



**Parker D. Kasmer  
Regulatory Counsel**

August 30, 2019

**By Email**

Mayor Karyl Matsumoto & Members of the City Council  
City Council  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

**Re: Comment Relating to Proposed Regulations on the Sale of Vapor Products and Flavored Tobacco Products in South San Francisco**

Dear Mayor Matsumoto and City Council Members,

On behalf of JUUL Labs, Inc. (JLI or the Company), I am writing in response to proposed regulations being considered by the City of South San Francisco to regulate the sale and availability of vapor products and flavored tobacco products. I want to thank you for considering the Company's initial commitments letter that was submitted on July 3, 2019, and allowing me to present to the City Council on July 22, 2019.<sup>1</sup> JLI stands by its commitments letter, including the deployment of enhanced point-of-sale (POS) systems for South San Francisco retailers to restrict the sale of vapor products, and believes the Company's proposed actions will address youth use of vapor products in the City.

It is our understanding that, based on the study session held on July 22, the City is now considering a measure that would place all vapor products, regardless of flavor, and all flavored tobacco products in specialty tobacco and vape stores that purportedly limit access to those 21 years and older. This policy approach is troubling for several reasons, as outlined below, but not least of which is the negative public-health impact it will have for adult smokers.

By removing vapor products from stores that sell combustible cigarettes and where adult smokers shop for their products, the City is reducing the likelihood that adult smokers will switch from the deadliest consumer product ever marketed (cigarettes) to a less harmful alternative (vapor). Let us be very clear: The single biggest beneficiary of the proposed regulation is the cigarette manufacturer and the products they sell which remain

---

<sup>1</sup> The Company's commitments letter, which outlines how JLI can support South San Francisco to prevent youth use of vapor products and potentially all tobacco products, is enclosed as Attachment A for reference.

the leading cause of preventable death in the world and contribute to over 480,000 deaths per year in the U.S.

But we also understand the importance of reversing the trend in youth use of vapor products. No youth, or non-nicotine user for that matter, should use vapor products, including JUUL products. Thus, our collective goal should be to address youth use effectively, while preserving this generational public-health opportunity for adult smokers, particularly those in South San Francisco. These two objectives are not mutually exclusive. JLI believes a focused regulatory approach that accounts for youth access to and appeal of vapor products can ultimately address youth use. By tailoring legislative measures to these factors, we can retain reasonable availability for adult smokers.

### **RESPONSIBLY MARKETED FLAVORS PLAY A CRITICAL ROLE IN TRANSITIONING ADULT SMOKERS FROM COMBUSTIBLE CIGARETTES**

Data continue to demonstrate the significant impact certain flavored vapor products have in transitioning adult smokers from combustible cigarettes, ultimately eliminating their consumption altogether. To move adult smokers from combustible use to less harmful products, they need a viable nicotine alternative that is disassociated from the taste and smell of cigarettes.

But not all flavors are equal in their appeal and impact on adult smokers, particularly given concerns around youth use. For example, FDA generally recognizes two categories of flavored vapor products: (i) traditional flavors commonly found in other tobacco products (i.e., tobacco, menthol, and mint) and (ii) non-traditional flavors relatively unique to vapor products (i.e., fruit, dessert, candy, and other sweets).<sup>2</sup> The latter category, based on FDA's analysis, tends to appeal more to youth than traditional flavors, including mint. That is, in part, why the Company suspended the sale of non-traditional flavored JUUL products to brick-and-mortar retail in November 2018, accounting for approximately 50% of its business at that time, to offset the potential for youth appeal. The Company is effectively out of the "flavor business" at traditional retail, including in convenience stores and specialty tobacco and vape shops.<sup>3</sup>

Recognizing the distinction between traditional and non-traditional flavors, we cannot ignore the role these flavored products, particularly mint and menthol, have in switching adult smokers from combustible cigarettes. One study, published in the Harm Reduction Journal, included a sample of 15,456 U.S. adult smokers (21+) who purchased

---

<sup>2</sup> See FDA, Draft Guidance, Modifications to Compliance Policy for Certain Deemed Tobacco Products, at 7-12 (2019). Based on an analysis of federally-supported and third-party research, menthol/mint flavors ranked lower in youth appeal compared to fruit, candy/other sweets, and other flavors.

