored tobacco is incredibly appealing to young tobacco users, especially when over 15,000 flavors exist on the market at any given time. Some products, like menthol tobacco products, are disproportionately marketed to certain communities such as Black communities, youth, women, and LGBTQ. Given the harms of tobacco products, these communities experience health disparities of tobacco-related illnesses at greater rates. Other communities that have fully restricted flavored tobacco, including menthol, are: Edina, Golden Valley, Arden Hills, Lilydale, and Mendota Heights. Richfield would be in good company and a model to other communities by passing a similar restriction.

Eliminating the sale of flavored tobacco and capping retail licenses to four will protect residents and future generations' health and wellbeing from the harms of tobacco. These changes stand to have a huge impact if passed, including on health disparities, community health and wellbeing, and economically. I hope we can work together to achieve this goal. Thank you for your leadership on this important issue.

Sincerely,

Zeke McKinney MD, MHI, MPH

President, Advocates for Better Health



July 24, 2023

Mayor Supple and Members of the Richfield City Council:

The Association for Nonsmokers-MN (ANSR) supports the proposed ordinance to end the sale of all flavored tobacco products including menthol and cap retailer licenses in Richfield.

Since 1973, ANSR has worked to prevent youth tobacco use and reduce health disparities by supporting and helping enact strong public policies like the ones you are considering. We know that the tobacco industry has a long history of targeting youth, communities of color and LGBTQ populations with their products. Tobacco executives admitted to these intentions in emails and industry documents throughout the late 20th century. While the industry may be craftier today, their intentions are still clear. They use flavors like mango, mint and cotton candy to reel in a new generation who become addicted to nicotine.

There will be pressure to exempt menthol from your proposed restriction. We strongly oppose this tobacco industry ploy. Menthol makes it easier to start and harder to quit. Further, menthol tobacco poses a unique health risk because of its targeted marketing to African Americans, youth, and the LGBTQ community. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of nicotine addiction.

ANSR also supports the proposal to cap the number of tobacco licenses, thus reducing the number of licensed tobacco retailers over time. Cities in Minnesota that have capped their tobacco licensing ordinance include Bloomington, Brooklyn Center, Excelsior, Golden Valley, New Hope, Roseville, and St. Paul. Saint Paul is considering reducing their allowed number of licensing even further.

Richfield is poised to adopt one of the strongest tobacco licensing ordinances in the state. We are proud of the work you are doing to protect your citizens and are pleased to support your work.

Sincerely,



Jeanne Weigum, President





July 25, 2023

Mayor Mary Supple
Members of the Richfield City Council
6700 Portland Avenue South
Richfield, MN 55423

RE: Proposed Tobacco Retail Licensing Ordinance Amendments

Dear Mayor Supple and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 66,000 retail stores throughout the country including several Richfield retail store members, I am writing to submit our comments and concerns regarding the to amend the existing Tobacco Retail Licensing ordinance to, among other things, ban the sale of flavored tobacco and vapor products and prohibit the transfer of tobacco businesses.

Compliance with Minnesota Statutes Section 461.12

Minnesota Statutes Section 461.12 grants cities the authority to license and regulate the sale of tobacco products. Minnesota Statutes Section 461.19 requires that a city which intends to adopt or substantially amend an existing retail tobacco licensing ordinance provide a written notice by mail at least 30 days before a city council meeting at which an ordinance is to be adopted or an amendment considered. My question is whether the City of Richfield mailed the required prior notice to those retailers which hold a retail tobacco sales license. If not, then I would request that the Richfield City Council not consider the proposed ordinance amendments at a first reading scheduled for today and direct staff to issue the notice in accordance with Minnesota Statutes Section 461.19 (see statute below).

461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections 461.12 to 461.18 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section 461.12 or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section 461.12. The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

Richfield Should Focus on Alcohol and Marijuana Use, Not Flavored Tobacco Products

According to the 2022 Minnesota Student Survey for 11th graders in Richfield, in the previous 30 days, just 1.1% used *any* cigarettes, cigars or smokeless tobacco, *even once*. With no significant youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.

This same survey found that 6.5% of 11th graders currently used alcohol and 10.6% currently used marijuana. This survey is consistent with the recently published Gallup survey referenced above. Richfield has a much more significant problem with youth drinking alcohol and smoking marijuana; a reasonable person can inquire why the Richfield City Council is not considering a ban on all flavored alcohol products and additional regulations to respond to the high marijuana use rates?

The Public Does Not Support a Menthol Cigarette Ban

An August 2022 Gallup poll noted that cigarette smoking was at an historic low of 11% of the nation's adult population, and only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. It is simply not a priority of the public, which is much more concerned with marijuana use than cigarettes. This is not surprising, in that Gallup released further survey results that show that young adults aged 18-29 use marijuana at a rate more than double that of cigarettes (26% marijuana use vs. 12% cigarette use.) Marijuana use among that age cohort also exceeds the 19% who use e-cigarettes, according to Gallup. As other traditional flavored tobacco products are used even less than menthol cigarettes, one can only surmise that the public also has little interest in banning traditional flavors of these products.

