

March 13, 2023

**LETTER OF CONCERN FROM HUNDREDS OF RETAIL ESTABLISHMENTS,
WHOLESALE, AND COMMUNITY ORGANIZATIONS OVER
EMERGENCY ORDINANCE NUMBER 184-2023**

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Cc: Cleveland City Council Members
City of Cleveland - Mayor Justin M. Bibb

Re: Deep Concerns that Emergency Ordinance in its Current Form Would Have a
Devastating Economic Impact on Both the Local Small Business Ecosystem and
the City of Cleveland's Economy

The undersigned retail establishments, wholesale, and community organizations write to express strong opposition to Emergency Ordinance No.184-2023,¹ which seeks to: (1) restrict the sale of flavored tobacco products and vapor products; (2) increase additional stringent and burdensome compliance and enforcement measures onto small retail establishments; and (3) impose stricter violations and penalties.

While we understand the concerns that have led to this proposed ordinance, we collectively believe that a blanket ban is not the most effective means through which the City can achieve its important public health objective. By the same token, we strongly support the City's continued effort in pursuit of harm reduction policies through emphasizing education for

¹ [City Record - 2-10-23rev.pdf \(clevelandcitycouncil.org\)](#)

adults and minors, encouraging the cessation of smoking, and funding healthcare facilities for communities of color, etc. Measures that disincentivize and dissuade tobacco use are proven to be successful at curbing tobacco use and nicotine dependency without the corresponding effect of financially straining small businesses and guaranteeing their inevitable closure.

For the reasons set forth below, these proposed measures are not only ineffective and extreme but will also have profound, unanticipated consequences that will disrupt years of economic growth.

Emergency Ordinance Number 184-2023 will have a Negative Economic and Safety Impact on the Local Community

1. **Sales Decline.** The ban will cause a significant, negative economic impact on local businesses, including convenience stores and tobacco shops. Impacted businesses will suffer a devastating loss of sales revenue and potential customers will shop elsewhere for banned products. This places local small businesses at a competitive disadvantage compared to businesses that are unaffected by the ordinance a short distance away in the surrounding suburbs.
2. **Incidental Sales Decline.** If traditional flavored tobacco products are not removed from the proposed sales ban, law-abiding adult customers will be forced to drive outside of the City to the surrounding suburbs to buy their preferred products. A loss of foot-traffic ensures a loss of customers that also purchase gasoline, grocery items, beverages, and other products incidental to their tobacco purchase. It is unmistakable that these mom and pop businesses have borne the burden of declined gasoline use and the strain of competition with big-box chains that are able to absorb such regulatory constraints. The overwhelming loss of incidental sales will render these small businesses as a relic of the past.
3. **Job Losses.** When businesses lose their competitive advantage, their revenue will decrease thereby abridging the businesses' workforce. Indeed, employee employment, retention and promotion depend on a business' revenue. The ban will deplete jobs in retail establishments, wholesale, tobacco industry, and related businesses.
4. **Customer Loyalty / Promotions.** As alluded, the businesses will shed many of their loyal legal-aged customers because of the ban. Customer loyalty is founded on the familiar and consistent provisions of products to customers by a business. There will be a loss of customer loyalty, as loyal customers will be forced to shop elsewhere.
5. **Business Valuation.** This proposed ordinance will severely diminish the value of operable businesses.
6. **Real Estate Diminution.** This proposed ordinance will certainly cause businesses—especially smaller retail and boutique establishments—to shutter due to the impact of the

ban. Many of these businesses may be abandoned and not maintained. Small business owners who have been lifelong community members will become prey to predatory offers for under their current market value.

7. **Outside Investors / Regulatory Risk.** The increased regulatory risk and precedent-setting of blanket industry wide bans is dissuading potential investors from investing in Cleveland's retail infrastructure.
8. **Community Reinvestment.** The closure of small businesses and mom and pop shops will have a ripple socio-economic effect on the community in which these businesses are located. True enough, small businesses support community schools and centers, local athletic fundraisers, religious institutions, youth engagement efforts, and homeless shelters.
9. **Tax Revenue.** Local and state taxes, including county sin taxes paid per pack of these tobacco products, help fund local police, firefighters, neighborhood parks, and sports stadiums.
10. **Black market.** Banning flavored tobacco products will have the unintended consequence of creating black-market demand for these products. Because such markets are unregulated, the circulation of such products in the market creates precarious health and safety aftereffects. To be sure, black market transactions will open the doors wide open to increased risks for consumers—especially vulnerable minors using products deceptively marketed as flavored tobacco but containing alternative, more harmful ingredients than regulated products.²
11. **Age Verification / Control.** Currently, the most effective means by which the vendors can verify a customer's age is at the point of sale at the retail establishments. Banning the sale of flavored traditional tobacco products could shift sales of these products from law-abiding retailers to illicit and illegal sources, which will not employ ID verification methods.
12. **Public Safety / Law Enforcement Resources.** This proposed action will certainly cause an increase in loitering, especially in the cases of the unlawful sale of these products. Such illicit sales will, in turn, cause an increase in law enforcement interactions with consumers and illicit sellers.³ Increased tobacco-related interactions will certainly deplete law enforcement resources desperately needed to address crime in the City.
13. **Tobacco Use Among Youth.** Survey data from the latest National Institutes of Health (NIH) Monitoring the Future report shows that usage rates of traditional tobacco products are at historic lows, and further studies suggest that banning flavored tobacco products leads to an increase in cigarette smoking by underage individuals and young adults.