<sup>3</sup> Rather, JLI limits the sale of non-traditional flavored JUUL products to its ecommerce platform (JUUL.com) where it uses automated third-party age verification against publicly-available records to ensure purchasers are 21+ (regardless of jurisdiction) and limits the amount of product that can be purchased (to prevent the potential for social sourcing or illegal resale). These flavors include Mango, Fruit, Cucumber, and Creme. For brick-and-mortar retail, JLI sells the following traditional flavors: Virginia Tobacco, Classic Tobacco, Menthol, and Mint.

JUUL products either at retail or online through JUUL.com. Survey participants were assessed at monthly intervals through three months to determine use rates, use patterns, and past 30-day smoking history including complete cigarette abstinence. The final follow-up assessment was conducted after three months of JUUL product use.

This study found that adult smokers who *exclusively* used JUUL products in non-tobacco flavors in the 30 days prior to the three-months follow-up assessment were 30% more likely to have switched completely from cigarettes than those who exclusively used tobacco flavors.<sup>4</sup> Mint flavored JUULpods not only are the most popular among adult smokers, but also the most effective at eliminating cigarette consumption. Compared to those who primarily used Virginia Tobacco flavored JUULpods in the 30 days prior to the three-months follow-up assessment, those who primarily used Mint flavored JUULpods were 37% more likely to have switched completely from combustible cigarettes. For JUUL users who purchased the product at retail, 61% of respondents who primarily used Mint had not smoked any cigarettes in the 30 days prior to the three-months follow-up assessment. For Menthol flavored JUULpods, 40% of respondents who primarily used that product had not smoked any cigarettes in the 30 days prior to the three-months follow-up assessment.

This is just one analysis that highlights how certain flavored vapor products support adult smokers off combustible use. Any measure that seeks to limit access to these flavored products must account for its impact on the adult smoker, while also limiting youth access and appeal. A sensible policy would be to allow traditional flavored products (e.g., tobacco, menthol, and mint) to be sold in retail outlets where combustible cigarettes are available and limit non-traditional flavored products (e.g., fruit, dessert, candy, and other sweets) to stores with enhanced access restrictions to prevent youth use. We outline what these “enhanced access restrictions” could be below vis-à-vis requirements for automated ID scanning to verify age and ID validity and bulk-purchasing limits to prevent social-sourcing.

#### **THE PROPOSED REGULATION WILL DRIVE ADULT SMOKERS TO COMBUSTIBLE CIGARETTES BY LIMITING THE AVAILABILITY OF VAPOR PRODUCTS**

As we understand it, the City is considering a proposal that would restrict all vapor products, regardless of flavor, and all flavored tobacco products to specialty tobacco and vape stores that purportedly limit access to those 21 years and older. We also understand that there are two such stores in South San Francisco; neither of which sells combustible cigarettes or is frequented by typical adult smokers as consumers.

If enacted, the City’s proposal would be a boon for cigarette manufacturers. As a result of the proposal, vapor products — even in flavors that mimic what is available for combustible cigarettes (tobacco and menthol-based) — would be removed from store

---

<sup>4</sup> See Christopher Russell, et al., *Factors Associated with Past 30-day Abstinence from Cigarette Smoking in a Non-Probabilistic Sample of 15,456 Adult Established Current Smokers in the United States Who Used JUUL Vapor Products for Three Months*, *Harm Reduction Journal* (2019). The full publication is enclosed as Attachment B.

shelves where cigarettes remain freely available. In short, vapor products, the single most viable alternative to transition adult smokers to a less harmful product, would be restricted to stores where adult smokers do not even shop.

