

CASE STUDY

HOW MINNEAPOLIS, ST. PAUL, DULUTH AND FALCON HEIGHTS ARE IMPLEMENTING MENTHOL TOBACCO RESTRICTIONS

EXPERIENCES FROM MINNESOTA

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ClearWay MinnesotaSM

Center for Prevention at Blue Cross[®] and Blue Shield[®] of Minnesota

EXECUTIVE SUMMARY

How Minneapolis, St. Paul, Duluth and Falcon Heights are
Implementing Menthol Tobacco Restrictions: *Experiences from Minnesota*

The Minnesota cities of Minneapolis, St. Paul, Duluth and Falcon Heights passed ordinances in 2017 and 2018 to restrict the sale of menthol tobacco¹ products to adult-only stores. The goals of these policies are to reduce the number of outlets where these products are available, prevent young people from being exposed to seductive tobacco industry marketing, and encourage adults to make a quit attempt. The purpose of this case study is to examine the implementation experience in each city and provide recommendations that may benefit advocates in other cities who hope to reduce menthol-related harms in their communities.

SUCCESSSES AND WHAT IS WORKING WELL

Early reports indicate that most retailers are in compliance. The ordinances successfully decreased availability of menthol, reducing the number of outlets in the four cities that sell menthol products by 62 to 100 percent. Ordinances have strong support of City Councils, who are committed to making the menthol restrictions work. Cities educated retailers on the new restrictions. Collaboration between advocacy organizations and city staff/departments has provided valuable support for implementation, monitoring, and enforcement of the ordinances. Some cities and advocacy organizations are successfully identifying products that contain menthol to help retailers and enforcement personnel identify restricted products.

CHALLENGES AND RETAILER EFFORTS TO CIRCUMVENT THE ORDINANCES

Retailers employed a variety of tactics to circumvent the menthol ordinances including applying for adult-only licenses to split stores in two, with one side remaining a convenience store and the other side becoming an adult-only tobacco products shop; building a store-within-a-store, establishing an adult-only tobacco products shop with a separate entrance inside an existing convenience store; and converting from convenience stores to tobacco products shops. Stores in border communities promoted availability of menthol. At the time the ordinance went into effect, some stores had unsold menthol inventory. Early efforts to combine education of new menthol restrictions with enforcement of other flavor restrictions passed earlier was confusing for retailers.

¹Tobacco in this document refers specifically to the use of manufactured, commercial tobacco products, and not to the sacred, medicinal and traditional use of tobacco by American Indian people.

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RECOMMENDATIONS

Based on these implementation experiences, advocates considering menthol restrictions in their communities are urged to do the following:

POLICY RECOMMENDATIONS

- Anticipate efforts to circumvent the intent of the ordinance.
- Include density restrictions when restricting menthol, including:
 - » Caps that limit the total number of licenses for selling tobacco products; and
 - » Spacing requirements that require sufficient distance between tobacco licensees.
- Ensure that existing definitions of adult-only tobacco shops are sufficient.
- Establish separate licensing for adult-only tobacco shops and other stores that sell tobacco.
- Consider a full ban on menthol and other flavors.
- Consider the local environment and context as well as what other jurisdictions have done when deciding what policy options to pursue.

ENGAGE CITY STAFF WHO ENFORCE COMPLIANCE

- Engage with key city staff early.
- Remember that cities also want to support their local businesses.
- Communicate with retailers early and often.
- Anticipate and plan for stores having unsold inventory.
- Create a plan to identify products that contain menthol (or other flavors) and are restricted by the ordinance.
- Remember that ultimately, retailers are responsible to follow the law.

PASSING THE POLICY IS JUST THE BEGINNING

- Be prepared to defend new ordinances and be vigilant on attempts to weaken menthol language when pursuing other tobacco control efforts.
- Keep advocacy groups engaged and informed.
- Monitor implementation progress.

The cities of Minneapolis, St. Paul, Duluth and Falcon Heights have substantially reduced the number of outlets where menthol tobacco products can be purchased. All but Falcon Heights experienced challenges from tobacco retailer attempts to circumvent the ordinances. In response, cities and advocates have examined the original ordinances and implementation processes to improve compliance. This work is ongoing as cities and tobacco control advocates continue to monitor implementation to ensure the ordinances achieve the goal of reducing access to menthol tobacco products in their communities.

