



**JOINT MEETING OF THE
OROVILLE CITY COUNCIL AND
*OROVILLE SUCCESSOR AGENCY**

Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

**December 03, 2019
REGULAR MEETING
CLOSED SESSION 5:30 PM
OPEN SESSION 6:00 PM
AGENDA**

REQUESTS TO ADDRESS COUNCIL

If you would like to address the Council at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the City Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Mayor or presiding chair in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, **please submit the form prior to the conclusion of the staff presentation for that item.** Council has established time limitations of two (2) minutes per speaker on all items and an overall time limit of thirty minutes for non-agenda items. If more than 10 speaker cards are submitted for non-agenda items, the time limitation would be reduced to one and a half minutes per speaker. If more than 15 speaker cards are submitted for non-agenda items, the first 15 speakers will be randomly selected to speak at the beginning of the meeting, with the remaining speakers given an opportunity at the end. **(California Government Code §54954.3(b)).** Pursuant to Government Code Section 54954.2, the Council is prohibited from taking action except for a brief response from the Council or staff to statements or questions relating to a non-agenda item.

CALL TO ORDER / ROLL CALL

Council/Committee Members: David Pittman, Eric Smith, Linda Draper, Art Hatley, Janet Goodson, Vice Mayor Scott Thomson, Mayor Chuck Reynolds

CLOSED SESSION

The Council will hold a Closed Session on the following:

1. Pursuant to Government Code section 54956.9(d)(2), the Council will meet with the City Administrator and City Attorney regarding potential exposure to litigation – two cases.
2. Pursuant to Government Code Section 54957(b), the Council will meet with the City Administrator, Personnel Officer, and City Attorney to consider the employment related to the following position: Assistant City Administrator.
3. Pursuant to Government Code section 54957.6, the Council will meet with Labor Negotiators and City Attorney to discuss labor negotiations for the following represented groups: Oroville Firefighters' Association, Oroville Police Officers Association (Sworn and Non-Sworn), Oroville Public Safety Mid-Managers Association, Oroville Management and Confidential Association, and Oroville City Employees Association.

OPEN SESSION

1. Announcement from Closed Session
2. Pledge of Allegiance
3. Adoption of Agenda

PUBLIC COMMUNICATION – HEARING OF NON-AGENDA ITEMS

This is the time to address the Council about any item not listed on the agenda. If you wish to address the Council on an item listed on the agenda, please follow the directions listed above.

CONSENT CALENDAR

Consent calendar **items 1 - 5** are adopted in one action by the Council. Items that are removed will be discussed and voted on immediately after adoption of consent calendar items.

1. **APPROVAL OF THE MINUTES**

The City Council may approve the minutes of the November 19, 2019 City Council Meeting.

RECOMMENDATION

Approve the minutes of the November 19, 2019 City Council Meeting.

2. **FREE ADMISSION DAYS FOR ALL CITY MUSEUMS**

Council may approve free admission to all City Museums on February 29, 2020 and March 1, 2020

RECOMMENDATION

Authorize free admission days for all City Museums on February 29, 2019 and March 1, 2019 in support of Explore Butte County

3. **2020 SEWER LINING PROJECT – DESIGN TASK ORDER**

Mayor and council may award a task order to Bennett Engineering Services to design and release for construction bid, a sewer lining rehabilitation project to improve problematic sewer pipelines and reduce infiltration to the sewer system.

RECOMMENDATION

Authorize Task Order with Bennett Engineering Services for design of bid documents for sewer rehabilitation.

4. ADOPTION OF ORDINANCE 1840 ADOPTING THE 2019 CALIFORNIA BUILDING STANDARDS CODE TITLE 24, PARTS 1-6 AND 8-12

The Council may adopt Ordinance 1840 to adopt the California Building Standards Code Title 24, Parts 1-6 and 8-12.

RECOMMENDATION

Adopt Ordinance 1840 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE, ADOPTING BY REFERENCE THE 2019 EDITION OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24, KNOWN AS THE CALIFORNIA BUILDING STANDARDS CODE PARTS 1-6 AND 8-12 AND THE UNIFORM HOUSING CODE 1997 EDITION, AND THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS 1997 EDITION AND THE 2019 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE AND AMENDING CERTAIN PORTIONS OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24

5. LETTER TO THE FEDERAL ENERGY REGULATORY COMMISSION REGARDING PROJECT NO. 2001 NEW LICENSE

The Council may consider approving a revised letter to the Federal Energy Regulatory Commission (FERC) regarding Project No. 2100 – Request for Issuance of new license.

RECOMMENDATION

Approve the draft letter or provide direction. (Pictures of SBF completed projects will be included with the letter as attachments.)

REGULAR BUSINESS

6. SUCCESSOR AGENCY PROPERTY SALE - 750 MONTGOMERY STREET*

The Successor Agency may consider an option for the sale of a commercial property asset of the former Oroville Redevelopment Agency located at 750 Montgomery Street.

RECOMMENDATION

Adopt Successor Agency Resolution No. 19-01 - A RESOLUTION OF THE OROVILLE SUCCESSOR AGENCY OF THE FORMER OROVILLE REDEVELOPMENT AGENCY OF THE CITY OF OROVILLE AUTHORIZING AND DIRECTING THE CHAIRPERSON TO SIGN A RESOLUTION RECOMMENDING TO THE BUTTE COUNTY OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF OROVILLE THAT THE PROPERTY LOCATED AT 750 MONTGOMERY STREET, OROVILLE BE SOLD TO BSJ ENTERPRISES, LLC FOR THE APPRAISED VALUE OF \$56,000 LESS THE CLEANUP, DEMO AND ESCROW COSTS; and

Direct staff to sign Successor Agency Agreement No. 19-01

7. CITY OF OROVILLE NEIGHBORHOOD TRAFFIC CALMING PROGRAM

The Council will review and provide direction on accepting the proposed Neighborhood Traffic Calming Program (NTCP). Council will provide direction on the potential purchase of speed enforcement/traffic counting trailers.

RECOMMENDATION

Staff recommends moving forward with the implementation of the proposed Neighborhood Traffic Calming Program and purchasing one (1) or two (2) TrafficLogix VMS30 signboard / trailers in an amount not to exceed \$15,000.00 each.

8. OLD FERRY ROAD ACCESS AGREEMENT FOR CA DEPT. OF WATER RESOURCES (DWR)

City council may approve and direct the mayor may sign a long-term access agreement between the City of Oroville and the California Department of Water Resources (DWR) to allow DWR crews to access their infrastructure adjacent to the Thermalito Diversion Dam.

RECOMMENDATION

Approve the agreement and direct staff to sign it.

9. LIMITING OR PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

The Council may consider input from the Planning Commission and additional testimony from the public regarding adopting an ordinance that limits the sale of flavored tobacco products, or that prohibits the sale outright.

RECOMMENDATION

Provide direction to staff. If the direction includes an ordinance, staff will bring the ordinance to the Council for a first reading on December 17 and a second reading on January 7, 2020. If a letter to the Governor, staff will draft and bring to the Council for approval on December 17.

10. RESOLUTION OF INTENT TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS FOR COUNCIL MEMBERS

The Council may consider the adoption of Resolution No. 8823 to initiate procedures for establishing and implementing by-district elections for Council Members of the City of Oroville.

RECOMMENDATION

Adoption of Resolution No. 8823 – A Resolution of the Oroville City Council Expressing the Council's Intention, Pursuant to Elections Code Section 10010 to Initiate Procedures for Establishing and Implementing By-District Elections for Council Members

REPORTS / DISCUSSIONS / CORRESPONDENCE

1. Council Announcements and Reports
2. Future Agenda Items
3. Administration Reports
4. Correspondence

i. PG&E Rate Change Notice

ii. FERC - 2018 Dam Safety Surveillance and Monitoring Report

iii. Email in support of Flavored Tobacco Ban

ADJOURN THE MEETING

The meeting will be adjourned. A regular meeting of the Oroville City Council will be held on December 17, 2019 at 5:30 p.m.

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the City Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

Recordings - All meetings are recorded and broadcast live on cityoforoville.org and YouTube.



**November 19, 2019
MINUTES**

This agenda was posted on November 15, 2019. This meeting was recorded live and may be viewed online at cityoforoville.org or on YouTube.

CALL TO ORDER / ROLL CALL

Mayor Reynolds called the meeting to order at 5:30pm.

PRESENT: Council Members: David Pittman, Eric Smith, Linda Draper, Art Hatley, Janet Goodson, Vice Mayor Scott Thomson, Mayor Chuck Reynolds

ABSENT: None

STAFF: City Administrator Bill LaGrone, Assistant City Administrator Ruth Wright, Assistant City Clerk Jackie Glover, City Attorney Sam Emmerson, Community Development Director Leo DePaola, Public Safety Director Joe Deal, Management Analyst III Amy Bergstrand, City Treasurer Carolyn Fairbanks.

CLOSED SESSION

The Council held a Closed Session on the following:

1. Pursuant to Government Code section 54957.6, the Council will meet with Labor Negotiators and City Attorney to discuss labor negotiations for the following represented groups: Oroville Firefighters' Association, Oroville Police Officers Association (Sworn and Non-Sworn), Oroville Public Safety Mid-Managers Association, Oroville Management and Confidential Association, and Oroville City Employees Association.
2. Pursuant to Government Code Section 54957(b), the Council will meet with the City Administrator and the Personnel Officer to consider the employment related to the following positions: Assistant City Administrator.
3. Pursuant to Government Code section 54956.9(d)(2), the Council will meet with the City Administrator and City Attorney regarding potential exposure to litigation – one case.

The Council convened to closed session.

OPEN SESSION

Mayor Reynolds reconvened the council from closed session at 5:57pm

1. Announcement from Closed Session – Direction given; no action taken.
2. Pledge of Allegiance – Led by Mayor Reynolds
3. Adoption of Agenda – Motion by Council Member Goodson and second by Council Member Draper. Motion passed.

AYES: Council Member Hatley, Pittman, Goodson, Smith, Draper, Vice Mayor Thomson and Mayor Reynolds
NOES: None
ABSTAIN: None
ABSENT: None

Item 1.

PUBLIC COMMUNICATION – HEARING OF NON-AGENDA ITEMS

The following individuals spoke on non-agenda items:

- Tasha Levinson
- Bill Speer

The following individuals spoke on agenda items:

- Cheri Bunker – Item 2
- The Cameraman – Item 8
- Bill Speer – Item 8

CONSENT CALENDAR

Motion by Council Member Goodson and second by Council Member Smith to adopt consent calendar items 1-6. Motion passed.

AYES: Council Member Hatley, Pittman, Goodson, Smith, Draper, Vice Mayor Thomson and Mayor Reynolds
NOES: None
ABSTAIN: None
ABSENT: None

1. APPROVAL OF THE MINUTES

The City Council May approved the minutes of the November 5, 2019 City Council Meeting

2. DECLINE THE DONATION OF FLOWER TAPESTRY FOR THE PIONEER OR LOTT HOME MUSEUMS

The Council will consider the recommendation of the Parks Commission to accept a donation of a Flower Tapestry for the Lott Home or Pioneer Museum

The council respectfully declined this item at this time.

3. 2018 HOME INVESTMENT PARTNERSHIP GRANT ACCEPTANCE AND ESTABLISH BUDGET

The Council considered accepting the 2018 Home Investment Partnerships Program (HOME) Grant in the amount of \$1,000,000; and establishing the budget for program activities.

In addition, the Council considered approving a budget adjustment to the Housing Program to supplement the budget for administration and program activities for the 2018 HOME Grant in the amount of \$50,000.

The Council accepted the 2018 Home Investment Partnerships Program Grant Agreement No. 18-HOME-12580 in the amount of \$1,000,000.

The Council approved a budget adjustment as indicated in the fiscal impact of this staff report, dated November 19, 2019

4. 2019 HOME INVESTMENT PARTNERSHIPS PROGRAM APPLICATION

Item 1.

The Council considered the submittal of an Application to the State Department of Housing and Community Development for 2019 Home Investment Partnerships (HOME) Program funding in the amount of \$1,000,000.

Additionally, Council considered committing City/Housing Revolving Loans Funds (RLF), equaling \$50,000, for additional administrative support for HOME program activities.

The Council authorized staff to commit City/Housing RLF funds in the amount of \$50,000, to supplement general administration and activity delivery duties.

The Council adopted Resolution No. 8820 - A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE 2019 HOME INVESTMENT PARTNERSHIPS PROGRAM; THE EXECUTION OF A STANDARD AGREEMENT IF SELECTED FOR SUCH FUNDING, AND ANY AMENDMENTS THERETO; AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE 2019 HOME INVESTMENT PARTNERSHIPS PROGRAM.

5. VETERANS HOUSING PROJECT

The Council considered the Exclusive Negotiating Agreement (ENA) with Veterans Housing Development Corporation (VHDC) to develop affordable housing for veterans and their families.

Additionally, Council considered the transfer of Oroville Housing Successor Agency real property, consisting of five (5) single-family homes and three (3) vacant parcels to the VHDC in order to develop affordable housing for Veteran's and their families.

The Council adopted Resolution No. 8822 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF OROVILLE AND VETERANS HOUSING DEVELOPMENT CORPORATION.

The Council adopted Resolution No. 8821 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA, AUTHORIZING AND DIRECTING THE MAYOR TO TRANSFER \$1,005,000 IN SUCCESSOR AGENCY HOUSING PROPERTIES; APN 012- 221-012, APN 012-135-040, APN 012-064-001, APN 031-340-047, APN 068-300-095, APN 012-100-015, APN 033-462-032, APN 033-452-016 TO THE VETERANS HOUSING DEVELOPMENT CORPORATION FOR THE PURPOSE OF AFFORDABLE HOUSING TO EXTREMELY-LOW, VERY-LOW, AND LOW INCOME VETERANS AND THEIR FAMILIES.

6. MODIFICATION TO THE OROVILLE SAFETY MORTGAGE ASSISTANCE PROGRAM GUIDELINES

The Council authorized modification to the Oroville Safety Mortgage Assistance (OSMAP) program guidelines.

REGULAR BUSINESS

7. REPLACEMENT OF OFD ENGINE 2 MOTOR

The Council considered replacing the motor of Oroville Fire Department Engine 2.

Motion by Council Member Pittman and second by Council Member Draper to approve the replacement of a remanufactured motor in Engine 2 in the amount of \$47,996.90. Motion passed.

Item 1.

AYES: Council Member Hatley, Pittman, Goodson, Smith, Draper, Vice Mayor Thomson and Mayor Reynolds
NOES: None
ABSTAIN: None
ABSENT: None

8. AUTHORIZATION TO AWARD CONTRACT FOR TREE PRUNING SERVICES

The Council awarded a contract for Tree Pruning services for City Trees and Trees in the public right of way to the Tree of Life in an amount not to exceed \$80,000.00

Motion by council member Thomson and second by Council Member Smith to authorize Staff to award the bid and sign a contract for Tree Pruning services for City Trees and Trees in the public right of way to the Tree of Life in an amount not to exceed \$80,000. Motion passed.

AYES: Council Member Pittman, Smith, Draper, Vice Mayor Thomson and Mayor Reynolds
NOES: Council Members Goodson and Hatley
ABSTAIN: None
ABSENT: None

REPORTS / DISCUSSIONS / CORRESPONDENCE

1. Council Announcements and Reports
 - a. Draper – Attended the Nature Center Fundraiser on November 7th; Participated in the Veterans Day Parade November 11th; Attended the Chico City Council Meeting on November 12th; Attended the Continuum of Care Meeting November 18th
 - b. Smith – Attended the Continuum of Care Meeting and spoke about the administration being taken over by Butte County; spoke about the Explore Butte County Visitor Guide; Attended the Joint Energy Council meeting November 18th
 - c. Pittman – Mentioned the Oroville Dam Citizens Advisory Committee Meeting to be held on November 20th.
 - d. Reynolds – Participated in the Veterans day parade with several council members; attended a Ribbon Cutting for Phase One of the Hwy 70 project; Is attending his sons Navy Graduation and is proud of his accomplishments and honors he will be receiving.
2. Future Agenda Items
 - a. Smith – Consider free Museum Tours as part of the Museum Passport Weekend for Butte County February 29th and March 1st.
3. Administration Reports
 - a. Project Manager Tom Lando – spoke about annexation progress; and Hwy 70 funding
 - b. City Administrator Bill LagGrone – Spoke about a draft letter to send to FERC; mentioned the several grants being worked on by City Staff for funding for generators, Portland loos, and more; mention that the city is working on 3 affordable housing projects currently; mentioned he will be out the week of Thanksgiving; Thanked the Council and community for giving him the ability to serve them and the community.
 - c. Community Development Director Leo DePaola – Administrative Permit approved for Vista Del Oro trailer; Chipotle and KFC received their finals and are opening in the next few days.

- d. Chief Deal – Met with the Trailer Park Community on 5th avenue, they hosted the first neighborhood watch meeting, long road ahead, but are making progress; Police team staff have been identified, but there is a long road ahead towards implementation.
 - i. Letter - FERC Project No. 2100 - Request for Issuance of New License (Letter provided under separate cover)
- 4. Correspondence
 - i. Letter from FERC - Oroville Emergency Recovery

Item 1.

ADJOURN THE MEETING

The Meeting was adjourned at 6:35pm. A regular meeting of the Oroville City Council will be held on December 3, 2019 at 5:30 p.m.

Approved:

Attested:

Mayor Chuck Reynolds

Assistant City Clerk Jackie Glover



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND CITY COUNCIL MEMBERS
FROM: BILL LAGRONE, CITY ADMINISTRATOR
RE: FREE ADMISSION DAYS FOR ALL CITY MUSEUMS
DATE: DECEMBER 3, 2019

SUMMARY

Council may approve free admission to all City Museums on February 29, 2020 and March 1, 2020

DISCUSSION

The City of Oroville staff in cooperation with Explore Butte County are asking for a two-day admission waiver for all City Museums. Explore Butte County is sponsoring a two-day event to exemplify cultural activities available in all of Butte County. Explore Butte County will advertise the free admission days as part of their advertising campaign. The hope is that these types of promotional activities will get people interested in the museums and increase attendance throughout the year.

FISCAL IMPACT

Loss of admission fees for the two-day period, estimated at between \$50 to \$100 dollars.

RECOMMENDATION

Authorize free admission days for all City Museums on February 29, 2019 and March 1, 2019 in support of Explore Butte County



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: 2020 SEWER LINING PROJECT – DESIGN TASK ORDER

DATE: DECEMBER 3, 2019

SUMMARY

Mayor and council may award a task order to Bennett Engineering Services to design and release for construction bid, a sewer lining rehabilitation project to improve problematic sewer pipelines and reduce infiltration to the sewer system.

DISCUSSION

Various sections of sewer throughout the City have been identified, via the on-going cleaning and inspection program administered by the City's Public Works – Sewer Maintenance, as problematic for poor pipeline joints and tree root intrusion. These pipelines are on a preventative maintenance schedule with our sewer crews to cut roots and clean the lines to prevent grease buildup and blockages.

It is anticipated that the pipelines will be thoroughly cleaned, video inspected, and a cured in place lining system will be installed continuously between manholes that will seal the pipeline and prevent further root intrusion and reduce groundwater infiltration to the sewer system.

The City was proactively doing annual lining projects from 2014 to 2016. The goal is to have a list of projects can be done annually to continuously improve the reliability of the sewer system and reduce the number of pipelines on the preventative maintenance list.

This task order will generate a design package for contractors to bid on the sewer lining work for the City. The project is expected to be bid in the early spring and constructed this summer.

FISCAL IMPACT

Estimated Design Fee: \$27,860 from the sewer fund 4101-6360 outside services

RECOMMENDATION

Authorize Task Order with Bennett Engineering Services for design of bid documents for sewer rehabilitation.

ATTACHMENTS

2020 Sewer Lining Project - Scope of Work
2020 Sewer Lining Project – Fee Estimate

Scope of Services

Item 3.

BEN|EN

TRUSTED ENGINEERING ADVISORS

Bennett Engineering Services
1082 Sunrise Avenue, Suite 100
Roseville, California 95661

T 916.783.4100

F 916.783.4110

www.ben-en.com

Client: City of Oroville
Consultant: Bennett Engineering Services Inc
Project: 2020 Sewer Lining Project
Date: November 8, 2019

Consultant's services shall be limited to those expressly set forth below, and Consultant shall have no other obligations or responsibilities for the Project or to the Client except as agreed to in writing or as provided in this Agreement. All of Consultant's services in any way related to the Project or Client shall be subject to the terms of this Agreement.

TASK 1. Project Management

Subtask 1.1. Project Administration

Bennett Engineering's (BEN|EN's) Project Manager will submit monthly project status updates and invoicing. BEN|EN will manage the project schedule and integrate deliverables.

DELIVERABLES:

- Monthly status updates
- Schedule updates

Subtask 1.2. Meetings

BEN|EN will prepare agendas and minutes for meetings and document design decisions accordingly. Meetings include one (1) project kickoff meeting and two (2) design meetings (or conference calls).

DELIVERABLES:

- Meeting agendas and minutes

Subtask 1.3. Quality Control Program

BEN|EN's Quality Control Program will be implemented and constructability reviews will be conducted by senior BEN|EN staff prior to submittal of the 90% and Bid Set submittals.

TASK 2. Design Services

Subtask 2.1. Records Research

The BEN|EN team will visit the site as needed for investigation of existing conditions. BEN|EN will also research and review existing GIS mapping, as-built plans, record maps, improvement plans, and other available documents for the project.

Subtask 2.2. 90% PS&E

BEN|EN will prepare and submit 90% plans and an opinion of probable construction cost (OPCC) to the City or review and comment. Design will be based on City of Oroville design and construction standards and will reference City standard details where appropriate.

The construction drawings will include, at a minimum:

- Title Sheet – 1
- General Notes – 1
- Site Plan – 1
- Lining Plan Sheets – 4+
- Civil Details – 1

INITIALS:

Specifications will be prepared in the Construction Specifications Institute (CSI) MasterFormat, 2016 format.

DELIVERABLES:

- 90% plans, specifications, and estimate

Subtask 2.3. Bid Set PS&E

BEN|EN will prepare and submit final plans, specifications, and an OPCC to the City that fully address all comments in the City's 90% review. Final bid documents will be provided to the City in both PDF and hard copy formats.

DELIVERABLES:

- Bid set plans, specifications, and estimate

TASK 3. Bid Services

Subtask 3.1. Bid Advertisement

BEN|EN will advertise the project for bidding and make the Construction Documents available to potential bidders.

Subtask 3.2. Bid Coordination

BEN|EN will respond to questions concerning the plans, specifications, and estimate prior to the bid openings, and prepare addenda and letters of clarification as required to respond to potential bidders' Requests for Information (RFIs). BEN|EN will provide revised or supplemental project plans or exhibits as needed to be fully responsive to RFIs. One (1) Bid Addendum is assumed. BEN|EN will support the City of Oroville during bid opening.

DELIVERABLES:

- Bid tabulation

TASK 4. Engineering Services During Construction

Subtask 4.1. Review Submittals and RFIs

BEN|EN will coordinate with a Construction Manager during project construction. The Construction Manager will be selected by the City.

BEN|EN will prepare a list of submittals required to be submitted by the Contractor during construction. BEN|EN will review submittals for construction. Submittals will be logged in a matrix/spreadsheet and provided to the City. Four (4) submittals are assumed. BEN|EN will also review requests for information (RFIs) and contract change order (CCO) requests made by the Contractor. BEN|EN will provide responses and prepare revised plans or clarification exhibits, as required. RFIs will be logged in a matrix and provided to the City. Three (3) RFIs are assumed.

DELIVERABLES:

- Submittal tracking spreadsheet
- Submittal responses

Fee Estimate - Design and Construction Support

Client: City of Oroville
Consultant: Bennett Engineering Services Inc
Project: 2020 Sewer Lining Project
Date: November 8, 2019



Item 3.

Fee Estimate	Project Manager II 180 \$/hr		Engineer III 180 \$/hr		Engineer I 150 \$/hr		Engineering Tech I 110 \$/hr		Administrative 80 \$/hr		BEN EN Subtotal		MISC. EXPENSES	TOTAL
	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost		
Task 1 - Project Management														
1.1 - Project Administration	8 hrs	\$1,440	hrs	\$0	hrs	\$0	hrs	\$0	6 hrs	\$480	14 hrs	\$1,920	\$100	\$2,020
1.2 - Meetings	4 hrs	\$720	hrs	\$0	hrs	\$0	hrs	\$0	hrs	\$0	4 hrs	\$720	\$40	\$760
1.3 - Quality Control Program	1 hrs	\$180	4 hrs	\$720	hrs	\$0	hrs	\$0	hrs	\$0	5 hrs	\$900	\$50	\$950
Subtotal	13 hrs	\$2,340	4 hrs	\$720	hrs	\$0	hrs	\$0	6 hrs	\$480	23 hrs	\$3,540	\$190	\$3,730
Task 2 - Design Services														
2.1 - Records Research	4 hrs	\$720	hrs	\$0	6 hrs	\$900	hrs	\$0	hrs	\$0	10 hrs	\$1,620	\$80	\$1,700
2.2 - 90% PS&E	24 hrs	\$4,320	hrs	\$0	40 hrs	\$6,000	16 hrs	\$1,760	hrs	\$0	80 hrs	\$12,080	\$600	\$12,680
2.3 - Bid Set PS&E	8 hrs	\$1,440	hrs	\$0	16 hrs	\$2,400	12 hrs	\$1,320	hrs	\$0	36 hrs	\$5,160	\$260	\$5,420
Subtotal	36 hrs	\$6,480	hrs	\$0	62 hrs	\$9,300	28 hrs	\$3,080	hrs	\$0	126 hrs	\$18,860	\$940	\$19,800
Task 3 - Bid Services														
3.1 - Bid Advertisement	2 hrs	\$360	hrs	\$0	4 hrs	\$600	hrs	\$0	hrs	\$0	6 hrs	\$960	\$50	\$1,010
3.2 - Bid Coordination	4 hrs	\$720	hrs	\$0	4 hrs	\$600	4 hrs	\$440	hrs	\$0	12 hrs	\$1,760	\$90	\$1,850
Subtotal	6 hrs	\$1,080	hrs	\$0	8 hrs	\$1,200	4 hrs	\$440	hrs	\$0	18 hrs	\$2,720	\$140	\$2,860
Task 4 - Engineering Services During Construction														
4.1 - Review Submittals and RFIs	2 hrs	\$360	hrs	\$0	4 hrs	\$600	4 hrs	\$440	hrs	\$0	10 hrs	\$1,400	\$70	\$1,470
Subtotal	2 hrs	\$360	hrs	\$0	4 hrs	\$600	4 hrs	\$440	hrs	\$0	10 hrs	\$1,400	\$70	\$1,470
PROJECT TOTAL	57 hrs	\$10,260	4 hrs	\$720	74 hrs	\$11,100	36 hrs	\$3,960	6 hrs	\$480	177 hrs	\$26,520	\$1,340	\$27,860

Additional Fee Information

- ▶ This fee estimate is valid for 90 days.
- ▶ This fee estimate contains an abbreviated list of staff classifications and does not restrict BEN|EN to those classifications. The Standard Rate Schedule with a full list of staff classifications is available upon request.
- ▶ Standard hourly rates do not apply to a demand to perform work during an overtime period. Work required to be performed during an overtime period (as mandated by California law) may be charged at a 50% premium. Work mandated by Prevailing Wage laws may be charged at a 25% premium.
- ▶ Hourly rates include all compensation for wages, salary-related benefits, overhead, general office administration, and profit. Direct project administrative hours will be billed at the rate shown above.
- ▶ Classifications may be added or removed as-needed without notice.
- ▶ Changes in the requested scope of work or projected schedule may result in the revision of the proposed fees and amendment to the total contract amount.