The public-health consequences of such a proposal are not merely hypothetical. Recently published research from Duke University Medical Center reinforces the negative impact of restricting the sale and availability of vapor products. In this study, an online survey of individuals aged 18 to 29 years who used both combustible cigarettes and vapor products, researchers assessed the perceived impact of various new regulations that would restrict the availability of vapor products. Of the 240 survey participants, 47% stated that if regulations eliminated the nicotine in vapor products, they would not use such products as much and, instead, would increase their use of combustible cigarettes. Seventeen percent stated that if vapor products were limited to tobacco and menthol flavors, they would use vapor products less and would smoke combustible cigarettes more.

The researchers concluded that “[i]t is possible that regulations that deter complete switching to potentially lower-harm tobacco products, such as ECs [e-cigarettes] and result in increases in the proportion of CCs [combusted cigarettes] used among dual EC/CC users, may have a negative effect on public health.”<sup>5</sup> The City’s proposal would have similar effects by significantly restricting where vapor products would be available, removing them as an alternative where cigarettes are sold.

Moreover, San Francisco’s chief economist confirmed what we already know: restricting vapor products from retail would result in adults smoking more cigarettes. As the Councilmembers are likely aware, San Francisco recently adopted an ordinance that effectively bans the sale of legally marketed vapor products in the city, while leaving cigarettes untouched. The Office of the Controller, led by San Francisco’s chief economist, assessed the potential local economic impact of the ordinance. While the Office of the Controller concluded that the ban on vapor products would have no material effect on the city’s economy, this is because retailers would make up for the loss of vapor sales by selling more cigarettes. According to San Francisco’s chief economist, “the money spent on vaping products would continue to be spent in the city on other nicotine products like cigarettes.”<sup>6</sup>

**THE PROPOSED REGULATION WILL PLACE VAPOR PRODUCTS IN THE VERY STORES THAT POSE THE GREATEST COMPLIANCE RISK — SPECIALTY TOBACCO AND VAPE STORES**

Not only does the City’s proposal remove vapor products from where combustible cigarettes are sold, thus restricting adult smokers’ ability to transition to harm-reduction products, but it also places them in specialty stores that are the least effective at keeping

---

<sup>5</sup> Lauren R. Pacek, et al., Young Adult Dual Combusted Cigarette and E-cigarette Users’ Anticipated Responses to Hypothetical E-cigarette Market Restrictions, Substance Use & Misuse (2019). The full publication is enclosed as Attachment C.

<sup>6</sup> Catherine Ho, SF’s Proposed E-cigs Ban Would Snuff Out Local Business, Store Owners Say, San Francisco Chronicle (May 15, 2019), available at <https://www.sfchronicle.com/business/article/SF-s-proposed-e-cigs-ban-would-snuff-out-local-13845592.php>.

vapor products out of the hands of youth. Specialty stores, including one specific outlet in South San Francisco, also market vapor products in wildly attractive flavors, including “UniCake,” “UniLoop,” “Lemon Tart,” “Pineapple Citrus Twist,” “Pebbles Donuts,” “Watermelon Apple,” “Hulk Tears,” and “Mystery Pop.”

Like other age-restricted items, youth obtain vapor products through a lack of age verification or social-sourcing when a legal-age purchaser provides the product to an underage user for sale or shared use. The overwhelming driver of youth use remains social-sourcing (i.e., non-commercial sales), accounting for 70-80% of underage use.<sup>7</sup> For illegal commercial sales, however, the main access points are specialty vape shops and/or tobacco-only outlets. For example, based on the 2018 National Youth Tobacco Survey (NYTS), 12.9% of youth obtained the vapor product from a specialty vape shop, while only 6.6% of youth obtained the product from a gas and convenience store.

