

Michael B. Hancock
Mayor



City and County of Denver

OFFICE OF THE MAYOR
CITY AND COUNTY BUILDING
DENVER, CO 80202-5390
TELEPHONE: (720) 865-9090 • FAX: (720) 865-8787
TTY/ TTD: (720) 865-9010

December 10, 2021

Council President Gilmore and Members of City Council:

I am writing to you today to inform you that I have exercised my Charter authority as Mayor to veto CB21-1182, the ban on the sale of flavored tobacco products and accessories. I share with the sponsors of this ordinance the desire and goal to reduce youth nicotine use in our city, especially youth vaping, which has become increasingly prevalent. Previously, we've taken steps together to reduce youth nicotine use, including raising the purchase age to 21, instituting a new tobacco retail store license and enhancing enforcement efforts. We all recognize the public health challenge that flavored tobacco products pose for our city, families and communities, and as a city government we have taken steps to address that challenge.

However, while well-intentioned – and again, we share in the goal of this legislation – there are several flaws in this ordinance that I believe should prevent it from being enacted. My reasons for issuing this veto are as follows:

- As we advocated for with our COVID response, protective actions for public health are only as effective as the breadth of their coverage. If we have a mask-wearing order in Denver, but Jefferson, Adams and Arapahoe counties do not, our shield looks more like a net. As I said prior to introduction of this bill, if we are to pursue a ban of this nature, it should be done, preferably, through the state Legislature and apply across Colorado, or at the very least across the metro area in coordination with our metro area city and county partners. Denver is one of dozens of cities in our metro area, and absent similar bans in our neighboring communities, it is not a prohibitive enough barrier if our youth are simply able to travel across Denver's border to the nearest convenience store and obtain flavored tobacco products. We cannot appropriately address the public health impacts of youth tobacco use if that public health response occurs only in Denver.
- Many convenience stores receive a significant portion of their revenue from the sale of flavored tobacco products. For many other retail stores, it is their entire business model. Many of these businesses are small and minority owned. If we were to institute this ban only within our jurisdiction, many local businesses and business owners would experience a severe drop in their income, some may choose to locate to other jurisdictions where such a ban is not in place, and others would have to close their businesses entirely, leaving their employees out of a job. This economic disruption will be felt by Denver alone. Moreover, providing an exemption for natural cigars and hookah lounges puts us in a position of not only picking winners and losers in this ban, but also raises equity concerns that certain businesses and residents should not face the burdens this ban will place on others.

I am committed to continued discussions and partnership with City Council to take additional actions to keep harmful and addictive flavored tobacco products out of the hands of our children. We will review our current regulations and pursue stronger tools such as additional licensing requirements, expanded

fine schedules that will act as a meaningful deterrent to bad actors, and increased enforcement of regulations already in place to ensure we are precisely, meaningfully and equitably addressing the problem of youth access to tobacco. We should also stand together in advocating for our legislators to propose and pass a statewide measure to address this specific challenge as comprehensively as we can. When discussions occurred in 2005 and 2006 regarding prohibiting smoking in Denver bars, restaurants and hotels, I joined with then-Mayor Hickenlooper to expand the conversation to be a statewide effort, with the understanding that limiting the exposure to second-hand smoke should occur across Colorado to expand the protection to all Coloradans, and not create a patchwork of regulations. Enacting this flavored tobacco ban only in Denver, I believe, will not have the meaningful public health impact that is intended with this ordinance, and instead will be outweighed by the equity challenges and negative impacts on certain communities and businesses.

The introduction of this ordinance has elevated a needed public discussion about flavored tobacco products and the line between protecting vulnerable youth and acknowledging the choices we trust adult consumers to make. We can work on this in a more collaborative way and we can also move to enhance our existing regulatory framework, in addition to pursuing an effective and non-discriminatory state law. Towards this end, I have instructed Executive Director Bob McDonald and the Department of Public Health & Environment to begin engaging our regional and state partners on this issue, as well as to review our enforcement efforts and fine schedule and take additional actions to assure it aligns with the public health significance of underage tobacco sales. This will build on engagement my staff began, when this proposal was first introduced, with State officials on creating a state-wide strategy on this issue. The health of our children is of critical importance – my goal is not to stop this conversation with this veto, my goal is to broaden it.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Hancock", with a long horizontal line extending to the right.

Michael B. Hancock
Mayor