² [Report Shows Negative Results of Massachusetts Flavored Tobacco Ban | NACS \(convenience.org\)](#)

³ [ACLU Statement on FDA Menthol Cigarette Ban | American Civil Liberties Union](#)

14. **Compliance / Enforcement.** Impacted businesses will have to make costly expenditures, such as those associated with the licensing fee, to ensure their compliance with the ban. There will be increased paperwork requirements for retailers in order to comply with licensing and inspections. There is a fear that excessive fines or penalties will be imposed onto retail establishments for non-compliance despite the fact that there is no evidence to show an increase of violations among retail establishments, namely related to age verification. The proposed action has the duplicative effect of prohibiting more activity and increasing the fines with the associated activity—in effect guaranteeing the imposition of excessive fines and penalties.

Emergency Ordinance Number 184-2023 is Ineffective and Less Restrictive Means Exist for Achieving the Desired Objective

1. **Emergency Status.** It is important to carefully consider the proposed emergency ordinance and whether it truly constitutes an emergency before passing it as such, as rushing to declare an ordinance as an emergency can have unintended consequences and may not be necessary in this case.
2. **Lack of Evidence to Support Effectiveness.** No evidence exists to substantiate the notion that the ban's extreme measures will effectively combat this public health matter. In fact, the National Association of Convenience Stores (NACS), the leading global trade association dedicated to advancing convenience and fuel retailing, released an article⁴ on March 7, 2023 reporting that the State of Massachusetts issued an Illegal Tobacco Task Force Annual Report 2023⁵ evidencing the negative results of a statewide ban. The action caused the creation of a black market and cost the state a considerable amount of tax revenue.
3. **Education Campaigns.** Instead of banning products, more resources could be dedicated towards education and awareness campaigns to promote safe and responsible tobacco use, cessation and prevention.
4. **Less Restrictive Means.** There are certainly less restrictive means available to accomplish this objective, such as awareness and educational campaigns, which have been proven effective in combating other public health concerns. For example:
 - A study published in the Journal of Environmental Psychology found that an awareness campaign on energy conservation in households was effective in reducing energy consumption by up to 10%. The campaign used social norms and personalized feedback to encourage households to reduce their energy use.
 - In a study published in the Journal of Environmental Management, an educational campaign on recycling and waste reduction was found to be effective in increasing

⁴ [Report Shows Negative Results of Massachusetts Flavored Tobacco Ban | NACS \(convenience.org\)](#)

⁵ [Illegal Tobacco Task Force Annual Report 2023 \(mass.gov\)](#)

recycling rates in a university setting. The campaign used educational materials, social media, and a competition among dormitories to promote recycling.

- According to a survey by the National Campaign to Prevent Teen and Unplanned Pregnancy, teens who received comprehensive sex education were 60% less likely to become pregnant or to impregnate someone than those who received abstinence-only education.
- A study published in the Journal of Community Health found that an educational campaign on HIV prevention was effective in increasing knowledge and awareness of HIV and promoting condom use among young adults in Nigeria.

Again, the small businesses in the City of Cleveland proudly and vehemently support the City's effort in continuing the implementation of harm reduction policies. These businesses believe that education and awareness campaigns are more effective in addressing this issue. Banning flavored tobacco products will not prevent young people from accessing tobacco products; instead, it will harm our businesses and our ability to serve our adult customers.

The retail establishments are not the root cause of underage tobacco usage as the proposed ordinance purportedly suggests, and, in fact, we are the first line of defense. **THE RETAIL ESTABLISHMENTS ARE A PARTNER IN THE FIGHT AGAINST UNDERAGE USE OF TOBACCO AND VAPOR PRODUCTS.**

It is also very important to note that this letter is strictly proffered from a retail establishment perspective. Aside from the economic impact, there are critical social elements attendant to this matter that are not discussed. The American Civil Liberties Union (ACLU) has previously taken a position on this issue. In 2021, the Food and Drug Administration moved forward with a plan to ban menthol cigarettes; the ACLU highlighted serious concerns that a ban on menthol cigarettes will disproportionately impact Black and Brown communities.⁶

The undersigned retail establishments, wholesale, and community organizations respectfully request the following:

1. We strongly urge Cleveland City Council to reconsider this extreme measure and express our strong opposition to the proposed Emergency Ordinance No.184-2023 in its current form.
2. Please provide an anticipated timeline, and the dates and times of any opportunity for public comment on proposed Emergency Ordinance No.184-2023.
3. We request an open dialogue between the sponsors of proposed Emergency Ordinance No.184-2023 and the Director of Public Health, to be joined by a small representative contingency of participants that comprise this grassroots effort.

Thank you for your attention to these critical concerns. For more information or to coordinate a meeting, please contact Mohammad A. Faraj (m.faraj@gmail.com).

Respectfully Submitted,

⁶ [ACLU Statement on FDA Menthol Cigarette Ban | American Civil Liberties Union](#)