



# Case Study

## *City of Oakland closes loophole in flavored tobacco products policy, strengthens enforcement*

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### ***Executive Summary***

In May 2020, the Oakland City Council closed a loophole exempting “adult-only” tobacco stores from the city’s flavored tobacco sales restrictions and further strengthened community tobacco control and enforcement measures. The policy also prohibited pharmacies from selling any tobacco products, set a minimum price of \$8 for a pack of cigarettes and little cigars/cigarillos and a minimize pack size of 20 little cigars/cigarillos. The effort, led by the Alameda County Tobacco Control Coalition (the Coalition), the African American Tobacco Control Leadership Council (AATCLC), Roots Community Health Center and the Alameda County Tobacco Control Program (TCP) – leveraged strong community partnerships to reflect broad and strong support for strengthening the Tobacco Retail License (TRL) policy as an urgent public health and social equity response in the wake of the COVID-19 pandemic.

### ***Background***

In September 2017, Oakland became one of the first cities in the nation to "restrict" the sale of all tobacco products. The policy carved out an exemption for a handful of “adult-only” tobacco stores in which tobacco products accounted for at least 60% of sales.

Even before the policy took effect in July 2018, the Alameda County TCP noticed during observational surveys that many retailers were making modifications to create “adult-only” retail areas within existing stores to qualify for the exemption in order to continue selling flavored tobacco. In May 2019, 10 months after the policy took effect, Oakland Police Department’s Alcohol Beverage Action Team shared with TCP data showing that the number of stores that had submitted applications to qualify for the new “adult-only” tobacco store exemption was significantly higher than the handful of tobacco stores identified when the policy was adopted. Further analysis by TCP showed the newly categorized “adult-only” retailers were concentrated in Oakland’s low-income neighborhoods and communities of color, triggering a renewed effort to strengthen Oakland’s TRL to close the loophole and implement stronger tobacco control measures in line with public health best practice.

“These unintended consequences became the ‘Bat Signal’ that our Coalition put out to mobilize the community,” said Anna Lee, who at the time was a Program Specialist for Alameda County Public Health Department’s Tobacco Control Program.

## ***Assessing the Problem***

It was quickly apparent that the “adult-only” loophole had left the door wide open for retailers to easily change their stores to continue selling flavored tobacco products, making implementation of the 2017 policy ineffective. To qualify as “adult-only,” requirements included that stores had to “primarily sell tobacco products” and generate more than 60% of annual gross revenue from the sale of tobacco products. Merchants were required to sign an affidavit stating that their store qualified to meet adult-only tobacco store requirements, but it was difficult for enforcement staff to determine and validate the percent of a store’s annual revenue based on financial records provided. Additionally, the burden of proof was on the city to determine whether a given store qualified for the exemption.

Some merchants increased tobacco product inventory to meet the 60% threshold. Other merchants, such as food markets, built in-store adult-only structures, or rooms with separate entrances that would operate independently of the primary store, effectively creating a store within a store to facilitate the sale of flavored tobacco products. Other merchants, such as gas stations, rang up tobacco sales at the window area on a separate cash register from gas sales to meet the guidelines.

## ***Key Partners***

Key partners included African American Tobacco Control Leadership Council, Roots Community Health Center, American Cancer Society Cancer Action Network, American Heart Association, Americans for Nonsmokers’ Rights, Breathe California, Eden Youth and Family Center, La Clínica de La Raza Inc., La Familia, California LGBTQ Tobacco Education Partnership, Merritt College Tobacco Less Club, Oakland Unified School District Tobacco-Use Prevention Education, Oakland Youth Commission and Martin Luther King Jr. Freedom Center.

## ***Campaign Summary***

During spring 2019, the Coalition began meeting with Oakland council members to educate them about the impact of the loophole. Building on support cultivated for the 2017 ordinance, the Coalition convened its partners in October 2019 to outline its goal to close the loophole in the flavored tobacco policy. The Coalition met with Vice Mayor Larry Reid to draw his attention to the TRL loophole. Reid, a co-author for the 2017 policy whose council district was most impacted by the increase in “adult-only” tobacco stores, agreed to be a champion and the Coalition began to reengage the community and build support among council members.

This included recruiting well-connected community members to send letters of support, reflecting the broad support for removing the adult-only exemption and strengthening the TRL.

Engaging the media was important to demonstrating support. Coalition members wrote an op-ed that was published in the Oakland Post while the Campaign for Tobacco-Free Kids funded an ad in the Post highlighting tobacco industry tactics targeting youth of color and created an online letter-writing platform that resulted in 69 letters being sent to City Council and their staff. The letters demonstrated Council District-specific support from both those who participated in the 2017 campaign and garnered new voices in support of the proposed changes.