A separate study of adolescent users of vapor products (aged 15-17 years) found a similar outcome on illicit commercial sales of vapor products to youth. Of the 1,729 adolescent users surveyed, 31.1% purchased the product from retail. Of those, 22.3% obtained the product from a vapor shop or lounge and 16.4% obtained the product from a tobacco specialty store. Only 5.6% of those surveyed obtained the product from a convenience, gas, or liquor store.<sup>8</sup>

Another study, focused on access patterns among Californian high-school students who had used an e-cigarette within the last 30 days, further highlights the issue of where youth are obtaining vapor products illegally. In this survey, of the 13,902 respondents from the California Student Tobacco Survey, 52.9% did not pay for the vapor product. Of those who did make a purchase, 35.9% bought the product from another individual (i.e., non-commercial sale). Of those who purchased the product from a commercial retailer, the majority accessed the product from a specialty vape shop or tobacco-only retailer.<sup>9</sup>

And finally, a recent article published in JAMA Pediatrics reaffirms the lack of age-verification compliance associated with specialty tobacco and vape stores in California. In this study, researchers assessed results from “secret shops” of California tobacco retailers in which individuals aged 18–19 years sought to purchase tobacco products, including vapor products, without an ID. “Tobacco and vape shops” were defined as retailers that primarily sell tobacco products. The researchers concluded that “[t]he violation rate in tobacco and vape shops was significantly higher than for other types of retailers,” with

---

<sup>7</sup> See CDC, 2018 National Youth Tobacco Survey (NYTS); *see also*, Tobacco Truth, Some FDA Claims About Teen Vaping Confirmed, Others Evaporate (April 2, 2018), available at <https://rodotobaccotruth.blogspot.com/2019/04/some-fda-claims-about-teen-vaping.html> (last accessed April 5, 2019).

<sup>8</sup> Jessica K. Pepper, et al., How Do Adolescents Get Their E-cigarettes and Other Electronic Vaping Devices?, 33 Am. J. of Health Promotion 420 (2018).

<sup>9</sup> See Julian Ong, et al., Where Do Californian Youth Get Their E-cigarettes?, Presented at the 2019 Annual Conference for the Society for Research on Nicotine & Tobacco, San Francisco, California (2019).

49.8% of tobacco and vape shops failing to check ID for the purchase of vapor products. This contrasts with a violation rate of just over 20% for convenience stores.<sup>10</sup>

#### **ALTERNATIVE MEASURES TO PREVENT YOUTH ACCESS THROUGH TECHNOLOGICALLY-BASED SOLUTIONS AT POINT-OF-SALE FOR ALL RETAILERS**

The City's proposal suffers from two critical issues: First, it would remove all vapor products, regardless of flavor, from stores where cigarettes are sold, restricting the ability of adult smokers to transition to a less harmful alternative and deliver a gift to cigarette manufacturers and the deadly products they sell. Second, the proposal instead would place vapor products in specialty stores that are the leading contributors of illicit commercial sales to minors.

Alternatively, there are smart and effective restrictions on access, through technological measures, that can stem youth use of vapor products across retailer types. Any policy to restrict youth access must account not only for robust age verification, but also the social-sourcing component, limiting the amount of product that can be purchased and ultimately resold or shared with youth. We believe enhanced, automated sales controls at retail can solve this problem.

Given advancements in POS systems, brick-and-mortar retail outlets can incorporate new technologies or update existing sales systems to restrict youth access through automated transactional-level controls. For example, retailers can use barcode scanning software to verify age and ID validity automatically. Scanners can pull information from the barcode on government-issued IDs and determine whether the purchaser is of legal age and whether the ID has expired. If either check fails, the POS system can block the purchase from being completed.

Retailer POS systems also can set limits on the amount of product that can be purchased. For example, JLI currently requires its retailers to limit the sale of JUUL products to 2 devices and/or 5 pod packages per transaction.<sup>11</sup> Retailers that do not wish to enforce bulk-purchasing requirements manually can upgrade their POS systems to block any transaction that exceeds similar limits, thus addressing the potential for social-sourcing.

Together, additional age-verification and bulk-purchasing requirements will impact youth access and use of vapor products. The Company proposes that, for the sale of products in South San Francisco, retailers be required to adopt scanning technology to

---

<sup>10</sup> See April Roeseler, et al, *Assessment of Underage Sales Violations in Tobacco Stores and Vape Shops*, JAMA Pediatrics (2019). The full publication is enclosed as Attachment D.