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INTRODUCTION

The Minnesota cities of Minneapolis, St. Paul, Duluth and Falcon Heights passed ordinances in 2017 and 2018 to restrict the sale of menthol tobacco products to adult-only stores. The goals of these policies are to reduce the number of outlets where these products are available, reduce young people’s exposure to seductive tobacco industry marketing, and encourage adults to make a quit attempt. It is important to address menthol use because the tobacco industry has historically targeted African American, American Indian, Asian American, Native Hawaiian, Pacific Islander, Latinx and LGBTQ communities, as well as women and youth. Menthol was the only flavor exempted by the federal ban on flavored cigarettes under the 2009 Family Smoking Prevention and Tobacco Control Act. The cool, minty flavor of menthol masks the harshness of tobacco, making it easier to start smoking while at the same time making it harder for people to quit. Implementation of the ordinances went into effect throughout 2018 (see Table 1 below). The purpose of this case study is to examine the implementation experience in each city and provide recommendations that may benefit advocates in other cities who hope to reduce menthol-related harms in their communities.

REDUCING AVAILABILITY OF MENTHOL PRODUCTS

The primary aims of the ordinances restricting menthol are to reduce the ease of availability and make it harder for youth to obtain these products, reduce their exposure to menthol products, and reduce the extensive targeting of the products to others in the community. Despite some challenges with implementation, which are described in the following pages, the ordinances have been successful at reducing the availability of menthol and substantially reduced the number of outlets in each city selling menthol tobacco products (as shown in Table 1).

City	Council Dates		# of Outlets Selling Menthol		Decline	
	Passed	Impemented	Before	After	Number	Percent
Minneapolis	8/04/2017	8/01/2018	342	82	-260	76%
St. Paul	11/01/2017	11/01/2018	241	92	-149	62%
Duluth	2/12/2018	6/12/2018	84	4	-80	95%
Falcon Heights	5/09/2018	7/09/2018	3	0	-3	100%

Table 1: Reduction in tobacco licenses before and after ordinances restricting menthol

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BACKGROUND

The ordinances restrict the sale of menthol products to adult-only stores. Menthol products can now only be sold in adult-only tobacco products shops² and in Minneapolis and St. Paul, liquor stores. The cities of Minneapolis and St. Paul addressed menthol products separately from other flavors, first passing policies restricting flavored products to adult-only stores a couple years prior, then following those ordinances with restrictions on menthol. These two cities acted on menthol and other flavors separately due to the extensive initial work undertaken to engage their communities, especially youth, in other flavor restrictions. Advocates felt that more community outreach and education was necessary to address menthol but did not want to lose the momentum that was already building around other flavors. Thus, both Minneapolis and St. Paul successfully passed restrictions on other flavors, then successfully advocated for enactment of restrictions on menthol a year later, after engaging leadership from impacted communities. Duluth advocates opted to pursue other flavors and menthol in one ordinance, and successfully passed both together after an extensive campaign that engaged leaders from impacted communities and leaders throughout the city. Falcon Heights enacted its ordinance shortly afterwards, and restricted all flavors including menthol, and raised the minimum sale age of any tobacco products (including e-cigarettes) from 18 to 21 years old (Tobacco 21 or T21).

DATA COLLECTION

For this case study, the evaluator gathered data through key informant interviews with advocates, organizers, public health and other city staff, and elected officials in the four cities from January to September 2019. In addition to interviews, the evaluator made numerous follow-up contacts to continue monitoring ongoing developments.

The evaluator and staff members from funding organizations identified interview respondents based on their knowledge of implementation of the menthol ordinances. A total of 16 interviews with 15 individuals were conducted, recorded, and transcribed. Two interviews were group interviews with multiple city representatives; four interviews were follow-up interviews to assess ongoing progress. Interview transcripts were analyzed to identify implementation successes and challenges, and how challenges were addressed. Two meetings with the evaluator and funding organization staff were held during interviews to assess findings and identify areas for deeper investigation. Preliminary findings were shared with the Minnesota Menthol Evaluation Advisory Group to inform final drafting of this report.

The Minnesota Department of Health Institutional Review Board reviewed the study protocols and determined the evaluation was exempt. Prior to beginning each interview, the evaluator explained the evaluation, including purpose, audience, confidentiality, benefits and risks. Respondents signed a consent form verifying

²Tobacco products shop means a retail establishment with an entrance door opening directly to the outside that derives at least ninety (90) percent of its gross revenue from the sale of tobacco products, loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

³For detailed information about the advocacy and policy passage experience of Minneapolis, St. Paul, and Duluth, see *How Minneapolis, St. Paul and Duluth Passed Nation-Leading Menthol Tobacco Sales Restrictions: Case Studies from Minnesota* available on-line at: <https://www.centerforpreventionmn.com/wp-content/uploads/2019/02/Menthol-Case-Studies-Minneapolis-St.-Paul-Duluth-FINAL.pdf>

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they understood the protocols. The evaluator obtained permission to record interviews from each respondent. Respondents were offered a \$25 gift card to a major department store upon completion of the interview.