INITIALS:



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: LEONARDO DEPAOLA, COMMUNITY DEVELOPMENT DIR.

RE: ADOPTION OF ORDINANCE 1840 ADOPTING THE 2019 CALIFORNIA BUILDING STANDARDS CODE TITLE 24, PARTS 1-6 AND 8-12

DATE: DECEMBER 3, 2019

SUMMARY

The Council may adopt Ordinance 1840 to adopt the California Building Standards Code Title 24, Parts 1-6 and 8-12.

DISCUSSION

The California Building Standards Code is published in its entirety every three years by order of the California Legislature, with supplements published in intervening years. The California legislature delegated authority to various agencies, boards, commissions and departments to create building regulations to implement the state's statutes. These building regulations, or standards, have the same force of law, and take effect 180 days after their publication unless otherwise stipulated. The California Building Standards Code applies to occupancies in the State of California as annotated.

The 2019 edition of the California Building Standards Codes ("The Code") were published on July 1, 2019. They will go into effect un-amended on January 1, 2020 unless The City specifically adopts this most current edition by ordinance. This specific adoption allows the City to make more restrictive amendments to The Code as allowed (with findings), or to adopt specific appendices provided in The Code for clarification. The specific codes and the corresponding amendments (attached as Exhibit A) are published by reference in Chapter 15, division 1 of the City of Oroville Municipal Code.

The City Council conducted a public hearing on November 5, 2019 and adopted the first reading of the ordinance.

FISCAL IMPACT

There is no fiscal impact to the city

RECOMMENDATION

Adopt Ordinance 1840 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE, ADOPTING BY REFERENCE THE 2019 EDITION OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24, KNOWN AS THE CALIFORNIA BUILDING STANDARDS CODE PARTS 1-6 AND 8-12 AND

THE UNIFORM HOUSING CODE 1997 EDITION, AND THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS 1997 EDITION AND THE 2019 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE AND AMENDING CERTAIN PORTIONS OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24

ATTACHMENTS

Exhibit A; Ordinance to adopt the 2019 edition of the California Building standards Code Title 24, parts 1-6 and 8-12 with amendments.

**CITY OF OROVILLE
ORDINANCE NO. 1840**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE, ADOPTING BY REFERENCE THE 2019 EDITION OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24, KNOWN AS THE CALIFORNIA BUILDING STANDARDS CODE PARTS 1-6 AND 8-12 AND THE UNIFORM HOUSING CODE 1997 EDITION, AND THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS 1997 EDITION AND THE 2019 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE AND AMENDING CERTAIN PORTIONS OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24

NOW, THEREFORE, the Oroville City Council DO ORDAIN as follows:

WHEREAS, The purpose of this Chapter is to adopt by reference the 2019 edition of the California Code of Regulations Title 24, known as the California Building Standards Code Parts 1-6 and 8-12, subject to the definitions, clarifications, and the amendments set forth in this Chapter. The purpose of this Chapter is also to provide minimum requirements and standards for the protection of the public safety, health, property, and welfare of the City of Oroville. This Chapter is adopted under the authority of Government Code Subsection 50022.2, Health and Safety Code Section 18941.5, and the California Constitution.

Section 1. Chapter 15-04 of the City of Oroville Municipal Code (General Applications)

A. The existing sections of Chapter 15 Division 1 of the city of Oroville Municipal Code that are not expressly repealed or amended by this ordinance are hereby readopted without change, and shall apply, as applicable, to the model codes herein adopted.

B. The following sections and subsections of Chapter 18-04 of the Santa Rosa City Code are amended as follows:

Division I. Uniform Codes

Chapter 15.04 GENERAL APPLICATIONS AND ADMINISTRATIVE CODE

15.04.010 Title and purpose.

A. This chapter shall be known as the Oroville Building Code, and may be cited as such, and will be referred to herein as “this Code.”

B. The purpose of this Code is to provide for the uniform administration and enforcement of the technical codes adopted by this jurisdiction. (Ord. 1800 § 2, 2013)

15.04.020 Conflicts with other laws or ordinances.

In the event of any conflict between this Code and any law, rule or regulation of the State of California, that requirement which establishes the higher standard of safety shall govern. (Ord. 1800 § 2, 2013)

15.04.030 Adoption of the Administrative Code.

A. Chapter 1, Divisions I and II of the 2013 Edition of the **California Building Code**, Title 24, Part 2 of the California **Code of Regulations** hereinafter referred to as “Administrative Building Code,” as amended, is hereby adopted and incorporated by reference herein.

B. Exception. Chapter 1 Division I and sections referenced therein of Chapter 1 Division II of the 2013 Edition of the **California Residential Code**, Title 24, Part 2.5, as amended in Section 15.04.080, hereinafter referred to as the “Administrative Residential Code,” is hereby adopted as amended and incorporated by reference herein and shall govern buildings as applicable per Residential Code Section 1.1.3. (Ord. 1800 § 2, 2013)

15.04.040 Flood ordinance compliance.

The city flood ordinance, Chapter 15.96, applies to buildings constructed in areas regulated therein. (Ord. 1800 § 2, 2013)

15.04.050 Scope.

A. The provisions of the Administrative Residential Code shall serve as the administrative, organizational, and enforcement rules and regulations for the technical codes that regulate, within this jurisdiction, the site preparation, construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every detached one- and two-family dwelling and accessory structures as classified in Section 1.1.3 of the Residential Code.

B. The provisions of the Administrative Building Code shall serve as the administrative, organizational, and enforcement rules and regulations for the technical codes that regulate, within this jurisdiction, the site preparation, construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of every building or structure including but not limited to docks, marinas, boathouses, signs, swimming pools, accessory structures or any appurtenances connected or attached to such buildings or structures and building service equipment within this jurisdiction unless these are subject to regulation under the Residential Code. (Ord. 1800 § 2, 2013)

15.04.060 Definitions.

For the purpose of this chapter, the following definitions shall apply:

Whenever the word “code” is used in California Chapter 1 of the **California Building Code**, Title 24, Part 2, of the California **Code of Regulations**, it shall mean the Administrative Code.

“**Building official**” is the officer or other designated authority charged with the administration, and enforcement of the Code. The terms “administrative authority,” and “city” are to be considered synonymous with the terms “building official,” “department of building safety” and “building department” as they appear in the Code or the technical codes.

“**Building service equipment**” refers to the plumbing, mechanical, and electrical equipment including piping, wiring, fixtures, and other accessories that provide sanitation, lighting, heating, ventilation, cooling, refrigeration and fire fighting facilities essential for the habitable occupancy of the building or structure for its designated use and occupancy.

“**This jurisdiction**” means the incorporated area of the City of Oroville.

“**Technical codes**” refers to the following codes adopted by the City of Oroville, which contain the provisions for design, construction, alteration, addition, repair, removal, demolition, use, location and occupancy of all buildings and structures and building service equipment as herein defined:

1. Oroville City Code, Chapter 15.08, Building Code (hereinafter referred to as “Building Code”).
2. Oroville City Code, Chapter 15.12, Residential Code (hereinafter referred to as “Residential Code”).
3. Oroville City Code, Chapter 15.24, Plumbing Code (hereinafter referred to as “Plumbing Code”).
4. Oroville City Code, Chapter 15.28, Electrical Code (hereinafter referred to as “Electrical Code”).
5. Oroville City Code, Chapter 15.32, Energy Code (hereinafter referred to as “Energy Code”).
6. Oroville City Code, Chapter 15.40, Mechanical Code (hereinafter referred to as “Mechanical Code”).
7. Oroville City Code, Chapter 15.60, Fire Code (hereinafter referred to as “Fire Code”).
8. Oroville City Code, Chapter 15.56, California Green Building Standards Code (hereinafter referred to as “Green Code”). (Ord. 1800 § 2, 2013)

15.04.070 Amendments to Sections 103 and 105 through 116 of Chapter 1, Division II, of the Building Code.

A. Section 103.1 “Creation of enforcement agency” is amended as follows:

103.1 Creation of Enforcement Agency. The Building Inspection section of the Construction Management and Inspection Division is hereby created and the official in charge thereof shall be known as the building official.

B. Section 105.3.2 “Time Limitation of Application” is re-titled and amended as follows:

105.3.2 Expiration of Plan Review. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend time for action by the applicant for a period not exceeding 180 days

upon request by the applicant in writing showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than twice. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

C. Section 105.5 “Expiration” is re-titled and amended as follows:

105.5 Permit Expiration. Every permit issued by the building official under the provisions of the technical codes shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit or if the building or work authorized by such permit is suspended or abandoned for a period of 180 days at any time after the work is commenced. Before such work can be recommenced, the permit shall be renewed. The fee for renewal shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after the building or work has been suspended or abandoned or the permit has been expired for a period exceeding one year, the permittee shall pay a new full permit fee. Permits deemed to have expired shall be subject to all permit related fee increases and new fees in effect at the time of permit renewal as applicable subject to the discretion of the building official. The valuation for new construction or additions shall not be less than that established by the International Code Council based square footage cost tables. The building official shall have discretion to adjust permit renewal fees when extenuating circumstances exist.

Permits will be deemed to have expired if there has been no inspection of work within a 180-day period. When the work is not ready for a required inspection within 180 days of the last inspection, the permittee must request a permit extension.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

All building permits shall expire two years after the issuance date. The permit may be extended beyond this period if the work authorized by the permit is being diligently pursued but only upon written request by the permittee. Review of the request and granting of an approved time extension beyond two years shall be made by the building official.

D. Section 109.1.1 “Fees” is added as follows:

109.1.1 Fees. The fee for each permit shall be that fee established by the City Council fee resolution.

E. Section 109.1.2 “Plan Review Fees” is added as follows:

109.1.2 Plan Review Fees. When submittal construction documents are required by Section 107, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be that fee established by the City Council fee resolution.

The plan review fees specified in this section are separate fees from the permit fees specified in Section 109.1.1 and are in addition to the permit fees. When submittal documents are incomplete or changed so as to require additional plan review, or when project involves a deferred submittal

item as defined in Section 107.3.4.1, an additional plan review fee shall be charged at the rate established by the City Council fee resolution.

F. Section 109.3 “Building Permit Valuations” is amended as follows:

109.3 Building Permit Valuations. The applicant for a permit shall provide an estimated permit value at time of application. The value to be used in computing the building permit and building plan review fees shall be the total of all construction work for which the permit is being issued, as well as finish work, painting, roofing, electrical, plumbing, gas, heating, air conditioning, elevators, fire extinguishing systems, and any other permanent equipment and systems. Value for donated and/or discounted materials and labor shall be established at typical market value and rates. The permit shall include additional valuation for work on the project site such as lighting, sewer, water service and other items requiring inspection. In no case shall the valuation for new construction or additions be less than determined by the International Code Council based cost tables. When permitted work includes an alteration to an existing structure, or includes work outside of the standard calculated fee areas determined by the International Code Council based square footage cost tables, the applicant shall provide actual/contracted project costs to establish the additional non-calculated valuation of the total permitted project. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

G. Section 109.4 “Work Commencing Before Permit Issuance” is amended as follows:

109.4 Work Commencing Before Permit Issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical, plumbing system before obtaining the necessary permits shall be subject to a violation fee. The violation fee shall be twice the amount of the total Building Inspection fees (plan review plus building permit fees) as established by the City Council fee resolution. The violation fee is separate and independent from other fees and shall be collected whether or not a permit is then or subsequently issued; however, the violation fee shall not apply to emergency work when it is proved to the satisfaction of the building official that such work was urgently necessary and that it was not practical to obtain a permit before commencement of the work. The payment of such violation fee shall not exempt any person from compliance with other provisions of this Code, the technical codes, or from any penalty prescribed by law.

H. Section 109.6 “Refunds” is amended as follows:

109.6 Refunds. The building official may authorize the refunding of any fee paid hereunder that was erroneously paid or collected.

The building official may authorize the refund of the separate plan review and/or building permit fees. The plan review fee may be refunded when no plan review has been performed. The building permit fee may be refunded only when inspections have not been provided. The refund of these separate and independent fees shall not exceed 80% of the individual plan review or building permit fee.

The building official shall not authorize the refunding of any fee paid except upon written application filed by the original applicant not later than 180 days after the date of fee payment. Under no circumstances shall there be a refund of either fee if the plan review or building permit has expired.

I. Section 110.7 “Reinspections” is added as follows:

110.7 Reinspections. A reinspection fee may be assessed for each inspection or reinspection when any of the following conditions exist:

1. such portion of work for which inspection is called is not completely ready.
2. previous written corrections have not been made.
3. the job address is not clearly posted and visible from the street or the front of the building.
4. the inspector has no access to the work to be inspected.
5. the approved plans are not readily available to the inspector.
6. the building permit, application and any previous correction notice(s) are not available at the job site.
7. deviating from the approved plans requiring further approval of the building official.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspections before the job is completely ready for such inspection or when plans and/or permit documents are not available to the inspector at the site where the inspection is to be performed.

To obtain a reinspection, the applicant shall file an application in writing on a form furnished for that purpose and pay the reinspection fee as established by the City Council fee resolution.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the reinspection fees have been paid.

J. Section 112.1 “Connection of Service Utilities” is amended as follows:

112.1 Connection of Service Utilities. No person shall make connections from a source of energy fuel, or power to any building service equipment that is regulated by the technical codes and for which a permit is required by this Code until approved by the building official.

K. Section 112.1.1 “Connection of Building Service Equipment” is added as follows:

112.1.1 Connection of Building Service Equipment. All building service equipment for which a permit is required by this Code shall be inspected by the building official. No portion of any building service equipment intended to be concealed by any permanent portion of the building shall be concealed until inspected and approved. When the installation of any building service equipment is complete, an additional and final inspection shall be made. Building service equipment regulated by the technical codes shall not be connected to the water, fuel, or power supply or sewer system until authorized by the building official.

L. Section 112.1.2 “Operation of Building Service Equipment” is added as follows:

112.1.2 Operation of Building Service Equipment. Inspection of replacement building service equipment must be scheduled within 48 hours after installation; building service equipment replaced on an emergency basis may be operated during this time. No work may be covered prior to approval of the building official.

M. Section 112.2 “Temporary Connection” is amended as follows:

112.2 Temporary Connection. The building official may authorize the temporary connection of the building service equipment to the source of energy fuel, or power for the purpose of testing building service equipment or for the use under a temporary Certificate of Occupancy.

N. Section 112.3 “Authority to Disconnect Service Utilities” is amended as follows:

112.3 Authority to Disconnect Service Utilities. The building official or an authorized representative shall have the authority to disconnect any utility service or energy supplied to any building, structure, or building service equipment therein regulated by this Code or the technical codes when either:

1. The building owner/occupant knowingly fails to comply with a notice or order.
2. In case of emergency where necessary to eliminate an immediate hazard to life or property.

The building official shall, whenever possible, notify the serving utility, the owner and the occupant of the building, structure, or building service equipment of the decision to disconnect prior to taking such action and shall notify such serving utility, owner, and occupant of the building structure, or building service equipment, in writing, of such disconnection immediately thereafter.

O. Section 113 “Board of Appeals” is amended and added as follows:

113.1 General (amended).

The appeal process is only for review of the jurisdictional interpretation of the technical building codes and does not apply to the adopted jurisdictional administrative section of the code.

In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of the technical codes, there shall be and is hereby created a building inspection board of appeals. The board of appeals Chairperson and Vice Chairperson shall be appointed by the building official and approved by the City Council and shall hold office at its pleasure. The Board of Appeals shall adopt rules of procedure for conducting its business.

113.1.1 Informal Appeal (added).

Prior to the convening of a formal session of appeals before this board, an informal appeal shall be convened for review and determination of the issue by the building official and building inspection personnel who possess the specific inspection discipline expertise. Discipline trade or engineering and construction experts may also participate in this first step appeal. This appeal request must be made to the building official in writing. Should the appellant disagree with the interpretation by the informal board of appeals, a written request for the formal appeals process may be made.

113.1.2 Appeals in Violation Cases (added).

For violation cases, the informal appeal process shall be used to appeal issued notices and orders. This appeal request must be made to the building official in writing within ten calendar days of the issuance date of the notice or order. Violation case notices and orders shall not be elevated to the second level formal Board of Appeals which is reserved for technical provisions of the Code.

113.2 Limitations on authority (amended).

An application for appeal shall be based on a claim that the true intent of the technical codes or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of the technical codes do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive the requirements of the technical codes.

113.3 Qualifications and Members (amended).

The board of appeals shall consist of a Chairperson, a Vice Chairperson approved by the City Council who will be present at each appeal and three listed experts that are familiar with the content subject of the specific appeal. The Chairperson and Vice Chair shall be chosen from the Architectural, Building Code and/or Legal (Attorney) professions. The additional three members shall be chosen from a list to meet the needs of each specific appeal. Chosen members shall possess the experience and training to pass on matters pertaining to building construction. Appointments shall not be employees of the jurisdiction for the specific appeal at hand and shall consist of members who are qualified and specifically knowledgeable in the [California Building Standards Code](#) and applicable local ordinances.

The board of appeals shall consist of five members, three of which are chosen to serve based upon their expertise and availability for any single appeal matter. The Chairperson and Vice Chairperson of the board shall be approved by the City Council and shall be present at each appeal. A list of available members shall be reviewed by the building official and appointed through agreement of the Chairperson and Vice Chairperson for membership. These two primary members shall further choose the member experts for each appeal request. The list of potential board members shall be derived from a typical group of representative experts such as: Residential or Commercial General Contractors; Electrical contractors; Mechanical contractors; Plumbing contractors; Electrical engineers; Mechanical engineers; Civil or structural engineers; Architect; Fire service representative; Attorney; Utility representative; and a Code expert/professional from outside of the jurisdiction.

113.5 Terms (added).

Terms for Chairperson and Vice Chairperson shall be for three years or for the length of the current California Code cycle. Other listed members shall be chosen and appointed to individual appeal board sessions at the pleasure of the Chairperson and Vice Chairperson. There is no limit in the number of terms that any board member may serve.

113.6 Vacancies (added).

Vacancies for the Chairperson and Vice Chairperson shall be filled and appointment by the building official for the un-expired portion of the term.

113.7 Secretary (added).

The secretary shall be the building official or designee. The secretary shall have no vote except in the case of a tie vote.

113.8 Meetings (added).

The Board of Appeals shall meet as determined by the building official or as determined by the Chairperson and/or by the Vice Chairperson of the board.

113.9 Rules, Regulations, Decisions and Findings (added).

The Board of Appeals shall adopt reasonable rules and regulations for conducting its investigations. The Board of Appeals shall render all decisions and findings in writing to the building official and provide a copy to the applicant; the Board of Appeals may recommend to the City Council or jurisdictional governing board such new legislation as is consistent therewith. Decisions and findings are final and shall be filed in the office of the building official, for public inspection.

P. Section 114.5 “Authority to Condemn Building Service Equipment” is added as follows:

114.5 Authority to Condemn Building Service Equipment. Whenever the building official determines that any building service equipment regulated in the technical codes has become hazardous to life, health, property or becomes unsanitary, the building official shall order, in writing, that such equipment either be removed or restored to a safe or sanitary condition, whichever is appropriate. The written notice itself shall prescribe a fixed time limit for compliance with such order. No person shall use or maintain defective building service equipment after receiving such notice.

When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefore shall be given within 24 hours to the serving utility, the owner, and occupant of such building, structure or premises.

When any building service equipment is maintained in violation of the technical codes and in violation of any notice issued pursuant to the provisions of this section, the building official shall institute any appropriate action to prevent, restrain, correct or abate the violation.

Q. Section 114.6 “Connection after Order to Disconnect” is added as follows:

114.6 Connection after Order to Disconnect. No person shall make connections to any energy, fuel, or power supply nor supply energy or fuel to any building service equipment that has been disconnected, ordered to be disconnected or the use of which has been ordered discontinued by the building official until the building official authorizes the reconnection and use of such equipment.

The building official shall have the right to withhold clearing building service equipment for connection by the utility company if the owner or contractor refuses to comply with other ordinances affecting the structure as a whole.

(Ord. 1800 § 2, 2013)

15.04.080 Amendments to Sections R103 and R105 through R116 of Chapter 1, Division II, of the Residential Code.

A. Section R103.1 “Creation of enforcement agency.” Refer to Section 15.04.070, Section 103.1.

B. Section R105.3.1.1 “Determination of substantially improved or substantially damaged existing buildings in flood hazard areas” is specifically not adopted. In lieu of Section R105.3.1.1, refer to the City of Oroville flood ordinance, Chapter 15.96.

C. Section R105.3.2 “Time limitation of application.” Refer to Section 15.04.070, Section 105.3.2.

D. Section R105.5 “Expiration.” Refer to Section 15.04.070, Section 105.5.

E. Section R108.1.1 “Fees” is hereby added; refer to Section 15.04.070, Section 109.1.1.

F. Section R108.1.2 “Plan Review Fees” is hereby added; refer to Section 15.04.070, Subsection 109.1.2.

G. Section R108.1.3 “Additional Plan Review” is added as follows:

For projects where changes in the scope of work require additional plan review, additional plan review fees shall be charged at the rate prescribed in Section 15.04.070 of the Oroville City Code.

H. Section R108.3 “Building Permit Valuations.” Refer to Section 15.04.070, Section 109.3.

- I. Section R108.6 “Work Commencing Before Permit Issuance.” Refer to Section 15.04.070, Section 109.4.
- J. Section R108.5 “Refunds.” Refer to Section 15.04.070, Section 109.6.
- K. Section R109.1.6.1 “Elevation documentation” is specifically not adopted. In lieu of Section R109.1.6.1, refer to the City of Oroville flood ordinance, Chapter 15.96.
- L. Section R109.5 “Reinspections” is hereby added; refer to Section 15.04.070, Section 110.7.
- M. Section R110.1 “Certificate of Occupancy” is amended as follows:
Exception 3. The record of approved final inspections serves as approval of occupancy for R3 occupancies and accessory structures.
- N. Section R111.1 “Connection of Service Utilities.” Refer to Section 15.04.070, Section 112.1.
- O. Section R111.1.1 “Connection of Building Service Equipment” is hereby added; refer to Section 15.04.070, Section 112.1.1.
- P. Section R111.1.2 “Operation of Building Service Equipment” is hereby added; refer to Section 15.04.070, Section 112.1.2.
- Q. Section R111.2 “Temporary Connection.” Refer to Section 15.04.070, Section 112.2.
- R. Section R112 “Board of Appeals” is amended as follows:
The Local Appeals Board, the Housing Appeals Board and the Board of Appeals shall be synonymous with the Board of Appeals in Section 15.04.070, Section 113.
- S. Section R113.5 “Authority to Condemn Building Service Equipment” is hereby added; refer to Section 15.04.070, Section 114.
- T. Section R113.6 “Connection after Order to Disconnect” is hereby added; refer to Section 15.04.070, Section 114.6.
- U. Section 115 “Unsafe structures and equipment” is hereby added; refer to Section 15.04.070, Section 116. (Ord. 1800 § 2, 2013)

15.04.090 Work exempt from permits.

Chapter 1, subsection 105.2/R105.2, “Work Exempt from Permits,” of the 2013 **California Building Code** and **California Residential Code** is amended as follows:

105.2/R105.2 Work Exempt from Permits: Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any matter in violation of the provisions of this Code or any other laws or ordinances of the City of Oroville. Permits shall not be required for the following:

Building:

- a) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet.
- b) Fences not over 7 feet in height and complying with Title 17 of the City of Oroville Zoning Regulations.
- c) Oil derricks.

- d) Retaining walls that are not over 4 feet in height measure from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or IIIA liquids.
- e) Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2:1.
- f) Sidewalks and driveways not more than 30 inches above adjacent grade, and not over any basement or story below and are not part of an accessible route.
- g) Painting, papering, tiling, carpeting, cabinets, counter tops, and similar finish work.
- h) Temporary motion picture, television and theater stages, sets, and scenery.
- i) Prefabricated swimming pools accessory to a group R-3 occupancy that are less than 24 inches deep, do not exceed 5,000 gallons and are installed directly above grade.
- j) Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
- k) Swings and other playground equipment accessory to one- and two-family dwellings.
- l) Window awnings supported by an exterior wall that do not project more than 54 inches from the exterior wall and do not require additional support of Groups R-3 and U occupancies.
- m) Non-fixed and movable fixtures, cases, racks, and counters and partitions not over 5 feet 9 inches in height.

(Ord. 1800 § 2, 2013)

Chapter 15.08 BUILDING CODE

15.08.010 Title and purpose.

A. This chapter shall be known and cited as the “City of Oroville Building Code” (hereinafter referred to as “Code”).

B. The purpose of this Code is to provide minimum standards to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, use and occupancy, and location of all buildings and structures within this jurisdiction, and certain equipment specifically regulated herein. Exception: Group R-3 and U occupancies as classified in Section 1.1.3 of the [California Residential Code](#). (Ord. 1800 § 2, 2013)

15.08.020 Adoption of the California Building Code.

The 2013 [California Building Code](#), Title 24, Part 2, of the California [Code of Regulations](#), a portion of the [California Building Standards Code](#) as defined in the California State [Health and Safety Code](#) Sections 17922 and 18901 et seq. (hereinafter referred to as the “Building Code”), and any rules and regulations promulgated pursuant thereto, including Building Code Appendix C (Group U Agricultural Buildings), Appendix H (Signs), Appendix I (Patio Covers), and Appendix J (Grading), are hereby adopted and incorporated by reference herein. Except as otherwise provided by this chapter and Chapters 15.04 and 15.12 of the City of Oroville Municipal Code, all construction, alteration, moving, demolition, repair and use of any building or structure within

this jurisdiction shall be made in conformance with the Building Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

15.08.030 Definitions.

As used in this chapter, the word “Code” means the City of Oroville Building Code. (Ord. 1800 § 2, 2013)

15.08.040 Building Code amended and added.

- A. Section 105.2, “Work Exempt from Permits.” Refer to Section 15.04.090, Section 105.2.
- B. Section 1510.1.1 is hereby added to the **California Building Code** to read as follows:
1510.1.1 Re-roofing means the replacement of 25% or more of the existing roof area of a structure over any 12-month period.
- C. Section 3109 is hereby added to the Building Code to read as follows:
3109.2. Swimming Pool Enclosures and Safety Devices: A swimming pool, as defined in Section 115921 of the California **Health and Safety Code**, shall be permanently walled or fenced so as to prevent uncontrolled access by children from a street or adjacent properties. The enclosure shall be in compliance with Section 115921, 115922 and 115925 of the California **Health and Safety Code**, also known as the Swimming Pool Safety Act. This enclosure shall be installed prior to filling with water.
(Ord. 1800 § 2, 2013)

15.08.050 Amendments, deletions and additions to Health and Safety Code Sections 115921, 115922 and 115925 (also known as the Swimming Pool Safety Act).

- A. Section 115921(a) is hereby amended to read:
“Swimming pool” or “pool” means any structure intended for swimming or recreational bathing that contains water over 18 inches deep. “Swimming pool” includes in-ground and above-ground structures and includes, but is not limited to, hot tubs, spas, portable spas, and non-portable wading pools.
- B. Section 115921(c) is hereby amended to read:
“Enclosure” means a fence, wall building wall or combination thereof, which completely surrounds the pool and obstructs access to the pool.
- C. Section 115922 is hereby amended to read:
Commencing on January 1, 2007, except as provided in Section 115925, whenever a building permit is issued for construction of a new swimming pool or spa, or any building permit is issued for remodeling a pool or spa, at a private, single family home, the pool shall be isolated from access from other properties by an enclosure that meets the requirements of Section 115923. The pool or spa shall also be equipped with at least one of the following 4 drowning prevention safety features:
 - (1) The pool shall be isolated from access to the dwelling by an enclosure meeting the requirements of Section 115923.