FDA is Pursuing Menthol Cigarette and Flavored Cigar Bans

The FDA issued proposed regulations in April 2022 banning menthol cigarettes and flavored cigars. If enacted, these regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and flavored cigars from the marketplace. The FDA has publicly announced that it plans to finalize these regulations banning menthol cigarettes and flavored cigars in August of 2023, this coming month. With this federal action being taken, there is no need for the Richfield City Council to act.

The Ban Would Affect Products Found by the FDA to be in the Public Health

The U.S. Food and Drug Administration has a process whereby manufacturers submit products for scientific scrutiny to determine whether the products are “appropriate for the protection of public health.” To do so, the agency utilizes a review process that relies on science and evidence-based data to determine whether a tobacco product may stay on the market. Thus far, the FDA has granted marketing orders for four modern nicotine products, all of which are mint flavored, eight snus products, four of which are mint or wintergreen flavored, two low nicotine combustible cigarettes, one of which is menthol flavored, and three heat-not-burn products, two of which are menthol flavored. By granting these applications, the FDA has determined that some menthol, mint, and wintergreen tobacco products *protect* public health. The city's prohibition of flavored products that may receive this designation as the FDA would work *against* the public health.

Cross-Border Purchasing of Flavored Tobacco Products Will Hurt City Retailers

A ban on the sale of flavored tobacco products in the city will cause adults who purchase these products to go outside Richfield to buy their preferred products. This cross-border purchasing will involve not only

buying tobacco products and e-cigarettes in a nearby city, but also gasoline, snacks, and beverages, which will exacerbate the loss of sales by Richfield retailers.

Illicit Tobacco Product Market Expansion by Criminals and Racial Profiling

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and traditional flavors of other tobacco products and e-cigarettes will create even more incentive for criminals to supply these products in the city to anyone of any age who has cash. This increase in illegal tobacco sales will necessitate a higher level of law enforcement intervention, putting further pressure on already strained police resources.

Beyond the illicit market, banning the sale of flavored tobacco products, including menthol cigarettes, may result in racial profiling and a greater number of interactions between African Americans, who tend to smoke menthol cigarettes at higher rates, and City police. These interactions may arise if police witness African Americans possessing or using menthol cigarettes and stop these individuals to ascertain the source of the prohibited menthol cigarettes. Such interactions will create further tensions between the African American community and the police.

Increase in Non-Tobacco Product Prices

The average convenience store business model relies on cigarette and tobacco sales for approximately one-third of all in-store sales. Some areas have become food deserts, forcing residents to rely on convenience stores or small grocers to remain open for basic groceries and household goods. Since a ban on these flavored products would eliminate hundreds of tobacco products from convenience store shelves, those stores located in underserved areas of a city may be forced to close or move to nearby border cities where no flavored tobacco restrictions exist.

Moreover, these retailers will be forced to raise prices on non-tobacco products to replace the lost sales due to an expanded flavor ban. In this period of record-breaking inflation that the country is experiencing, higher prices on other products, including gasoline and food products, will exacerbate the financial challenges being faced by many families. Richfield convenience store retailers will find it very difficult to compete with retailers in neighboring localities or with illicit sellers who do not care to whom they sell illicit tobacco products. Employee layoffs and even store closures are real possibilities in the event of significant sales declines.

Restricting License Transfers Takes Valuable Property Interests without Compensation

The proposed ordinance adds subdivision 11 to Section 11.46.05, prohibiting transfers of licenses from one person to another. Such a prohibition makes it impossible for a business to be sold and the business owner realize its value as a going concern. Small business owners, many of whom are first- or second-generation citizens, who would like to either sell and retire or give the business to their progeny, would be impacted the hardest by this prohibition. Many mom-and-pop operators have a considerable amount of their net worth and retirement savings in the equity of their business. If they are not able to realize that by a sale of the business to a third party, or if they cannot leave the business by will or gift to their heirs, they are significantly deprived of their life savings. This prohibition should be removed to protect small business owners in Richfield.

Conclusion

Richfield retailers share everyone's interest in keeping tobacco products out of the hands of persons under 21 years old. In fact, according to the FDA's compliance checks on Richfield retailers, in 209 checks over the past 10 years, Richfield retailers have only failed to comply 9 times, a 95.6% compliance rate; the last failure to comply was in 2019. (See attached spreadsheet.) Banning the sale of these products makes no sense. Why would the Richfield City Council want to harm the city's responsible, legitimate retailers and force their adult customers to patronize other cities' retailers or buy from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with this ban on the sale of flavored tobacco products and prohibition on business sales. Thank you for your time and willingness to hear from retailers.