SUCCESSSES AND WHAT IS WORKING WELL

EARLY REPORTS INDICATE THAT MOST RETAILERS ARE IN COMPLIANCE

While implementation is in the early stages, cities have begun monitoring and enforcing their ordinances. Initial reports indicate retailers' compliance with the ordinances is high. While many retailers opposed the new menthol restrictions, it appears most are complying and have stopped selling menthol. As of the time of this report, none of the cities with adult-only tobacco shops have reported problems with underage sales.

Minneapolis and St. Paul also allow menthol to be sold in liquor stores. In St. Paul, a study conducted by Association for Nonsmokers Minnesota (ANSR) one year after implementation shows that total tobacco inventory was unchanged in liquor stores. However, the percentage of inventory made up of menthol products increased from 26 percent to 47 percent. There is no information available yet on Minneapolis liquor stores.

STRONG SUPPORT OF CITY COUNCILS

Support from city councils is strong in all four cities. Advocates did a thorough job of educating lawmakers and providing a solid rationale for adopting the ordinance. Ordinances in all cities passed with just one or two no votes, often from a council member who stated they wanted the ordinance to go further, such as a full ban. Council members were confident of the research showing the harmful effects of menthol and the tobacco industry's intentional marketing of menthol that targets

specific communities. They were also impressed by the large numbers of supporters of the ordinances, especially those from communities most impacted by menthol products. This strong support has contributed to city councils' determination to ensure the city's respective ordinance has the intended effect. As problems have occurred, advocates report that city council members are largely committed to making adjustments in the laws to prevent retailers from circumventing its intent, rather than backing away from their original vote.

EDUCATING RETAILERS ABOUT THE NEW RESTRICTIONS

All four cities wanted to be sure that their retailers had accurate information about the new restrictions, what products could or could not be sold, the effective date of the restrictions, and penalties for non-compliance. Upon passage of the ordinances or at the time of license renewal, cities sent letters to all tobacco license holders, usually from the city departments that are responsible for enforcement and/or their health departments. ANSR (in Minneapolis, St. Paul, and Falcon Heights) and American Lung Association (ALA; in Duluth) assisted cities in promoting the new ordinance and its contents. Fliers with photos of samples of products restricted to adult-only tobacco products shops and those still allowed by general tobacco licensees were distributed in each city. In St. Paul, licensing staff visited all its licensed tobacco outlets to educate them on the new ordinance requirements and restrictions. When retailers have questions about compliance or specific products, the Minneapolis Health Department and St. Paul's Department of Safety and Inspections (DSI) respond. (See Appendix: Guide for Complying with Falcon Heights Tobacco Ordinance Chapter 14.)

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COLLABORATION BETWEEN ADVOCACY ORGANIZATIONS AND CITY STAFF/ DEPARTMENTS

ALA in Duluth and ANSR in Minneapolis, St. Paul, and Falcon Heights provide important support for implementation efforts. Both organizations have assisted in developing letters and educational materials for cities to use to inform tobacco retailers. ALA and ANSR engage in conducting or assisting with monitoring outlets to assess compliance and provide assistance with answering questions and monitoring new trends in products. In St. Paul, ANSR also collaborates with DSI to help educate and monitor retailers. City staff who oversee enforcement value this support and the expertise ANSR and ALA can provide and say it helps expand and improve their efforts.

IDENTIFYING PRODUCTS THAT CONTAIN MENTHOL

The variety of tobacco products that contain menthol can be challenging for retailers and for enforcement. Many products have misleading or ambiguous names that make it difficult to ascertain if they contain menthol. Cities are handling this in different ways. Minneapolis Health Department staff maintain a list of menthol products (as well as for other flavors) for licensing staff or retailers for when questions arise about a product's content, and add new products to the list when identified. Public health staff make a final determination on if a product contains menthol or other flavors. In St. Paul, ANSR staff support DSI by maintaining this information. ANSR works closely with DSI staff on monitoring and compliance in St. Paul, so this is seen as a resource for both. ANSR also provides support for monitoring and enforcement in Falcon Heights. In Duluth, a list is not maintained; parties determined it was too cumbersome to continue to update a list of frequently changing products; retailers are expected to know if a product contains menthol and is restricted.

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RETAILER EFFORTS TO CIRCUMVENT THE ORDINANCES & ENFORCEMENT CHALLENGES

STORE SPLITTING

When the 2015 Minneapolis and St. Paul restrictions on other flavored products went into effect, there was little retailer response, but once the 2017 menthol restrictions passed, several retailers attempted creative measures to circumvent the intent of the ordinance. The biggest challenge to the intent of the new ordinance was “store splitting.” Several convenience stores in Minneapolis and St. Paul applied for adult-only licenses to split their stores in two, with one side remaining a convenience store and the other side becoming an adult-only tobacco products shop. Store owners did this by building a wall within their store to separate existing sales space into two stores and installing a separate entrance door to the outside from the newly cordoned off space. This created two stores in a space that was previously one convenience store and enabled the store owner to continue to sell products that contained menthol or other flavors.