- (2) The pool shall be equipped with an approved safety pool cover that meets all the requirements of the ASTM Specifications F 1346.
- (3) The residence shall be equipped with exit alarms on those doors providing direct access to the pool mounted a minimum of 54 inches in height above floor level.
- (4) All doors providing direct access from the home to the swimming pool shall be equipped with a self-closing, self-latching device with a release mechanism (door knob or handle) placed no lower than 54 inches above the floor.

Prior to filling any pool with water of permitted construction or remodeling work, the local building code official shall inspect the drowning safety prevention devices required by this act and if no violations are found shall give approval.

D. California **Health and Safety Code** Section 115923(e) is amended as follows:

An outside surface free of protrusions, cavities or other physical characteristics that would serve as handholds or footholds that could enable a child below the age of five years to climb over. Horizontal members shall be spaced at least 48 inches apart. Chain link may be used provided that openings are not greater than 1-3/4 inches measured horizontally.

(Ord. 1800 § 2, 2013)

Chapter 15.12 RESIDENTIAL CODE

15.12.010 Title and purpose.

- A. This chapter shall be known and cited as the “Oroville Residential Code” (hereinafter referred to as “Code”).
- B. The purpose of the Code is to provide minimum standards to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, use, and location of all one- and two-family dwellings, townhouses and accessory structures as classified in Section 1.1.3 of the Residential Code. (Ord. 1800 § 2, 2013)

15.12.020 Adoption of the California Residential Code.

The 2013 **California Residential Code**, Title 24, Part 2.5, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq., (hereinafter referred to as the “Residential Code”), and any rules and regulations promulgated pursuant thereto and as defined in California **Health and Safety Code** Section 18938.3, including Residential Code Appendix H (Patio Covers), Appendix J (Existing Buildings and Structures), and Appendix K (Sound Transmission), are hereby adopted and incorporated by reference herein. Except as otherwise provided by this chapter and Chapters 15.04 and 15.08 of the Oroville City Code, all construction, alteration, moving, demolition, repair, and use of any building or structure within this jurisdiction shall be made in conformance with the Residential Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

15.12.030 Definitions.

As used in this chapter, the word “Code” means the City of Oroville Residential Code. (Ord. 1800 § 2, 2013)

15.12.040 Residential Code amended.

- A. Section R105.2, “Work Exempt from Permits.” Refer to Section 15.04.090, Section R105.2.
- B. Section R322 “Flood-Resistant Construction” is specifically not adopted. In lieu of Section R322, refer to the City of Oroville flood ordinance, Chapter 15.96.
- C. Sections R403.1.2, R403.1.3, and R403.1.4.2 of Chapter 4 of the [California Residential Code](#) are amended as follows:

R403.1.2 Continuous footing in Seismic Design Categories C, D0, D1, and D2: The braced wall panels at exterior walls of buildings located in Seismic Design Categories C, D0, D1, and D2 shall be supported by continuous footings. All required interior braced wall panels in buildings with plan dimensions greater than 50ft shall also be supported by continuous footings.

R403.1.3 Seismic Reinforcing: Concrete footings located in Seismic Design Categories C, D0, D1, D2, as established by Table R301.2(1) shall have minimum reinforcement. Bottom reinforcement shall be located a minimum of 3 inches clear from the bottom of the footing.

In Seismic Design Categories C, D0, D1, and D2 where a construction joint is created between a concrete footing and stem wall, a minimum of one No. 4 bar shall be installed not more than 4 feet on center. The vertical bar shall extend to 3 inches clear of the bottom of the footing, have a standard hook and extend a minimum of 14 inches into the stem wall.

In Seismic Design Categories C, D0, D1, and D2 where a grouted masonry stem wall is supported on a concrete footing and stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet on center. The vertical bar shall extend 3 inches clear of the bottom of the footing and have a standard hook.

In Seismic Design Categories C, D0, D1, and D2 masonry stem walls without solid grout and vertical reinforcing are not permitted.

Exception: In detached one-and-two family dwellings which are three stories or less in height and constructed with stud bearing walls, plain concrete footings without longitudinal reinforcement supporting walls and isolated plain concrete footings supporting columns or pedestals are permitted.

R403.1.4.2 Seismic conditions: In Seismic Design Categories C, D0, D1, and D2, interior footings supporting bearing or braced walls and cast monolithically with a slab on grade shall extend to a depth of not less than 12 inches below the top of the slab.

- D. Section R907.1.1 is hereby added to the [California Residential Code](#) to read as follows:

R907.1 Re-roofing means the replacement of 25% or more of the existing roof area of a structure over any 12-month period.

- E. Section AJ102.5 “Flood Hazard Areas” is specifically not adopted. In lieu of Section R322, refer to the City of Oroville flood ordinance, Chapter 15.96.

- F. Section AJ 601.5 “Limitation of Reconstruction” is added as follows:

AJ 601.5 Limitation of Reconstruction: When the scope of work for R-3 and U Occupancies involves the removal of 50% or more of the building within a one-year period, the project,

existing and new, shall be considered as new construction, and the entire building shall comply with all currently adopted codes. Plan review and permit fees will be based on the valuation of the entire project as a new structure. The criteria for determining the reconstruction of more than 50% of a building may include the linear length of all existing walls (interior and exterior), square footage of the building, percentage of altered construction, actual construction valuation as determined by a California licensed appraiser or any combination of the above; any such calculation shall be approved by the building official prior to acceptance.

(Ord. 1800 § 2, 2013)

Chapter 15.16 HOUSING CODE

15.16.010 Adoption of the Uniform Housing Code, 1997 Edition.

The Uniform Housing Code, 1997 Edition, as published by the International Conference of Building Officials, is hereby adopted by reference and incorporated in this Code, except as expressly amended or superseded by the provisions of this chapter. (Ord. 1800 § 2, 2013)

15.16.020 Amendments, additions and deletions.

The following amendments, additions and deletions are made to the **California Building Code** adopted by this chapter:

Subsection 1201 of the Uniform Housing Code, is hereby amended as follows:

Subsection 1201.1 Form of Appeal. Any person entitled to service under Section 1101.3 may appeal from any notice and order or any action of the building official under this Code by filing at the office of the building official a written appeal. A filing fee as established by the City Council shall be submitted at the time of filing. Refer to City Code Section 15.04.070, Section 113.

(Ord. 1800 § 2, 2013)

Chapter 15.20 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS

15.20.010 Adoption of Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition.

The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, as published by the International Conference of Building Officials as a stand-alone document, is hereby adopted by reference and incorporated in this Code, except as expressly amended or superseded by the provisions of this chapter. (Ord. 1800 § 2, 2013)

15.20.020 Amendments, additions and deletions.

The following amendments, additions, and deletions are made to the Uniform Code for the Abatement of Dangerous Buildings adopted by this chapter:

Section 501 of the Uniform Code for the Abatement of Dangerous Buildings, is hereby amended as follows:

Subsection 501.1 Form of Appeal. Any person entitled to service under Section 401.3 may appeal from any notice and order or any action of the building official under this Code by filing at the office of the building official a written appeal. A filing fee as established by the City Council will be submitted at the time of filing. Refer to City Code Section 15.04.070, Section 113.

(Ord. 1800 § 2, 2013)

Chapter 15.24 PLUMBING CODE

15.24.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Plumbing Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum requirements and standards for the protection of the public health, safety and welfare. (Ord. 1800 § 2, 2013)

15.24.020 Adoption of the California Plumbing Code.

The 2013 **California Plumbing Code**, Title 24, Part 5, of the California **Code of Regulations**, a portion of the **California Building Standards Code**, as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Plumbing Code”), and any rules and regulations promulgated pursuant thereto, including Plumbing Code Appendix Chapters A (Recommended Rules for Sizing the Water Supply System), B (Explanatory Notes on Combination Waste and Vent Systems), D (Sizing Storm Water Drainage Systems), and I (Installation Standards), hereinafter referred to as the “Appendix,” are hereby adopted and incorporated by reference herein. (Ord. 1800 § 2, 2013)

15.24.030 Definitions.

As used in this chapter, the word “Code” means the City of Oroville Plumbing Code. (Ord. 1800 § 2, 2013)

15.24.040 Amendments.

- A. Sections 102.3, 103.3.3, 103.4, 103.4.2, 103.4.4 and 103.5.9 of the **California Plumbing Code** are amended as follows:
 1. 102.3 “Board of Appeals.” Refer to Section 15.04.070, Section 113.
 2. 103.3.3 “Expiration.” Refer to Section 15.04.070, Section 105.5.
 3. 103.4 “Fees.” Refer to Section 15.04.070, Section 109.1.1.
 4. 103.4.2 “Expiration of Plan Review.” Refer to Section 15.04.070, Section 105.3.2.
 5. 103.4.4 “Fee Refunds.” Refer to Section 15.04.070, Section 109.6.
 6. 103.5.9 “Re-inspections.” Refer to Section 15.04.070, Section 110.7.
- B. Section 713.4 of the **California Plumbing Code** is amended as follows:

713.4 Public Sewer Availability: The public sewer may be considered as not being available when such public sewer is not available within 200 feet (61 m) of the property line.

(Ord. 1800 § 2, 2013)

Chapter 15.28 ELECTRICAL CODE

15.28.010 Title and purpose.

A. This chapter shall be known and cited as the “City of Oroville Electrical Code” (hereinafter referred to as “Code”).

B. The purpose of this Code is to provide minimum electrical system standards to safeguard life, limb, health, property, and public welfare by regulating and controlling the design, construction, installation, and quality of materials. (Ord. 1800 § 2, 2013)

15.28.020 Adoption of the California Electrical Code.

The 2013 **California Electrical Code**, Title 24, Part 3, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Electrical Code”), and any rules and regulations promulgated pursuant thereto, are hereby adopted and incorporated by reference herein. Except as otherwise provided by Chapter 15.04 of the City of Oroville Municipal Code, all electrical systems associated with construction, alteration, moving, demolition, repair, and use of any building, structure or building service equipment within this jurisdiction shall be made in conformance with the Electrical Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

15.28.030 Definitions.

As used in this chapter, the word “Code” means the City of Oroville Electrical Code. (Ord. 1800 § 2, 2013)

15.28.040 Amendments.

Section 690.4(I), “Solar Photovoltaic Roof Placement Requirements,” is added as follows:

690.4(I) Solar Photovoltaic Roof Placement Requirements: Access and spacing requirements for fire department emergency access related to solar photovoltaic modules shall adhere to the latest edition of the Office of State Fire Marshall Solar Photovoltaic Installation Guidelines and shall be reviewed by the City Fire Marshall and/or building official. Any modifications to the photovoltaic installation guidelines shall be subject to review and approval by the Fire Marshall and/or building official.

(Ord. 1800 § 2, 2013)

Chapter 15.32 ENERGY CODE

15.32.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Energy Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum energy standards for energy consumption regulations, energy efficient building practices, and establish minimum energy requirements, by regulating and controlling the design, construction, installation, and quality of materials. (Ord. 1800 § 2, 2013)

15.32.020 Adoption of the California Energy Code.

The 2013 **California Energy Code**, Title 24, Part 6, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Energy Code”), and any rules and regulations promulgated pursuant thereto, are hereby adopted and incorporated by reference herein. Except as otherwise provided by Chapters 15.04 and 15.12 of the City of Oroville Municipal Code, all construction, alteration, moving, demolition, repair and use of any building or structure within this jurisdiction shall be made in conformance with the Energy Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

Chapter 15.36 MOBILE HOME INSTALLATION STANDARDS

15.36.010 Adoption of mobile home installation standards.

The mobile home installation standards as set forth in this chapter and adopted by the City Council of the City of Oroville shall be known as the “Mobile Home Installation Standards for Mobile Homes” within the city. (Ord. 1800 § 2, 2013)

15.36.020 Permits.

- A. Required. Permits shall be required for the installation of any mobile home within the City of Oroville. Such permits will be issued by the building division of the city, and all required inspections related to the permit shall be made by the building division in accordance with the State of California regulations governing mobile home installations and the requirements of this chapter.
- B. Fees. Fees shall be as prescribed in the permit fee schedule as established by the city council. (Ord. 1800 § 2, 2013)

15.36.030 Appearance.

- A. All occupied mobile homes shall be skirted around their perimeter or the underside shall be otherwise obscured with decking.
- B. No structure or mobile home shall have any part of its exterior roofing or siding, which is readily visible from adjacent or nearby properties constructed of reflective or glaring materials.

C. The exterior style of all structures and occupied mobile homes which are constructed, reconstructed or placed in the city may be subject to the approval of the city as to the compatibility of the mobile home with the existing structures and habitations in the neighborhood, and any such facilities which are not compatible may be prohibited in accordance with this law. (Ord. 1800 § 2, 2013)

15.36.040 Plans and specifications.

Prior to the issuance of any permit for the installation of any mobile home or the construction of any accessory structure for the mobile home, the applicant shall submit all materials necessary to determine the property location, location of the mobile home, and all other structures of the property, utility locations, exterior blocking plan, and any other materials necessary for approval and permit issuance. If conditions are such that the building official feels the need for further review, a request for mobile home installation permits may be submitted to the development review committee for consideration and findings. (Ord. 1800 § 2, 2013)

Chapter 15.40 MECHANICAL CODE

15.40.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Mechanical Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum system standards to safeguard life, limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance or use of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances within this jurisdiction. (Ord. 1800 § 2, 2013)

15.40.020 Adoption of the California Mechanical Code.

The 2013 **California Mechanical Code**, Title 24, Part 4, of the California **Code of Regulations**, a portion of the **California Building Standards Code**, as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Mechanical Code”), and any rules and regulations promulgated pursuant thereto, is hereby adopted and incorporated by reference herein. (Ord. 1800 § 2, 2013)

15.40.030 Definitions.

As used in this chapter, the word “Code” means the City of Oroville Mechanical Code. (Ord. 1800 § 2, 2013)

15.40.040 Amendments.

Sections 108.0, 113.4, 114.0, 114.6 and 115.6 of the **California Mechanical Code** are amended as follows:

- A. 108.0 “Board of Appeals.” Refer to Section 15.04.070, Section 113.

- B. 113.4 “Expiration.” Refer to Section 15.04.070, Section 105.5.
- C. 114.0 “Fees.” Refer to Section 15.04.070, Section 109.1.1.
- D. 114.6 “Fee Refunds.” Refer to Section 15.04.070, Section 109.6.
- E. 115.6 “Reinspections.” Refer to Section 15.04.070, Section 110.7. (Ord. 1800 § 2, 2013)

Chapter 15.44 CALIFORNIA HISTORICAL BUILDING CODE

15.44.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Historical Building Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum standards to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, use and occupancy, location of all historical buildings and structures within this jurisdiction, and certain equipment specifically regulated herein. (Ord. 1800 § 2, 2013)

15.44.020 Adoption of the California Historical Building Code.

The 2013 California Historical Building Code, Title 24, Part 8, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Historical Building Code”), and any rules and regulations promulgated pursuant thereto, including Historical Building Code Appendix A (hereinafter referred to as the “Appendix”), are hereby adopted and incorporated by reference herein. Except as otherwise provided in Chapter 15.04 of the Oroville City Code, all construction, alteration, moving, demolition, repair, and use of any historical building or structure within this jurisdiction shall be made in conformance with the Historical Building Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

Chapter 15.48 CALIFORNIA EXISTING BUILDING CODE

15.48.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Existing Building Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum standards to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, use and occupancy, and location of all existing buildings and structures within this jurisdiction, and certain equipment specifically regulated herein. (Ord. 1800 § 2, 2013)

15.48.020 Adoption of the California Existing Building Code.

The 2013 California Existing Building Code, Title 24, Part 10, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Existing Building Code”), and any rules and regulations promulgated pursuant thereto, including Existing Building Code Appendix A1 (Seismic Strengthening Provisions for Unreinforced Masonry Bearing Wall Buildings), are hereby adopted and incorporated by reference herein. All construction, alteration, moving, demolition, repair and use of any existing building or structure within this jurisdiction shall be made in conformance with the Existing Building Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

Chapter 15.52 CALIFORNIA REFERENCED STANDARDS CODE

15.52.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Referenced Standards Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum standards to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, use and occupancy, and location of all buildings and structures within this jurisdiction, and certain equipment specifically regulated herein. (Ord. 1800 § 2, 2013)

15.52.020 Adoption of the California Referenced Standards Code.

The 2013 California Referenced Standards Code, Title 24, Part 12, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as the “Referenced Standards Code”), and any rules and regulations promulgated pursuant thereto, including all appendix chapters, are hereby adopted and incorporated by reference herein. All construction, alteration, moving, demolition, repair and use of any building or structure within this jurisdiction shall be made in conformance with the Referenced Standards Code and any rules and regulations promulgated pursuant thereto. (Ord. 1800 § 2, 2013)

Chapter 15.56 CALIFORNIA GREEN BUILDING STANDARDS CODE

15.56.010 Title and purpose.

- A. This chapter shall be known and cited as the “City of Oroville Green Building Standards Code” (hereinafter referred to as “Code”).
- B. The purpose of this Code is to provide minimum standards for Green Building construction by regulating and controlling the design, construction, installation, quality of materials, use and occupancy, and location of all buildings and structures within this jurisdiction, and certain equipment specifically regulated herein. (Ord. 1800 § 2, 2013)

15.56.020 Adoption of the California Green Building Standards Code.

The 2013 California Green Building Standards Code, Title 24, Part 11, of the California **Code of Regulations**, a portion of the **California Building Standards Code** as defined in the California State **Health and Safety Code** Sections 17922 and 18901 et seq. (hereinafter referred to as “Green Building Standards Code”), and any rules and regulations promulgated pursuant thereto, is hereby adopted and incorporated by reference herein. (Ord. 1800 § 2, 2013)

Chapter 15.60 FIRE CODE

15.60.010 Purpose.

The purpose of this chapter is to adopt by reference the 2013 edition of the **California Fire Code** based on the 2012 **International Fire Code**, Title 24 of the California **Code of Regulations**, subject to the definitions, clarifications, and the amendments set forth in this chapter. The intent of this Code is to regulate and govern the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Oroville. This chapter is adopted under the authority of **Government Code** Section 50022.2 and **Health and Safety Code** Section 18941.5. (Ord. 1802 § 2, 2013)

15.60.020 Adoption of California Fire Code.

The **California Fire Code**, 2013 edition, including appendix chapters, is hereby adopted as the Fire Code of the City of Oroville, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the City of Oroville are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the additions, insertions, deletions, and changes prescribed in Section 15.60.040. (Ord. 1802 § 2, 2013)

15.60.030 Amendments to the California Fire Code.

The following amendments are hereby made to the **California Fire Code**:

A. Section 105.3.3 is deleted and replaced with the following:

Section 105.3.3. No final inspection by the building official as to all or any portion of a development shall be deemed complete, and no certificate of occupancy or temporary certificate of occupancy shall be issued unless and until the installation of the prescribed fire protection facilities and access ways have been completed and approved by the Fire Chief, or the Chief's designee.

B. Section 105.8 is added to read as follows:

Section 105.8. Fees and Special Requirements. The fees for the permits and other services shall be as established by resolution of the Oroville City Council. The fee shall be set to cover the cost of the Fire Department to review and inspect the intended activities, operations or functions. The

fees must be paid to the City of Oroville prior to engaging in the listed activities, operations or functions.

C. Section 302 is amended by adding the following definition:

Fireworks. Any composition or device for the purpose of producing a visible or audible effect for entertainment purposes by combustion, deflagration, detonation or any fireworks including “safe and sane” as defined by Section 12529 of the State of California [Health and Safety Code](#).

D. Section 315.1 is amended by adding the following exception to read as follows:

Section 315.1 General. Storage, use, and handling of miscellaneous combustible materials shall be in accordance with this section. A permit shall be obtained in accordance with Section 105.6.

Exception: Storage of combustible materials other than motorized vehicles or vessels shall not be permitted in a public parking garage or in a garage or carport serving a Group R, I Occupancy, unless the method of storage is approved by the Fire Code Official.

E. Sections 319.1 through 319.7 are added to read as follows:

Section 319.1 General. The manufacture of all fireworks, as defined in Section 302, is prohibited.

Section 319.2 Safe & Sane Fireworks, Permit to Sell. It shall be unlawful for any person to sell fireworks within the City without having first applied for and received a permit to sell safe and sane fireworks issued by the City Fire Department.

Section 319.2.1 Prerequisites to issuance of Permit. No permit to sell safe & sane fireworks shall be issued to any applicant unless:

1. He/She has first obtained a permit from the state fire marshal, and
2. He/She has first obtained a business license from the City.

Section 319.2.2 Permit and clean-up fee. The permit fee for the sale of safe & sane fireworks within the City shall be established by resolution of the City Council, payable to the City at the Office of the City Clerk. In addition to the permit fee, each location shall pay a clean-up fee established by resolution of the City Council, which shall be used to defray the cost of cleaning up and disposing of expended fireworks in the City.

Section 319.2.3 Application for permit. Application for a permit to sell safe & sane fireworks shall be made in writing to the Fire Department on or prior to the second Tuesday in March of each year, setting forth the proposed location, and accompanied by a statement that if a permit is issued to the applicant, the applicant shall at the time of receipt of such permit deliver to the City Clerk a Certificate of Insurance showing the existence of a \$1 million public liability insurance policy naming the City as an additional insured.

Section 319.2.3.1 Qualifications. No permit to sell safe & sane fireworks shall be issued except as follows:

1. To a holder of a regular business license whose principal place of business is located within the City.
2. To a nonprofit association or corporation primarily for veteran, patriotic, welfare, civic betterment, charitable youth purposes, and each such organization must have its principal and permanent meeting place within the City and must have been organized and established in the City for a minimum of one year continuously preceding the filing of the application for permit and must have a bona fide membership of at least 20 members.

3. Applicants returning from the previous year may have first priority in the application process.

Section 319.2.3.2 Notification. Applicants for any such permit shall be notified by the Fire Chief, or the Fire Chief's designee, as to the granting or rejection of application for permit on or prior to the first Monday in May of each calendar year.

Section 319.3 Operators of fireworks stands. Operators of fireworks stands shall be subject to the following provisions:

1. No person other than the permittee organization shall operate the stand for which the permit is issued, or share or otherwise participate in the profits of the operation of such stand.
2. No person other than the individuals, who are members of the permittee organization, or the wives or husbands or adult children of such members, shall sell or otherwise participate in the sale of fireworks at such stand.

Section 319.4 Temporary fireworks stands. Temporary fireworks stands shall be subject to the following provisions:

1. No fireworks stand shall be located within 75 feet of any existing building or within 100 feet of any gas station.
2. Fireworks stands need not comply with the provisions of the building code of the City, provided, however, that all stands be erected under the supervision of the building inspector who shall require that stands be constructed in a manner which will reasonably insure the safety of attendants and patrons.
3. No stand shall have a floor area in excess of 200 square feet.
4. Each stand in excess of 20 feet in length must have at least two exits, and each stand in excess of 40 feet in length must have at least three exits spaced approximately equidistant apart, provided, however, that in no case shall the distance between exits exceed 24 feet.

Section 319.5 General requirements for permittees. Permittees shall meet the following general requirements:

1. Each stand shall be provided with two water-type fire extinguishers, each having a two and one-half gallon capacity, being in good working order and easily accessible for use in case of fire.
2. All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least 20 feet surrounding the stand.
3. "No Smoking" signs shall be prominently displayed on the fireworks stand or wherever fireworks are for sale.
4. Each stand must have an adult in attendance and in charge thereof when the stand is being used for the sale or dispensing of fireworks.
5. The sale of fireworks shall not begin before 12:00 noon on the 28th day of June and shall not continue after 12:00 midnight on the 4th day of July.
6. All unsold stock and accompanying litter shall be removed from the City by 12:00 noon on the 10th of July. Proof of removal must be furnished to the City's Fire Department.
7. The fireworks stand shall be removed from the temporary location by 12:00 noon on the 10th day of July, and all accompanying litter shall be cleared from such location by such time and date.

Section 319.6 Number of permits. The maximum number of permits issued pursuant to this chapter during any one calendar year shall not exceed one license for each 1,500 residents of the City. In determining the City population for the purposes of this section, the most recent census calculations shall be used.

Section 319.7 Seizure. The Fire Chief or the Fire Chief's designee shall seize, remove, or cause to be removed at the expense of the owner all stocks of illegal fireworks offered or exposed for sale, stored, discharged or held in violation of this Code.

F. Section 503.2.1 is deleted and replaced to read as follows:

Section 503.2.1 Dimensions. Fire Apparatus access drives shall have an unobstructed width of not less than the following dimensions (including two 2' shoulders):

Residential	Width
One-way access drive:	
1—2 Units	16 feet (12 feet paved)
Two-way access drives:	
3—10 Units	20 feet (16 feet paved)
11—60 Units	25 feet (21 feet paved)
Over 60 Units	30 feet (26 feet paved)
 Nonresidential	 Width
One-way access drive:	16 feet (fully paved)
Two-way access drive:	25 feet (fully paved)

The minimum unobstructed vertical clearance shall be 14 feet at all points across the required width of the access drive. Vertical clearance may be increased as determined necessary by the Fire Chief or the Chief's designee.

G. Section 503.2.7 is deleted and replaced to read as follows:

Section 503.2.7 Grade. The gradient for a fire apparatus access road shall not exceed a grade of 16%, except that one run of the one hundred (100) feet or less in length may be at 18% grade upon approval of the Fire Chief.

H. Section 503.3 is amended by adding Section 503.3.1 to read as follows:

Section 503.3.1 Fire Lane Designation. Designation of fire lanes shall be by one of the following means:

1. By a white sign measuring at least 12 inches by 18 inches (12" x 18") posted immediately adjacent thereto and clearly visible. It should clearly state, in red letters not less than one inch (1") in height, that the space is a fire lane and parking is prohibited.
2. By outlining and hash marking the area in contrasting colors clearly marking it with the words "Fire Lane - No Parking."
3. By identifying the space with a red curb upon which the words "Fire Lane - No Parking" are stenciled every 15 feet.

- A. Both sides of fire lanes shall be red curbed when the fire lane is twenty (20) to twenty-eight (28) feet in width.
- B. At least one side of a fire lane shall be red curbed and stenciled when the fire lane is over twenty-eight (28) and up to thirty-six (36) feet in width.
- C. Curbs need not be painted red nor stenciled when the fire lane is more than thirty-six (36) feet in width.

I. Section 505.1 is deleted and replaced to read as follows:

Section 505.1 Address numbers. New and existing buildings shall have approved address numbers, building numbers, or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Said numbers shall be either internally or externally illuminated in all new construction. Numbers shall be as follows:

- 1. Minimum of one-half-inch (1/2") stroke by two and one-half inches (2-1/2") high.
- 2. When the structure is thirty-six (36) to fifty (50) feet from the street or fire department access, a minimum of one-half inch (1/2") stroke by six inches (6") high is required.
- 3. When the structure is more than fifty (50) feet from the street or fire apparatus access, a minimum of one-half inch (1/2") stroke by nine inches (9") high is required.
- 4. Where multiple addresses are required at a single driveway, they shall be mounted on a single post, and additional signs shall be located at locations where driveways divide.
- 5. Where a roadway provides access to solely a single commercial or industrial business, the address sign shall be placed at the nearest road intersection providing access to that site.

J. Sections 505.1.1 and 505.1.2 are added to read as follows:

Section 505.1.1 Multi-Tenant Buildings. Numbers or letters shall be designated on all occupancies within a building. Size shall be one-quarter-inch (1/4") stroke by two inches (2") high and on a contrasting background. Directional address numbers or letters shall be provided. Said addresses or numbers shall be posted at a height no greater than 5 feet, 6 inches (5' 6") above the finished floor and shall be either internally or externally illuminated in all new construction.