Marlene Hurd, a longtime community activist and founder of the Merritt College Tobacco Less Club and one of the op-ed authors, held several tabling events on campus to educate students about flavored tobacco sales in Oakland. Hurd also secured a letter of support from the Associate Students of Merritt College.

“The power of having a variety of relationships enabled us to broaden community support for the stronger measures and show the Councilmembers why this policy was needed and why they should vote on it,” Hurd said.

### **Elevating Youth Voices**

To generate support of young people and amplify the youth voice in the campaign, TCP presentations to high-profile youth organizations with strong ties to the surrounding communities, including Martin Luther King Jr. Freedom Center, Oakland Youth Commission and La Clínica de La Raza. Roots Community Health Center, a Coalition member, trained youth supports on providing public comment at City Council meetings. Through this effort, the Coalition secured letters of support from the Oakland Youth Commission and MLK Jr. Freedom Center, as well as letters of support from individual youth members.

TCP also partnered with the Tobacco Use Prevention Education (TUPE) program at Oakland Unified School District. TUPE and TCP facilitated discussion groups and invited students to collect petitions, further engaging students about the impact of flavored tobacco in the community.

### **Pivoting, Recalibrating with COVID-19**

Shelter-in-place restrictions due to the COVID-19 pandemic created new challenges but also offered some unique opportunities. On the challenge side, in-person community meetings and advocacy activities that are mainstays to engage the community were stymied. Work to cultivate youth voices through school programs sputtered as on-campus activities were halted. In addition, the police shooting of George Floyd fueled momentum for the Black Lives Matter movement with widespread protests focused on racial equity issues that diverted student interest efforts to strengthen the Oakland TRL.

As the pandemic swept across the nation, alarming data linking significant disparities in health impacts from COVID-19 on communities of color and other marginalized communities provided a new urgency for the TRL campaign as it drew the line from tobacco to social equity. Among the findings: smoking doubles your risk of getting sicker from COVID-19. “All the maps overlapped,” Nathan Subramanian of the Alameda County Tobacco Control Program said. “The same places where people had lower life expectancy were the same places where tobacco retailers were located and the same places where people were sicker and dying of COVID-19.”

The COVID-19 pandemic threw off the timing for the effort to strengthen the TRL. The hearing on the TRL amendments was originally slated for mid-March 2020. This date was scrapped as Council focused its energy on the unfolding public health crisis.

The Coalition’s effort to focus on the tobacco links to COVID-19, especially the impacts on marginalized communities in Oakland, offered unique opportunity for the campaign. The Council champion Vice Mayor Reid pushed for an “emergency ordinance” thus allowing for a fast-tracked process whereby the policy could be adopted in a single hearing. However, by-passing the committee hearing process meant that the Coalition, and its allies, had little opportunity to get a read on where what avenues the opposition may present.

### **Demonstrating Community Support Virtually**

Due to the pandemic restrictions, the city made several changes to how it conducted public comment during council meetings, which were held using Zoom. The Coalition responded to the new remote engagement process by using e-mail blasts and a group messaging app to organize the community. The Coalition invited contacts made during educational presentations and its partner networks to a virtual training on how to use Zoom to prepare community members to provide public testimony at the Council meeting and to practice their comments.

The messaging app enabled TCP to alert Coalition members to last minute changes postponing the hearing by a week and encouraging them to provide public comment. At the May 12, 2020 Council meeting, 46 community members, including several youth members, publicly advocated for a strengthened TRL, compared with nine speakers in opposition.

Speakers included representatives or youth members from prominent youth-focused organizations, including Oakland’s Youth Commission, MLK Jr. Freedom Center, Oakland Unified School District high schools, Roots Community Health Center, Merritt College, Peralta Community Colleges, La Clínica de La Raza and the American Heart Association. The Coalition also secured letters of support from youth organizations based in East Oakland, including the school district TUPE program and East Oakland Youth Development Center.

## **Key Organizations Play a Crucial Role**

The efforts by key organizations that bridged the 2017 and 2019 campaigns also made an important impact. These organizations provided support, shared regional insights, and provided recommendations on policy language and challenges as the effort moved forward. The American Heart Association (AHA) was among Coalition-based organizations which supported retailer outreach and education following the 2017 legislation, an activity that helped identify how loopholes in the policy were being exploited. Other key organizational partners including AATCLC, ACS-CAN, California LGBT Tobacco Education Partnership, La Clínica de La Raza and Roots Community Health Center, participated in multiple meetings with city council members and submitted letters of support and public comment at council hearings.

## **Results**

The Oakland City Council voted unanimously on May 12, 2020, to close the loophole and further strengthen community tobacco control and enforcement measures, making it one of the first large cities to remove an “adult-only” exemption for flavored tobacco. In addition to eliminating the exemption that allowed “adult-only” stores to sell flavored tobacco, the policy, which took effect the same day it was approved, prohibited pharmacies from selling any tobacco products, set a minimum price of \$8 for a pack of cigarettes and cigarillos and a minimize pack size of 20 cigarillos. In addition, the policy was amended to include an annual compliance check and clarified that it would not be used to criminalize youth for use, possession or purchase of tobacco products.