Loon Grocery before splitting (Source: <https://www.facebook.com/pages/category/Local-Business/LOON-GROCERY-and-DELI-324011789291/>)



Loon Grocery and Smoke Shop after splitting

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STORE-WITHIN-A-STORE

Similar to store splitting, a few retailers in Duluth have built a room within an existing store that is basically a “store-within-a-store.” These retailers have constructed a separate, locked room within their convenience store, which is staffed separately from the convenience store. Since the convenience store itself is prohibited from menthol sales, these rooms must be separate businesses with separate licenses, staffing, and cash registers. To date, these rooms have been built using glass walls so the products inside are visible to customers in the rest of the store—including minors who can be in the convenience store but are prohibited from entering the glass-walled “tobacco shop” space. These glass-walled rooms also have extensive advertising of menthol products, which diminishes the policy’s intent to reduce young people’s exposure to menthol products.



Example of Store-Within-A-Store in Duluth

CHANGING FROM A CONVENIENCE STORE TO AN ADULT-ONLY TOBACCO STORE

A handful of stores in Minneapolis changed their business model, eliminating the convenience store function and applying for a license to become an adult-only tobacco shop. In Minnesota, this means they are restricted on how many typical convenience store products they can sell—less than 10 percent of their sales can be from non-tobacco products, including things like chips, sodas, and candy. In at least one case, a former gas station changed over from a convenience store model to an adult-only tobacco products shop, and heavily advertises outside that menthol products are available for sale inside. Some of these stores continue to sell soda, chips, and snacks, so to the casual observer they may still seem like convenience or small grocery stores. Young people may still try to enter these stores for these products and be exposed to menthol tobacco products. For this reason, Minneapolis is examining a change in its definition of ‘tobacco products shop’ to be similar to definitions of ‘off-sale liquor stores,’ which could prohibit tobacco shops from selling grocery items.

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“CALL YOUR COUNCIL MEMBER” SIGNS

Some stores that complied and did not attempt to circumvent the ordinance posted signage that menthol was no longer sold in their stores due to a new ordinance adopted by the city council, and suggested that any complaints about unavailability of menthol be directed to customers’ city Council members.



“Call your Council Members” signs at cash register in Minneapolis

BORDER CITY ADVERTISING

In a few bordering communities where menthol is not restricted, some merchants have used the opportunity to promote that menthol is still sold in their stores, such as ads at gas pumps.



Sign at a gas station in Superior, Wisconsin, just across the bridge from Duluth

UNSOLD PRODUCT

In Minneapolis, some retailers had leftover unsold products, despite a one-year period before implementation took effect. Tobacco products cannot be sold to other license holders, and despite adequate notice, several stores had leftover product. This resulted in Licensing staff fielding several questions about unsold product.

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COMBINING EDUCATION AND ENFORCEMENT CONFUSE RETAILERS

Minneapolis and St. Paul were already enforcing restrictions on other flavors when menthol restrictions went into effect. In St. Paul, DSI staff tried combining other flavor enforcement visits with education on menthol, meaning a citation might be issued for a non-menthol flavor violation while a menthol violation would only result in education. DSI staff said this was cumbersome for staff and confusing for merchants, and recommended doing enforcement and education separately.

CITY RESPONSES

MINNEAPOLIS MORATORIUM

When numerous stores began applying to divide their stores to create adult-only tobacco products shops—some decided to change their businesses from convenience stores into adult-only tobacco shops and others applied for new licenses—advocates and Council Members became alarmed that businesses were circumventing the intent of the ordinance. Some city wards were experiencing an uptick in adult-only tobacco shops. The number of adult-only tobacco shops in Minneapolis increased from 25 in 2017 to 52 in 2018. City staff also observed a higher per capita rate of tobacco dealers in Minneapolis neighborhoods with at least 40 percent of residents living in poverty and at least 50 percent of the residents are people of color.