Section 505.1.2 Rear Addressing. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the fire apparatus road at the back of a property or where rear parking lots or alleys provide an acceptable vehicular access. Number stroke and size shall comply with Section 505.1.

K. Section 506.1 is deleted and replaced to read as follows:

Section 506.1 Where Required. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain contents as established in Section 506.1.1.1.

L. Sections 506.1.1.1 and 506.1.1.2 are added to read as follows:

Section 506.1.1.1 Key box contents requirements. The key provided shall be a master key to all spaces including multi-tenant spaces. Additional keys shall be included for elevator control, fire

alarm control panels, and fire sprinkler control valve access. In addition, when required by the Chief, a current copy of the Hazardous Materials Inventory Statement (HMIS) shall be kept within the key box.

EXCEPTION: Multi-tenant spaces which provide a key box for each tenant and installed per Section 506.1. Electronic card keys and codes may not be utilized as a substitute for manual keys.

EXCEPTION: When electronic locks release upon loss of electrical power, a manual key need not be provided.

Section 506.1.1.2 Installation Location. When key boxes are required by the Fire Chief, such boxes shall be mounted at 72 inches above finished floor within five feet of the latching side of the main entrance to a structure or facility. In addition, a decal shall be provided and installed adjacent to the key lock/latching device.

M. Section 506.2.1 is added to read as follows:

Section 506.2.1 Hazardous Materials Inventory Statements (HMIS). The operator of the building shall update and maintain HMIS as required by the Fire Code Official.

N. Section 509.1.1 is added to read as follows:

Section 509.1.1. Utility Identification. In multi-unit commercial and residential buildings, gas and electric meters, service switches and shut-off valves shall be clearly and legible marked to identify the unit or space that it serves.

O. Section 903.3.1.4 is added to read as follows:

Section 903.3.1.4 Inspectors Test Valves. Inspector Test Valves shall be provided for each system and located the furthest point away from the sprinkler riser.

P. Section 5003.6.1 is added to read as follows:

Section 5003.6.1 Requirements. Two NFPA 704 diamonds shall be placed on buildings so that they are clearly visible from at least two directions of travel.

1. The signs shall be at least fifteen inches by fifteen inches (15" x 15"). The signs shall not be placed on windows.

2. When NFPA 704 diamonds are required for the interior doors, the signs shall be applied to the doors at a level no higher than the doorknob. The signs for the interior doors shall be at least six inches by six inches (6" x 6").

3. The Fire Code Official may require fewer or more NFPA diamonds if the building configuration or size make it reasonably necessary.

Q. Section A101.1 is amended by adding the following:

Section A101.1.1 Application. The application for appeal shall be filed on a form obtained from the City building official within 20 days after the notice was served. A filing fee, as established by resolution of the City Council, shall be submitted at the time of filing.

(Ord. 1802 § 2, 2013)

15.60.040 Express findings.

As required by **Health and Safety Code** Sections 17958.7, 18941.5(c) and 18942, the city council hereby expressly finds that amendments to the codes adopted by this chapter and as described in

this section are necessary for the protection of the public health, safety and welfare, due to the local climatic, geological or topographical conditions.

A. Express Finding Number 1—Climatic.

Climate is one of the greatest impacts to fire behavior and other major emergency events because it cannot be controlled. The drying out of wood shakes and wild land fuels in the summer months allows for easy ignition. The combustible weeds on vacant urban lots coupled with windy conditions are a recipe for disaster. The Greater Oroville region has extreme variations in weather patterns. Summers are arid and warm; winters are cool to freezing, but void of significant snowfall. Fall and spring can bring any combination of weather pattern together. The doubling of average rainfall called an “El Nino” event has occurred from time to time and does cause the grass to mature and grow in excess of 6 feet high before it dries out. Ten square feet of this type of fuel is equivalent to the explosive force of one gallon of gasoline. Average yearly rainfall for the city is approximately 27 inches. This rainfall normally occurs from October to April. Low-level fog (tulle-fog) is present throughout the winter months, which brings visibility to almost zero feet. The fog delays emergency responders. The fog can also cause freezing and slick roadways. During the summer months there is generally no measurable precipitation. Temperatures for this dry period range from 70 to 112 degrees F and are frequently accompanied by light to gusty Delta winds. The relative humidity during the summer months range from 2 to 30 mm Hg, which is classified as arid.

B. Express Finding Number 2—Geological.

The City of Oroville is subject to ground tremors from seismic events as the city is located in Design Category C, which relates to a high risk of earthquakes. Gas appliances located in attics or garages must be adequately braced and protected from damage from moving objects. Large portions of the city have poor soil conditions. Additionally, the very low elevations are subject to a very high water table.

C. Express Finding Number 3—Topographical.

The city features include open space, drainage canals, components of the Oroville Dam and its water handling systems, highways and railroad tracks. Traffic has to be channeled around several of these topographical features and limitations which create traffic congestion and delays in emergency response. These features are located between the Fire Station located within the city and our Automatic Aid partners CalFire and El Medio. Heavy traffic congestion on the city streets already acts as a barrier to timely response for fire and emergency vehicles. In the event of an accident or other emergency at one of the key points of intersection between a road and freeway, sections of the city could be isolated or response times could be sufficiently slowed so as to increase the risk of injury or damage. (Ord. 1802 § 2, 2013)

Chapter 15.64 MISCELLANEOUS PROVISIONS

15.64.010 Uniform Sign Code.

The Uniform Sign Code is not adopted. (Ord. 1800 § 2, 2013)

15.64.020 Uniform Code for Building Conservation.

The Uniform Code for Building Conservation is not adopted. (Ord. 1800 § 2, 2013)

15.64.030 Permits and state license requirements.

“To whom permits may be issued” is deleted. (Ord. 1800 § 2, 2013)

15.64.040 Construction value schedule.

The construction valuation schedule shall be that fee schedule established by the city council fee resolution. (Ord. 1800 § 2, 2013)

15.64.050 Violations and penalties.

Any person, firm or corporation violating any of the provisions of this division shall be guilty of an infraction and upon conviction thereof shall be punished by a fine of not more than the amount outlined in the Master Fee Schedule. (Ord. 1800 § 2, 2013)

SECTION 3: The City Clerk shall attest to the adoption of this ordinance and cause same to be published in the manner required by the City Charter.

This ordinance shall take effect on the 30th day after its adoption.

First Reading Passed by the Oroville City Council at a meeting of November 5, 2019 by the following vote:

AYES: Council Members Draper, Goodson, Hatley, Pittman, Smith, Vice Mayor Thomson, Mayor Reynolds

NOES: None

ABSTAIN: None

ABSENT: None

Chuck Reynolds, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott E. Huber, City Attorney

Jackie Glover, Asst. City Clerk



CITY OF OROVILLE STAFF REPORT

TO: MAYOR CHUCK REYNOLDS AND COUNCIL MEMBERS

**FROM: BILL LAGRONE, CITY ADMINISTRATOR
JORDAN DALEY, SBF PROGRAM SPECIALIST**

**RE: LETTER TO THE FEDERAL ENERGY REGULATORY COMMISSION
REGARDING PROJECT NO. 2001 NEW LICENSE**

DATE: DECEMBER 3, 2019

SUMMARY

The Council may consider approving a revised letter to the Federal Energy Regulatory Commission (FERC) regarding Project No. 2100 – Request for Issuance of new license.

DISCUSSION

At the November 5, 2019 Council meeting staff received direction to draft a letter to be sent to FERC regarding Issuance of the Project No. 2100 new license. The letter calls attention to the improvements done at the Oroville Dam Spillway after the extended period of high lake inflows back in February 2017. The letter also highlights several projects and upgrades funded by Supplemental Benefit funds that have added improvements around Butte County.

FISCAL IMPACT

None

RECOMMENDATION

Approve the draft letter or provide direction. (Pictures of SBF completed projects will be included with the letter as attachments.)

ATTACHMENTS

Letter to FERC – REQUEST FOR ISSUANCE OF NEW LICENSE



December 3, 2019

Neil Chatterjee, Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

FERC PROJECT NO. 2100 – REQUEST FOR ISSUANCE OF NEW LICENSE

Dear Neil Chatterjee,

The purpose of this letter is to respectfully request that the Federal Energy Regulatory Commission issue the new Project No. 2100 license for the continued operations of the Oroville Supplemental Benefits Fund. The economic and recreational benefits provided from the Supplemental Benefits Fund allows opportunities for job creation, tourism, and local recreation. Much of the recreational and economic development will occur along Oroville's most prized natural resource, the Feather River. The Waterfront Development Concept is designed to integrate the Feather River with the Oroville Community.

Throughout the years the SBF has been able to help fund many projects and improvements around Butte County benefiting organizations like The Feather River Center, S.T.A.G.E and Oroville Veterans Memorial Park by upgrading rental equipment, and renovating buildings. Funding has also been put towards marketing our Historic Downtown, Upstate Community Enhancement Foundation and Birdcage Theatre. With those funds they have been able to get more production rights and host more successful events to bring the community together.

The Oroville Dam Spillway sustained major damage during an extended period of high lake inflows in February 2017, DWR and the lead construction contractor, Kiewit, removed, designed and rebuilt the Oroville main spillway and rebuilt the emergency spillway over two construction seasons using modern design, engineering and construction techniques. The current cost estimate for the Lake Oroville Spillways Reconstruction Project is \$1.1 billion. With oversight by FERC, the California Division of Safety of Dams, and an independent Board of Consultants, the main spillway has been completely rebuilt using a modern method of combining a roller-compacted concrete foundation, leveling concrete and erosion-resistant structural concrete for the spillway chute's 612 slabs and 204 wall placements, including 13 million pounds of reinforcing steel and over a half-million cubic yards of concrete.

Public safety remains DWR's primary goal in the operation of the Oroville spillways. The Oroville spillways incident has made a lasting impact on dam safety in California and across the nation. The reconstruction of the Oroville spillways is just one of the many crucial changes DWR has implemented since the incident to bolster dam safety. Implementing a comprehensive safety assessment regarding Oroville Dam called the Oroville Dam Safety Comprehensive Needs Assessment (CNA). The CNA process is led by DWR, but DWR has also created an Independent Review Board (IRB) of dam safety experts who are conducting independent technical reviews of key deliverables and document its review of DWR's work products.

Settlement Agreement parties have worked for more than a decade to get this license approved and allow the community to move forward with projects that will benefit the citizens of Butte County. All environmental clearances, studies and requirements have been met to FERC's standards. We, the City of Oroville, respectfully ask the Federal Energy Regulatory Commission to issue the new Project No. 2100 license.

With Kind Regards,

Chuck Reynolds, Mayor

Scott Thomson, Vice Mayor

David Pittman, Council Member

Janet Goodson, Council Member

Linda Draper, Council Member

Art Hatley, Council Member

Eric Smith, Council Member



OROVILLE SUCCESSOR AGENCY STAFF REPORT

TO: CHAIRPERSON AND BOARD MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: SUCCESSOR AGENCY PROPERTY SALE

DATE: DECEMBER 3, 2019

SUMMARY

The Successor Agency may consider an option for the sale of a commercial property asset of the former Oroville Redevelopment Agency located at 750 Montgomery Street.

DISCUSSION

The former Oroville Redevelopment Agency ("Agency") was the owner of record on the title for ten total commercial properties in Oroville.

As stated in the state Department of Finance (DOF) approved Long Range Property Management Plan (LRPMP):

- Six of these properties (750, 2044, 2060, 2062 Montgomery Street, 1330 Downer Street, 1305 Myers Street), are proposed to be sold by the Successor Agency with the proceeds of the sale to be distributed to taxing entities by the Butte County Auditor-Controller in accordance with the Dissolution Act.
- The properties were appraised and the total appraised value of these six properties was \$216,000.

All sales must first be approved by the Successor Agency, the Butte County Oversight Board and DOF before they can be closed. DOF approval may take up to 100 days.

Four of the six properties have been sold and the sale proceeds have been distributed to the taxing entities. Two remain to be sold that have environmental issues. Staff is requesting approval to sell one of those, the Agency property located at 750 Montgomery Street to BSJ Enterprises, LLC. for the appraised value of \$56,000, as of March 24, 2015, less the cost to mitigate the environmental issues and the City's portion of the title and escrow costs. John Noland is the principal partner of BSJ Enterprises and the owner of Pioneer Collision Center.

The estimate the City received to do the Asbestos and Lead Paint Abatement and the demolition of the office building and shop area was \$86,030 not including the land fill costs for disposing wood and other debris which could cost as much as \$20,000 to \$30,000. The costs the City would incur to abate and demo this property exceed the appraised value of the

property. The John Noland feels that as a private party, BSJ Enterprises, LLC can abate and demo at a much lower cost and are willing to take on this project with the understanding that their documented costs will be deducted from the \$56,000 purchase price of the property. They will place \$56,000, the appraised value of the property, into an escrow account at Mid Valley Title and Escrow Company. The abatement, demo and title/escrow costs would be deducted from the purchase price and any remaining funds would be turned over to the Butte County Auditor-Controller's Office for distribution to the taxing entities of which the City is one. If abatement and demo costs exceed the purchase price, the buyer will be responsible for any costs that exceed the \$56,000 appraised value/purchase price.

The Agency must also receive approval for this agreement/sale from the Butte County Oversight Board and the California Department of Finance (DOF). The next Butte County Oversight Board meeting is on January 15th, 2020 at 2:00 pm in the Butte County Supervisors Chambers.

FISCAL IMPACT

No cost impact to the general fund. Ultimately the City general fund will receive approximately 24 percent of any net revenue from the sale of the property when the proceeds are distributed by the County of Butte. The City will also start receiving the normal tax increment each year once the property is back on the County property tax rolls. As the property is developed the assessed value and the property taxes will increase.

RECOMMENDATION

Adopt Resolution No. 19-01 – A RESOLUTION OF THE OROVILLE SUCCESSOR AGENCY OF THE FORMER OROVILLE REDEVELOPMENT AGENCY OF THE CITY OF OROVILLE AUTHORIZING AND DIRECTING THE CHAIRPERSON TO SIGN A RESOLUTION RECOMMENDING TO THE BUTTE COUNTY OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF OROVILLE THAT THE PROPERTY LOCATED AT 750 MONTGOMERY STREET, OROVILLE BE SOLD TO BSJ ENTERPRISES, LLC FOR THE APPRAISED VALUE OF \$56,000 LESS THE CLEANUP, DEMO AND ESCROW COSTS; and

Direct staff to sign Successor Agency Agreement No. 19-01

ATTACHMENTS

Resolution No. 19-01
Agreement No. 19-01

**OROVILLE SUCCESSOR AGENCY
RESOLUTION NO. 19-01**

A RESOLUTION OF THE OROVILLE SUCCESSOR AGENCY OF THE FORMER OROVILLE REDEVELOPMENT AGENCY OF THE CITY OF OROVILLE AUTHORIZING AND DIRECTING THE CHAIRPERSON TO SIGN A RESOLUTION RECOMMENDING TO THE BUTTE COUNTY CONSOLIDATED OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF OROVILLE THAT THE PROPERTY IDENTIFIED IN THE STAFF REPORT DATED 12-03-19 BE SOLD FOR THE APPRAISED VALUE.

BE IT HEREBY RESOLVED by the Oroville Successor Agency as follows:

1. The Chairperson is hereby authorized and directed to execute a Resolution between the Oroville Successor Agency and the Butte County Consolidated Oversight Board recommending that the property located at 750 Montgomery Street, Oroville and further identified in the staff report dated 12-03-19 be sold for the appraised value less cleanup and escrow costs to BSJ Enterprises, LLC.
2. The Secretary shall attest to the adoption of this Resolution

PASSED AND ADOPTED by the Oroville Successor Agency at a regular meeting on December 03, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chuck Reynolds, Chairperson

APPROVED AS TO FORM:

ATTEST:

Scott Huber, Agency Counsel

Jackie Glover, Assistant City Clerk

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Escrow Instructions (“Agreement”) is dated as of December 3, 2019 (the “Effective Date”), by and between City of Oroville acting as the Successor Agency to the Oroville Redevelopment Agency (collectively “Seller”) and BSJ Enterprises, LLC (collectively, “Buyer”).

In consideration of the respective agreements hereinafter set forth, Seller and Buyer agree as follows:

RECITALS

- A. Seller is the owner of the Property (as defined in Paragraph 1 below).
- B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer.
- C. Buyer acknowledges that the presence of hazardous materials have been found to exist on the Property and the obligations to remediate the contamination of the Property in accordance with the orders and directives of the appropriate regulatory agencies will be assumed by Buyer.

NOW, THEREFORE, the parties agree as follows:

1. Property Included in Sale. Seller shall sell and convey to Buyer, and Buyer shall purchase from Seller, subject to the terms and conditions set forth herein, the following:

1.1 The real property which is described in EXHIBIT “A” attached hereto consisting of the property located at 750 Montgomery Street in Oroville, California, Assessor’s Parcel No. 012-061-009 (“Real Property”);

1.2 All of Seller’s right, title and interest in and to all rights, privileges and easements appurtenant to the Real Property, including without limitation all development rights, permits, entitlements and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property (collectively, the “Appurtenances”). The Real Property and Appurtenances are collectively referred to herein as the (“Property”).

2. Purchase Price.

2.1 The purchase price for the Property shall be the sum of Fifty-Six Thousand and No/100ths Dollars (\$56,000.00) (the "Purchase Price"). Buyer acknowledges that the cost of cleanup of identified contaminants, as outlined in this Agreement, will be deducted from the purchase price. Cleanup costs for the property to be credited shall not exceed \$56,000.00.

2.2 Upon execution of this Agreement and as a condition to the rights and obligations hereunder, Buyer shall deliver into escrow with Mid Valley Title Company, ("Escrow Holder" or "Title Company") a deposit in the amount of (\$56,000.00) (the "Deposit").

2.3 All interest earned on the Deposit, if any, shall be credited to Buyer at the Close of Escrow. The Deposit shall become nonrefundable once the conditions set forth in paragraphs 4.1 and 4.2 are satisfied or waived.

2.4 The Deposit shall be applied to the Purchase Price at Close of Escrow.

3. Title to the Property; Condition of the Property.

3.1 At the closing of the purchase and sale contemplated hereunder (the "Closing"), Seller shall convey to Buyer insurable title to the Property by a duly executed and acknowledged Grant Deed in Title Company's standard form (the "Grant Deed"). At Closing, Title Company shall issue to Buyer a CLTA Owner's Policy of Title Insurance in the amount of the Purchase Price insuring fee simple title to the Property in Buyer. The cost of the Title Policy shall be shared equally by the Buyer and Seller.

3.2 The Property is known to contain the presence of hazardous materials. The City has engaged professionals to conduct an analysis as to the extent of the hazardous materials. All information known by the City to exist related to hazardous materials is contained in the documents which are attached to this Agreement as Exhibit "B". Buyer is aware of the presence of hazardous materials and is willing to accept the Property in the as-is condition, as outlined in this Agreement.

INITIALS: Seller _____ Buyer _____

4. Conditions to Closing. The following conditions are conditions precedent to Buyer's obligation to purchase the Property (the "Conditions Precedent"):

4.1 Buyer's Review and Approval of Title to the Property. Seller shall use reasonable efforts to cause Title Company to deliver to Buyer a preliminary title report on the Property within ten (10) days after the Effective Date, which preliminary title report shall be issued by Title Company and accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report"). Buyer shall advise Seller, within twenty (20) days after the Effective Date, what exceptions to title, if any, will be accepted by Buyer. Seller shall have five (5) days after receipt of Buyer's objections to give Buyer: (i) notice that said exceptions will be removed on or before the Closing Date; or (ii) notice that Seller elects not to cause such exceptions to be removed. If Seller gives Buyer notice under clause (ii), Buyer shall notify Seller within five (5) days after Buyer's receipt of Seller's notice whether Buyer elects to proceed with the purchase or terminate this Agreement. If Buyer shall fail to give Seller notice of its election within such five (5) day period, Buyer shall be deemed to have elected to terminate this Agreement.

4.2 Buyer's Review and Approval of Condition of the Property. Buyer's review and approval of (i) all physical characteristics and conditions of the Property, including the environmental condition thereof, all governmental requirements relating to the operation, use or occupancy of the Property, and any other factors as Buyer deems necessary to fully

understand the Property and its suitability for Buyer's intended use of the Property and (ii) all documentation in Seller's possession related to the operation of the Property, which documentation shall be provided to Buyer within five (5) days after the Effective Date.

4.3 Buyer's Remediation of Environmental Contamination. Buyer must remediate all known environmental contamination, as outlined in Exhibit "B", prior to the close of escrow to the satisfaction of Seller and in the Seller's sole and absolute discretion.

4.4 Approval by Butte County Consolidated Oversight Board. This Agreement must be approved by the Butte County Consolidated Oversight Board prior to the close of escrow.

4.5 Failure of Conditions Precedent. The Buyer's Conditions Precedent are intended solely for the benefit of Buyer and Seller. If any of the Conditions Precedent set forth in paragraphs 4.1 through 4.4 are not satisfied prior to December 31, 2020, Buyer and/or Seller shall have the right in their sole discretion either to terminate this Agreement by written notice to the other party or to waive the Condition Precedent. If Buyer does not approve, waive or complete the Conditions Precedent set forth in paragraphs 4.1, 4.2 and 4.3 prior to December 31, 2020, such Conditions Precedent shall be deemed disapproved, this Agreement shall terminate, and the Deposit shall be refunded to Buyer.

5. Remedies.

IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED FOR ANY REASON OTHER THAN A DEFAULT UNDER THIS AGREEMENT ON THE PART OF SELLER, SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT TOGETHER WITH ALL INTEREST ACCRUED THEREON AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IF THE SALE OF THE PROPERTY DOES NOT OCCUR, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT OF THE DEPOSIT, TOGETHER WITH ALL INTEREST ACCRUED THEREON, HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT THAT THIS TRANSACTION DOES NOT CLOSE FOR ANY REASON OTHER THAN A DEFAULT ON THE PART OF THE SELLER.

INITIALS: Seller _____ Buyer _____

6. Closing and Escrow.

6.1 Upon mutual execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Escrow Holder and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 The closing of the purchase and sale contemplated hereunder (the “Closing”) shall occur no later than thirty (30) days following the final recordation of the Grant Deed (the “Closing Date” or “Close of Escrow”).

6.3 At or before the Closing (except to the extent otherwise specifically provided below), Seller shall deliver to Buyer the following:

- (i) the Grant Deed, duly executed and acknowledged by Seller;
- (ii) an affidavit pursuant to Section 1445(b)(2) of the Federal Code, and on which Buyer is entitled to rely, that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Code; and
- (iii) a properly executed California Form 590RE certifying that Seller is a California resident.

6.4 Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

6.5 The following are to be apportioned as of the Closing Date, as follows:

- (i) Real Estate Taxes and Assessments. General real estate taxes shall be prorated as of the Closing Date.
- (ii) Closing Costs. Buyer shall pay the recording fees and Seller shall pay any County of Butte transfer tax. Buyer and Seller shall share equally in the cost of the premium for the Title Policy and escrow fees. In addition, all other costs and charges of the escrow for the sale not otherwise provided for in this paragraph or elsewhere in this Agreement shall be shared equally by Buyer and Seller.

7. Seller’s Representations. Seller hereby represents to Buyer that:

7.1 Seller has full power and authority and has take all action necessary to execute this Agreement and to fulfill all of its obligations hereunder.

7.2 Seller acknowledges that there are identified contaminates that need to be cleaned up on the property. Seller further acknowledges that Buyer is aware of the existence of identified contaminates and agrees to clean up the property at Buyer’s sole cost and expense.

Except as provided above, Seller is making no representations or warranties, express or implied, regarding the property or matters affecting the Property, including, without limitation, the physical condition of the Property, title to or the boundaries of the Property, soil condition, hazardous waste, toxic substance or other environmental matters, compliance with health, safety, land use and zoning laws, regulations and orders, traffic patterns or any other information property.

8. As-Is Acquisition. Buyer represents and warrants that as of the Close of Escrow Buyer will have satisfied itself as to the physical, environmental, legal and economic condition

and all other aspects of the Property and its suitability for the purposes intended by Buyer. Buyer acknowledges and agrees that Buyer is acquiring the Property subject to all existing laws, ordinances, rules and regulations, and that neither Seller nor any of Seller's agents, representatives and attorneys (collectively, "Seller's Agents") have made any warranties, representations or statements regarding the availability of any approvals, or the laws, ordinances, rules or regulations of any governmental or quasi-governmental body, entity, district or agency having authority with respect to the ownership, possession, development, occupancy, condition and/or use of the Property except as expressly provided herein. Buyer moreover acknowledges that Buyer has entered into this Agreement with the intention of relying upon its own investigation of the physical, environmental, economic and legal condition of the Property, including, without limitation, the compliance of the Property with laws and governmental regulations and the operation of the Property, and (iii) that Buyer is not relying on any representations and warranties made by Seller or anyone acting or claiming to act on Seller's behalf concerning the Property except as expressly provided herein. Buyer further acknowledges that it has not received from Seller any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and is relying upon the advice of its own accounting, tax, legal, architectural, engineering, property management and other advisors. Buyer shall purchase the Property in its "As-Is" condition on the Closing Date and assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigations. Seller shall have no liability for any subsequently discovered defects, whether latent or patent.

9. Possession. Possession of the Property shall be delivered to Buyer on the Closing Date.

10. Miscellaneous.

10.1 Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, or (ii) three (3) days after being deposited in the U.S. Mail, and addressed as follows:

If to Seller: Bill LaGrone
City Administrator
City of Oroville
1735 Montgomery Street
Oroville, CA 95965

If to Buyer: John Nolind, Partner
BSJ Enterprises, LLC
251 Lodgeview Drive
Oroville, CA 95966

or such other address as either party may from time to time specify in writing to the other.

10.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns.

10.3 Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

10.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.5 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

10.6 Negotiated Agreement. Seller and Buyer acknowledge that this Agreement has been negotiated and that each party has had an opportunity to have the Agreement reviewed by legal counsel. Accordingly, notwithstanding the fact that this Agreement was prepared by Seller's counsel, the doctrine that ambiguities in an agreement shall be construed against the drafting party shall not be employed in connection with this Agreement.

10.7 Enforcement. If either party commences legal proceedings to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party its attorneys' fees and court costs incurred therein.

10.8 Time of the Essence. Seller and Buyer agree that time is of the essence of this Agreement. If either party fails to perform an obligation contained herein by the date such performance is required, it shall not be deemed to be unreasonable for the other party to pursue its remedies hereunder, including termination of this Agreement.

