

**PROPOSED REGULATION BANNING THE SALE OF
SINGLE, CHEAP CIGARS IN BALTIMORE CITY**



Baltimore City Health Department
May 28, 2008

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I. BACKGROUND

A. Legal Authority

Under the Baltimore City Health Code, Section 2-104 provides that the Health Commissioner is responsible for preventing disease and nuisances affecting public health. Health Code Section 2-105(5) states that the Health Commissioner also has the duty to “to remove and abate nuisances...” Section 5-101(b) inclusively defines nuisances as “any other health or safety hazard.” Cheap, individually sold cigars are a public health hazard and nuisance. Under Section 2-106 of the Baltimore City Health Code, the Health Commissioner may adopt and enforce regulations to carry out his duties described above.

B. The Use and Health Risks of Single, Cheap Cigars

A cigar is defined by its wrapping: Unlike a cigarette, a cigar’s wrapping includes tobacco.

Under Maryland law, cigarettes may only be sold in packs of 20 or more¹ resulting in an average price of more than \$5 per pack;² sales of single cigarettes are illegal.

This requirement does not apply to cigars, however. Cigars are widely sold singly in Baltimore. Storeowners sell cheap, prepackaged single cigars, and will also open larger packs of 5 or 20 cigars and sell them singly from the pack.

No federal or State law regulates the quantity in which retailers may sell cigars.

1. Multiple Varieties of Cheap Cigars, Sold for as Little as \$0.69 Each, are Available for Purchase
 - a) Little Cigars or Brown Cigarettes

The term “little cigars” generally refers to products that have a filter, are commonly sold in packages of twenty, and outwardly look like cigarettes with brown wrapping. These products are sometimes referred to as “brown cigarettes.” An example of this type of product includes Winchester little cigars. These packs may be broken open, with little cigars sold separately.

Another brand of little cigars is Prime Time, whose packaging is similar in size and design to lip balm.





b) Cigarillos

Larger than “brown cigarettes,” but still small by comparison to more expensive cigars, “cigarillos” do not have a filter, and are sold singly or in packages of five. This size may also be described in marketing as a “little cigar” or a “miniature.” They come in candy or fruit flavors, such as grape, watermelon, apple and vanilla.³



c) Blunts

Larger versions of cheap cigars may be referred to as “blunts,” or simply as a cigar. Phillies markets in a variety of flavors, including apple and grape, as does White Owl. Another brand is called The Game, a product endorsed by a prominent rapper by the same name.





d) Pipe Tobacco Cigars

Black and Milds are known as pipe tobacco cigars, or filter tip cigars. They are frequently sold singly and are available in such flavors as wine, cherry vanilla, cream, and apple.



2. Single, Cheap Cigars Are Widely Available in Baltimore

Single, cheap cigars can be found in many drug stores, pharmacies, and corner stores in Baltimore. A recent survey of 10 retail and corner stores by Health Department staff found the following brands for sale:

- Black and Mild

- Phillies
- Swisher Sweet
- White Owl
- The Game
- Prime Time

Flavors for sale included:

- Fruit: Strawberry, watermelon, cherry, wild apple, peach, grape, pineapple
- Alcohol: Wine, cognac
- Other: Vanilla, chocolate, honey, cream

Health Department staff who conduct food inspections and enforce youth tobacco laws frequently encounter these products.

3. Single, Cheap Cigars Are Popular Among Young People

In 2006, an estimated 13.7 million Americans aged 12 or older smoked cigars (representing 5.6 percent of all tobacco users). In recent years, the number of people who smoked a cigar for the first time in the past year has been increasing; in 2006, there were 3.1 million persons aged 12 or older who used cigars for the first time. Cigar smokers are getting younger: the average age at first use was lower in 2006 (19.9 years) than in the previous year (21.2 years).⁴

From 2002 to 2006, while cigarette use among young adults ages 18 to 25 declined, cigar use increased.

