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## **RE: RESPONSE TO POTENTIAL REGULATORY MEASURES TO REDUCE THE YOUTH ACCESS AND APPEAL OF VAPING PRODUCTS**

The Middlesex-London Health Unit (MLHU) shares Health Canada's concerns regarding the increase in vapour product use by young people in Canada. MLHU applauds Health Canada's commitment to work with provincial and territorial partners to enhance national collaborative and cooperative efforts to reduce youth vaping. In Ontario, local Public Health Units play an important role in working with parents, schools, community and social service agencies, and municipalities to prevent youth, young adults and non-tobacco users from using vaping products, and to promote compliance and enforce the provisions outlined in the *Smoke-Free Ontario Act, 2017*. Regulatory measures that would reduce youth access and appeal would be an important step forward, and we are pleased to be able to provide input on the proposed measures.

Research suggests that adolescents are using vaping products at an alarming rate. According to the 2017 Canadian Student Tobacco, Alcohol and Drugs Survey, student usage of vaping products in Canada increased by 30% per year between 2015 and 2017.<sup>i</sup> When the *Tobacco and Vaping Products Act* was passed in 2018, innovative products that are appealing to youth began to show up in the Canadian market place. These vaping products deliver higher concentrations of nicotine per puff than older models of e-cigarettes and traditional tobacco cigarettes.<sup>ii</sup> Nicotine is a highly addictive substance that can have adverse effects on the developing brain.<sup>iii</sup> The US Food and Drug Administration has declared e-cigarette use an epidemic among young people after research showed a 78% increase in vaping among high school students between 2017 and 2018 in the United States.<sup>iv,v</sup> Not only do vaping products put youth and young adults at risk of nicotine dependence, there is substantial evidence that e-cigarette use increases the risk of ever using combustible tobacco cigarettes among youth and young adults. Increased usage of vaping products by youth, young adults, and non-tobacco users threatens to undermine the success of previous tobacco control measures in reducing tobacco use in Canada.<sup>vi</sup>

Under the *Smoke-Free Ontario Act, 2017 (SFOA, 2017)*, smoking and the use of vaping products is prohibited on school grounds and within 20 metres of school property. The use of vaping products inside and outdoors on school property has become a substantial problem for elementary and secondary school staff. Between October 2018 and April 2019, the Health Unit's Tobacco Control Team received 64 complaints from school staff and parents in the Middlesex-London region about young people vaping on school property. Vapour products are not only being used outside on school property, but they are being used inside school washrooms, classrooms and on school buses. More complaints regarding vaping on school property have been received between January 1<sup>st</sup> and April 30<sup>th</sup>, 2019 than in the entire calendar year of 2018. Health Unit Inspectors, designated by the Ontario Ministry of Health and Long-Term to enforce the *Smoke-free Ontario Act, 2017*, have reported that students caught vaping on school property are indicating that because of their addiction to nicotine, they are unable to wait for class breaks to leave school property to use their vaping products. Public Health Nurses that work within the secondary schools in the Middlesex-London area have reported that students have disclosed situations where they have experienced adverse reactions to high doses of nicotine, including headaches, nausea, elevated heart rate, general malaise and in extreme situations, seizures. According to the manufacturer, a single pod that is used in the JUUL e-cigarette device contains as much nicotine as a pack of cigarettes.<sup>vii</sup> The current regulations in place regarding the manufacturing and design of e-cigarettes are inadequate to protect youth.

It is commendable that the *Tobacco and Vaping Products Act* has restrictions on the promotion of flavoured vapour products and prohibits lifestyle advertising, sponsorships, testimonials or endorsements, and other advertising that could be appealing to youth; however, further regulatory measures are needed to reduce youth access and appeal.

### **Prohibiting the Manufacture and Sale of Vaping Products with Certain Flavours/Flavour Ingredients and/or Prohibiting the Promotion of Certain Flavours**

“Flavor is a multisensory perception” that involves taste, aroma, and feelings of cooling and burning within the mouth and throat.<sup>viii</sup> The documented evidence within the food consumer science literature demonstrates that flavour impacts the appeal of consumable goods, and that flavour preferences direct food selection.<sup>ix,x</sup> Youth and young adults are particularly influenced by flavours, with heightened preferences for sweet flavours and a greater dislike to bitter food tastes, with preferences generally diminishing with age.<sup>xi,xii</sup> Due to pervasive marketing and promotion tactics, and the addition of attractive candy and fruit flavours to vapour products, sales of e-cigarettes are growing rapidly across Canada and around the world.<sup>xiii,xiv,xv</sup> Youth and young adults are using e-cigarettes because they are perceived to be “fun” or “cool”.<sup>xvi</sup> Worldwide sales for e-cigarettes reached \$6 billion in 2014, with over one thousand e-liquid flavours available in the marketplace under the banner of 460 different brands.<sup>xvii</sup>