10.9 Severability. If any provision of this Agreement or the application thereof to any person, place or circumstance shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

City of Oroville

By: Bill LaGrone
Its: City Administrator

BUYER:

BSJ Enterprises, LLC

By: John Noland
Its: Partner

EXHIBIT "A"

LEGAL DESCRIPTION (as originally received)

180

RECORDING REQUESTED BY
Mid Valley Title & Escrow Company

AND WHEN RECORDED MAIL DOCUMENT
AND TAX STATEMENT TO:
Orville Redevelopment Agency
1735 Montgomery
Orville, CA 95965

2008-0010598
Recorded
Official Records
County of
Butte
CRADACE J. BRUBBS
County Clerk-Recorder
09:00AM 25-Mar-2008
Page 1 of 6

Space Above This Line for Recorder's Use Only

A.P.N.: 012-061-009-000

File No.: 0403-2469758 (AM)

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$: CITY TRANSFER TAX \$0.00;

SURVEY MONUMENT FEE \$

[X] computed on the consideration or full value of property conveyed, OR
[] computed on the consideration or full value of liens and/or encumbrances remaining at time of sale,
[] unincorporated area; [x] City of Oroville, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Donna Fergus, Executor of the Estate of Donald Fergus, Deceased, pursuant to those certain Letters of Testamentary, issued under the Independent Administration of Estates Act filed in the Superior Court in Butte County under case number PR 33060 and Vereschagin Oil Company, a California corporation

hereby GRANTS to ^{Filed March 18, 1997} Oroville Redevelopment Agency, a public body, corporate and politic of the State of California

the following described property in the City of Oroville, County of Butte, State of California:

A PARCEL OF LAND BEING A PART OF SECTION 18, TOWNSHIP 19 NORTH, RANGE 6 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHERE THE NORTH LINE OF MONTGOMERY STREET OF SAID CITY OF OROVILLE IS INTERSECTED BY THE PRODUCED WEST LINE OF THE OROVILLE-MARYSVILLE ROAD, AT WHICH POINT IS A STAKE WITH AN IRON PIN RUNNING THROUGH SAID STAKE; THENCE EASTERLY ALONG THE NORTH LINE OF MONTGOMERY STREET, 369.5 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO GEORGE A. TAYLOR BY DEED DATED NOVEMBER 21, 1922 AND RECORDED IN BOOK 199 OF DEEDS, PAGE 34; BUTTE COUNTY RECORDS, FOR THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE A RIGHT ANGLE NORTH AND ALONG THE EAST LINE OF SAID PARCEL OF LAND CONVEYED TO GEORGE A. TAYLOR, TO THE NORTH LINE OF SAFFORD STREET PRODUCED WESTERLY, 100 FEET; THENCE EASTERLY ALONG THE NORTH LINE OF SAFFORD STREET PRODUCED WESTERLY, 100 FEET; THENCE AT A RIGHT ANGLE SOUTH TO THE NORTH LINE OF MONTGOMERY STREET AT A POINT 100 FEET EAST OF THE POINT OF BEGINNING; THENCE WEST ALONG THE NORTH LINE OF MONTGOMERY STREET, 100 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE NORTHERLY 66 FEET AS HERETOFORE CONVEYED TO THE CITY OF OROVILLE, A MUNICIPAL CORPORATION BY DEED FROM FRANK W. BOYLE, ET UX, DATED OCTOBER 31, 1935 AND RECORDED DECEMBER 7, 1935, IN BOOK 151, PAGE 420, OFFICIAL RECORDS.

Dated: 03/06/2008

Mail Tax Statements To: SAME AS ABOVE



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND COUNCIL MEMBERS

**FROM: JOE DEAL, PUBLIC SAFETY DIRECTOR;
MIKE MASSARO, CITY ENGINEER**

RE: CITY OF OROVILLE NEIGHBORHOOD TRAFFIC CALMING PROGRAM

DATE: DECEMBER 03, 2019

SUMMARY

The Council will review and provide direction on accepting the proposed Neighborhood Traffic Calming Program (NTCP). Council will provide direction on the potential purchase of speed enforcement/traffic counting trailers.

DISCUSSION

The City of Oroville Department of Public Works is taking action to address neighborhood traffic concerns through a new reporting system, the Neighborhood Traffic Calming Program. The NTCP is a system which provides you and your neighbors with a process with which to report neighborhood traffic concerns to the City, and for the City to respond appropriately to such concerns.

The goal of the NTCP is to introduce a system in which residents can directly contact the City in an organized manner regarding traffic concerns, increasing the City's ability to respond appropriately and record all concerns. By conducting traffic analyses of the neighborhood streets identified in this process, the City will be able to appropriately respond where necessary and calm traffic in neighborhoods where concerns are raised.

In order to assist in program success, Staff is suggesting the purchase of a signboard/trailer. This signboard will have multiple uses within the city. Staff has researched several models and recommends the TrafficLogix VMS30 which is radar capable as well as traffic counting. The sign could also be used in conjunction with Public Works and other city entities as it is a signboard as well. The VMS30 comes with 1 year of cloud data collection so survey reports could be run remotely from a desk as well as the ability to program the sign remotely. The cloud renewal isn't required, but if desired the service is \$500.00 per year for each sign.

FISCAL IMPACT

Not to exceed \$30,000 for (2) trailers from the Capital Asset Replacement Fund 300-7301-8020

RECOMMENDATION

Staff recommends moving forward with the implementation of the proposed Neighborhood Traffic Calming Program and purchasing one (1) or two (2) TrafficLogix VMS30 signboard / trailers in an amount not to exceed \$15,000.00 each.

ATTACHMENTS

- A. City of Oroville NTCP
- B. Community Action Request Form
- C. VMS Spec Sheet
- D. Cloud Technology Information Sheet
- E. VMS Quote



Neighborhood Traffic Calming Program

CAR Form - PART 1

Parts 1 and 2 must both be completed before submitting to Public Works.

Contact Name: _____

Day/Message Phone: _____

Address: _____

Today's Date: _____

Please indicate traffic issues that concern residents in your neighborhood.

_____ speeding

_____ increased traffic

_____ bicyclist safety

_____ pedestrian safety

_____ pet safety

_____ collisions

_____ other

If you selected "other", please explain:

(This space may be used for additional comments)

Please describe the boundaries of your neighborhood:

Are you aware of any neighborhood associations that represent your area?



Neighborhood Traffic Calming Program

CAR Form - PART 1

Parts 1 and 2 must both be completed before submitting to Public Works.

The following petition is an optional addition to the CAR form. Each of the residents signing this petition must be at least 18 years of age and must reside in separate households within the neighborhood boundaries described. **The petition is not required at this stage, but it is strongly recommended as neighborhood approval will be required should your neighborhood fit the criteria of the Neighborhood Traffic Calming Program.**

By signing, the residents listed below are requesting that this neighborhood be considered in the Neighborhood Traffic Calming Program.

	Signature	Printed Name	Address	Phone Number (Optional)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				



Neighborhood Traffic Calming Program

CAR Form - PART 2

Parts 1 and 2 must both be completed before submitting to Public Works.

Please draw or attach a street diagram that includes the boundaries of your neighborhood.

Thank you for your interest in the Neighborhood Traffic Calming Program. Based upon the date the CAR form is received by Public Works, neighborhood requests will be processed on a first come, first served basis. You will be contacted once the CAR form is received and initially processed; please allow 3 weeks for your request to be acknowledged.

Please submit completed forms Parts 1 and 2 to:

City of Oroville, Department of Public Works
Neighborhood Traffic Calming Program
1735 Montgomery Street
Oroville, CA 95965
(530) 538-2401
Fax: (530) 538-2426
Planning Division Email: cdpw@cityoforoville.org



SafePace VMS30

Item 7.

Display messages, alerts, and even vehicle speed, updated instantly, with the VMS30 variable message signs.

Show drivers exactly what they need to know in real-time with the amazingly versatile SafePace **VMS30**. The web-enabled variable message sign lets you update messages instantly and can even display driver speed. The **VMS30** also offers driver responsive messaging, a choice of text sizes and colors, a range of mounting and power options, and the ability to gather traffic stats to create valuable reports.



VMS30 Specifications

Digit Size	3 lines of 8", 2 lines 12" or 1 line 30"
Height	30"
Weight	60 lbs
24/7, 365 Scheduling	✓
Data Collection	✓
Solar Compatibility	✓
Battery Operated	✓
Cloud Compatibility	✓
Trailer Compatibility	✓
Hitch Compatibility	✓
Warranty	2 Years

Features

Customized Messaging: Display your choice of text, graphics, and images. Switch between multiple messages, text sizes, and speed responsive text, and show driver speeds.

Multiple Mounting Options: The VMS30 can be mounted on a pole or gantry or used portably on a hitch or trailer.

Choice of Power Supply: A choice of energy sources to accommodate every mounting situation including AC, solar, or police cruiser battery.

Advance Scheduling: Create a schedule for when your sign displays specific messages including time of day, weekday/weekend, holidays, custom calendars, and exceptions.

Instant Updates: Change sign messaging instantly via our cloud backend or even by mobile device.

Data Collection: Collect traffic data and statistics with your VMS30 to conduct traffic studies and create reports for traffic analysis.



Feature	Specifications
Dimensions	
Display	30" x 60"
Text Size	3 lines of 8" text 2 lines of 12" text 1 line of 30" text
Sign Weight	
AC Powered	60 lbs
General Specifications	
Operating Temperatures F (C):	-40° (-40°) to 185° (85°)
2-Digit Speed Display	Miles per hour (mph) 3-99. Kilometers per hour (km/h) 5-99.
Communications	GSM/GPRS Default communication every 3 hours Change setting instantly via SMS Upload changes instantly via Cloud
Programming	SafePace Pro management software SafePace Cloud remote management
Power Options (Electrical Specifications)	
AC power input	100~240 V AC
DC power input	12 V DC
DC power options	12V, 18Ah Lead acid batteries.
Solar panel option	90W or 140W solar panel

Feature	Specifications	Item 7.
Display		
LEDs	6400	
Digits (Amber)	3200 LEDs: Color: Yellow (590 nm) Viewing angle at 50% IV: 30° Partial Flux (Brightness): 9000– 24000 Ev,[lux]/LED	
Digits (Red)	3200 LEDs: Color: Red (633 nm) Viewing angle at 50% IV: 30° Partial Flux (Brightness): 7100– 18000 Ev,[lux]/LED	
Speed and Message Display		
Message Display Mode	Show drivers message alerts Triggered by any motion Can animate up to 6 messages with choice of color Can collect traffic statistics	
Vehicle Speed Mode	Display "your speed," "speed limit," or both simultaneously Sign operates as speed display sign New message shown when next car detected	
Speed Responsive Mode	Messages rotate based on speed intervals (ie 25-30, 31-40..) Display up to 4 rotating messages per speed range Option to change led color when chosen speed is exceeded	
Enclosure		
Construction	Vandal resistant, lightweight polymer. Matte black front for reduced glare and maximum contrast.	
Weatherproof Rating	Weatherproof, NEMA 4X-12, IP65 level compliant. Non-sealed and ventilated	
Messaging		
Default library	Includes standard messages such as road work in 1 mile, right lane closed ahead, major delays, buckle up, etc	
Custom messaging	Create custom messages using text, digits, and graphics Choose to add to default library	
Warranty		
Sign	2 years	
Batteries	1 year	

Traffic Logix is a leading manufacturer of traffic calming solutions and offers the *widest selection of radar speed signs* to provide a solution for all our customer's needs. We are extremely dedicated in only manufacturing and developing paramount products and solutions and are *deeply invested in our product research and development* to keep above the competition. We will continue down that path to keep our customers up to date with the best technology and pricing available.

SAFEPACE CLOUD



SafePace Cloud by Web Director lets the end user connect to their signs online from anywhere with an internet connection. SafePace Cloud adds unparalleled flexibility to the end user's SafePace signs. With detailed reporting, customized alerts, and real time data, the end user can *see stats* for each sign, *change settings*, *check batteries* and *download data* without ever traveling to sign locations. With the unlimited possibilities of remote management, SafePace Cloud will help the end user get more out of their SafePace speed signs. Using the SafePace Cloud solution requires only that the user has a browser with internet access and maintains power to the equipment. There is *no additional IT configuration*, *no local software to install* and *no third-party charges* for connectivity (i.e. cellular), which is included in the subscription.

SafePace Cloud web-based user interface is always up to date, reflecting the most current enhancements. SafePace Cloud participation entitles you (the end user) to any *software and feature upgrades* that become available for your products. Importantly, Traffic Logix can perform these upgrades remotely and automatically.

Cloud Features:

- Secure, remote access for simple-to-use sign management from anywhere with an internet connection.
- Real Time Data – See live performance data updated every five minutes.
- User-friendly – Streamlined, easy-to-use interface.
- Comprehensive Reporting – Use data to generate detailed reports you can use to better improve safety on your roads.
- Mapping tool – *Map unlimited sign locations* and create and apply parameters for each.
- Update sign location whenever a sign or trailer is moved.
- One-Screen Management: *Manage alerts, messages, and display settings all from one screen.*
- One-click Scheduling – *One click lets you schedule and program multiple signs simultaneously.*
- Complete Control – Manage all aspects of sign configuration including schedules, messages, blinking limit, strobe limit, and display range.
- Scheduling – Display settings can be constant, or schedule-based.
- Statistics snapshot provides at-a-glance data updates including vehicle count, 85th percentile, and maximum and minimum speed.
- Real time alerts: receive email notification for alerts such as high or low speed or when batteries are low.



- *Unlimited data storage* for years of access to historical data.
- Zero footprint – Nothing to install; all you need is an internet connection.

About Reports:

Reporting allows you to retrieve the collected data from your sign(s) and use it to generate weekly, summary, period comparison and custom reports and charts. All reports can be printed directly or exported in a variety of formats to suit your needs. Reports may include the following:

- Total and average vehicle counts
- Minimum and maximum speeds
- Average and 85th percentile speeds
- Total percentage of speed violations Our software programs offer advanced statics and reporting which allow you to further customize reports and charts to view more granular traffic data.

Upon activating the Cloud, the assigned administrator will have the ability to add *unlimited users* to Cloud access which widely expands the audience that will be able to utilize the data collected (Police Department personnel, Public Works personnel, Traffic Engineering personnel, etc.). To reiterate, all that is needed to access the Cloud Dashboard is an internet connection on any desktop or laptop computer or tablet.

Notes : FREIGHT TBD

**Address:**

3 Harriett Lane
Spring Valley, NY 10977 USA

Tel: (866) 915-6449

Fax: (844) 405-6449

Email: info@trafficlogix.com

Created Date 11/22/2019

Expiration Date 12/31/2019

Quote Number QUO-05580-P8Z6D0

Prepared By Jim Merrill
Title Regional Sales Manager
Phone 925-784-7865
Email jmerrill@trafficlogix.com
Address 3 Harriett Lane
Spring Valley, New York 10977
United States

Contact Name Lt. Gil Zarate
Phone 530-538-2465
Email gzarate@oropd.org

Bill To Name Oroville Police
Department

Ship to Name Oroville Police
Department

Bill To

Ship To

Standard Features (Included) – Evolution Signs

- The Evolution VMS radar feedback signs come with 1 year of unlimited cloud access. At the end of this 12 month period the customer has the option to either renew the cloud at a cost of \$500 per sign or resort back to a Bluetooth option at no cost.
- Sign powers down when no traffic present
- Programmable Speed Violator Flashing Strobe Light
- Ambient Light Sensor and Automatic Brightness adjustment
- Banding Mount Bracket
- Safe Pace Management Software
- Bluetooth

Quote Line Items – All Prices shown are in \$USD

Product	Product Code	Quantity	Sales Price	Discount	Total Price
VMS with Cruiser LT Trailer - Solar powered - Includes 1 year of Cloud	VMS-SPTRAILERLT-SOL	1.00000	\$11,995.00	\$0.00	\$11,995.00

Totals

Subtotal	\$11,995.00
Freight	TBD (est \$1200)
Tax 8.25%	\$989.59

Grand Total (no freight) **\$12,984.59****Terms: 1% - 10 Days - Net 30 We also accept: MC - VISA - AMEX****IF TAX EXEMPT:** Please Provide Tax Exempt Certificate with Order**Please note:** If you are not able to unload from a 53' truck, special delivery services will need to be added.

Quote Acceptance Information

Signature _____

Name _____

Title _____

Date _____



Neighborhood Traffic Calming Program

**City of Oroville
1735 Montgomery Street
Oroville, CA 95965**



Neighborhood Traffic Calming Program

Item 7.

PROGRAM APPROVAL AND IMPLEMENTATION

The following Neighborhood Traffic Calming Program was approved on October____, 2019

Mike Massaro, PE
Contract City Engineer

Approval Date

Bill LaGrone
City Administrator

Approval Date

Chuck Reynolds
Mayor

Approval Date



Table of Contents

PROGRAM APPROVAL AND IMPLEMENTATION i

INTRODUCTION 1

DEFINITIONS..... 2

NTCP STEPS 3

PUBLIC WORKS RESPONSIBILITIES 4

DRAFT



INTRODUCTION

The City of Oroville Department of Public Works is taking action to address neighborhood traffic concerns through a new reporting system, the Neighborhood Traffic Calming Program. The NTCP is a system which provides you and your neighbors with a process with which to report neighborhood traffic concerns to the City, and for the City to respond appropriately to such concerns.

The goal of the NTCP is to introduce a system in which residents can directly contact the City in an organized manner regarding traffic concerns, increasing the City's ability to respond appropriately and record all concerns. By conducting traffic analyses of the neighborhood streets identified in this process, the City will be able to appropriately respond where necessary and calm traffic in neighborhoods where concerns are raised.

The NTCP has been created in the interest of street safety, livability, and other public purposes as set forth in the Circulation and Transportation Element of the City of Oroville 2030 General Plan and shown below.

Goal CIR-2 Create and maintain a roadway network that provides for the safe and efficient movement of people and goods throughout the City while maintaining the quality of life for residents.

How the NTCP Works

You and your neighbors will submit a Community Action Request (CAR) form to be reviewed by the City. The CAR form is available through the Department of Public Works or the City Clerk's office. The CAR form is also available on the City website at **insert address for Oroville forms here**. The CAR form contains general information about the program and selection process, a petition, and a section for listing neighborhood boundaries and traffic concerns.

Upon receiving requests, the City will prepare an acknowledgement of the request. The City will then investigate traffic conditions in your neighborhood and determine if existing conditions warrant implementation of traffic calming measures. If traffic calming measures are required, the program will initially focus on less restrictive measures such as signing and markings. Traffic safety education and police enforcement will be emphasized for that neighborhood. If traffic concerns persist, consideration may be given to speed control measures.



DEFINITIONS

The Three E's

Education - Guided by Public Works staff, you and your neighbors will receive the information and the tools necessary to make informed decisions regarding traffic concerns in your neighborhood.

Enforcement - Strategies identified by your neighborhood will be supported by police and parking enforcement.

Engineering - Through this partnership, traffic calming strategies will be considered based on engineering principles and community input.

Traffic Calming - Traffic calming involves altering of motorist behavior on a street or street network by using the three "E's": Education, Enforcement, and Engineering.

Local Street - Per the City of Oroville 2030 General Plan, local streets are intended to serve adjacent properties only and should enhance community livability. They carry very little, if any, through traffic, and generally carry very low traffic volumes, usually less than 5,000 vehicles per day. Speed limits on local roadways normally do not exceed 25 miles per hour.

Collector Street - Per the City of Oroville 2030 General Plan, collectors are intended to "collect" traffic from local roadways and carry it to roadways higher in the street classification hierarchy such as arterials, highways, and freeways. These roadways also serve adjacent properties. Collectors typically have one lane of traffic in each direction.



Neighborhood Traffic Calming Program

Item 7.

NTCP STEPS

Depending upon the severity of traffic concerns and level of community involvement, it could take up to 4 years to develop a City Council approved traffic calming measure and have it implemented. An approximate timeframe for each stage of the process is shown in the step by step process breakdown below.

- | | | |
|---------------|---|-------------|
| Step 1 | Neighborhood completes and returns a Community Action Request (CAR) form to the City. | |
| Step 2 | Public Works staff reviews the CAR form for completeness. Staff will issue an acknowledgement of receipt of complete CAR. | 1 month |
| Step 3 | Staff will determine appropriate traffic calming boundaries for the neighborhood based upon initial neighborhood input in the CAR form and review to ensure that all affected areas are included. | 1 week |
| Step 4 | Public Works staff initiates a traffic survey for the neighborhood in question. | 2-4 months |
| Step 5 | Public Works staff develops a formal response to the CAR, including results of the traffic survey and whether the neighborhood is recommended for traffic calming measures. | 2-4 months |
| Step 6 | Public Works staff design traffic calming measures for the identified problem. | 6-18 months |
| Step 7 | Proposed traffic calming measures will be presented to the City Council for approval. | 1-2 months |
| Step 8 | Funding for the approved traffic calming plan will be determined by the City Council. Should grant funding be required, Public Works will begin the process to apply for grant funding. If grant funding is not required, the traffic calming measures will be implemented. | 2-4 months |



Neighborhood Traffic Calming Program

Item 7.

PUBLIC WORKS RESPONSIBILITIES

Ranking Local Streets

Public Works staff will review all submitted CAR forms for completeness and assign a numerical score based upon the following criteria:

Criteria	Points	Basis for Point Assignment
Speed	0 to 36	3 points assigned for every 1 mile per hour the 85 th percentile speed is over the posted speed limit
Volume	0 to 34	Average daily traffic volumes (1 point assigned for every 50 vehicles over 500 vehicles per day)
Pedestrian Generators	0 to 10	5 points assigned for each public facility (such as park, community center) that generates a significant number of pedestrians on the street
School	0 to 10	5 points assigned for each 25 mph school zone and an additional 5 points for an elementary school
Sidewalks	0 or 5	5 points assigned if there are not continuous sidewalk on both sides of the street
Bicycle Route	0 or 5	5 points assigned if the street is a designated bicycle route
Total Points Possible	100	

The 85th percentile speed is used as a standard from which to set the speed limit at a safe speed in traffic engineering. Since the 85th percentile speed should be close to the posted speed limit, it is the benchmark in comparing the posted speed limit to actual traffic speeds. The 85th percentile speed is calculated using speed data collected through the speed data collected as part of the traffic survey.

An example of how points are calculated for speed is as follows:

The posted speed limit in a neighborhood is 25 miles per hour (MPH). The 85th percentile speed is 31 MPH based on data collected. The difference between the posted speed limit and 85th percentile speed is $31 - 25 = 6$ MPH. 6 MPH over the speed limit * 3 points = 18 points.

Neighborhood scores will be recorded and stored by the City for comparison with other neighborhood scores. Initially scores will not be used to determine eligibility for traffic calming devices, as the City has no established system for what score accurately reflects traffic issues requiring action. When enough data has been collected and a more accurate level at which traffic calming devices are necessary can be determined, a cutoff score may be assigned by the City. Collected data may also be used in future transportation grant applications by the City.

In addition to determining the rank score, neighborhood boundaries will be established based upon initial input from neighborhood residents on the CAR form and review by Public Works staff to ensure that all affected areas are included.



Formal Response to CAR

Once the traffic survey is complete and a rank score has been determined, a formal response from the City will be distributed to the applicant. This formal response will include the applicant's score and comments from the Public Works staff, including whether or not the applicant's neighborhood has been approved to proceed with a traffic calming plan.

Developing a Traffic Calming Plan

If a neighborhood is determined to need traffic calming measures, Public Works staff will start the Traffic Calming Plan process.

A description of common Traffic Calming Measures is included in Appendix A. These measures range from temporary to permanent, restrictive measures; not all of these measures will be considered during development of a Traffic Calming Plan through this process. Traffic calming measures described include those below, organized by significance of measure.

Nonrestrictive

- Neighborhood Traffic Safety Campaign
- Crosswalks
 - Flashing Crosswalk Signals
 - Talking Crosswalks
- Signage
- Pavement Markings
- Speed Monitoring
 - Radar Trailer in Neighborhoods
 - Radar Speed Signs
 - Targeted Police Enforcement

More Restrictive

- Speed Humps
- Speed Tables
- Raised Crosswalks and Intersections
- Textured Pavements

Most Restrictive

(not considered for this policy)

- Traffic Circles
- Chicane
- Realigned Intersections
- Neckdowns
- Center Islands
- Chokers

Public Works staff will develop a Traffic Calming Plan based on the results of the traffic survey. Public Works will first consider the non-restrictive traffic calming measures above, then the more restrictive measures. Once a Traffic Calming Plan has been developed, the plan will be presented to City Council for approval. If a neighborhood association is active within the project area, they will be included on communication regarding the plan as it is developed and brought before City Council.



Neighborhood Traffic Calming Program

Item 7.

Project Funding

The majority of funding for traffic calming plans developed through this process will be by City funds and assigned based on project need and availability. Some project funding may come from state or federal grant applications in rare cases.

Removal of Traffic Calming Measures

In the event that a resident feels that traffic calming measures are ineffective in curbing traffic problems or are causing additional problems in the neighborhood, they may apply to have traffic calming measures removed. The community request process for removal of traffic calming measures is the same as that for requesting traffic calming measures. Under the traffic issues section, residents may select 'other' and specify removal of an existing traffic calming device. Removal of traffic calming measures can be requested for measures that were not installed through the use of this program.



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: MIKE MASSARO, CONTRACT CITY ENGINEER

**RE: OLD FERRY ROAD ACCESS AGREEMENT FOR CA DEPT. OF WATER
RESOURCES (DWR)**

DATE: DECEMBER 3, 2019

SUMMARY

City council may approve and direct the mayor may sign a long-term access agreement between the City of Oroville and the California Department of Water Resources (DWR) to allow DWR crews to access their infrastructure adjacent to the Thermalito Diversion Dam.

DISCUSSION

The Old Ferry Road Access Agreement will grant DWR a permanent non-exclusive road easement for the portion of Old Ferry Road owned by the City of Oroville. Versions of this agreement have been reviewed by both parties and agreed upon by legal counsel prior to the final version contained herein.

FISCAL IMPACT

None

RECOMMENDATION

Approve the agreement and direct staff to sign it.

ATTACHMENTS

Access Agreement

August 29, 2019

Mr. Michael Massaro
City of Oroville
1735 Montgomery Street
Oroville, CA 95965

Dear Mr. Massaro:

Enclosed are two partially executed originals of the Access Agreement for Old Ferry Road (Agreement). This Agreement allows the Department of Water Resources (DWR) access to City of Oroville (City) property, identified as Butte County Assessor's Parcel No. 013-010-003, for the purpose of regular access to the Thermalito Diversion Dam for maintenance duties, and other projects as mutually agreed upon between DWR and the City.

Upon approval by the City, please return one fully executed original of the Agreement to DWR in the enclosed envelope. Once this Agreement is executed, I will be in contact with you to begin working on a permanent access right from the City for Old Ferry Road.

If you need additional information or would like to discuss this further, you may contact me by telephone directly at (916) 653-0788, toll free at (800) 600-4397, or via email at Preston.Good@water.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Preston Good
Senior Right of Way Agent

Enclosures

PGood:SBurns/193PG082719SB
MOS_OldFerryCityAccess

ACCESS AGREEMENT – OLD FERRY ROAD

This Agreement, effective upon full execution between both parties, is entered into by and between the DEPARTMENT OF WATER RESOURCES, hereinafter referred to as "DWR," and the CITY OF OROVILLE, hereinafter referred to as "City," with respect to the following:

RECITALS

- A. WHEREAS, the City owns a portion of Old Ferry Road from the roundabout northward approximately 1,100 feet within Butte County Assessor's Parcel Number 013-010-003, and as shown in Exhibit A;
- B. WHEREAS, during daylight hours this portion of the City-owned Old Ferry Road is normally used for public access to the Feather River Nature Center and Native Plant Park;
- C. WHEREAS, from time to time DWR has utilized Old Ferry Road as access to the Thermalito Diversion Dam for maintenance purposes;
- D. WHEREAS, DWR intends to use Old Ferry Road in the future for regular access to the Thermalito Diversion Dam for maintenance purposes and other projects as mutually agreed upon by the Parties in advance;
- E. WHEREAS, DWR may need to use Old Ferry Road at night and/or on weekends, beyond the public's hours of use;
- F. WHEREAS, portions of Old Ferry Road were damaged during the weather events related to the 2017 Oroville incident; and
- G. WHEREAS, DWR intends to perform a one-time repair on Old Ferry Road as consideration for a grant of permanent access rights from the City.