In response to these concerns, in August 2018 the City Council enacted a one-year moratorium on any new

adult-only tobacco shops and directed city staff to conduct a density study to develop recommendations. City staff studied current outlet density, explored approaches used by other cities, looked at current zoning and licensing implications, and developed options for the City Council to consider.⁴

On August 23, 2019, the City Council unanimously adopted an amendment requiring 2,000 feet between adult-only tobacco products shops outside of the downtown zoning area. In addition, the Council directed staff to explore a cap on the number of total tobacco licenses in Minneapolis (to limit the total number of tobacco licenses allowed in the city). At the same time, the Council directed staff to develop recommended language to modify the definition of tobacco shops to mirror the Minneapolis definition of off-sale liquor establishments, which prevents adult-only tobacco shops from operating like grocery stores. The City Council is expected to act on capping and definition items in early 2020.

ST. PAUL: CAPS AND SPACING

In St. Paul, at least seven stores submitted applications to the Board of Zoning Appeals (BZA) to convert from convenience stores to adult-only tobacco products shops and several convenience stores applied to divide their stores to create a business with a separate entrance that would operate as an adult-only tobacco shop. At least one application was approved before advocates and the City Council were aware of what was happening—due in part to the BZA members not fully understanding the rationale behind the menthol restrictions. This meant the BZA was, in effect, debating the menthol ordinance, which led the St. Paul City Council to make a clear

⁴The Minneapolis Tobacco Density Study, June 2019, is available at <https://lims.minneapolismn.gov/Download/File/2550/Tobacco%20Density%20Study%20updated.pdf>

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statement that it stood behind the ordinance. The City Council capped the total number of tobacco licenses allowed in the city at 242. St. Paul already had an existing distance requirement of 2,000 feet between tobacco retailers when the menthol policy was enacted.

DULUTH

At the time of this report, Duluth advocates and City Council were exploring options for how to address the store-within-a-store concept. They are researching what constitutes a separate business and will develop proposals to address businesses that are circumventing the new ordinance.

BUSINESS SUPPORT EFFORTS

HELPING LOCAL RETAILERS BE PROFITABLE WITHOUT RELYING ON A BUSINESS MODEL THAT DEPENDS ON SELLING MENTHOL

Both Minneapolis and St. Paul City Councils instructed city staff to work with business owners to provide resources and information to help them adjust to a business model that doesn't rely on selling menthol tobacco products. Especially for St. Paul, a plan to assist businesses as they adjusted was important to gain the City Council's support for passage of the menthol restriction. In both Minneapolis and St. Paul, this work included efforts to be sure retailers were aware of and understood the ordinance. Both cities contracted with community organizations that work with small businesses to reach out to local retailers and inform them of resources each city has available such as loans, grants, store design, technical assistance, and advice on improvements.

MINNEAPOLIS BUSINESS SUPPORT

The Minneapolis City Council directed staff to provide support to businesses to ease the transition to menthol restrictions. Minneapolis contracted with three organizations to conduct outreach with tobacco retailers. The outreach workers visited 104 of the 312 tobacco retailers active at the time of the study. They focused their attention on independently owned stores rather than grocery stores or chain convenience stores. The purpose of these visits was to inform retailers of the ordinance, get feedback, and provide information on city resources to support businesses as they adjusted to menthol restrictions. This outreach showed that stores were aware of the ordinance, felt they were suffering financial losses, thought the ordinance was racially motivated, and was unfair to them.

The city of Minneapolis has numerous programs available to assist small businesses in the city, including loans, grants, and training in marketing, business legal and financial topics, and entrepreneurship (<http://business.minneapolismn.gov/>). Retailers were provided information on city programs, with the programs of most interest being the Business Technical Assistance Program (36 retailers were referred to B-TAP) and the Great Streets Façade Matching Grants (10 referrals). No information is available indicating if the retailers pursued and ultimately accessed or benefited from these resources. Taking out loans was not seen as realistic for many, as it may be difficult to obtain financing if a business is already struggling.

After the moratorium was put in place, the Minneapolis Small Business Team held three stakeholder meetings to give retailers the opportunity to express their concerns about the ordinance and provide input on potential policy solutions under consideration (e.g., capping licenses, minimum spacing requirements). The team held two meetings with retailers, which were attended by

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just 26 people. The Small Business Team also met with the Coalition of Neighborhood Retailers at its request. At this meeting, retailers expressed confusion about the purpose of the moratorium. Retailers argued that menthol sales had not declined, but simply moved to other outlets. Retailers expressed skepticism that the ordinance is having a local public health impact and accused the city of “picking winners and losers.” Perhaps most significantly, they urged the city to take into consideration other laws being enacted that impact small businesses, such as increasing the minimum wage and paid leave requirements that the city was considering.

ST. PAUL BUSINESS SUPPORT

The St. Paul Department of Safety and Inspections (DSI) was charged with carrying out business support, which was implemented through the Department of Planning & Economic Development (PED). While staff who were available for interviews did not know exactly how many businesses responded or were engaged, the number was presumed to be small. St. Paul did not create a report summarizing outreach to businesses. Since PED felt some businesses would be less likely to reach out to them for support or advice, it contracted with a local community-based organization to provide technical assistance to retailers.