Sincerely,

Thomas A. Briant

NATO Executive Director and Legal Counsel



July 28, 2023

Mayor Supple and Richfield City Council
Richfield Municipal Center
6700 Portland Avenue
Richfield, MN 55423

Mayor Supple and Members of the Richfield City Council,

The Minnesota Cancer Alliance (MCA) strongly supports the proposed ordinance that would end the sale of flavored commercial tobacco products, including menthol, and cap retailer licenses in Richfield. We urge you to move forward with this ordinance.

The MCA is a coalition of over 100 organizations dedicated to reducing the burden of cancer across the continuum: from prevention and detection, to treatment, survivorship and end-of-life care. Our members include Fairview Health Services, the Masonic Cancer Center at the U of M, the Mayo Clinic Cancer Center, Health Partners, Medica, Blue Cross Blue Shield of MN and the MN Medical Association – to name just a few.

Tobacco is the leading preventable cause of cancer, and cancer is the leading cause of death among Minnesotans. The tobacco industry adds flavors to tobacco to make their products more appealing to new users. In December 2022, nearly 80% of all e-cigarette unit sales in the U.S. were menthol, mint or other flavored. The industry markets and sells flavors like mango, mint and cotton candy to entice youth, and now, there is an epidemic of youth e-cigarette use in our country. Removing flavored e-juice/pods and disposables from tobacco retailers in Richfield will have a major impact on youth access and appeal.

There will be pressure to exempt menthol from your proposed restriction. We urge you to continue to include it. Historically, marketing of menthol cigarettes, products known to be more addictive and difficult to quit than other tobacco, has been targeted towards African Americans, youth, women, and the LGBTQ community. As a result, a disproportionate number of these individuals use menthol products and are burdened by tobacco addiction. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of commercial tobacco addiction.

The MCA also strongly supports your efforts to reduce the number of licensed tobacco retailers in your city. Your city is poised to adopt one of the strongest tobacco licensing ordinances in the state. Research shows that youth who live or attend school in neighborhoods with the highest density of tobacco retailers have higher smoking rates.

The Minnesota Cancer Alliance strongly supports the ordinance that has been proposed to you, as we believe it will protect Richfield's youth and community members from the burdens of tobacco addiction and a myriad of cancers and other chronic diseases. As city leaders, you can pass a policy that will prevent commercial tobacco use for decades to come.

Sincerely,

Sarah Manes
Chair, Minnesota Cancer Alliance Steering Committee

2023 STEERING COMMITTEE

CHAIR: Sarah Manes, MS, CCLS
Global Liver Institute

VICE CHAIR: Sumedha Penheiter, PhD
Mayo Clinic

SECRETARY/TREASURER: Patty Graham
HealthPartners

NOMINATING CHAIR: Kris Newcomer
KLN Consulting

Brittney Dahlin
Minnesota Association of Community Health Centers

Laura Fangel
M Health Fairview - Fairview Health Services

Kate Feuling Porter, MPH
Be the Match

Matthew Flory
American Cancer Society

Catherine Graeve, PhD, MPH, CNE, BSN, PHN
St. Catherine University

Erin Hartung, JD
Cancer Legal Care

Amy LaRue
Fond du Lac Human Services Division

Heather Kehn, RN, BS, MPH
Metro-Minnesota Community Oncology Research Consortium

Deborah Day Laxson
Health Care Agent Literacy Project

Joanne Moze, MPH
Blue Cross MN

Emily Myatt
American Cancer Society Cancer Action Network

David Perdue, MD, MSPH
MNGI Digestive Health

Erin Peterson
Colon Cancer Coalition

Melanie Peterson-Hickey, PhD
Minnesota Department of Health

Ashley Pohlenz, MPH
University of Minnesota – Masonic Cancer Center

Kathy Scheid
Elder Network

Esha Seth, MPH
Association of Nonsmokers-Minnesota

Patrick Tarnowski
PTx2 Healthcare Consulting

Cornelius Thiels, DO
Commission on Cancer, Mayo Clinic

Nancy Torrison
A Breath of Hope Foundation



July 27, 2023

RE: LETTER OF SUPPORT - Proposed ordinance prohibiting the sale of flavored commercial tobacco products including menthol

Dear City Manager Kate Rodriguez,

Thank you for considering ending the sale of all flavored commercial tobacco products in Richfield.

[Parents Against Vaping e-cigarettes](https://www.parentsagainstvaping.org), is a national volunteer-based nonprofit, fighting youth tobacco use and the predatory behavior of the tobacco industry. There is an epidemic of youth e-cigarette/vape use in our country. Youth have been blatantly targeted by the tobacco industry through flavored vape devices. This proposal is particularly important to Richfield parents eager to protect their kids from nicotine addiction and becoming Big Tobacco's next generation of cash cows.