In a Massachusetts sample of 5,000 teenagers age 12 to 18 years, 16.4% reported that they had ever smoked cigars.⁵ Numbers are also significant for current cigar smokers: in national samples, nearly 1 in 20 of all youth age 12-18 years and over 1 in 10 of young adults age 18-25 years report cigar use in the past month.⁶ Boys remain more likely than girls to smoke cigars even at this young age, with 14% of males and 6% of females reporting cigar use.⁷ For those trying cigars for the first time, however, the number of males and females is nearly equal.⁸

African Americans are more likely than whites to smoke inexpensive cigars. Nationally, Black and Mild is the most popular brand among African Americans, women, and youth under 18. Their use is especially common among urban African Americans, and particularly favored by young adolescents age 12-17 years.⁹ Other popular brands include Swisher Sweets, Phillies and White Owl; a large group of over 20 brands split the rest of the market, with each product claiming less than 2% of the total share.¹⁰ (Figure 1)

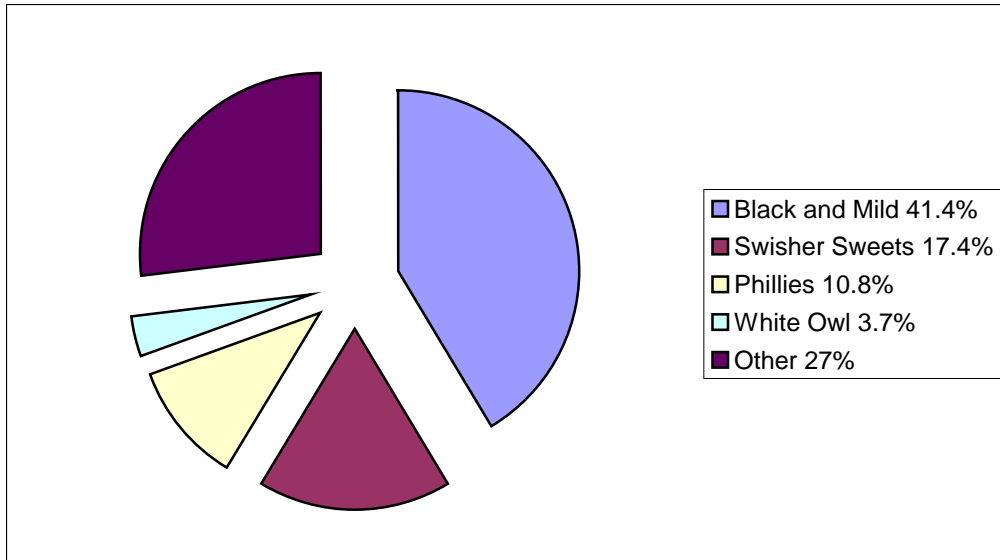


Figure 1. Cigar brand preference by youth age 12-17.¹¹

Cigar use is high among underage and young adult smokers in Baltimore. A 2005 survey by the Centers for Disease Control and Prevention of Baltimore City students found that 10.3% of boys and 4.9% of girls had smoked cigars, little cigars, or cigarillos in the past month.¹²

These rates likely underestimate actual cigar use in Baltimore. Research has shown that youth typically refer to cigars, cigarillos or little cigars by the brand name themselves, as the term “cigars” may be associated with wealthy, older people.¹³ Therefore, on surveys asking about cigar use, youth may answer negatively, leading to an underestimate in regards to use.

This problem was overcome by researchers from the Johns Hopkins School of Public Health, who specifically asked participants ages 18 to 24 in an employment program about use of Black and Mild little cigars. Of nearly 300 participants, 23.9% reported Black and Mild use in the last 30 days.¹⁴

4. The Health Risks of Smoking Single, Cheap Cigars Are Substantial

The high levels of cigar smoking among young people in Baltimore represent a significant threat to health. Cigar initiation can lead to a lifetime of addiction and disease.

Cigars generally have nicotine levels (100-200 mg) much higher than cigarettes (~8.4 mg). In addition, cigars on average contain 5 to 17 grams of tobacco while cigarettes usually contain less than 1 gram; smaller cigars have an intermediate value between the two extremes.¹⁵

The adverse health effects of all forms of tobacco usage, including cigarette, cigar and little cigar use, are well documented.¹⁶ Regardless of the form of tobacco, increased consumption, early onset of smoking and duration of use equate increased risk. By the age of 40, the average cigar smoker has lost 5 years of their life.¹⁷

Cancer. Cigarettes and cigars are comparable in their risk of tobacco-related lung cancer, especially when cigars are inhaled like cigarettes.¹⁸ Data from interview studies and observational studies also support that single, cheap cigars are often inhaled like a cigarette, rather than smoked with minimal inhalation like a traditional cigar.¹⁹

Cigar smokers are ten times more likely than non-smokers to have cancer of the larynx and four times as likely to suffer from oral cancer; the risk is likely higher when smoked like a cigarette.²⁰

Cardiovascular Disease. The risk of heart disease for cigar smokers is 30% greater compared to non-smokers and the risk doubles for those cigar smokers who inhale.²¹

Respiratory Disease. Inhaling cigars increases the risk of obstructive lung disease, including chronic bronchitis and emphysema.²²

Immediate Harms. Bad breath, tooth decay, and reduced exercise capacity are short-term adverse health impacts of smoking.²³

Secondhand smoke. Secondhand smoke from cigars contains many of the same toxic compounds as secondhand smoke from cigarettes. These can trigger heart attacks and contribute to asthma and ear infections in young children.²⁴

In addition to the harms above, cigar use can be a gateway to long-term cigarette use.