The community-based organization helped businesses clarify the ordinance requirements and explained what it would take for them to create a separate business to sell menthol products legally. It's not clear if this assistance resulted in many changes; staff pointed out there are limited resources that can address retailers' greatest concern, which is potential loss of revenue. Costs to make changes to a store are likely prohibitive for many owners. While some stores could likely use advice on redesigning store interiors to reduce clutter or managing inventory, shortage of capital for such improvements may be a barrier for many convenience store owners. St. Paul

programs are limited, and some may require matching funds, which can be a barrier.

Lack of other options may be an obstacle for some owners. One issue staff identified as a challenge is that many of St. Paul's convenience stores are owned by immigrant families who operate convenience stores as a last resort for income—they may be unable to find viable work to support their families. One staff person pointed out that in the long-term, businesses based on tobacco sales are not a viable business model. This person suggested a “longer runway”—expanding the conversation beyond issues like technical assistance for store operations to providing support for operators to train for different careers.

RECOMMENDATIONS

Based on the implementation experiences in Minneapolis, St. Paul, Duluth, and Falcon Heights, advocates considering menthol restrictions in their communities are urged to consider the following:

POLICY RECOMMENDATIONS

- *Anticipate efforts to circumvent the intent of the ordinance:* Include language in ordinances that prohibit existing businesses from dividing/splitting stores or building rooms to serve as a “separate” tobacco shop.
- *Include density restrictions when restricting menthol:* Explore how zoning regulations are implemented in your jurisdiction to limit density of outlets to avoid proliferation of shops and address concentration of outlets in some neighborhoods or wards, including:
 - » Caps that limit the total number of licenses for selling tobacco products; and
 - » Spacing requirements that require sufficient distance between tobacco licensees.

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- *Be sure existing definitions of adult-only tobacco shops are sufficient:* To ensure consistency between state and local definitions, research existing statewide definitions for a starting point, and expand on them for your community. Minnesota law requires tobacco products shops to derive 90 percent of revenue from the sale of tobacco products. Ordinance language should prevent tobacco products shops from advertising and displaying snack, beverage, and other non-tobacco items in a manner that makes them appear to be convenience or grocery stores, to avoid appealing to youth and confusing the public.
- *Establish separate licensing based on retail store type:* Since adult-only tobacco shops are permitted to sell menthol, at least one advocate suggests cities establish two types of licenses: one for adult-only tobacco shops and one for convenience/other stores that sell tobacco. This could allow cities to have better control over both types of businesses.
- *Consider if a full ban on menthol and other flavors is more appropriate for your community:* Advocates in at least one city wonder if they should have pursued a full ban, rather than restrictions. This might prevent some of the enforcement challenges and responses such as store-splitting. Bans have been enacted in a few cities since Minneapolis, St. Paul, and Duluth enacted their ordinances. When campaigns began in Minneapolis and St. Paul, they were in the forefront of activity on menthol and few other examples existed.
- *Consider the local environment and context as well as what other jurisdictions have done when deciding what policy options to pursue:* As more jurisdictions have implemented bans on all flavors including menthol, momentum increases for the cities that follow. For Minneapolis and St. Paul, taking on other flavors and menthol at different times made sense because each city had already started campaigns restricting other flavors; in Duluth, advocates didn't consider doing them separately; in Falcon Heights,

the City Council decided to enact other flavors, menthol, and T21 at the same time. For each city setting, this made sense based on existing advocacy efforts and other activity taking place within their cities at the time. Cities undertaking campaigns since then have been able to address menthol and other flavors at the same time.

ENGAGE CITY STAFF WHO ENFORCE COMPLIANCE

- *Engage with key city staff early:* Staff in public health, licensing, zoning, and/or planning departments, as well as city attorneys and clerks may all be engaged in enforcement or issues related to the ordinance. It is important to develop relationships with these staff, work with them so they understand the purpose of the ordinance, and offer resources such as information, assistance with training and awareness building of the new ordinance. Public health advocates and these city staff should be allies. Likewise, these city staff have valuable expertise and experience that may help advocates craft better policy recommendations. Smaller cities may have fewer staff or contract for some of these services, so it is important to learn how services are provided in your city.
- *Remember that cities also want to support their local businesses:* Some departments exist to serve and promote business interests, and may empathize with retailers' concerns. Focus on the goals of the ordinance to promote health and help staff understand the benefits of the ordinance. Engage these departments to help stores adjust to menthol restrictions.
- *Communicate with retailers early and often:* Staff and/or advocate communication with vendors is important—the more information they are provided, the smoother the implementation process. Clear, frequent communication ensures vendors have the information they need to comply.