Reid said the policy was an important tool in helping to prevent tobacco from falling into the hands of our young people, especially black and brown communities who have been heavily targeted by big tobacco companies.

“If policies like our flavored tobacco ban were in effect when I was a young person, it could have prevented me from being a long-term tobacco user,” Reid said. “If we save one life or prevent one young person from becoming addicted to tobacco products, then this policy is worth it.”

## ***Campaign Analysis -- Challenges and Lessons Learned***

**Exemptions and lack of detail can pose significant vulnerabilities.** What was intended as an exemption for a handful of specialty tobacco retailers became a foothold exploited by a wide variety of retailers to continue the sale of flavored tobacco products. Additionally, a lack of specificity in the ordinance’s enforcement provisions made the ordinance difficult to enforce. A lack of scheduled reporting measures left Councilmembers uninformed about continuing issues.

**Data is a powerful tool.** Data from ABAT and the Healthy Stores, Healthy Communities survey illustrated both the overall growth in “adult-only” tobacco stores and their concentration in low-income areas and communities of color. By mapping the stores along with areas in the City with high youth populations, low-income areas and communities of color, communities and Councilmembers were able to clearly identify the ways in which they were targeted by the tobacco industry.

**Identifying an effective champion.** Members of the Coalition, such as the American Heart Association and others who are permitted to fully engage in advocacy efforts, made a strategic decision to approach Vice Mayor Reid to champion the effort to strengthen the TRL. As the longest serving member of the City Council, Reid was seen an ideal champion for this role because he had both personal connections to the issue, longstanding relationships with his council colleagues and his District was disproportionately impacted by the sale of flavored tobacco.

**Youth voices were powerful.** Cultivating strong relationships with school leaders and community organizations is important to maintaining and leveraging youth voices. Brandon Baranco, from the Office of Vice Mayor Reid, said public comment by youth in the community made a big impact. “In politics, it’s really hard to ignore when you have a ground swell of youth voices come to the table,” he said. “The youth have incredible power and when you have that you can really swing the needle into your favor.”

**Linking tobacco-related health disparities to social equity issues** provided urgency to the campaign and harnessed community voices activated through the Black Lives Matter Movement, resulting in key letters of organizational support for the policy.

“Push into your network to identify other interests that align with tobacco control,” Subramanian said. “Black Lives Matter may not be focused on tobacco, but menthol cigarettes cause more deaths among African Americans than everything you see on the news. Tobacco doesn’t always get as much attention, but at the end of the day, we’re talking about lives.”

Strong community relationships were paramount, enabling access to key influencers when the COVID- 19 pandemic restricted traditional in-person outreach efforts. “Once COVID hit, we had to be nimble and come up with other ways to do our engagement and outreach work,” Lee said. “If we can’t include hard-to-reach communities who are most impacted, then we aren’t getting to equity. This exemption was having a negative racial equity impact, so our strategy was not only to work with nonprofit health organizations, but also to find ways to reach people who are most impacted.”

Baranco said the broad and persistent community support was also paramount. “They were relentless in their advocacy,” he said. “They wouldn’t stop until they got a meeting with the other Council members. It is a perfect example of how to get legislation while facing so much opposition.”

“There was broad support from all parts of the Oakland community – faith-based, Latino, Black, and youth – so the breadth of the support was really important,” said Dr. Phillip Gardiner, Co-Chair of the African American Tobacco Control Leadership Council. Having a coordinated, united and diverse group of youth voices, local and national organizations, created a dynamic coalition ready to respond to industry pushback.

**Maintain vigilance during implementation.** The passage of an ordinance or law is not the end of the campaign! Once a policy passes, it is paramount both to identify potential vulnerabilities to its effectiveness and to ensure that the measure is implemented according to the letter and spirit of the ordinance. Because Oakland’s 2017 TRL ordinance didn’t take effect for nearly 10 months -- the long grace period provided retailers ample time to exploit the “adult-only” loophole to continue selling flavored tobacco products. “This is a marathon, not a sprint,” Vice Mayor Reid said. “We had to take up this policy twice before we could get a complete ban of flavored tobacco products in the City of Oakland.”

## ***Looking Ahead***

A statewide ban on the sale of flavored tobacco and vaping products was signed into law in August 2020 by Governor Gavin Newsom, but opponents gathered enough signatures to put the matter before voters in 2022. That reality makes continued community engagement paramount, which is why the TCP continues to support the effective implementation of the amended ordinance, partnering with Oakland Police Department to create factsheets about the law and provide ongoing technical support.

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