According to the 2022 National Youth Tobacco Survey, more than 3.0 million kids across the country are using tobacco products. Among e-cigarette/vape users, 85% of high school and 81% of middle school students use flavored products with menthol, fruit, candy, and mint reported as the most popular. **To effectively address the youth vaping epidemic, the most crucial step is to eliminate youth access by discontinuing the sale of all flavored tobacco products, including menthol, in all locations.**

Historically, flavors have been used as a marketing weapon by tobacco manufacturers to target youth and initiate them into the use of the industry's addictive nicotine products. In particular, the tobacco industry has used menthol flavors to racially segment and target specific groups, especially Black Americans, and LGBTQ communities.

As our city leaders, you can pass a policy that will prevent youth tobacco and nicotine use for decades to come. We commend you for championing these important issues and encourage you to continue fighting for these efforts. It is up to all of us to prevent our children and loved ones from being preyed upon and exploited for profit by Big Tobacco.

Sincerely,

Cynthia Stremba

Director of Volunteers and State & Local Advocacy, Parents Against Vaping e-cigarettes

www.parentsagainstvaping.org



SENT VIA E-MAIL

July 13, 2023

Dear Mayor Mary Supple and Richfield City Council Members:

On behalf of Children's Minnesota, I am writing in support of the proposed ordinance ending the sale of all flavored tobacco products, including menthol tobacco, in Richfield.

Children's Minnesota is the state's largest pediatric health care system. We serve an incredibly diverse patient population and 46 percent of our patients are insured through Medicaid. Last year, we saw over 170,000 patients.

As the kid experts in our community, Children's Minnesota is committed to promoting a healthier and more equitable future for our kids. Commercial tobacco use and addiction is an important health equity issue that must be addressed. We know the tobacco industry has a long history of targeting specific communities through various marketing efforts. Because of this targeting, the Black community, those that identify as LGBTQ+, youth, and low-income populations are disproportionately impacted by tobacco-related illnesses.

Candy, mint and menthol flavors are extremely attractive to children and young adults, and at these young ages they are especially vulnerable to addiction. In 2019, providers at Children's Minnesota found a cluster of cases of vaping-related severe lung injuries in teens and young adults. Despite these injuries and growing evidence of the health harms of e-cigarettes, thousands of flavored vapes remain on the market alongside flavored cigars and menthol cigarettes. The tobacco industry has studied the behaviors of young people and figured out how to target the next generation of customers. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of tobacco addiction.

Children's Minnesota applauds efforts being made in cities across our state to address youth tobacco use and reduce health disparities. We hope to see the City of Richfield join others that are ending the sale of commercial tobacco products to secure a brighter future for our children.

Sincerely,

Amanda Jansen, MPP
Director of Public Policy
Children's Minnesota



The African American Tobacco Control Leadership Council

July 18, 2023

To: Mayor Mary Supple, Councilmember Sharon Christensen, Councilmember Simon Trautmann, Councilmember Sean Hayford O'leary, and Councilmember Ben Whalen

From: The African American Tobacco Control Leadership Council (AATCLC)

Re: End the Sale of Menthol Cigarettes and All Other Flavored Tobacco Products in Richfield! No Exemptions: All Flavors, All Products at All Locations!

The African American Tobacco Control Leadership Council (AATCLC) strongly encourages the Richfield City Council to adopt a comprehensive policy to:

- (1) end the sale of menthol cigarettes and all flavored tobacco products, with no exemptions for hookah;
- (2) reduce tobacco store density; and
- (3) remove all criminal penalties associated with the purchase, use, and possession of all tobacco products.

We are glad to see that the Council is taking up this matter. Frankly, this couldn't come at a better time. We already know that 80% of youth, 12-17 start smoking using flavored cigarettes (Ambrose et al., 2015). According to the 2022 National Youth Tobacco Survey, more than 2.5 million kids across the country are using tobacco products. 85% of high school and 81% of middle school students use flavored products with fruit, candy/desserts/other sweets, mint, and menthol reported as the most popular flavors.

Indeed, in the aftermath and lingering impact of the COVID-19 pandemic, nothing could be more important than getting these products out of our community. Unfortunately, we know that smokers are more susceptible to COVID infection (CDC, 2020). If the Council truly wants a healthier Richfield, and we believe that you do, then it is imperative that you support the end of the sale of menthol and all flavored tobacco products; its passage will end the predatory marketing of these products that disproportionately impacts poorer communities, marginalized groups, youths, and communities of color.

Menthol the Ultimate Candy Flavor; It Helps the Poison Go Down Easier!

This is no minor matter. Menthol and flavored tobacco products are driving tobacco-related deaths and diseases nationwide. While the use of non-flavored tobacco cigarettes has been decreasing, the use of menthol cigarettes is on the rise, among youth and adults; among Latinos,



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Blacks, and Whites (Villanti, 2016). Let's be clear, the majority of women smokers smoke menthol cigarettes; folks from the LGBTQ community disproportionately smoke these products; 47% of Latino smokers prefer menthol cigarettes, with 62% of Puerto Rican smokers using menthol; nearly 80% of Native Hawaiians; a majority of Filipinos; and a majority of smokers with behavioral health issues smoke menthol cigarettes. Frankly, the most marginalized groups disproportionately use these so-called "minty" products (CDC, 2010; Fallin, 2015; Forbes, 2013; Delnevo, 2011; Hawaii State Dept. of Health, 2009; Euromonitor, 2008; Hickman, 2015).