C. Sales of Single, Cheap Cigars Are a Public Health Hazard and Nuisance in Baltimore

Sales of single, cheap cigars pose a public health hazard and nuisance in Baltimore for three reasons. First, their low cost makes them more accessible to young people. Second, health warnings are not included in purchase. Third, they compete favorably with higher cost cigarettes and risk undermining progress on smoking by young people.

1. The Low Cost of Single, Cheap Cigars Encourages Smoking by Young People

Single, cheap cigars are widely available for far less than a pack of cigarettes in Baltimore. The low price and ease of accessibility make them attractive to younger smokers, who are known to be price sensitive.

Young people are price sensitive for at least two reasons. First, they have a shorter history of tobacco use and are less likely to be addicted than older smokers. This means that if the price rises, then they are less likely to purchase the product. Second, youth have lower incomes and simply cannot afford higher prices for tobacco products as easily as adults.²⁵

In Baltimore, young participants at a community discussion of Black and Mild use described gathering loose change to purchase a single cigar.²⁶

Because of these factors, preventing the sale of single, cheap cigars – by increasing the minimum cost of purchase – will deter purchase and use by young people. Several studies on the use of cigarettes among children and adolescents have shown that increases in price significantly decrease smoking participation and cigarette consumption.^{27,28,29} Similar evidence is available for cigars, demonstrating that public policy, such as increasing the price of products through minimum pack size, can significantly decrease cigar use by youth.³⁰ And because tobacco addiction typically starts in adolescence,³¹ this step may prevent a lifetime of addiction.

2. Sales of Single, Cheap Cigars Often Fail to Carry Warnings and Mislead Young People About the Risks of Smoking

There is no state or federal law mandating health warnings on cigars. In 2000, however, several cigar manufacturers agreed to include one of five Surgeon General warnings on cigar packaging and displays.³²

Single cigars, however, are not required to display health warnings; this contributes to misperceptions about the health risk of these products.

For example, Black and Mild wrappers state, “Tastes Great, Smells Great.”

In one observational study, young adults shared that they thought cigars were cleaner, represented status, and were culturally tied to hip-hop.³³ A second survey study found similar beliefs, with youth reporting that cigars are more “natural,” less harmful, and produced without nicotine as an additive.³⁴

Former Federal Trade Commission Chairman Robert Pitofsky noted, “Cigar smoking is considered by many consumers to be a harmless alternative to cigarette smoking. According to the Surgeon General and scientific evidence to the contrary, they are dead wrong.” He characterized cigar companies as “deceptive and unfair” due to poor labeling and disclosure of health risks.³⁵

3. Sales of Single, Cheap Cigars Threaten to Undermine Gains in Reducing Youth Smoking

Across the country, including in Baltimore, smoking by young people has declined in recent years. However, the easy accessibility of low cost alternatives, without any health warnings, could undermine these gains.

It is concerning in this regard that large cigarette corporations are entering the market for single, cheap cigars. Recently, tobacco company Phillip Morris purchased John Middleton, maker of Black and Milds.³⁶ Recent news reports have speculated about an R.J. Reynolds' purchase of Swisher International Inc., maker of Swisher Sweets.³⁷

II. HEALTH DEPARTMENT PROPOSES REGULATION

The sale of single, cheap cigars is a public health hazard and nuisance. To address this problem, the Health Department is proposing a simple and easily enforceable regulation that prohibits the sale of cigars except in packages of five or more in Baltimore City. The regulation would potentially take effect 30 days after adoption.

The proposal contains two exceptions. First, premium cigars—those rolled in whole leaf tobacco and sold for at least \$2 each at wholesale—are exempt. There is no evidence that these products contribute significantly to the hazard and nuisance created by the sale of single, cheap, manufactured cigars. Second, tobacconists, as the term is used in the Clean Indoor Air Law, are exempt. The Health Department does not have evidence at this time that these retailers are an important source of single, cheap cigars.