AGREEMENTS

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE, IT IS MUTUALLY AGREED as follows:

- 1. Initial Repair. Upon execution of this Agreement, City hereby grants DWR, its agents, and contractors permission to repair the City-owned portion of Old Ferry Road in accordance with the standards outlined in the description of work in the City-approved Encroachment Permit, attached hereto as Exhibit B.
- 2. Initial Access. Upon execution of this Agreement, City agrees that DWR shall have immediate non-exclusive access along the City-owned portion of Old Ferry Road for routine project maintenance and project construction as needed, independent of any public access restrictions.

3. Non-Exclusive Easement. City hereby agrees to work cooperatively with DWR and grant a permanent, non-exclusive road easement to DWR sufficient for DWR's future use as described herein. DWR shall prepare the documentation to record said easement on the City-owned portion of Old Ferry Road.
4. Public Access. Upon DWR's completion of the road repairs as outline in the Encroachment Permit, the City will re-open Old Ferry Road and allow public access, during daylight hours, to the Feather River Nature Center and Native Plant Park as well as initial public access to current and future recreation sites as part of the settlement agreement for the Federal Energy Regulatory Commission licensing of Oroville Dam.
5. Future maintenance costs/responsibilities. The Parties agree that DWR shall be responsible to repair only those road damages to the City's portion of the road caused by DWR and/or its contractors.
6. Governing Law and Jurisdiction. The interpretation and performance of this Agreement shall be governed by the laws of the State of California.
7. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, addressed as follows:

TO DWR: Chief, Real Estate Branch
 Division of Engineering
 California Department of Water Resources
 1416 Ninth Street, Room 415
 Sacramento, CA 95814
 (800) 600-4397

TO CITY: City of Oroville
 City Administrator
 1735 Montgomery Street
 Oroville, CA 95965
 (530) 538-2401

8. Successors and Assigns. Neither the City nor DWR may assign or delegate any right or obligation hereunder without first having received the written and duly executed consent of the other party. This Agreement shall bind and shall inure to the benefit of any successors or assigns of either party following such consent but shall not otherwise create duties or obligations to or rights in third parties not parties to this Agreement, nor shall this Agreement affect the legal liability of any party by imposing any standard of care different from that otherwise imposed by law.
9. Amendment. This Agreement may be amended or modified only by a written amendment, signed by duly authorized representatives of DWR and the City.
10. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

11. Relationship of Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or agency relationship between or among the Parties, or to impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.
12. Waivers. Any waiver at any time, by any Party, of its rights with respect to a default under this Agreement shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.
13. No Effect on Existing Litigation. Nothing contained in the Agreement shall be construed to have any effect on the pending litigation by the City of Oroville against the California Department of Water Resources, Sacramento County Superior Court, Consolidated Case No. JCCP 4974.
14. EXECUTION OF AGREEMENT
 - a. Execution in Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument.
 - b. Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.
 - c. Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out their respective obligations under this Agreement.

IN WITNESS HEREOF, DWR and City have executed this Agreement the day and year written below.

CITY OF OROVILLE:

By _____
 Bill LaGrone
 City Administrator

Date _____

APPROVED:

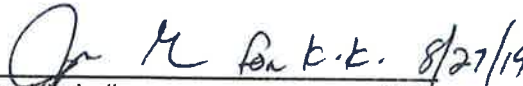
By _____
 Scott E. Huber, City Attorney

Date _____

Date _____

THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE DEPARTMENT OF WATER RESOURCES:

APPROVAL RECOMMENDED:

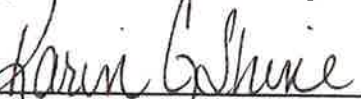
By  Date 8/27/19
 Kacy Kimball,
 Supervising Right of Way Agent

APPROVED:

By 
 Angelica Aguilar, Chief
 Real Estate Branch

Date 8/29/19

Approved as to form and legal sufficiency:

By 
 Karin Shine
 Office of the Chief Counsel

Date 16 August 2019

Exhibit A – Aerial of Old Ferry Road
 Exhibit B – City-approved Encroachment Permit



THERMALITO DIVERSION DAM
OLD FERRY ROAD ACCESS
OROVILLE FIELD DIVISION - BUTTE COUNTY

EXHIBIT A

This exhibit does not represent a survey and is for informational purposes only.

11/18/2019

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF ENGINEERING - GEODETIC

87 CH

CONFIDENTIAL - NOT FOR PUBLIC DISTRIBUTION



City of Oroville

COMMUNITY DEVELOPMENT DEPARTMENT

Donald Rust
DIRECTOR

1735 Montgomery Street
Oroville, CA 95965-4897
(530) 538-2401 - FAX (530) 538-2426
www.cityoforoville.org

TRAKIT #:

PW1806 014

ENCROACHMENT PERMIT

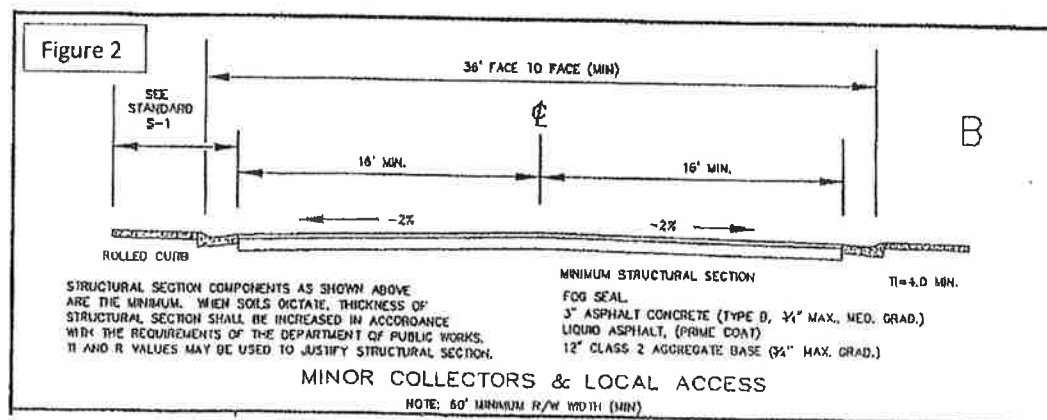
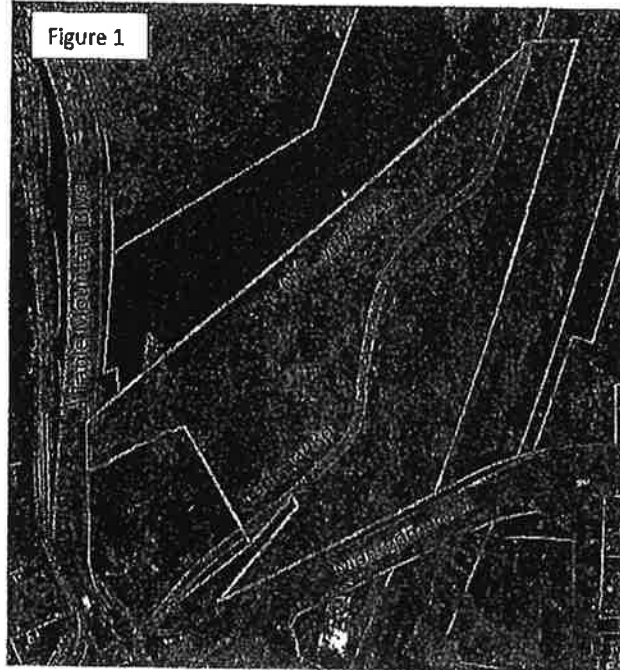
JOB LOCATION		PERMIT CONDITIONS (BY CITY)	
APN: 013 _010 _002		PERMIT IS: <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DENIED	
Address of Work: Old Ferry Road		Reason for Denial: _____	
OWNER		Conditions: Permit is approved subject to the conditions listed below AND the General Conditions listed on Page 2 of this permit form	
Name: CA Dept. of Water Resources		1. Underground Service Alert shall be notified no less than two working days prior to the start of any excavating.	
Address: 460 Glen Drive		2. All work shall conform to plans submitted by applicant and the City's construction standards.	
City/State/Zip Oroville, CA 95966		3. Pre-Construction Meeting Required? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Phone: 530-534-2541		4. Pre-Paving Inspection Required? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Permit Contact Email: edward.elliott@water.ca.gov		5. CLSM backfill for utility trenches? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
WORK TYPE AND PLANS		5. Other Conditions: _____	
Description of Work: See attached document		Approval Date: 6/24/2018 Expiration Date: 8/30/2018	
WORK REQUIRES TRENCHING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Approval By: <i>Mike Massaro, Contract City Engineer</i>	
PROJECT PLAN(S) ATTACHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Approval By: Donald L. Rust, Community Development Director	
TRAFFIC CONTROL PLAN REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Approving Signature: <i>[Signature]</i>	
PLANNED DURATION OF WORK:		Final Inspection By: _____ Date: _____	
FROM DATE: July 16		Permit Final Date: _____	
TO DATE: July 20		Comments: _____	
WORK PERFORMED BY		PERMIT ISSUANCE FEES	
<input type="checkbox"/> Contractor <input type="checkbox"/> Utility Company		Encroachment Permit Fee 94.77	
Contractor's Name CA Dept. of Water Resources		Administrative Fee 15.36	
Address 460 Glen Drive		Tech. Cost Recovery Issuance Fee 16.79	
City/State/Zip Oroville, CA 95966		Check # 629166 Cash 7/9/18 Credit Card 8/1/19.92	
Phone: 530-534-2541 Fax: _____		TOTAL 119.92	
E-mail: edward.elliott@water.ca.gov			
LICENSED CONTRACTOR'S DECLARATION			
By signing this permit application below, I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect (Utility companies exempt if using own forces).			
Contractor/Applicant Name (Print): _____			
Contractor/Applicant Signature: _____			
Application Date: _____			
License No.: _____			

I, the undersigned applicant, shall defend, indemnify and hold harmless the City of Oroville and its officers, officials, employees and agents from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of myself, anyone directly or indirectly employed by me or anyone for whose acts I may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City of Oroville.

Description of Work:

All work within the City of Oroville right of way is on or directly adjacent to Old Ferry Road from the intersection of Table Mountain Blvd and Montgomery Street to the property line shared with Union Pacific Railroad Company (see figure 1 below). Work scope includes the following:

1. Debris Removal – Remove several piles of woody debris accumulated on the road or shoulder as a result of high flow events in the Feather River during the 2016/2017 winter storms. Total volume of material is estimated to be around 30 cubic yards, maximum. Debris will be hauled away and disposed of.
2. Tree Trimming – Trim all trees that encroach into the traveled way out to 24 inches beyond the edge of asphalt and up approximately 15 feet from the road surface. Tree cuttings will be hauled away and disposed of.
3. Edge of Asphalt and Shoulder Repairs – Sawcut, remove and replace road section at two locations where erosion has undercut edge of roadway. Total length of treatment is approximately 100 feet. Conform line will be no more than 36 inches from edge of asphalt at each location. Road section will be placed back per Butte County Standards for "Minor Collectors & Local Access" road section details (3" AC over 12" AB see figure 2 below). Shoulder sections will be replaced with compacted AB and slopes will be armored with 12" RSP.





City of Oroville

Building Department
Cash Collections

RECEIPT

Printed: 7/9/2018 8:34 am

Item 8.

Permit Number: PW1806-014
Job Address: 2799 OLD FERRY RD

Fee Description	Account Number	Fee Amount
ENCROACHMENT FEE		
ADMIN	2301 4230	\$15.36
STREET REPAIR <500 SF	2901 4230	\$97.77
TECH COST RECOVERY [ISSUANCE]		
	5141 4700	\$6.79
Total Fees Paid:		\$119.92

Date Paid: 7/9/2018

Paid By: **JOHN CHING**

Pay Method: **CHECK 629166**

Received By: **JODI HUNSPERGER**

Credit Card Payments

A convenience fee is charged for all credit card payments. Please note that the convenience fee is a third-party fee and is not part of the City of Oroville. For all credit card payments the convenience fee is 2.50% of the total amount charged with a minimum charge of \$2.00.



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: LIMITING OR PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

DATE: DECEMBER 3, 2019

SUMMARY

The Council may consider input from the Planning Commission and additional testimony from the public regarding adopting an ordinance that limits the sale of flavored tobacco products, or that prohibits the sale outright.

DISCUSSION

In the interest of improved public health and especially for Oroville's youth, on October 1, 2019, the City Council heard testimony from many individuals and groups who pointed out the health effects and increasing use by youth of e-cigarettes and flavored tobacco liquids. The Council then directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits. Because some of the code changes would affect Title 17 (Zoning Code), the Council also directed the Planning Commission to hear the question¹.

The Planning Commission met twice on the issue, on October 29 and again on November 21. At those meetings the Commission heard testimony from both proponents and opponents of the ban. After considering several options as described in their November 21 staff report, the Commissioners agreed that banning flavored tobacco in Oroville and not in neighboring jurisdictions might help limit access by our youth but would also create an uneven business environment where Oroville's tobacco retailers would lose business to those in neighboring jurisdictions could.

The Commission then voted 5-0 to recommend that the City Council take no action at this time to ban or limit flavored tobacco products in Oroville. Instead the Commission recommends the City send a letter to the Governor and the State Legislature urging immediate action to ban flavored vaping products statewide, and/or take other appropriate measures to protect the health of our State's youth.

¹ The Planning Commission's charge in this case is to " evaluate information from staff and testimony for the purpose of making recommendations to guide legislative action" from The Job of the Planning Commissioner, by Albert Solnit, ©1987, 3rd edition revised, page 5.

There is almost universal acknowledgement that vaping by our youth has reached epidemic proportions across the nation, and the Federal government, the State government, and dozens of local jurisdictions are acting to restrict, educate, and/or study vaping and its health effects. On October 1, there were 29 California jurisdictions that had enacted some form of an ordinance. As of November 14 there are over 50 who have now done so.

If the Council still desires to enact an ordinance banning all flavored tobacco products in Oroville, a draft ordinance modeled after the enacted Sacramento City Ordinance is included as Attachment 2. The Council should also consider whether to make a ban effective immediately or to wait a period of time to allow retailers to sell their existing inventory.

FISCAL IMPACT

Assuming a ban on all flavored tobacco products, the lost sales of e-cigarettes and other flavored tobacco products would mean minimal sales tax revenue losses to the City -- in the range of \$10,000 - \$20,000 per year. Total sales tax revenues in 2018 from those likely to be tobacco retailers were \$660,334 (service stations, food markets, and liquor stores combined). However, if Oakland's experience is repeated in Oroville and our stores are bypassed because they do not sell flavored tobacco, lost City sales tax revenue could be up to \$90,000 per year.

RECOMMENDATION

Provide direction to staff. If the direction includes an ordinance, staff will bring the ordinance to the Council for a first reading on December 17 and a second reading on January 7, 2020. If a letter to the Governor, staff will draft and bring to the Council for approval on December 17.

ATTACHMENTS

1. Planning Commission November 21, 2019 Staff report and backup materials
2. Draft ordinance assuming a full ban on flavored tobacco products.



**November 21, 2019
REGULAR MEETING
OPEN SESSION 7:00 PM
AGENDA**

CITY OF OROVILLE PLANNING COMMISSION

CHAIR: Damon Robinson
VICE-CHAIR: Carl Durling
MEMBERS: Randy Chapman; Wyatt Jenkins; Michael Britton, Tammy Flicker, Susan Sears

ALL MEETINGS ARE RECORDED AND BROADCAST LIVE

*This meeting may be broadcast remotely via audio and/or video conference at the following address:
Cota Cole, LLP, 2261 Lava Ridge Court, Roseville, California 95661.
Meeting is streamed live at cityoforoville.org and on YouTube*

CALL TO ORDER

ROLL CALL

Commissioners: Tammy Flicker, Michael Britton, Randy Chapman, Wyatt Jenkins, Susan Sears, Vice Chairperson Carl Durling, Chairperson Damon Robinson

PLEDGE OF ALLEGIANCE

INSTRUCTIONS TO INDIVIDUALS WHO WISH TO SPEAK

If you would like to address the commission at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the City Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Mayor or presiding chair in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, please submit the form prior to the conclusion of the staff presentation for that item. Council has established time limitations of three (3) minutes per speaker on all items and an overall time limit of thirty minutes for non-agenda items. If more than 10 speaker cards are submitted for non-agenda items, the time limitation would be reduced to two minutes per speaker. If more than 15 speaker cards are submitted for non-agenda items, the first 15 speakers will be randomly selected to speak at the beginning of the meeting, with the remaining speakers given an opportunity at the end. **(California Government Code §54954.3(b))**. Pursuant to Government Code Section 54954.2, the commission is prohibited from taking action except for a brief response from the Council or staff to statements or questions relating to a non-agenda item.

PUBLIC COMMENTS

Item 9.

This is an opportunity for members of the public to address the Planning Commission on any subject not on the agenda related to the Planning Commission.

REGULAR BUSINESS

1. ORDINANCE TO LIMIT OR PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to limit or prohibit the sale of flavored tobacco products.

RECOMMENDATION

That the Planning Commission consider several options to regulate flavored tobacco, and after consideration recommend to the City Council whether they should adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010.

DIRECTOR'S REPORT

The Director shall report on information pertinent to the Planning Commission.

COMMISSION REPORTS

Reports by commission members on information pertinent to the Planning Commission.

ADJOURNMENT

Adjourn to Wednesday, December 18, 2019 at 7:00 P.M. in the Oroville City Council Chambers

***** NOTICE *****

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the City Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

***** NOTICE *****

Any person who is dissatisfied with the decisions of this Planning Commission may appeal to the City Council by filing with the Zoning Administrator within fifteen days from the date of the action. A written notice of appeal specifying the grounds and an appeal fee immediately payable to the City of Oroville must be submitted at the time of filing. The Oroville City Council may sustain, modify or overrule this decision.



City of Oroville

Leonardo DePaola
Community Development Director

COMMUNITY DEVELOPMENT DEPARTMENT

1735 Montgomery Street
Oroville, CA 95965-4897
(530) 538-2436 FAX (530) 538-2426
www.cityoforoville.org

PLANNING COMMISSION STAFF REPORT

Thursday, November 21, 2019

RE: ORDINANCE TO LIMIT OR PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

SUMMARY: The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to limit or prohibit the sale of flavored tobacco products.

RECOMMENDATION: That the Planning Commission consider several options to regulate flavored tobacco, and after consideration recommend to the City Council whether they should adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010.

APPLICANTS: None

LOCATION: City wide

GENERAL PLAN: NA

ZONING: NA

FLOOD ZONE: NA

ENVIRONMENTAL DETERMINATION: Not a project under CEQA (para 21065 & CEQA Guidelines 15378(b)(5))

REPORT PREPARED BY:

REVIEWED BY:

Wes Ervin, Senior Planner
Community Development Department

Leonardo DePaola, Director
Community Development Director

DISCUSSION

In the interest of improved public health and especially for Oroville's youth, on October 1, 2019, the City Council heard testimony from many individuals and groups who pointed out the health effects and increasing use by youth of e-cigarettes and flavored tobacco liquids. All acknowledge that vaping has reached epidemic proportions across the nation. The Council then directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits. On October 1, there were 29 jurisdictions that had

enacted some form of an ordinance. As of November 14 there are 50 who have done so. Some of these changes involve amendments to Title 17, which is the purview of the Planning Commission. Accordingly, the Commission is asked to review at its earliest opportunity recommended changes to Title 17 and Title 5 of the Oroville Municipal Code, and to forward the Commission's recommendations to the City Council for action.

At its October 29, 2019 meeting the Planning Commission conducted a public hearing and considered the proposed changes, which included:

- Amending the definitions in OMC 17.04.060 (Zoning Code) to separate flavored tobacco from tobacco products so they can be separately regulated;
- Amending the definitions in OMC 5.28.010 (tobacco retailers), to separate flavored tobacco from tobacco products. Tobacco retailers will thus be prohibited from selling flavored tobacco products;
- No changes to OMC 17.16.190 (Smoke Shops). with the definition changes proposed above, Smoke shops will be prohibited from selling flavored tobacco products to minors or adults;
- No changes to OMC 9.04.170 (Regulation of Smoking). Smoking, including vaping and use of electronic cigarettes, will still be prohibited wherever already prohibited.

After discussion, rather than accept the recommended ordinance the Commission directed staff to develop information on three less restrictive options:

1. Take no action, assuming the State will soon take action that affects all jurisdictions;
2. Design a more nuanced ordinance that is less restrictive but still targets youth access to vaping and flavored products. May also include hiding flavored products on store shelves.
3. Design an ordinance that limits flavored tobacco products to smoke shops.

The Chairman also encouraged staff to meet with retailers to get more input prior to the November 21 meeting.

No Action Option

If the City takes no action, it would do so with the expectation that the State or Federal governments will ultimately take action against vaping and/or e-cigarettes.

Governor Newsom issued on September 16 an executive order directing a \$20 Million campaign to educate youth, young adults, and parents about the health risks of vaping and cannabis, and to post warning signs where these products are sold.

The State Assembly Committee on Health held an informational hearing on October 16, 2019¹. Assembly members Gray and McCarty are now expected to introduce legislation to regulate vaping, e-cigarettes and/or e-liquids.

The FDA is advancing a policy to address youth e-cigarette use, but has wavered on

¹ https://cheac.org/2019/10/18/assembly-holds-joint-informational-hearing-on-vaping-tobacco-and-cannabis-products/?utm_source=rss&utm_medium=rss&utm_campaign=assembly-holds-joint-informational-hearing-on-vaping-tobacco-and-cannabis-products

banning them until the policy is finalized².

Limiting sales to Smoke Shops Option

The rules for sale of tobacco products are the same at smoke shops and tobacco retailers, though our five smoke shops all have Use Permits and typically have more security and limit patronage to adults only. The City's smoke shops would certainly gain much of the sales lost by tobacco retailers, generating some but not all of the foregone tax revenues.

Nuanced and Less Restrictive Ban Options

Less restrictive bans that still try to limit youth access have included some of the approaches below.

1. Nine jurisdictions exempt menthol from their bans, which is a long-standing flavor in regular cigarettes, and the only flavor FDA allows in cigarettes;
2. Limit the ban to e-cigarettes and associated e-liquids;
3. Limit the ban to flavored e-liquids only, exempting pure liquid nicotine, and still allowing e-cigarettes;
4. Ban online sales by sellers located within the jurisdiction;
5. Prohibit new tobacco retailers within 500 feet of an existing one, or of a school;
6. Limit sales of flavored cigars and cigarillos to packs of 5 or 20;
7. Extend the smoking ban to more public places such as parks and public events;
8. Cap the number of tobacco retailers, much like smoke shops are now limited;
9. Enact a ban, but delay effective dates and enforcement to give retailers time to adjust, and/or give the State Legislature time to act.

Three examples of unique ordinances:

- Mono County -- April 17, 2018
 - Mono County prohibited the sale of flavored e-liquids for one year, excluding other flavored tobacco products. However, since October 2019 the County now has a complete ban on all flavored tobacco products;
 - The County also banned smoking in county vehicles, public parks, recreational areas, service areas, dining areas, and public places when used as a public event;
- Richmond -- July 17, 2018
 - Banned sale of all electronic smoking devices in stores or online;
 - Limits minimum pack size of 20 cigarettes or cigars/cigarillos, except those sold for over \$5 apiece;
 - Now prohibits new tobacco retailers from opening within 500 feet of another tobacco retailer, or within 1,000 feet of a school, park, playground or library;
 - Delayed enforcement until January 1, 2020;

² <https://www.cnbc.com/2019/11/13/trump-administration-wavers-on-ban-of-flavored-e-cigarettes-no-final-answer.html>

- San Francisco -- June 27, 2017 (referendum vote June 5, 2018).
 - Banned sale of all electronic smoking devices in stores or online;
 - Bans new tobacco retailers after a maximum of 45 per supervisorial district;
 - Prohibits new tobacco retailers from opening within 500 feet of a school or another tobacco retailer;
 - Enforced beginning January 1, 2019

Since the options are many, staff will develop a specific draft ordinance after hearing direction from the Commission, and will prepare to present the draft to the Council.

Enforcement and Education Considerations

Staff consulted the Police Department for this item. Most tobacco related enforcement issues are about e-cigarettes, vaping, and youth use of tobacco. Menthol and other flavorings in cigarettes, cigars and smokeless tobacco are much more benign. Thus, from the enforcement standpoint the most effective ban would be e-cigarettes and e-liquids only.

There are laws that restrict placement of tobacco products in stores, but compliance is uncertain (e.g. behind the counter vs. on the counter). A code compliance effort may be indicated.

In addition, there is data to suggest that one third of smoke shops sell to minors statewide, and that 19% of all tobacco retailers do in fact frequently sell to minors despite the law. The Butte County Sheriff's Office has conducted several sting operations, including as recently as last month.

A ban limited to e-liquids and/or flavored tobacco will help but their effectiveness is limited, because online sales, buying at the two reservations, illicit sales, and adults supplying youth will all continue regardless. Education is thus a critical component of limiting access to youth. In addition to the many nonprofit organizations now educating our youth, the Oroville Police Department has received a 3-year Department of Justice grant for \$424,240 to help educate students at the Oroville City Elementary School District (OCESD), including hiring dedicated staff, installing cameras and smoke and vapor detectors, and increased monitoring of tobacco retailers near schools. OPD and OCESD are now actively engaged in tobacco prevention education for grades 4-8, and are actively supporting other anti-smoking programs.

Economic Loss to Retailers of a Flavored Tobacco Ban

The City has 40 licensed tobacco retailers, of which 16 appear to be C-stores (gas stations/mini-marts). Gas station/mini marts are typically among the highest sales tax generators in a community. Others are grocery markets of all sizes (13), liquor stores (3), smoke shops (5), and drug stores (3). Note that Raley's and CVS have corporate policies not to carry tobacco products.

Some national sales data are available for convenience stores from the National Association of Convenience Stores³. Using that data, staff estimates that the direct

³ 2018 NACS State of the Industry Summit, published by CSPdailynews.com, Volume 29, Issue 7
<http://cdn.coverstand.com/20858/497321/9ff769c3ec0939592ebae907b4ea96529ca9fc3a.5.pdf>

sales of e-cigarettes at the average C-store to be about \$12,000 per year, or less than 1% of total store sales. Average C-store tobacco sales including cigarettes, cigars, smokeless tobacco and paraphernalia total \$102,000 per year, or 43% of total sales. Cigarettes are the largest component of tobacco sales.

A ban on flavored tobacco products affects more than just that specific product. Patrons seeking e-cigarettes also purchase other goods at the same time. Those stores that do not carry flavored tobacco products would lose a greater percentage of sales due to customers bypassing that store, instead purchasing gasoline and other products elsewhere. The two Tribal casinos both have gas stations, mini marts and smoke shops, which would presumably gain from a ban, as would Billy Bob's Market and other stores in Thermalito.

For example, Oakland limited the sale of flavored tobacco products effective July 1, 2018. According to the APCA, the effect to C-store sales was lost revenue of 11% to fuel sales, 52% in cigarette and tobacco sales, and 20.47% overall. Similar data is not available for liquor stores and smoke shops, but the impact to sales at those stores would of course be much greater.

Input from Organizations Received to Date (in order received)

In addition to the many individuals who have testified, the following organizations have provided input to the City Council and/or Planning Commission. Some are attached:

1. The California Health Collaborative has presented, and has provided much information about the health effects of vaping, tobacco, and of youth access to those products. Data they provided is included in prior staff reports;
2. The County Department of Health has presented, and supports a ban on flavored tobacco products;
3. 92 individual form letters were received opposing a ban of flavored tobacco products;
4. The Cancer Action Network supports the ban – letter attached
5. The American Petroleum and Convenience Store Association opposes the ban and supports waiting until the State acts – letter and email attached

FISCAL IMPACT

Assuming a ban on all flavored tobacco products, the lost sales of e-cigarettes and other Tobacco (OTP) products would mean minimal sales tax revenue losses to the City -- in the range of \$10,000 - \$20,000 per year. Total sales tax revenues in 2018 from those likely to be tobacco retailers were \$660,334 (service stations, food markets, and liquor stores combined). However, if Oakland's experience is repeated in Oroville, lost sales tax revenue could be up to \$90,000 per year.