Be appraised that 85% of African American adults and 94% of Black youth who smoke are using menthol products (Giovino, 2013). These striking statistics arise from the predatory marketing of these products in the Black Community, where there are more advertisements, more lucrative promotions, and most disturbing menthol cigarettes are *cheaper in the Black community* compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). These predacious practices for the past 50 years have led to Black folks dying disproportionately from heart attacks, lung cancer, strokes, and other tobacco-related diseases (RSG, 2014).

Take note that new research shows that menthol cigarettes were responsible for 1.5 million new smokers, 157,000 smoking-related premature deaths, and 1.5 million life-years lost among African Americans over 1980–2018. While African Americans constitute 12% of the total US population, these figures represent, respectively, a staggering 15%, 41%, and 50% of the total menthol-related harm (Mendez & Le, 2021).

The Council should be aware that menthol is an anesthetic by definition, and as if to add insult to injury, masks the harsh taste of tobacco and allows for deeper inhalation of toxins and greater amounts of nicotine. The greater the nicotine intake, the greater the addiction. Hence, it is no surprise menthol cigarette users find it harder to quit than non-menthol cigarette users (Ton et al., 2015; Levy et al., 2011). The "cool refreshing taste of menthol" heralded by the tobacco industry is just a guise; **ultimately, menthol and all flavors allow the poisons in cigarettes and cigarillos "to go down easier!"**

We Can't-Wait on the FDA

Today over 90 municipalities prohibit the sale of all menthol tobacco products including flavored e-juices; <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf>

While it is important that the FDA announced that they will put forward a Rule outlawing menthol as a characterizing flavor in cigarettes, we know that even this process will be fraught with disorder. First, the FDA says they will promulgate the rule in August of 2023. If past practices are any indication of future practices, then it is almost certain that the ruling won't come in August. Even if the ruling comes in August of 2023, it will probably give the industry a



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year to implement the rule, pushing the date to the summer of 2024 and once a final rule is made public and there is more public comment, the industry will **sue** to stop the process from going forward, thus extending the time period for years to come. **The bottom line is that: We Can't Wait on the FDA.** Richfield must take steps to protect the health of its citizens, lives are at stake.

Who Are the Racists: The Tobacco Control Advocates or the Tobacco Industry?

Some groups funded by the tobacco industry insist that removing menthol cigarettes and flavored little cigars would be taking away “our” cigarette; we’d be discriminatory; racist. This line of argumentation stands history on its head. As was pointed out earlier, it was and is the tobacco industry that predatorily markets these products in the Black Community. As mentioned earlier, the facts are these: there are more advertisements, more lucrative promotions, and most disturbing is that menthol cigarettes are ***cheaper in the Black Community*** compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). This is how these flavored death sticks became “our” cigarettes, they pushed them down our throats!

Still, other groups, spurred on and funded by the tobacco industry, have been spreading falsehoods, stating that restricting the sale of menthol and flavored tobacco products, including flavored e-juices will lead to the “criminalization” of particularly youth of color. Nothing could be further from the truth. All ordinances adopted around the country ***prohibit the sale*** of flavored products, ***they don't prohibit the possession*** of these products. Indeed, the FDA proposed rule states explicitly that there are no penalties for individual use or possession. The facts are that the adoption of menthol restrictions will not lead to police having any greater interaction with any youth; it won't be illegal to possess these products, just retailers cannot sell them.

These same groups rail about “unintended consequences.” We respond: **Look at the Intended Consequences!** As mentioned before, Black folks die disproportionately from tobacco-related diseases of heart disease, lung cancer, and stroke compared to other racial and ethnic groups. (RSG, 2014); menthol cigarettes and flavored little cigars are the agents of that destruction. It is estimated that 45,000 Black folks die each year from tobacco-related diseases (RSG, 1998). In this regard, we encourage Richfield's Council to support the removal of all criminal penalties associated with the purchase, use, and possession of all tobacco products. Decriminalize tobacco! Hold retail owners responsible, not clerks, and don't punish kids!

The AATCLC

Formed in 2008, the African American Tobacco Control Leadership Council is composed of a cadre of dedicated community activists, academics, public health advocates, and researchers.