The proposal will address the public health hazard. By requiring a minimum pack size, it will increase the minimum price to purchase five-fold, putting the products in line with a pack of cigarettes. This will deter purchase by young people.

In addition, because packages generally contain health warnings, the proposal will increase the chance that all purchasers of cigars will have access to health information.

The proposal is feasible, because manufacturers already market many of the popular, cheap cigars in packages of five or more; therefore, little to no manufacturing change will be necessary.

When a similar proposal was considered for the State of Maryland by the legislature, the bill received support from the Black Caucus and from the Maryland Department of Health and Mental Hygiene and local health departments. The bill also received support from several public health organizations, including the American Cancer Society, the American Heart Association and the Maryland Association of County Health Officers.

Tobacconists did not oppose the bill, being satisfied with the exceptions. The bill was opposed by the Maryland Retailers Association, the Maryland Candy and Tobacco Wholesalers, the Cigar Association of America, Philip Morris USA, R.J. Reynolds Tobacco Company, and similar tobacco industry organizations. The opposition argued that state and local authorities should focus on enforcing existing laws prohibiting the sale of tobacco to minors and the use or possession of tobacco by minors rather than passing a new law designed to reduce youth sales and use. They also claimed that youth cigar smoking is not a problem of sufficient magnitude to warrant regulation to curtail the activity.

These arguments are not compelling. First, as with cigarette sales, local access laws complement other regulations that restrict smoking by underage youth. Second, frequent smoking initiation by young people older than 18 also represents a significant public health threat, because, as discussed above, smoking initiation can lead to a lifetime of addiction and disease. Third, all smokers of every age should have access to basic health warnings about products. Fourth, the evidence on wide use of cheap cigars in Baltimore is substantial.

III. PUBLIC COMMENT

The Health Department is requesting public comment on this proposed regulation. Please send comments to Baltimore City Health Department, 210 Guilford Avenue, Baltimore MD 21202 Attention: Rianna Brown.

The Health Department is interested in receiving general comments on the proposal as well as on the following questions:

- What is an appropriate date of implementation and the length of a transition time for retailers?
- Should there be a larger pack size requirement than 5 per package?

The deadline for the submission of comments is 5 pm on Tuesday, July 1, 2008.

IV. PROPOSED REGULATION

A. Definitions

- (1) "Original Packaging" means any pack, box, carton, or other container of at least five cigars that is intended for sale to consumers as a package and not intended to be broken for individual cigar sale.
- (2) "Retailer" means a person located in the City who holds for sale or sells cigars to a consumer in the City.

- (3) “Wholesaler” means a person, whether located in or outside the City who holds for sale or sells cigars to a retailer or consumer in the City.

B. Cigar Sales of Less than Five per Package Prohibited

- (1) A retailer may not purchase from a tobacco product manufacturer or wholesaler or sell, resell, distribute, dispense, or give away to any person a package of cigars containing less than 5 cigars.
- (2) A retailer may not sell, resell, distribute, dispense, or give away to any person a package of cigars unless in the original packaging from the product manufacturer.
- (3) A wholesaler may not sell, resell, distribute, dispense, or give away to any person in this City a package of cigars containing less than 5 cigars.

C. Exceptions

- (1) This subtitle does not apply to a retail tobacco establishment as defined in § 12-107(b)(3).
- (2) This subtitle does not apply to cigars wrapped in whole leaf tobacco or any cigar that has a wholesale price of more than \$2.

D. Enforcement by Citation

- (1) In addition to any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of:
 - a. An environmental citation under City Code Article 1, Subtitle 40 {“Environmental Control Board”}; or
 - b. A civil citation under City Code Article 1, Subtitle 41 {“Civil Citations”}.
- (2) The issuance of a citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

E. Penalties

Any person who violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 for each offense.

V. NOTES

1. Md. Code Ann., Com. Law § 11-5A-02 (2007).

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Various factors make youth more sensitive to price increases in tobacco products; evidence on this point provided the basis for a minimum pack size for cigarettes. Since a significant number of smokers begin smoking as teenagers, higher prices can greatly reduce smoking long term by reducing smoking initiation among young people.²
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16. World Health Organization. The World Health Report 2002 – Reducing Risks, Promoting Healthy Life. 2002. Accessed August 22, 2007 at <http://www.who.int/whr/2002/en/>
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