ATTACHMENTS

1. City Council staff report of October 1, 2019
2. Planning Commission staff report of October 24/29, 2019
3. Assembly Informational Hearing background paper of October 16, 2019
4. Updated matrix of flavored tobacco ordinances as of 11-14-19
5. Selected correspondence supporting and opposing the ban
6. Changes to Oroville Municipal Code assuming a full ban



CITY OF OROVILLE STAFF REPORT

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

RE: LIMITING OR PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

DATE: OCTOBER 1, 2019

SUMMARY

The Council may consider adopting an ordinance that either limits the sale of flavored tobacco products to smoke shops, or that prohibits the sale outright.

DISCUSSION

In 2017 the City Council considered but did not enact an ordinance restricting the sale of Menthol cigarettes and other flavored tobacco products. At its last meeting on September 17, 2019, the Council heard a presentation by the California Health Collaborative about the problems associated with menthol and other flavored tobacco products. They directed staff to bring an agenda item forward for consideration.

Now there are a plethora of well-documented health issues associated with the use of this type of product, there is a high percentage of use by youth, and policymakers everywhere are acting. For instance:

1. The California Department of Health and Governor Newsome are actively warning about the health issues of flavored tobacco use in the media, including that there have been 4 deaths and hundreds of illnesses in the State;
2. The Trump Administration announced on September 11 that it is moving to pull flavored e-cigarettes from the market until/unless they are approved by the FDA¹;
3. The makers and sellers of flavored cigarettes are under tremendous public pressure by public officials at all levels of government. On September 25 the CEO of Juul stepped down, the company announced it would stop saying their

¹ <https://www.npr.org/sections/health-shots/2019/09/11/759851853/fda-to-banish-flavored-e-cigarettes-to-combat-youth-vaping>

products are safer than traditional cigarettes, and would not oppose new regulations for their products.²

4. Local and state governments across the country have enacted laws prohibiting or restricting the sale of flavored tobacco, including 37 in California (e.g. San Francisco, Hermosa Beach, Cloverdale, and Sacramento). On 9/24/19, the LA County Board of Supervisors became the latest - voting unanimously to ban flavored tobacco products.

How many retailers in Oroville will be affected?

There are 40 tobacco retailers in Oroville that sell tobacco as part of their product lines, and 5 smoke shops whose main business is tobacco and tobacco products. Three smoke shops are on Oro Dam Blvd, one is on Lincoln Blvd, and the fifth is on Feather River Blvd @ Bird St. Prohibition would eliminate a significant line of business at the 5 smoke shops. The sale of unflavored tobacco and tobacco products would not be affected.

What is a flavored tobacco product?

The ordinances of Hermosa Beach and Sacramento both define a flavored tobacco product as any tobacco product that imparts a characterizing flavor regardless of the name of the product. For example: "Tropical Mist" may be characterized as smelling / tasting like coconut

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.

FISCAL IMPACT

Limiting sale to smoke shops would have an undetermined but limited effect on annual sales at 40 stores that sell tobacco products in Oroville.

A prohibition would have a significant effect on sales at the five smoke shops.

RECOMMENDATION

Direct staff to prepare an ordinance that distinguishes between tobacco products and flavored tobacco products, and that also:

1. Limits the sale of all flavored tobacco products to smoke shops
- or
2. Prohibits the sale of all flavored tobacco products within City limits.

and

² <https://www.nytimes.com/2019/09/25/health/juul-vaping.html>

Direct Staff to bring the matter before the Planning Commission on October 24, then to Council for a First reading on November 5 or 19, and a second reading as soon as possible after that.

ATTACHMENTS

1. California Medical Association White Paper on Flavored and Mentholated Tobacco Products;
2. California Matrix of Local Flavored Tobacco Product ordinances;
3. Model California Ordinance Restricting Sale
4. Hermosa Beach Ordinance
5. Sacramento City Ordinance

Flavored and Mentholated Tobacco Products: Enticing a New Generation of Users

CMA White Paper

May 2016



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This document was prepared by the California Medical Association and reviewed by its Council on Science and Public Health, a panel of physician experts, with input from subject matter researchers. It was approved by the CMA Board of Trustees on April 21, 2016.

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Introduction	1
Background.....	2
Types of Flavored and Mentholated Tobacco Products	3
Cigars.....	3
Smokeless Tobacco.....	5
Hookah Tobacco.....	7
Liquid Nicotine Solution.....	8
Menthol Cigarettes.....	10
Priority Populations.....	12
Adolescents (12-17) and Young Adults (18-26).....	12
Racial and Ethnic Minorities.....	13
Lesbian, Gay, Bisexual, and Transgender (LGBT).....	15
Women.....	15
Conclusion.....	16
References.....	17

The California Medical Association's (CMA) mission is "to promote the science and art of medicine, the care and well-being of patients, the protection of the public health and the betterment of the medical profession" and the organization has a similar core objective of advancing public health.

CMA has long recognized that tobacco use is a costly habit that often leads to illness and poor health; in 1963, CMA was the first among state medical societies to create policy to inform people about the harmful effects of cigarette smoking. Effective policy solutions that prevent and reduce tobacco use and the negative health impacts of these products should be guided by the current literature and research that indicates these interventions are necessary – namely, that there is a preponderance of evidence that highlights emerging issues and which can be used to help guide tobacco control efforts.

This report presents the evidence and research on the impact of flavored and mentholated tobacco products on public health, particularly among priority populations. Priority populations are groups that have higher rates of tobacco use than the general population, experience greater secondhand smoke exposure at work and at home, are disproportionately targeted by the tobacco industry, and have higher rates of tobacco-related disease compared to the general population.¹

Specifically, this report addresses:

- The evidence linking flavored and mentholated tobacco products with initiation of and sustained tobacco use by youth and other priority populations, and the resulting negative health effects.

While great strides have been made in reducing tobacco use in California, tobacco use is still the leading preventable cause of premature death and disability in the state and nationally – more than 440,000 people die prematurely from tobacco-related disease.² Evidence indicates that lifelong smoking and other tobacco use begins early in life; in California, 63% of smokers start by the age of 18, and 97% start by age 26.³

Although the overall prevalence of youth smoking is declining in California, the introduction of novel tobacco products that are offered in a variety of flavors designed to appeal to children, such as bubblegum, grape, and chocolate, may present new public health threats to adolescents and young adults. Other evidence indicates that flavor additives, such as menthol, may impose additional threats, particularly among certain priority population groups that have relatively higher use rates.

The use of flavor and menthol additives in tobacco products has long been a popular industry strategy to mask the natural harshness and taste of tobacco, making initiation easier for younger and beginner smokers.⁴ Like all tobacco products, flavored and mentholated tobacco products have serious health risks and are not considered safe by the United States (U.S.) Food and Drug Administration (FDA).⁵

In 2009, the Family Smoking Prevention and Tobacco Control Act (FSPTCA) was signed into federal law, making it illegal to manufacture cigarettes that contained “characterizing flavors” other than that of tobacco. This included flavors like strawberry, grape, orange, clove, chocolate, and cinnamon. The FDA concluded that flavored cigarettes are a gateway for many children and young adults to become regular smokers.⁶

Notably, the federal ban on flavored cigarettes did not apply to mentholated cigarettes or other flavored tobacco products.⁷

There are several types of flavored tobacco products on the market, including cigars, smokeless tobacco, hookah, liquid nicotine solutions (used in electronic smoking devices), and menthol cigarettes. These products come in a variety of candy and fruit flavors such as chocolate, watermelon, grape, cherry, apple, and wintergreen. This section describes each type of tobacco product and consumption patterns, as well as health impacts associated with use of these products.

Cigars

- Cigars are sold in a variety of candy, fruit, and alcohol- like flavors.
- Cigars are the second most common form of tobacco used by youth, and flavored cigars represent more than half of the cigar market.
- Cigar smoke contains many of the same carcinogens as cigarette smoke, and may even be more toxic.
- Cigars pose significant morbidity and mortality risks to users.



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Cigar Products and Market Share

Cigars tend to vary in terms of size and the quantity of tobacco used in their products. There are three types of cigar sizes sold in the United States:

- **Large or Premium Cigars:** Contain between 5 and 20 grams of tobacco, which can equate to a pack of cigarettes.
- **Little Cigars:** Very similar to cigarettes and sold in the same size (e.g., contain 1 gram of tobacco), shape and packaging (20 little cigars in a package).
- **Cigarillos:** Contain about 3 grams of tobacco, usually larger than little cigars and cigarettes.⁸

In 2014, about 13 billion cigars were sold in the United States, including 12.4 billion large cigars and cigarillos and 0.6 billion little cigars.⁹ While cigarette consumption has declined from 2000 to 2014, total consumption of cigars increased by 122% over this same period,¹⁰ with flavored cigars representing more than half of the U.S. cigar market.¹¹ Following the Family Smoking Prevention and Tobacco Control Act of 2009, research indicates that cigar manufacturers and the tobacco industry manipulated flavored cigarettes to become flavored cigars in order to circumvent the ban on flavored cigarettes.^{12,13} Cigars are also commonly sold as single products, making them an affordable alternative to cigarettes which are taxed at higher rates.¹⁴

Swisher International Inc.'s Swisher Sweets and Little products represent the most popular cigar brands on the market. They come in a variety of flavors, including chocolate, strawberry, ice cream, peach, and grape. Black & Mild brand cigars, owned by Altria (parent company of Philip Morris USA), also maintain a significant market share and sell flavors like apple, wine, and cream.¹⁶

Cigar Use by Certain Groups

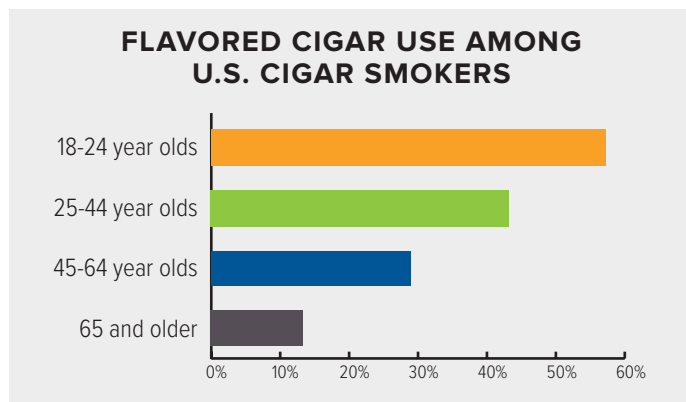
Cigars are the second most common form of tobacco used by high school students.¹⁷ That number increases among first-time tobacco users aged 12 and older, with nearly 2.7 million smoking cigars, in comparison to 2.3 million smoking cigarettes.¹⁸

A recent study found that more than 87% of adolescents who used cigarillos in the past 30 days used flavored cigarillos.¹⁹ When asked, 73.8% of current youth cigar smokers said they smoked cigars “because they come in flavors I like.”²⁰ More than two fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes.²¹

In fact, a recent study found that flavored tobacco products, such as sweet-flavored cigars, are being engineered with the same flavor chemicals used in popular candy and drink products like LifeSavers and Jolly Ranchers, providing a “familiar, chemical-specific flavor cue” to the user.¹⁵

When asked, 73.8% of current youth cigar smokers said they smoked cigars “because they come in flavors I like.”

Research indicates that use of flavored cigars decreases with age: an analysis of data from the National Adult Tobacco Survey show that flavored cigar use among cigar smokers was 57.1% for 18-24 year olds, 43.2% for 25-44 year olds, 28.9% for 45-64 year olds, and 13.4% for those 65 and older.²² In addition, youth, young adults, females, African-Americans, cigarette smokers, and daily cigar smokers are significantly more likely to report smoking a usual cigar brand that is flavored, with preference for a usual brand that produces flavored cigars decreasing significantly with age.²³



Source: Findings from the 2009–2010 National Adult Tobacco Survey. Nicotine & Tobacco Research. 2013;15:608–14.

Health Impacts of Cigar Use

Item 9.

Cigar smoke contains many of the same carcinogens as cigarette smoke, and may even be more toxic.²⁴ As a result of the curing and fermentation process involved in producing cigar tobacco, higher concentrations of cancer-causing nitrosamines are present and released upon combustion. Additionally, cigars have more tar for every gram of tobacco smoked in comparison to cigarettes, and higher concentrations of toxins due to less-porous cigar wrappers.²⁵

Cigars pose significant morbidity and mortality risks to users. While lung cancer risk is less strongly associated with cigar smoking than with cigarette smoking, the health risks from cigar smoking increase depending upon level of exposure as measured by cigars smoked per day, inhalation level, and past smoking history.^{26,27}

Cigar smokers have higher rates of lung cancer, heart disease, and lung disease as compared to nonsmokers.²⁸ Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophageal cancer, and has been linked to gum disease and tooth loss.^{29,30} Cigar smokers have also tested for higher levels of toxic and carcinogenic substances like cotinine, 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanol (NNAL), which is a tobacco-specific nitrosamine (TSNA) that is a known lung carcinogen, and lead concentrations, as compared to nontobacco users.³¹

Daily cigar use and deep inhalation has also been linked to elevated risk of heart disease and chronic obstructive pulmonary disease.³² Cigar smokers also increase their mortality risk for an aortic aneurysm.³³ Regular cigar smoking was responsible for approximately 9,000 premature deaths and more than 140,000 years of potential life lost among U.S. adults aged 35 years or older in 2010.³⁴

There is a misperception that cigars are not harmful because cigar smoke is not inhaled, however, studies indicate that some cigar smokers do inhale, especially current and former cigarette smokers.³⁵ Inhalation of cigar smoke into the lungs and bloodstream causes smoke particles to deposit into the lungs, stomach, and digestive tract and increases the risk for cancer.³⁶⁻³⁸ Other research indicates that some youth and adult users of little cigars fully inhale the cigar smoke, similar to cigarettes, often indicating that inhaling was necessary to get a “buzz” from little cigars.^{39,40} Regardless of the level of inhalation, all cigar smokers expose their lips, tongue, and throat to smoke and cancer-causing chemicals.⁴¹

Smokeless Tobacco

- Smokeless tobacco is sold in various flavors and forms, with newer products that do not require spitting.
- Moist snuff is the most popular smokeless tobacco product and flavors account for the largest portion of moist snuff sales.
- Smokeless tobacco users tend to be younger and evidence shows the industry has manipulated the nicotine content to attract and retain users.
- Smokeless tobacco contains at least 28 cancer-causing chemicals.

Smokeless Tobacco Products and Market Share

Smokeless tobacco contains nicotine and is addictive.⁴² It is not burned, and it may be sucked, chewed, spit, or swallowed. It can come in a variety of flavors such as winter-green, citrus blend, cinnamon, berry, vanilla, and apple.^{43,44}

There are three main types of smokeless tobacco:

- **Chewing tobacco:** includes cured tobacco that comes in various forms such as loose leaf, plug, or twist tobacco, and is available in multiple flavors. Users place chewing tobacco between the cheek and gums.
- **Snuff:** Oral snuff is a finely cut, processed tobacco which the user places between the cheek and gums. Snuff may be moist, dry, or packaged in tea-like pouches or packets (i.e., snus). Dry snuff may be sniffed or inhaled into the nose, while snus is a newer form of snuff that does not require spitting.
- **Dissolvables:** Finely ground tobacco and flavorings, shaped into tablets, strips, or other forms, that the user ingests orally. These products do not require spitting.

In 2011, smokeless tobacco sales totaled approximately 124.6 million pounds in the U.S., increasing from the 122.6 million pounds sold in 2010. Moist snuff is the most popular smokeless tobacco product with over 80% of the market share, followed by loose leaf at over 17% of the market.⁴⁵ Three companies account for nearly 90% of U.S. sales of smokeless tobacco—U.S. Smokeless Tobacco Company (owned by Altria, popular premium brands like Skoal and Copenhagen), American Snuff, and Swedish Match.⁴⁶

Between 2005 and 2011, sales of flavored moist snuff across all companies increased by 72%; and in 2011, flavored products accounted for more than half (56.1%) of all moist

snuff sales.⁴⁷ Internal documents for the U.S. Smokeless Tobacco Company indicate that flavors were intentionally used to “graduate” new users from the “milder-tasting, more flavored” products to those with a “more full-bodied, less flavored ... more concentrated tobacco taste.”⁴⁸

Smokeless Tobacco Use by Certain Groups

The current demographics of smokeless tobacco users have changed as tobacco manufacturers introduce novel smokeless tobacco products with flavorings and new delivery methods appealing to a broader consumer base.⁴⁹ In 1970, men aged 65 and older were about six times more likely to use smokeless tobacco regularly as compared to men aged 18 to 24. By 1991, young men were 50% more likely than the oldest men to be regular users of smokeless tobacco.^{50,51}

In a 2013 survey of U.S. high school students, 14.7% of high-school boys and 8.8% of all high-school students reported current use of smokeless tobacco products.⁵² Furthermore, each year about 535,000 youth ages 12-17 report using smokeless tobacco for the first time.⁵³ More broadly, the number of persons aged 12 or older who used smokeless tobacco for the first time within the past year was 1.1 million in 2013.⁵⁴ Smokeless tobacco use among females has historically been low. Among males, smokeless use decreased between 1986 and 2000, but has been increasing since 2000.⁵⁵

There is evidence that users who begin with low-nicotine “starter” products are more likely to subsequently “graduate” to products with higher nicotine content,⁵⁶ and that use of starter products reinforces use of other tobacco products, including cigarettes.^{57,58} Industry marketing practices and introduction of novel products have encouraged cigarette smokers to use smokeless tobacco as an alternative in locations where smoking is not permitted.^{59,60} Cigarette smokers may also consider smokeless tobacco to be a cessation or harm reduction strategy to reduce use of combustible tobacco products.⁶¹ Studies have found that smokers who no longer use combustible tobacco may switch to smokeless tobacco as a substitute to smoking or may engage in dual use by using both products concurrently.⁶²⁻⁶⁴ Smokeless tobacco is not a safe alternative to combustible tobacco, and there is no conclusive evidence that shows that switching to smokeless tobacco is an effective long-term smoking cessation strategy.^{65,66}

Item 9.

Health Impacts of Smokeless Tobacco Use

Smokeless tobacco contains at least 28 cancer-causing chemicals⁶⁷ and has been shown to cause gum disease, tooth decay and cancers of the oral cavity, esophagus and pancreas.⁶⁸⁻⁷⁰ The health risks associated with smokeless tobacco use can vary depending upon the product characteristics, manner and frequency of use, as well as interactions with dual use of other tobacco products.⁷¹

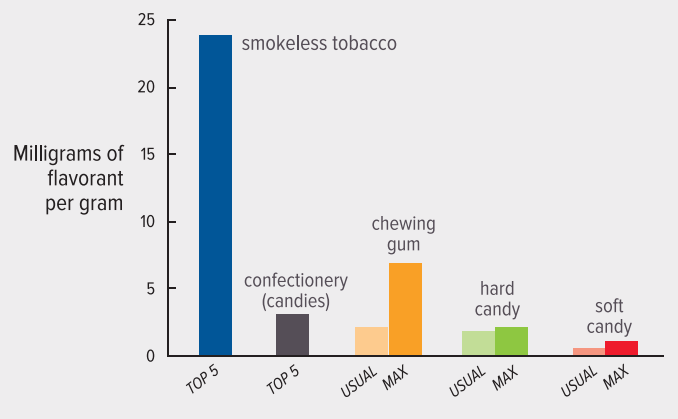
The use of flavorings in some oral smokeless tobacco products presents another level of exposure as the flavorings are ingested along with the tobacco.⁷² A measurement of the mint and wintergreen contents found in popular moist snuff products indicated that these products contain far more of these flavorings (i.e., methyl salicylate) than found in hard candies – a typical smokeless tobacco user could ingest up to 12 times the acceptable daily intake level of methyl salicylate as established by a scientific expert committee on food additives.⁷³ Smokeless tobacco products may also contain additives that have been prohibited for use in food; coumarin, for example, is an additive that has been banned in foods due to its liver toxicity, that is also found in Camel Mellow Orbs, a dissolvable tobacco product.⁷⁴

Smokeless tobacco products differ considerably in their concentrations of nicotine, volatile and nonvolatile nitro-samines including TSNAs, the most abundant strong carcinogens in smokeless tobacco products, as well as toxic metals and other compounds.⁷⁵⁻⁷⁷ All smokeless tobacco products contain nicotine and almost all contain TSNAs.⁷⁸ A comparison of studies found that biomarkers indicating exposure to carcinogens in the urine of users of moist snuff varied by brand used and, for some brands, were higher than levels seen in Marlboro cigarette smokers.⁷⁹

Smokeless tobacco use is strongly associated with the prevalence of oral lesions on the cheeks, gums, and/or tongue, such as leukoplakia.^{80,81} Lesions typically occur at the site in the mouth of smokeless tobacco application and indicate a high risk of cancers arising from leukoplakia and

METHYL SALICYLATE IN “WINTERGREEN” TYPES OF SMOKELESS TOBACCO, CANDY, AND GUM

Item 9.



Source: Chen C, et al. (2010)

oral submucous fibrosis.^{82,83} Research suggests that more than half of daily smokeless tobacco users had lesions or sores in the mouth,⁸⁴ and lesions are more severe in people who begin use at an earlier age, use for more hours per day, use greater dosages, or use on more days per month.⁸⁵ Other oral conditions associated with smokeless tobacco use include gingival recession, which can be observed within one year of smokeless tobacco use, dental decay, and caries.⁸⁶ A study found chewing tobacco users were four times more likely than non-users to have decayed dental root surfaces.⁸⁷

Other health impacts from smokeless tobacco use include an association with increased risk of fatal ischemic heart disease and stroke.⁸⁸⁻⁹⁰ Use during pregnancy heightens risk for early delivery and stillbirth, and can affect how a baby's brain develops before birth.^{91,92} Research shows that users who engage in dual use of smokeless tobacco and cigarettes may have greater levels of toxicants and may prolong the duration of smoking than those who use only one tobacco product, potentially posing greater health risks.^{93,94}

Hookah Tobacco

- Hookah has a wide range of flavors and flavor mixes available for purchase.
- Hookah smoking is a social activity and its popularity has increased among youth and college students.
- Flavored hookah tobacco is the preferred tobacco for use in water pipes.
- Hookah is not safer than cigarettes and has many of the same health risks as cigarette smoke.

Hookah Products and Market Share

Hookah—also called shisha, narghile, and goza—refers to water pipes that are used to smoke tobacco by indirectly heating it with burning embers or charcoal.⁹⁵ The tobacco comes in a range of flavors, such as apple, mint, cherry, chocolate, cardamom, watermelon, and cappuccino,⁹⁶ and some manufacturers even mix flavors to produce combinations such as strawberry-peach or raspberry-orange.⁹⁷ Several Middle Eastern companies manufacture and import the tobacco, including Al Fakher, Al Waha, Nakhla, Romman, and Fumari, and there are also U.S. companies that manufacture and distribute their own brands of tobacco for water pipe smoking.⁹⁸

Hookah Use by Certain Groups

Hookah smoking is often a social activity and two or more people may share the same waterpipe.⁹⁹ Hookah use began centuries ago in ancient Persia and India,¹⁰⁰ but hookah cafes have gained popularity nationwide in the U.S.¹⁰¹ and use by American youth^{102,103} and college students is increasing.¹⁰⁴⁻¹⁰⁸ One study found that hookah use in California was much higher among young adults (24.5% among men, 10% among women) than it was among all adults (11.2% among men, 2.8% among women) in the U.S.¹⁰⁹ A 2014 study found that teens that use hookah are two-to-three times more likely to start smoking cigarettes or to become current smokers than teens who have not tried hookah.¹¹⁰ In addition, an analysis of the 2012–2013 National Adult Tobacco Survey found that among young adults who had never established cigarette smoking, two of five hookah smokers reported being susceptible to smoking cigarettes.¹¹¹

The World Health Organization (WHO) found that the introduction of sweetened flavored water pipe tobacco, *maassel*, is one of the contributing factors that has caused hookah's explosive growth.¹¹² Prior to the introduction of *maassel*, most water pipe smokers used some type of raw tobacco that produced a strong, harsh smoke, unlike the smoother, aromatic smoke produced from *maassel*.¹¹³ Research indicates that *maassel* is the preferred tobacco for use in water pipes, especially among young smokers.¹¹⁴ One study found that 88.7% of 12-17 year olds who had ever smoked hookah used flavored hookah the first time they tried the product, and 89% of current hookah smokers used a flavored product in the last month.¹¹⁵ Similarly, the 2014 National Youth Tobacco Survey found that 60.6% of middle and high school hookah smokers had used flavored hookah in the past month.¹¹⁶

Health Impacts of Hookah Use

Many young adults falsely believe that hookah smoking is safer than cigarette smoking,¹¹⁷ however, hookah poses many of the same health risks as cigarette smoking. One hookah session delivers approximately 125 times the smoke, 25 times the tar, 2.5 times the nicotine, and 10 times the carbon monoxide as a single cigarette.¹¹⁸ During an hour-long hookah smoking session the average user will take 200 puffs, while smoking an average cigarette involves only about 20 puffs.^{119,120} In fact, smoking hookah for 45 to 60 minutes can be equivalent to smoking 100 or more cigarettes.¹²¹

The charcoal that is used to heat the tobacco in a hookah can increase health risks for smokers, as the smoke contains toxicants emitted from both the charcoal and the tobacco product, including flavorings.¹²² Hookah smoke has high levels of carbon monoxide, metals, and cancer-causing chemicals.¹²³ As a result, hookah use can cause negative health effects on the respiratory system, cardiovascular system, oral cavity and teeth, and long-term use has been linked to high incidences of chronic obstructive pulmonary disease and periodontal disease.^{124,125} Hookah smokers may also be at risk for some of the same diseases as cigarette smokers, including oral cancer, lung cancer, stomach cancer, and esophageal cancer.^{126,127}

Item 9.

Liquid Nicotine Solution

- Liquid nicotine solution is a broad term that encompasses “e-juice” or “e-liquid” which is often used in electronic nicotine delivery devices, or electronic cigarettes.
- Liquid nicotine solution is available in a plethora of candy and fruit-flavors, many of which use popular brand names and logos that appeal to youth.
- Youth uptake of electronic cigarettes has vastly increased over the last several years.
- While there is insufficient research on the long-term health effects of liquid nicotine solution, evidence shows that toxic additives are often included in the aerosol spray.