The African American Tobacco Control Leadership Council

Even though based in California, we are national in our scope and reach. We have partnered with community stakeholders, elected officials, and public health agencies, from Chicago, Boston, and Minneapolis to Berkeley and San Francisco. Our work has shaped the national discussion and direction of tobacco control policy, practices, and priorities, especially as they affect the lives of Black Americans, African immigrant populations, and ultimately all smokers. The AATCLC has been at the forefront in elevating the regulation of mentholated and other flavored tobacco products on the national tobacco control agenda, including testifying at the FDA hearings in 2010 and 2011 when the agency was first considering the removal of menthol cigarettes from the marketplace. In November of 2019 we testified on Capitol Hill in support of HR 2339 (The Pallone Bill), this bill would prohibit the manufacturing and sale of menthol and all flavored tobacco products throughout the United States. This Bill was passed in the House of Representatives in February of 2020 but went nowhere in the Senate. In June 2020 the AATCLC along with its partner Action on Smoking and Health (ASH) filed a lawsuit against the FDA for dragging their feet by leaving menthol on the marketplace with overwhelming scientific evidence showing that it should be removed immediately. Subsequently and importantly the American Medical Association (AMA) and the National Medical Association (NMA) have joined the lawsuit as plaintiffs. It was this lawsuit that forced the FDA to act. And even though the lawsuit has been dropped, we are prepared to re-file if the FDA drags its feet again and doesn't announce a rule in August of 2023.

Call to Action!

Now is the time to adopt strong tobacco control measures that can protect our families. We already know that menthol and flavors “makes the poison go down easier.” Richfield’s Council needs to put the health of Richfield Citizens at the forefront of their thoughts, not the interests and profits of the tobacco industry, the vaping industry, and their surrogates. This is not the time for half-steps, rather it is time to take a stand for the public’s health and say: **No Selling of Menthol Cigarettes and All Other Flavored Tobacco Products, including Flavored E-Juices and Flavored Hookah in the City of Richfield!** Say “No” to the continued predatory marketing of menthol-flavored tobacco products to our youth and say “Yes” to the health and welfare of our kids, who are the most vulnerable. In fact, say “Yes” to the protection for **all** residents of Richfield.

We respectfully ask for your support in ending the sale of menthol and all flavored tobacco products and reducing tobacco store density, a lifesaving proposal.

We are all counting on you!



The African American Tobacco Control Leadership Council

Sincerely,

A handwritten signature in black ink, reading 'Phillip Gardiner'.

Phillip Gardiner, Dr. P.H. Co-Chair AATCLC www.savingblacklives.org

A handwritten signature in black ink, reading 'Carol McGruder'.

Carol McGruder, Co-Chair AATCLC

A handwritten signature in black ink, reading 'Dr. Valerie Yerger'.

Valerie Yerger, N.D., Co-Chair AATCLC



Preserving Hookah Culture & Protecting Hookah Tradition across the USA

July 25, 2023

The National Hookah Community Association (NHCA) brings together, and serves as the voice of, hookah producers, distributors, sellers, hookah lounge owners, consumers, and community members who support the preservation of hookah's cultural traditions. We are writing to request that as you consider the ban on flavored tobacco products, you acknowledge the cultural significance of hookah to minority and immigrant populations as well as the lack of youth access to, and use of, the product. California took a historic step in December by enacting a statewide ban on flavored tobacco products, which exempted hookah, for these reasons. NHCA has worked with California, and with many other state and local governments including Colorado, Columbus, Denver, San Diego, San Jose, Los Angeles, and others, to include exemptions for hookah in recent flavor ban legislation.

Hookah is a small category in the tobacco space, making up only roughly 0.005% of nicotine product sales. However, hookah is an important cultural practice to many and one that has existed for centuries, originating in the Middle East and India. Today, a broad cross-section of immigrants in the U.S. from around the world enjoy hookah at home and in lounges as a centerpiece for cultural, business, and social gatherings. Hookah is widely used by Middle Eastern, Armenian, Turkish, East African, Indian, Persian, Indonesian, and other minority immigrant citizens. Hookah lounges across the country have come to serve as safe gathering places for many diverse ethnic and religious communities. Despite the importance of this social practice and tradition, NHCA members continue to find that many policymakers are often unfamiliar with hookah, its practice, and its community.

NHCA fully supports efforts to eliminate youth access and usage of tobacco products, including hookah. Hookah is unlikely to be used or consumed by youth for many reasons. Hookah water pipes are expensive, several feet tall, not easily concealed, and the setup for use is a lengthy process. Lounges that offer hookah are restricted to of-age customers, preventing teens from accessing the product. Recent research by the Centers for Disease Control and Prevention (CDC) found that just 1% of middle and high school students used hookah in the past 30 days, ten times less than the number of teens who vape.

Shisha, the product used in hookah, is a combination of tobacco and a sugar substance such as honey or molasses, and the total product is only comprised of approximately 15% tobacco. As has been the practice for hundreds of years, hookah is, by nature, a flavored product. Unfortunately, noble efforts to address the teen vaping epidemic by **banning flavored tobacco also would result in the ban of ALL hookah.**

A ban on hookah would not only eliminate this important cultural practice for many U.S. citizens, but could also shutter many small, independent, and minority owned businesses. Many of these businesses serve as community gathering places for immigrant populations in cities across the country. Many hookah users are part of religious or ethnic populations that already face discrimination. Eliminating this cultural practice would make many feel as though they are misunderstood and targeted as an outsider by lawmakers and regulators.

