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December 30, 2021

New Report Shows E-Cigarettes Remain Widely Available, Including in Maine, Three Months After Deadline for FDA Action

WASHINGTON, D.C. & PORTLAND, ME – Three months after a court-ordered deadline for the U.S. Food and Drug Administration to decide what e-cigarette products can stay on the market, FDA delays have left e-cigarettes in kid-friendly flavors widely available across the country, including in Portland, ME, according to a new report released by the Campaign for Tobacco-Free Kids. The report makes it glaringly obvious that to fully protect kids, Portland and other cities throughout Maine should end the sale of all flavored tobacco products.

Under a federal court order, e-cigarette manufacturers were required to submit marketing applications to the FDA by September 9, 2020, and products that were the subject of timely applications were allowed to stay on the market for up to one year while the FDA reviewed the applications, a period that expired September 9, 2021. The Campaign for Tobacco-Free Kids and other public health groups have urged the FDA to deny marketing applications for all flavored e-cigarettes because of the clear evidence that flavored products have fueled an epidemic of youth e-cigarette use and nicotine addiction.

Retail assessments were conducted in 43 stores in eight cities across the country, including Portland, ME, between October 25, 2021, and November 1, 2021. These stores included 28 gas stations or convenience stores and 15 vape/tobacco shops in the eight markets (Denver, CO; Detroit, MI; Los Angeles, CA; Portland, ME; Portland, OR; Seattle, WA; Tempe, AZ; and Washington, DC). Store assessments documented the availability of top-selling e-cigarette brands, including Juul, Vuse, NJOY, blu, Puff Bar and Bidi, as well as other disposable e-cigarettes and e-liquids.

Key findings show that Juul was sold in all cities and Vuse, NJOY and blu were available in most cities. Flavored e-liquids were found in most cities, in flavors like Green Apple, Cola, Peachy Rings, Tropical Fruit, Strawberry Macaroon and Island Orange. Disposable e-cigarettes were available in every city in a rainbow of flavors including Coconut Pineapple Smoothie, Strawberry Ice Cream, Gummy Bear, Mango Slushee and Blue Razz Lemonade. The report was presented with comprehensive findings, so city-specific and store-specific data is not available.

The FDA has reported that it has denied marketing applications for over 1 million
flavored e-cigarette products. However, the FDA has yet to issue decisions about the e-cigarette brands that have the largest market share or are most popular with kids, such as Juul, most Vuse products, NJOY, blu, Smok and Suorin. The FDA also continues to leave the door open for authorization of menthol-flavored e-cigarettes, despite the popularity of menthol products with kids. In addition, more than 40 e-cigarette companies have filed lawsuits challenging the FDA’s marketing denial orders, and other companies – including Puff Bar, the flavored disposable e-cigarette that is now the most popular brand among kids – have sought to evade FDA regulation by using synthetic nicotine (nicotine made in a lab rather than derived from tobacco).

The report calls for states and cities to continue their growing efforts to end the sale of all flavored e-cigarettes, as well as other flavored tobacco products. State and local action is as critical as ever given the uncertainty about what the FDA will do and when, the legal challenges to FDA actions and the efforts of e-cigarette manufacturers to evade FDA regulation with synthetic nicotine.

While youth e-cigarette use has declined from record-high levels reached in 2019, it remains a serious public health problem. According to the 2021 National Youth Tobacco Survey, over two million middle and high school students reported using e-cigarettes in the first half of 2021, even as many schools remained closed because of the Covid-19 pandemic. The survey underscored that flavored products are driving youth use as 85% of youth e-cigarette users report using flavored products, with fruit, candy/desserts/other sweets, mint and menthol reported as the most popular flavors. Indicating the addictiveness of the products now dominating the market, 43.6% of high school e-cigarette users report frequent use (on at least 20 days a month) and 27.6% report daily use.

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