<sup>11</sup> JLI secret-shops its retailers against this bulk-purchasing requirement, checking at least 500 stores per month (in addition to the 1,5000 age-verification checks). Retailers that fail are penalized, including up to a potential sales ban.

verify age and ID validity and limit the amount of product that can be purchased in a transaction.

As previously communicated in the Company's commitments letter, JLI would make available enhanced POS systems that comply with these new requirements to all tobacco retailers in South San Francisco for free, with support for installation and training. The Company also would not be asking South San Francisco to be "beta testers" of this new technology. JLI has received commitments from over 50 national and regional chain retailers to adopt this type of POS technology at over 40,000 outlets as part of its national program to prevent youth access. Additional information on this ambitious program can be found at the following links:

- [Wall Street Journal, Juul Introduces Checkout System to Combat Underage Purchasers \(Aug. 28, 2019\)](#)
- [CBS News, Juul Labs Announces ID Verification System to Curb Underage E-cigarette Use \(Aug. 29, 2019\)](#)
- [San Francisco Chronicle, Juul Commits \\$100 Million to New Cash Register System That Blocks Underage, Bulk Sales \(Aug. 29, 2019\)](#)
- [JUUL Labs Newsroom, Retail Access Control Standards \(Aug. 29, 2019\)](#)

More importantly, the Company already has piloted this technological solution for the sale of JUUL products, and the data are compelling. JLI has partnered with three regional chain retailers that have deployed these enhanced POS systems in a subset of their retail footprint (approximately 175 retail outlets). The Company conducted compliance checks pre- and post-POS deployment, testing against both age-verification and bulk-purchasing compliance. In total, JLI obtained nearly 4,000 data points. Below are the consolidated results across the pilot retailers:

	PRE-POS DEPLOYMENT	POST-POS DEPLOYMENT
<b>Age Verification – Fail Rate</b>	36.8% (n = 1,115)	0.2% (n = 858)
<b>Bulk Purchase – Fail Rate</b>	29.3% (n = 1,104)	1.0% (n = 913)

The Company believes these iron-clad technological measures can reduce youth access for JUUL products and beyond. A closely-controlled, automated sales system will ensure only adults of legal purchasing age have access to vapor and other tobacco products. We now would like to take this solution and make it available to every tobacco retailer in South San Francisco as outlined in our commitments letter.



August 30, 2019

Page 8

**POLICY PROPOSALS FOR CONSIDERATION**

Given the above, JLI recommends alternative policies to restrict youth access, appeal, and use of vapor products, while preserving reasonable availability for adult smokers to drive them from combustible use. These policies include:

- Require all tobacco retailers to adopt electronic scanning technology to verify the purchaser's age (21+) and ID validity before completing a transaction involving a tobacco product, including vapor products; or
- *Alternatively*, permit the sale of traditional flavored tobacco products, including traditional flavored vapor products (i.e., tobacco, menthol, and mint), in any retail outlet that sells combustible cigarettes
  - *And* restrict non-traditional flavored tobacco products, including non-traditional flavored vapor products, to retail outlets that have adopted enhanced access restrictions that have been shown to prevent youth access.

\*\*\*

JLI remains committed to its mission of eliminating cigarettes among adult smokers. But to preserve this significant public-health opportunity, we are equally committed to preventing youth use of vapor products, including JUUL products. As always, I am happy to discuss any of these critical issues in more detail, as well as the Company's proposed commitments to South San Francisco.

Sincerely,



Parker D. Kasmer

Enclosures: Attachments A – D

cc: Mike Futrell, City Manager, South San Francisco ([Mike.Futrell@ssf.net](mailto:Mike.Futrell@ssf.net))

Christina Fernandez, Assistant to the City Manager, South San Francisco  
([Christina.Fernandez@ssf.net](mailto:Christina.Fernandez@ssf.net))