We ask that you do not target this important cultural practice and shutter minority and immigrant owned businesses. Please grant an exemption for hookah from any flavored tobacco ban.

National Hookah Community Association

July 24, 2023

The Honorable Mary Supple and members of the Richfield City Council
6700 Portland Ave.
Richfield, MN 55423



Dear Mayor Supple and members of the Richfield City Council:

I am writing on behalf of Tobacco-Free Alliance to express our support for the proposed ordinance that would end the sale of all flavored tobacco products including menthol and cap retailer licenses in Richfield. The Tobacco-Free Alliance is a Twin Cities nonprofit organization with the mission to prevent youth from using commercial tobacco, prioritizing communities adversely affected by industry marketing and health disparities.

Thousands of different sweet, candy-flavored, and menthol/mint flavored tobacco products are available, enticing youth with the taste and colorful packaging. Menthol flavored tobacco products in particular make it easier for kids to start smoking and harder to quit because menthol cools the throat and masks the harshness of tobacco. The 2022 Minnesota Student Survey results showed that 78 percent of 8th-graders and 85 percent of 11th-grade tobacco users report they use a flavored product. Unfortunately, many of these same students are becoming addicted to e-cigarettes. More than 70 percent of youth e-cigarette users in Minnesota are showing signs of nicotine dependence. Removing menthol and flavored tobacco from the marketplace as well as capping licenses has the opportunity to make tobacco products less accessible and appealing to young people and is critical to lowering youth tobacco use rates.

By removing all flavored tobacco products including menthol from the marketplace and including a provision to not issue any new tobacco licenses in your ordinance, your city is poised to adopt one of the strongest tobacco licensing ordinances in the state. Thank you for your leadership in considering this tobacco prevention ordinance that will help prevent another generation from a lifetime of addiction and tobacco-related disease.

Sincerely,

A handwritten signature in dark ink, appearing to read "Elyse Less". The signature is fluid and cursive.

Elyse Levine Less
Executive Director

2395 University Avenue W, Suite 304, Saint Paul, MN 55114-1512
651-379-0196 | www.mntobaccofreealliance.org



July 25, 2023

Mayor Mary Supple
Members of the Richfield City Council
6700 Portland Avenue South
Richfield, MN 55423

RE: Proposed Tobacco Retail Licensing Ordinance Amendments

Dear Mayor Supple and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 66,000 retail stores throughout the country including several Richfield retail store members, I am writing to submit our comments and concerns regarding the to amend the existing Tobacco Retail Licensing ordinance to, among other things, ban the sale of flavored tobacco and vapor products and prohibit the transfer of tobacco businesses.

Compliance with Minnesota Statutes Section 461.12

Minnesota Statutes Section 461.12 grants cities the authority to license and regulate the sale of tobacco products. Minnesota Statutes Section 461.19 requires that a city which intends to adopt or substantially amend an existing retail tobacco licensing ordinance provide a written notice by mail at least 30 days before a city council meeting at which an ordinance is to be adopted or an amendment considered. My question is whether the City of Richfield mailed the required prior notice to those retailers which hold a retail tobacco sales license. If not, then I would request that the Richfield City Council not consider the proposed ordinance amendments at a first reading scheduled for today and direct staff to issue the notice in accordance with Minnesota Statutes Section 461.19 (see statute below).

461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections 461.12 to 461.18 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section 461.12 or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section 461.12. The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

Richfield Should Focus on Alcohol and Marijuana Use, Not Flavored Tobacco Products

According to the 2022 Minnesota Student Survey for 11th graders in Richfield, in the previous 30 days, just 1.1% used *any* cigarettes, cigars or smokeless tobacco, *even once*. With no significant youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.

This same survey found that 6.5% of 11th graders currently used alcohol and 10.6% currently used marijuana. This survey is consistent with the recently published Gallup survey referenced above. Richfield has a much more significant problem with youth drinking alcohol and smoking marijuana; a reasonable person can inquire why the Richfield City Council is not considering a ban on all flavored alcohol products and additional regulations to respond to the high marijuana use rates?

The Public Does Not Support a Menthol Cigarette Ban

An August 2022 Gallup poll noted that cigarette smoking was at an historic low of 11% of the nation's adult population, and only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. It is simply not a priority of the public, which is much more concerned with marijuana use than cigarettes. This is not surprising, in that Gallup released further survey results that show that young adults aged 18-29 use marijuana at a rate more than double that of cigarettes (26% marijuana use vs. 12% cigarette use.) Marijuana use among that age cohort also exceeds the 19% who use e-cigarettes, according to Gallup. As other traditional flavored tobacco products are used even less than menthol cigarettes, one can only surmise that the public also has little interest in banning traditional flavors of these products.