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- *Anticipate and plan for stores having unsold inventory:* Once restrictions are in place, stores will be prohibited from selling any remaining menthol products. Consider including information about unsold products in educational materials for merchants, and warn them that they may be unable to sell remaining products or transfer them to another license after the ordinance goes into effect.
- *Plan how you will identify products that contain menthol (or other flavors) and are restricted by the ordinance:* Use strong public health language in the ordinance that will cover new products and flavors. Be realistic about governments' or advocacy groups' capacity to monitor new products and keep vendors informed. Some cities and organizations have found it beneficial to monitor and identify products that contain menthol to educate retailers and assist with enforcement. Others have found it is not feasible to create and maintain a comprehensive list of all tobacco products that contain other flavors or menthol, and that it continually becomes outdated as the industry responds with new products.
- *Ultimately, retailers are responsible for following the law:* Be clear that no matter how much education or resources the city provides, retailers are responsible for knowing which products contain menthol (or other flavors) and for complying with the law.

PASSING THE POLICY IS JUST THE BEGINNING

- *Be prepared to defend new ordinances and be vigilant on attempts to weaken menthol language when pursuing other tobacco control efforts:*
- For example, when some cities began discussions on T21, retailers in several cities suggested that menthol restrictions be rescinded. Advocates countered these efforts by reminding council members that

menthol restrictions are intended to protect youth and communities disproportionately impacted by tobacco.

- *Keep advocacy groups engaged and informed:* They may need to continue to educate their city councils and turn out for hearings. It is important to show elected officials that people continue to be concerned about reducing availability of these products.
- *Monitor implementation progress:* Monitor zoning requests, license applications, and requests for variances or exemptions to stay abreast of developments and identify areas of the policy that may need strengthening. Learn what departments respond to these requests and work with city staff and elected officials to learn how stores are responding to the ordinance.

CONCLUSION

The cities of Minneapolis, St. Paul, Duluth, and Falcon Heights have substantially reduced the number of outlets where menthol tobacco products can be sold. All but Falcon Heights experienced challenges from tobacco retailer attempts to circumvent the ordinances. In response, cities and advocates have examined the original ordinances and implementation processes to improve compliance. This work is ongoing as cities and tobacco control advocates continue to monitor implementation to ensure the ordinances achieve the goal of reducing access to menthol tobacco products in their communities.

CASE STUDY

How Minneapolis, St. Paul, Duluth and Falcon Heights are
Implementing Menthol Tobacco Restrictions: *Experiences from Minnesota*

This case study was produced for ClearWay MinnesotaSM and the Center for Prevention at Blue Cross and Blue Shield of Minnesota by Linda M. Bosma, Ph.D., Bosma Consulting, LLC.

ACKNOWLEDGEMENTS

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GUIDE FOR COMPLYING WITH FALCON HEIGHTS TOBACCO ORDINANCE CHAPTER 14

*INFORMATION ABOUT THE ORDINANCE,
MENTHOL AND FLAVORED TOBACCO PRODUCTS*

Guide for Complying with Falcon Heights Tobacco Ordinance Chapter 14

Information about the ordinance, menthol and flavored tobacco products

As of July 8, 2018, Falcon Heights prohibits the sale of flavored tobacco products, including menthol, mint or wintergreen products, in stores with a tobacco license where minors can enter such as gas stations, corner stores, and grocery stores. Tobacco products shops (shops which make at least 90 percent of their revenue from tobacco and do not allow access to anyone under the age of 21) are exempted from the flavor restriction. Below are examples of flavored products that can only be sold in tobacco products shops, and similar non-flavored tobacco products that are allowed to be sold by all licensed tobacco vendors. Falcon Heights also prohibits the sale of tobacco products to anyone under the age of 21 years.

	Unflavored Tobacco Products	Flavored Tobacco Products
Adult-Only Tobacco Product Shops	✓ ALLOWED	✓ ALLOWED
Other Licensed Tobacco Vendors	✓ ALLOWED	✗ <u>NOT</u> ALLOWED

Cigarettes

NOT ALLOWED



**Examples of menthol cigarettes:
Newport, Marlboro menthol, Kool true menthol,
and Camel Crush**

Menthol cigarettes can only be sold in adult-only tobacco product shops.

ALLOWED



**Examples of unflavored cigarettes: Marlboro,
American Spirit, Pall Mall, and Camel unflavored**

Cigarettes that are not flavored are allowed to be sold in all licensed tobacco vendors.