Under the *Tobacco and Vaping Products Act*, it is illegal to promote that an e-substance contains confectionary, dessert, soft drink, energy drink or cannabis flavours, and the package, by way of illustrations or design, cannot indicate that the e-substance is flavoured with these classes of flavours. However, according to the Ontario Tobacco Research Unit, a quick search of Canadian online vaping product retailers showed that there is substantial promotion of e-substances that contain confectionary, dessert, soft drink and other flavours that are appealing to youth.<sup>xviii</sup> The Health Unit’s Tobacco Control Team has observed e-substances available for sale from retail stores in Middlesex-London that promote the inclusion of flavours that are appealing to youth. **Therefore, to reduce youth appeal of flavoured e-cigarettes, the Health Unit recommends that the Federal Government takes action to prevent the promotion of youth-appealing flavours by Canadian online vaping retailers. In addition, the Health Unit recommends that Health Canada strengthens the current approach to regulating flavoured e-substances to include tighter prohibitions on the manufacturing and sale of e-substance flavours that are attractive to youth and adolescents, with an overall reduction/market cap on the number of flavours available for sale in Canada. Nicotine replacement therapy is only available in a limited number of flavours; therefore, vapour product flavours should be limited to those available with traditional nicotine replacement therapy.**

### **Restricting the Concentration and/or Delivery of Nicotine**

Nicotine is a highly addictive substance that poses significant risk, especially to young people. The brain continues to develop until an individual reaches the approximate age of 25. Exposure to nicotine during brain development can result in nicotine addiction, mood disorders, permanent lowering of impulse control, and changes in attention and learning.<sup>xix</sup> While data has suggested that young people may be unaware that vaping products contain nicotine, there are growing concerns about youth seeking out vaping products for the nicotine hit. Anecdotally, MLHU staff have conversed with young people who have admitted to using vapour products for the nicotine “hit”. Trends such as “nicking out” have become increasingly more popular with young people within the Middlesex-London jurisdiction. Students that have been caught vaping inside school washrooms and classrooms have disclosed to Health Unit Inspectors and Public Health Nurses that they are unable to wait for class breaks to leave school property to vape due to nicotine cravings. In addition, youth have disclosed that they compete with each other to see who will vomit or pass out first from using their e-cigarettes. These trends would suggest that for some young people, the allowable nicotine content in vapour products is at dangerously high levels. **To reduce youth appeal and to protect the developing youth brain, the Health Unit recommends that acceptable nicotine concentration levels for vapour products should be more closely aligned with the approved nicotine concentrations for nicotine replacement therapeutic products (e.g. patches, gum, mist, inhalers, lozenges) that are already approved and regulated as cessation aids in Canada. The nicotine concentration level for e-substances should not exceed 21 mg/ml. This level is in alignment with the European**

**Union Tobacco Products Directive (20 mg/ml), which states that this concentration allows for delivery of nicotine that is comparable to a standard cigarette.<sup>xx</sup>**

### **Appearance, Shape, and Sensory Attributes, and Packaging Design**

In November 2019, Canada will join the 13 other countries that have already implemented plain and standardized tobacco product packaging regulations. With strict promotion and advertising rules in effect for tobacco products across Canada, the package became an important marketing tool for tobacco manufacturers. Acting as mini billboards, the tobacco industry used colours, images, logos, slogans and distinctive fonts, finishes, and sizing configurations of packages to make their product appealing and attractive to existing and new tobacco users.<sup>xxiv</sup> The design of the package can make its contents appear safe to use, undermining the visibility, credibility and effectiveness of health warnings. Studies have determined that the colour, shape and size of a package can influence consumer behaviour and contributes to consumer perceptions of the product.<sup>xxi</sup> There is substantial documented evidence that confirms that plain packaging reduces the attractiveness of tobacco products, particularly among young people and women, making plain and standardized tobacco product packaging one of the most effective tobacco control policy measures to reduce consumption.<sup>xxii,xxiii,xxiv</sup>

The same principles and body of evidence can be applied to the regulation of vapour products and their packaging. Devices are being manufactured to look like small, discrete everyday objects, including USB memory sticks, so that youth can attempt to hide vaping behaviour from teachers and parents.<sup>xxv</sup> In Middlesex-London, the ability to “stealth vape” in school washrooms and classrooms is undermining efforts that school staff and MLHU are taking to promote and enforce the *SFOA, 2017* on school property. E-cigarette use on school property is normalizing e-cigarette use among youth; the ability to skirt the law increases the appeal of these products. The devices come in many shapes, colours and sizes, which allow the consumer to customize and personalize their e-cigarette, which complements the lifestyle messaging that youth are receiving from the internet and on social media, in convenience stores, and at gas stations. The lifestyle messaging often depicts cheerful and stylish smokers taking back “their right to smoke” in public by using e-cigarettes instead.<sup>xv</sup> The messaging promotes e-cigarettes as a safe alternative to tobacco products, without communicating the potential health concerns related to inhalation of toxic chemicals, heavy metals, and nicotine found in the vapour.<sup>xix</sup> **To reduce youth appeal, the Health Unit recommends that Health Canada uses the same approach that has been applied to tobacco and cannabis products, by enacting plain and standardized vapour product design and packaging requirements.**