FDA is Pursuing Menthol Cigarette and Flavored Cigar Bans

The FDA issued proposed regulations in April 2022 banning menthol cigarettes and flavored cigars. If enacted, these regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and flavored cigars from the marketplace. The FDA has publicly announced that it plans to finalize these regulations banning menthol cigarettes and flavored cigars in August of 2023, this coming month. With this federal action being taken, there is no need for the Richfield City Council to act.

The Ban Would Affect Products Found by the FDA to be in the Public Health

The U.S. Food and Drug Administration has a process whereby manufacturers submit products for scientific scrutiny to determine whether the products are “appropriate for the protection of public health.” To do so, the agency utilizes a review process that relies on science and evidence-based data to determine whether a tobacco product may stay on the market. Thus far, the FDA has granted marketing orders for four modern nicotine products, all of which are mint flavored, eight snus products, four of which are mint or wintergreen flavored, two low nicotine combustible cigarettes, one of which is menthol flavored, and three heat-not-burn products, two of which are menthol flavored. By granting these applications, the FDA has determined that some menthol, mint, and wintergreen tobacco products *protect* public health. The city's prohibition of flavored products that may receive this designation as the FDA would work *against* the public health.

Cross-Border Purchasing of Flavored Tobacco Products Will Hurt City Retailers

A ban on the sale of flavored tobacco products in the city will cause adults who purchase these products to go outside Richfield to buy their preferred products. This cross-border purchasing will involve not only

buying tobacco products and e-cigarettes in a nearby city, but also gasoline, snacks, and beverages, which will exacerbate the loss of sales by Richfield retailers.

Illicit Tobacco Product Market Expansion by Criminals and Racial Profiling

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and traditional flavors of other tobacco products and e-cigarettes will create even more incentive for criminals to supply these products in the city to anyone of any age who has cash. This increase in illegal tobacco sales will necessitate a higher level of law enforcement intervention, putting further pressure on already strained police resources.

Beyond the illicit market, banning the sale of flavored tobacco products, including menthol cigarettes, may result in racial profiling and a greater number of interactions between African Americans, who tend to smoke menthol cigarettes at higher rates, and City police. These interactions may arise if police witness African Americans possessing or using menthol cigarettes and stop these individuals to ascertain the source of the prohibited menthol cigarettes. Such interactions will create further tensions between the African American community and the police.

Increase in Non-Tobacco Product Prices

The average convenience store business model relies on cigarette and tobacco sales for approximately one-third of all in-store sales. Some areas have become food deserts, forcing residents to rely on convenience stores or small grocers to remain open for basic groceries and household goods. Since a ban on these flavored products would eliminate hundreds of tobacco products from convenience store shelves, those stores located in underserved areas of a city may be forced to close or move to nearby border cities where no flavored tobacco restrictions exist.

Moreover, these retailers will be forced to raise prices on non-tobacco products to replace the lost sales due to an expanded flavor ban. In this period of record-breaking inflation that the country is experiencing, higher prices on other products, including gasoline and food products, will exacerbate the financial challenges being faced by many families. Richfield convenience store retailers will find it very difficult to compete with retailers in neighboring localities or with illicit sellers who do not care to whom they sell illicit tobacco products. Employee layoffs and even store closures are real possibilities in the event of significant sales declines.

Restricting License Transfers Takes Valuable Property Interests without Compensation

The proposed ordinance adds subdivision 11 to Section 11.46.05, prohibiting transfers of licenses from one person to another. Such a prohibition makes it impossible for a business to be sold and the business owner realize its value as a going concern. Small business owners, many of whom are first- or second-generation citizens, who would like to either sell and retire or give the business to their progeny, would be impacted the hardest by this prohibition. Many mom-and-pop operators have a considerable amount of their net worth and retirement savings in the equity of their business. If they are not able to realize that by a sale of the business to a third party, or if they cannot leave the business by will or gift to their heirs, they are significantly deprived of their life savings. This prohibition should be removed to protect small business owners in Richfield.

Conclusion

Richfield retailers share everyone's interest in keeping tobacco products out of the hands of persons under 21 years old. In fact, according to the FDA's compliance checks on Richfield retailers, in 209 checks over the past 10 years, Richfield retailers have only failed to comply 9 times, a 95.6% compliance rate; the last failure to comply was in 2019. (See attached spreadsheet.) Banning the sale of these products makes no sense. Why would the Richfield City Council want to harm the city's responsible, legitimate retailers and force their adult customers to patronize other cities' retailers or buy from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with this ban on the sale of flavored tobacco products and prohibition on business sales. Thank you for your time and willingness to hear from retailers.

Sincerely,

Thomas A. Briant

NATO Executive Director and Legal Counsel