Cigars and Cigarillos

NOT ALLOWED



**Examples of flavored cigars and cigarillos:
Strawberry, Raspberry Cream, Mango, White
Grape, Wintergreen, Arctic Ice, and Grape**

*Flavored cigars and cigarillos can only be sold in adult-only
tobacco product shops.*

ALLOWED



**Examples of unflavored cigars and cigarillos:
Garcia Vega, Swisher Diamonds, White Owl Silver,
and unflavored Black & Mild**

*Cigarillos and cigars that are not flavored are allowed to be
sold in all licensed tobacco vendors.*

Smokeless Tobacco and Pouches

NOT ALLOWED



**Examples of flavored smokeless tobacco:
Wintergreen Grizzly, Cherry Skoal, Wintergreen
Camel, Camel Snus Winterchill, General Swedish
Snus Mint and Camel Snus Mint**

*Flavored smokeless tobacco and snus can only be sold in adult
-only tobacco product shops.*

ALLOWED



**Examples of unflavored smokeless tobacco:
Copenhagen Snuff, Grizzly Premium Straight,
Skoal Classic Straight, and Camel Snus Robust**

*Smokeless tobacco and snus that is not flavored is allowed to
be sold in all licensed tobacco vendors.*

E-cigarettes and E-juice

NOT ALLOWED



Examples of flavored e-cigarettes and e-juice:
 Peach, Menthol, and Fruit Stripe e-juice; Cherry
 Crush blu, Cool Menthol NJOY, Menthol Vuse Vibe,
 Chai Vuse, and Sex on the Beach Starbuzz

*Flavored e-cigarettes and e-juice can only be sold in adult-only
 tobacco product shops.*

ALLOWED



Examples of unflavored e-cigarettes and e-juice:
 FIN Rich Tobacco, Rich Tobacco NJOY, Original
 Vuse VIBE, and Classic Tobacco blu

*E-cigarettes and e-juice that are not flavored are allowed to
 be sold in all licensed tobacco vendors.*

Tobacco and Hemp Cigar and Blunt Wraps

NOT ALLOWED



**Examples of flavored wraps: Strawberry, Grape
 Ape, Blueberry Bomb and Mango/Pineapple hemp
 wraps, Watermelon, Chicken & Waffles, and
 Menthol wraps**

*Flavored wraps can only be sold in adult-only tobacco product
 shops.*

ALLOWED



**Example of unflavored wraps: Natural hemp wraps
 and Double Platinum Zer0 blunt wraps**

*Tobacco and hemp cigar and blunt wraps that are not flavored
 are allowed to be sold in all licensed tobacco vendors.*

About

Recently, the Falcon Heights City Council voted to change the way that tobacco is sold in our city. The tobacco ordinance was changed to:

1. Prohibit the sale of flavored tobacco products, except in adult-only tobacco product shops.
2. Prohibit the sale of tobacco products to anyone under the age of 21.

These changes take effect on July 8, 2018.

Frequently Asked Questions

What tobacco products are included in the flavor restriction?

All forms of tobacco are included in the flavor restriction: cigarettes, e-cigarettes, e-cigarette liquid, cigars, cigarillos, blunt and hemp wraps, shisha, and smokeless tobacco.

What “flavors” are restricted under this policy?

Any tobacco product that has a taste or smell other than plain tobacco is restricted under the ordinance. Flavored tobacco products including menthol, mint, and wintergreen, can only be sold in stores licensed to sell tobacco which make at least 90 percent of their revenue from tobacco and do not allow access to anyone under the age of 21.

How does the ordinance define a flavored product?

Flavored tobacco product means any tobacco, tobacco products, tobacco-related device, or electronic delivery device that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by a manufacturer of tobacco or tobacco related devices, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product is a flavored product.

What if I’m not sure if the product is flavored?

Tobacco products with a flavor other than plain tobacco are considered “flavored” under this policy and cannot be sold. Several companies have removed flavor descriptions from their labels. For example, tobacco companies now sell grape-flavored cigars in purple wrappers without using the word “grape”. These products are still considered “flavored” under this policy because they include a flavor (in this case, grape).

In addition to the definition in the ordinance language, this document is intended to help clarify and provide examples of flavored products allowed and not allowed to be sold by tobacco retailers. If after reading the ordinance language, reviewing this document, and reading the product label you are still unsure if the product is flavored, the City recommends not selling the item. The burden is on the retailer to prove a product is not flavored. Therefore we recommend not selling any products you are unsure about.

What are the penalties?

The penalties for violating the tobacco ordinance are:

First violation— \$500 fine

Second violation with 24 months — \$750 fine

Third violation within 24 months — \$250 fine and 2-year license revocation

Who can I contact for more information?

For more information, please contact the City Administrator, Sack Thongvanh at sack.thongvanh@falconheights.org or 651-792-7611.