### **Restricting Online Retail Access**

Besides the availability of e-cigarette devices at retail outlets such as convenience stores, gas stations, grocery stores, tobacconist shops, and specialty vape stores, e-cigarette devices and e-substances are widely available for sale through websites and social media.<sup>xxvi</sup> While many online e-cigarette vendors use age-verification measures during online purchase, people under the age of 18 years are still able to purchase e-cigarettes and e-substances online. Research conducted by Williams, Derrick, and Ribisl (2015) in North Carolina showed that the overall success rate for youth purchases of e-cigarettes online was 93.7%. False birth dates were entered into the website and no delivery company attempted to verify recipients’ ages at point of delivery, with 95% of e-cigarette deliveries being left at the door.<sup>xxvii</sup> Youth under the age of 19 years in the Middlesex-London area have disclosed that they have successfully purchased e-cigarette devices and e-substances online. The measures Health Canada has suggested to enhance the verification of age and identity of online purchasers of vapour products are warranted. It is noted in the consultation document that some of these measures are not currently used federally for other age-restricted products, including alcohol or cannabis. **The Health Unit recommends that strict age-verification measures be required for online sales, including age-verification at time of purchase and proof of legal age at delivery. The Health Unit recommends that these measures be considered for online sales of all age-restricted products in Canada.**

## Increasing Regulatory Transparency and Openness

Local public health units, non-governmental organizations, health care practitioners and all levels of government across Canada need to be responsive to the social and health impacts that the use of tobacco and vapour products have on individual and population health. Ensuring that Canadians remain informed of tobacco and vapour product industry practices is important to supporting the efforts of health, non-governmental and governmental agencies to be able to respond to and reduce the burden of nicotine addiction. British American Tobacco plc, Altria Group Inc., Japan Tobacco Inc., Imperial Brands plc, Philip Morris International Inc., VMR Products LLC, NJOY Inc., International Vapor Group, Vapor Hub International Inc., and FIN Branding Group LLC are the predominant companies that are operating in the e-cigarette market.<sup>xxviii</sup> The tobacco industry has a long history of deceptive marketing and advertising practices, and authoring reports with biased data that lied about the addictive nature of tobacco and downplayed the health burden from tobacco use.<sup>xxiv</sup> Ensuring that Canadians have an accurate picture of tobacco and vapour product industry non-compliance with federal regulations, through annual reports and a public disclosure system, would encourage and promote voluntary compliance while keeping Canadians informed of industry activities. **The Health Unit recommends that vapour product manufacturers be held to the same level of accountability and scrutiny as tobacco product manufacturers, through the enactment of vapour product information and reporting regulations. The Health Unit also recommends that Health Canada dedicate research funding to better understand the potential benefits and risks associated with the use of vapour products. Research findings can be used to inform the development of future regulations.**

Inspectors, designated by the Ontario Ministry of Health and Long-Term Care to enforce the *Smoke-Free Ontario Act, 2017* and employed by the eight public health units in southwestern Ontario, meet on a bi-monthly basis to ensure consistent enforcement and application of the rules pertaining to the sale, supply, promotion and use of tobacco and vapour products in Ontario. The ad hoc participation of Health Canada staff involved in the promotion and enforcement of the *Tobacco and Vaping Products Act* would be welcomed at these meetings. Collaboration between local public health units and Health Canada inspectors would be of mutual benefit because it would provide an opportunity to share retailer business intelligence and to share information that supports mutual goals of risk-based enforcement activities. Coordination of enforcement activities could ensure that enforcement visits from Health Canada and local health unit inspectors are spaced out over the course of the year, contributing to an enhanced enforcement presence and improved referral processes between agencies.

The proposed regulatory measures outlined in the consultation document could be an important first step to reduce youth access and appeal of vaping products in Canada. Youth vaping is a significant public health concern, and we thank you for opportunity to share our suggestions with you for your consideration.

Sincerely,

Trish Fulton, Chair  
Middlesex-London Board of Health



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- <sup>v</sup> Youth Tobacco Use: Results from the National Youth Tobacco Survey Available from: <https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm405173.htm>
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