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Liquid Nicotine Products and Market Share

Liquid nicotine solution, also called “e-juice” or “e-liquid,” is used in electronic smoking devices such as e-cigarettes and vaporizers. The term “electronic cigarette” or “e-cigarette” is a common term that can refer to a wide variety of products that use liquid nicotine solution, which is a derivative of tobacco. Unlike combustible tobacco products, e-cigarettes are battery-operated devices that heat liquid nicotine solution to form an inhalable aerosol.¹²⁸ Some e-cigarettes are reusable and users can replace or refill the liquid nicotine solution, while others are disposable and cannot be refilled.¹²⁹ Other more advanced devices, called modulators or “mods,” can be assembled with separate component parts and accessories, which permits greater variation in the battery power, style, and size.¹³⁰

Sales of electronic cigarettes and supplies have experienced triple-digit growth over the past five years, climbing to over \$3.5 billion with market analyses projecting use of e-cigarettes and vaporizers to overtake combustible cigarettes in ten years.¹³¹ Almost 50% of the

electronic cigarette market is owned by the largest companies, and that market share is expected to reach 80% in 2021.¹³² However, sales have decelerated over the past year due to customer dissatisfaction, safety concerns, and increased state regulation.¹³³

As a result of this growth, there are now over 460 brands of e-cigarettes and more than 7,700 unique e-cigarette flavors available for purchase online.¹³⁴ This includes a wide range of candy and fruit-flavors that are not permitted in cigarettes, many of which use well-known brand name candy and cereal products, such as Wrigley’s, Atomic Fireball, Tutti Frutti, and Cap N’ Crunch, which are considered to be appealing to children.¹³⁵

Liquid Nicotine Use by Certain Groups

Data trends depict increasing use of e-cigarettes by youth. From 2013 to 2014, a Centers for Disease Control and Prevention (CDC) survey found that youth use of e-cigarettes had tripled and now exceeds youth use of traditional cigarettes. Current e-cigarette use among high school students increased from 4.5% to 13.4%, amounting to 2 million high school students and 450,000 middle school students who currently use e-cigarettes.¹³⁶

A 2015 Monitoring the Future study found that 40% of youth who used e-cigarettes did so because “they tasted good” compared to only 10% who use them to quit smoking traditional cigarettes.¹³⁷

Other studies found similar increases in youth uptake of e-cigarettes,¹³⁸⁻¹⁴⁰ and preliminary California specific data indicates e-cigarette youth use to be at much higher rates than traditional cigarettes.¹⁴¹

A gateway effect has been observed for youth users: a recent longitudinal study of e-cigarette use found that adolescents who use e-cigarettes are more likely to start smoking cigarettes. Among nonsmoking students who used e-cigarettes, 20% indicated they had smoked their first cigarette a year later. Among nonsmokers who had not used e-cigarettes, only 6% had used cigarettes a year later.¹⁴² Similar findings were published in *The Journal of the American Medical Association (JAMA) Pediatrics* that indicates young people who smoke e-cigarettes are more likely to start smoking traditional cigarettes within a year

as compared to their peers who do not use e-cigarettes.¹⁴³ Using data from the 2012 National Youth Tobacco Survey, one study confirmed that e-cigarette users who had never smoked cigarettes and who had experimented with smoking had elevated intention to smoke cigarettes compared with their counterparts who had never used e-cigarettes.¹⁴⁴ Additionally, a new analysis of a nationally representative sample of adolescents supports these findings: use of electronic nicotine delivery systems (such as e-cigarettes) was associated with initiation of cigarette smoking in the last year.¹⁴⁵

Health Impacts of Liquid Nicotine Use

There is insufficient research regarding the long-term health effects of using e-cigarettes.¹⁴⁶ As e-cigarettes have largely been unregulated, they have been heavily marketed as a safer alternative to conventional cigarettes. However, the liquid nicotine solution used in e-cigarettes frequently contains nicotine, as well as propylene glycol, glycerin, flavorings, and other toxic additives.¹⁴⁷ Research has found chemicals and toxins contained in the aerosol; such as nicotine, formaldehyde, lead, nickel, and acetaldehyde, all of which are found on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.¹⁴⁸ It is posited that nicotine exposure during periods of developmental vulnerability has multiple adverse health consequences, including impaired fetal brain and lung development, and altered development of cerebral cortex and hippocampus in adolescents.¹⁴⁹

Furthermore, certain chemicals used to flavor liquid nicotine, like diacetyl, 2,3-pentanedione, and acetoin, are present in many e-liquids at levels which are unsafe for inhalation.¹⁵⁰ While diacetyl has been approved for ingestion in human food, it has not been similarly evaluated and approved for use in tobacco products, which result in exposures other than ingestion (e.g., inhalation).¹⁵¹ A recent study found diacetyl in 75% of flavored e-cigarette liquids and refill liquids that were tested, and at least one of the three

flavoring chemicals (i.e., diacetyl, 2,3-pentanedione, and acetoin) was detected in 92% of the tested e-cigarettes and liquids.¹⁵² Diacetyl, when inhaled, is associated with the development of the severe lung condition called bronchiolitis obliterans, also known as "popcorn lung," which causes an irreversible loss of pulmonary function and damage to cell lining and airways.¹⁵³ Still another study has found that users of flavored e-cigarettes are likely inhaling a chemical called benzaldehyde, a widely used flavoring agent found in foods, as well as medicines like cough syrup, that when inhaled can irritate the airways.¹⁵⁴

In addition, the liquid nicotine solution contains varying concentrations of nicotine, ranging from no nicotine to 100 mg per milliliter (a milliliter is approximately a fifth of a teaspoon). The lethal dose of nicotine is estimated to be 30-60 mg in an adult and 10 mg in a child. The toxicity of a 60 mg dose of liquid nicotine is similar to or even higher than that of cyanide.¹⁵⁵ Accidental exposure to nicotine, particularly by children aged five and younger, has led to significant increases in calls to poison control centers in California and nationally.¹⁵⁶

Although there are claims that e-cigarettes are an effective smoking cessation tool, there is not enough evidence to indicate that e-cigarettes will help smokers quit or reduce the number of cigarettes smoked.^{157,158} The U.S. Preventive Services Task Force, which makes recommendations about the effectiveness of specific preventive care services after a thorough assessment of the science, recently concluded that "the current evidence is insufficient to recommend electronic nicotine delivery systems for tobacco cessation..."¹⁵⁹ In fact, recent evidence points to potential signs of dual use instead of cessation: instead of using e-cigarettes as a cessation tool, some users are using e-cigarettes in indoor environments where use of traditional cigarettes may be prohibited, but continuing to smoke traditional cigarettes outdoors.¹⁶⁰⁻¹⁶³

Menthol Cigarettes

- Menthol is an anesthetic additive used in cigarettes that imparts a cooling effect and minty taste, and reduces the harsh taste of cigarette smoke.
- Menthol cigarettes represent about one third of the U.S. cigarette market.
- Menthol users tend to be younger, female and members of ethnic minorities, and the FDA has concluded that menthol cigarettes are “starter” products.
- Menthol cigarettes lead to greater addiction and can inhibit cessation.

Menthol Cigarette Products and Market Share

Menthol is an anesthetic additive that can be natural or synthetically produced, and is commonly used as a minty flavoring in cigarettes. At low doses, menthol has a cooling, sensory effect that reduces the perceived harshness of tobacco and increases ease of smoking.¹⁶⁴ At high doses, menthol can cause irritation and pain via effects on certain receptors located in the nose, mouth and airways. Menthol is present in most cigarettes in the U.S., both as a characterizing flavor (higher levels) and for other taste reasons (lower levels).^{165,166} Menthol is also an active ingredient in many medicinal products, such as cough drops, and it is regulated as a drug by the FDA. The use of menthol in tobacco products is not regulated by the FDA, and it may be found in cigarettes, cigars, smokeless tobacco, and other tobacco products.¹⁶⁷

Menthol was first used as a cigarette additive in 1925, with sales totaling only 3% of the overall U.S. cigarette market prior to 1956.¹⁶⁸ Once the tobacco industry realized menthol made cigarettes more palatable upon initiation and could be used to retain smokers, marketing strategies were refined to target youth and certain groups (See Priority Populations Section).^{169,170}

There are approximately 19 million Americans who smoke menthol cigarettes, including 1.1 million adolescents, and sales of these products comprise between 28% and 34% of the U.S. cigarette market.^{171,172} Common menthol cigarette brands include Kool, Newport, and Salem, although the cigarette market is highly consolidated among three companies: Altria (parent company of Phillip Morris, Marlboro products), Reynolds American and Lorillard.¹⁷³

Lorillard’s brand of mentholated cigarettes, Newport, historically outpaced all other menthol brands and its main product line. In 2014, Reynolds acquired Lorillard in a merger allegedly designed to give Reynolds access to the Newport product.¹⁷⁴

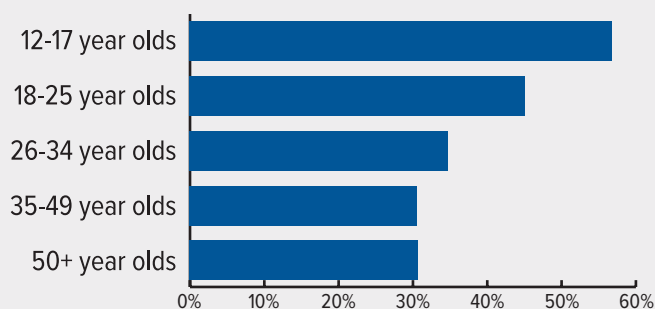
Item 9.

Menthol Cigarettes Use by Certain Groups

Analyses of internal tobacco industry documents reveal that the tobacco industry knowingly manipulated the menthol content in cigarettes to account for sensory preferences among younger and more experienced smokers,¹⁷⁵ understanding that the amount of menthol in a cigarette changes how the cigarette is smoked and how pleasurable it is to the smoker.¹⁷⁶ Menthol enhances the sensory experience or “throat grab” of the smoke, and through desensitization, reduces the irritating effect of nicotine, leading to a positive association by novice smokers.^{177,178}

Research indicates that menthol cigarettes are a “starter” product for youth and use of menthol is more likely among those who are recent initiates.¹⁷⁹⁻¹⁸³ Using data from the National Surveys on Drug Use and Health, one study found that menthol cigarette use is more common among 12–17 year olds (56.7%) and 18–25 year olds (45.0%) than among 26–34 year olds, 35–49 year olds, and 50+ year olds (range of 30.5% to 34.7%). The study also found that while adolescent and young adult use of non-menthol cigarettes has decreased from 2004–2010, menthol smoking rates have remained constant (adolescents) and increased (young adults) over this same period.¹⁸⁴

MENTHOL CIGARETTE USE AMONG PAST 30-DAY U.S. SMOKERS BY AGE



Source: Giovino GA, et al. (2015)

Menthol users are associated with being younger, female, and of non-Caucasian race/ethnicity, and use is especially high among minority youth. A review of three national data sets determined that more than 80% of adolescent African American smokers and more than half of adolescent Latino smokers use menthol cigarettes. Menthol cigarettes are also used by more than half of Asian American middle-school smokers.¹⁸⁵ In addition, an analysis on the 2008 and 2009 National Survey on Drug Use and Health found that an elevated prevalence of menthol use was found among persons with severe psychological distress,¹⁸⁶ while another study indicated that menthol is disproportionately used among young adult tobacco users with mental health problems.¹⁸⁷

Strong evidence also suggests that use of mentholated cigarettes during childhood and early adulthood increases nicotine addiction and dependence,¹⁸⁸⁻¹⁹⁰ with the FDA surmising that youth appeared to be particularly vulnerable to the effects of menthol cigarette smoking.¹⁹¹ Further, evidence indicates that menthol smokers in general, and African American smokers in particular, are less likely to quit successfully than non-menthol cigarette users.¹⁹²⁻¹⁹⁵

In 2011, after an extensive survey of the literature and research, the FDA released a report concluding that menthol cigarettes are “starter” products and increase smoking initiation among youth and young adults, lead to greater addiction, and can inhibit quitting smoking.¹⁹⁶ The FDA concluded that the removal of menthol cigarettes from the marketplace would greatly benefit public health.

Health Impacts of Menthol Cigarettes

Tobacco industry documents and empirical studies suggest that consumers, particularly younger users, tend to perceive menthol cigarettes as less hazardous than non-menthol cigarettes.¹⁹⁷ However, menthol cigarettes are not safer than non-menthol cigarettes and carry many of the same health risks: smokers are more likely than nonsmokers to develop heart disease, stroke, lung cancer and other respiratory diseases.¹⁹⁸

Due to the anesthetic effect of mentholated cigarettes, evidence suggests that they may facilitate deeper and more prolonged inhalation of toxic cigarette smoke.¹⁹⁹ Additionally, by reducing airway pain and irritation, continuous menthol smoking can mask the early warning symptoms of smoking-induced respiratory problems.²⁰⁰ Still other evidence has associated menthol with inhibiting the metabolism of nicotine in the body, and smokers of menthol cigarettes have been found with higher levels of cotinine and carbon monoxide in the bloodstream as compared to non-menthol smokers.^{201,202}

Menthol in high concentrations may also inhibit the detoxification of tobacco-specific carcinogens (NNAL), which could increase the risk of cancer,²⁰³ although the FDA in its 2013 report did not find enough evidence to support this claim. Lastly, a study of current smokers using data from the 2001-2008 U.S. National Health and Nutrition Examination Surveys found significantly increased odds of stroke for smokers of mentholated cigarettes compared with non-mentholated cigarette smokers.²⁰⁴

Priority populations are groups that have higher rates of tobacco use than the general population, experience greater secondhand smoke exposure at work and at home, are disproportionately targeted by the tobacco industry, and have higher rates of tobacco-related disease compared to the general population.²⁰⁵ This section describes the evidence which indicates particular priority populations (i.e., youth, racial/ethnic minorities, and other targeted groups) are more likely to initiate and use flavored and mentholated tobacco products.

Adolescents (12-17) and Young Adults (18-26)

A multitude of research indicates that flavored products appeal to youth and young adults leading to increased use for this population. Despite prevalence rates for cigarette use trending downward for youth, research shows that more youth are using other flavored tobacco products. A national study found that 80.8% of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product, and that 79.8% of current tobacco users had used a flavored tobacco product in the past month.²⁰⁶ Additionally, an examination of young adult tobacco users (18-34 year olds) found that 18.5% currently use a flavored tobacco product, with younger age being a predictor of flavored tobacco product use: young adults aged 18-24 year olds had an 89% increased odds of using a flavored tobacco product compared to those aged 25-34 year olds.²⁰⁷

Menthol cigarettes carry similar results. Among cigarette smokers, menthol cigarette use was more common among 12-17 year olds (56.7%) and 18-25 year olds (45%) than among 26-34 year olds, 35-49 year olds, and 50+ year olds (range of 30.5% - 34.7%).²⁰⁸ In fact, adolescents smoke menthol cigarettes at a higher rate than any other age group.²⁰⁹

Flavors Make Using Tobacco More Enticing and Harder to Quit

Flavorings and menthol additives mask the naturally harsh taste of tobacco, making it easier for youth to initiate and sustain tobacco use.^{210,211} A 2014 review of internal tobacco industry documents indicate that menthol and candy-like

flavors in little cigars and cigarillos were used to increase product appeal to beginning smokers by masking the heavy cigar taste, reducing throat irritation, and making the cigar smoke easier to inhale.²¹²

The majority of youth ever-users reported that the first product they had used was flavored, including 88.7% of ever hookah users, 81.0% of ever e-cigarette users, 65.4% of ever users of any cigar type, and 50.1% of ever cigarette smokers. Youth consistently reported product flavoring as a reason for use across all product types, including e-cigarettes (81.5%), hookahs (78.9%), cigars (73.8%), smokeless tobacco (69.3%), and snus pouches (67.2%).²¹³

Studies indicate that individuals who begin smoking at a younger age are more likely to develop a more severe addiction to nicotine than those who start later.²¹⁴ Further, both the FDA and the U.S. Surgeon General have warned that flavored tobacco products help new users establish habits that can lead to long-term addiction.^{215,216} A recent study of middle and high school students supports this: among cigar smokers, prevalence of no-intention-to-quit tobacco use was higher among flavored-little-cigar users (59.7%) than nonusers (49.3%).²¹⁷ Additionally, youth who initiate smoking with menthol cigarettes are more likely to become regular, addicted smokers and to show higher measures of dependence than youth who initiate with non-menthol cigarettes.²¹⁸ Furthermore, a nationally representative sample of U.S. youth tobacco users found that dual use (i.e., use of two tobacco product categories) was the most prevalent pattern (30.5%) detected among these users.²¹⁹

Flavored and Mentholated Tobacco Products are Heavily Marketed with Sweet Flavors, Colorful Packaging, and Brand Recognition

The U.S. Surgeon General concluded that, "... advertising and promotional activities by the tobacco companies cause the onset and continuation of smoking among adolescents and young adults."²²⁰ Tobacco industry documents containing information about tobacco companies' advertising, manufacturing, marketing, and research activities demonstrate a strategic focus on designing brand varieties with particular appeal to youth, such as mentholated, candy-flavored, and fruit-flavored brands.²²¹

For example, one internal industry memo described sweetened products as “... for younger people, beginner cigarette smokers, teenagers ... when you feel like a light smoke, want to be reminded of bubblegum.”²²²

Several flavored tobacco products share the same names, packaging and logos as popular candy brands like Jolly Rancher, Kool-Aid, and Life Savers.²²³ They are also engineered with the same flavoring agents as those used in popular kid-friendly candy and drink products such as Life Savers and Jolly Ranchers, providing a “familiar, chemical-specific flavor cue” to the user.²²⁴ Bright packaging and product placement at the register, near candy, and often at children’s eye-level, increases tobacco flavored products’ visibility to kids.²²⁵ As stated in an industry publication, “While different cigars target a variety of markets, all flavored tobacco products tend to appeal primarily to younger consumers.”²²⁶

The tobacco industry has aggressively used branding and advertising as a method to exploit particular youth populations and use of mentholated cigarettes. The vast majority of adolescents who smoke before the age of 18 use the three most heavily advertised brands. One of these heavily advertised brands, Newport, is the cigarette brand leader among African-American youth in the United States. Nearly eight out of every ten African American youth smokers smoke Newport cigarettes.²²⁷

Many Youth Believe Flavored or Mentholated Tobacco Products are Safer than Non-flavored Tobacco Products

Multiple studies of youth perception indicate that many younger users falsely believe that flavored or mentholated tobacco products are safer than non-flavored tobacco products. A recent study found that people younger than 25 years of age were more likely to say that hookahs and e-cigarettes were safer than cigarettes,²²⁸ and that mentholated cigarettes were less hazardous than

non-menthol cigarettes.²²⁹ This finding has been seen in other studies that show cigar smokers misperceive as being less addictive, more “natural,” and less harmful than cigarettes.²³⁰

Recent research indicates that some teens may be more likely to use e-cigarettes prior to using combustible tobacco because of beliefs that e-cigarettes are not harmful or addictive, as a result of youth targeted marketing and availability of e-cigarettes in flavors that are attractive to youths.²³¹ A longitudinal study of e-cigarette use found that adolescents who use e-cigarettes are more likely to start smoking cigarettes, and that risk for use was greater for students who had the impression that e-cigarettes were less dangerous than regular cigarettes.²³²

Racial and Ethnic Minorities

Menthol Cigarette Use is Higher Among African Americans, Especially Minority Youth

Significant disparities exist in the use of menthol flavored tobacco products by certain racial and ethnic minority communities. African American smokers are far more likely to smoke menthol cigarettes than smokers of other racial and ethnic groups, and this trend is pervasive across all categories, regardless of stratification by income, age, gender, region, education, etc. African American youth are especially impacted: more than 80% of all African American adolescents who smoke use menthol cigarettes—the highest usage among all minority groups.²³³

Although African Americans usually smoke fewer cigarettes and start smoking cigarettes at an older age, their smoking-related morbidity and mortality is significantly higher than white smokers.^{234,235} This disparity in tobacco-related morbidity and mortality among African Americans may partly result from the greater use of menthol cigarettes among African American smokers.²³⁶ A smoking simulation model predicted that a 10% quit rate among menthol smokers



would save thousands of lives, preventing more than 4,000 smoking-attributable deaths in the first ten years, and over 300,000 lives over the next 40 years. Approximately 100,000 of those lives saved would be African Americans.²³⁷

In addition, menthol cigarettes are used disproportionately by other minority youth groups. Data from the National Survey on Drug Use and Health (NSDUH) shows that among adolescent smokers aged 12-17 years, 51.5% of Asians, 47.0% of Hispanics, and 41.4% of Native Hawaiians/Pacific Islanders reported smoking a menthol brand in the past 30 days.²³⁸ Further, other research shows that during the last year of high school, one third of Asian American youth are smokers. Of these youth, 60% report that their usual brand of cigarettes is a menthol brand.²³⁹

Lower Cessation Rates Common Among Minority Menthol Smokers

Research indicates that menthol smoking can lead to lower rates of cessation outcomes, especially for non-white smokers.²⁴⁰ Generally, quitting menthol cigarettes is particularly difficult because menthol smokers have to overcome the dependency on nicotine as well as positive associations with menthol itself.²⁴¹ In addition, one study found that among African Americans and Hispanic/Latino current smokers, those who smoked mentholated cigarettes were more likely to be seriously considering quitting smoking in the next six months and to think that they would quit smoking successfully in the next six months compared to non-menthol smokers. However, the evidence did not support this outcome: African Americans and Hispanics/

Latinos who smoked mentholated cigarettes were to quit successfully for at least six months compared to those who smoked non-mentholated cigarettes.²⁴²

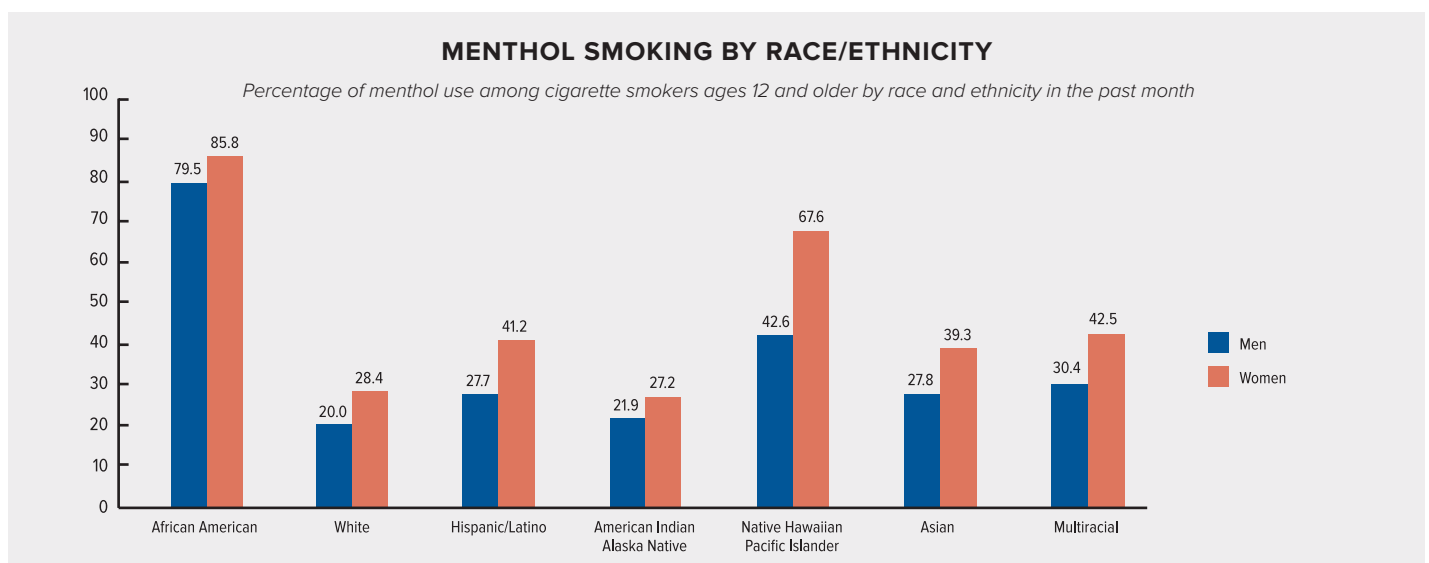
Another study found that despite smoking fewer cigarettes per day, African American and Hispanic/Latino menthol smokers were less likely to successfully quit as compared to non-menthol smokers within the same ethnic/racial group.²⁴³ This suggests that lower rates of cessation among these populations may be linked to higher rates of smoking mentholated cigarettes.

Tobacco Industry Has a Long History of Targeting Racial and Ethnic Minorities

Through strategic marketing and price discounting, the tobacco industry has targeted communities of color with mentholated tobacco products and flavored, cheap little cigars and cigarillos. Price discounting contributes to tobacco-related health disparities because vulnerable populations including youth, racial minorities, and persons with low incomes are more likely to purchase tobacco products through affordable discounts.^{244,245}

In particular, the tobacco industry has aggressively targeted African American populations through the use of multiple advertising mediums and branding to convey sociocultural messages around menthol products.²⁴⁶ Research indicates that African American neighborhoods have a disproportionate number of tobacco retailers,²⁴⁷ many which employ various point-of-sale strategies, such as price discounting, to encourage initiation and use in these communities.

Item 9.



Source: Substance Abuse and Mental Health Administration. The National Survey on Drug Use (NSDUH) and Health Report: Use of Menthol Cigarettes. November 2009.

One study found that a higher proportion of African American and young adult residents was associated with more exterior little cigar advertising and cheaper prices, with 95% of these stores selling little cigars in fruit, candy, and wine flavors.²⁴⁸

Other communities of color have similarly been targeted by industry. A review of tobacco industry documents suggests that RJ Reynolds, one of the leading cigarette manufacturers, developed a sophisticated surveillance system to track the market behavior of Hispanic/Latino smokers and understand their cultural values and attitudes. This information was translated into targeted marketing campaigns for the Winston and Camel brands, and in 2005, RJ Reynolds launched a music-themed marketing campaign to target African American and Hispanic/Latino youths.²⁴⁹ Empirical research examining menthol and non-menthol advertising also found a higher proportion of menthol advertisements out of all cigarette advertisements in Hispanic/Latino neighborhoods and magazines, than in non-Hispanic white neighborhoods and magazines.²⁵⁰

Since the mid-1980s, tobacco companies have targeted Asian Americans and Pacific Islanders in their marketing campaigns. The tobacco industry considered these groups to be a “potential gold mine” because of high rates of smoking in Asia and the Pacific, concentration in certain geographic regions, and the high proportion of Asian retailers.²⁵¹ A tobacco industry document review provided further evidence that Asian Americans and Hawaiian/Pacific Islanders were targeted in menthol marketing by cigarette companies.²⁵²

Lesbian, Gay, Bisexual, and Transgender (LGBT)

Similar to other priority populations, LGBT individuals have been aggressively targeted by tobacco industry through advertising and sponsorships on specific themes that resonate within the community: liberation, individualism, social success, and acceptance.²⁵³ For example, an ad for Camel Snus directed at LGBT audiences to “Take pride in your flavor,” and according to initial assessments of prevalence data, this industry messaging may be working.

Overall, LGBT individuals smoke cigarettes at a higher rate than the general population.^{254,255} In a national study conducted in 2009-2010, 71% of LGBT young adult smokers

(18-25) reported smoking menthol cigarettes.²⁵⁶ In **Item 9.** current menthol cigarette smoking was higher among adults (9.7%) than heterosexual/straight adults (4.2%), and LGBT women are more likely to smoke menthols cigarettes than straight women (42.9% vs.32.4%).²⁵⁷

LGBT individuals are also more likely to smoke flavored cigars (8.2%) than heterosexual/straight individuals (2.7%).²⁵⁸ Furthermore, 4.5% of LGBT adults use e-cigarettes, compared to 1.9% of heterosexuals.²⁵⁹ A Missouri study comparing heterosexual general population youth and LGBT youth found that these two groups differed significantly on many tobacco use related factors. General population youth initiated smoking at a younger age, and LGBT youth did not catch up in smoking initiation until age 15 or 16. However, LGBT youth (41.0%) soon surpassed heterosexual general population youth (11.2%) in initiation and proportion of current smokers and were more likely to use cigars/cigarillos and be poly-tobacco users.²⁶⁰ The latter finding is supported in a representative sample of U.S. high school youth that examined the concurrent use of multiple tobacco products: data indicated the prevalence of poly-tobacco use to be 21.7% among sexual minority youth compared with only 12.1% among heterosexual youth.²⁶¹

Women

Over 18 million adult women and 1.3 million girls in the U.S. currently smoke cigarettes.²⁶² Although men are more likely to smoke cigarettes than women, that is not the case with menthol cigarettes: women are 1.6 times more likely to smoke menthol cigarettes than men, and this pattern is seen across all racial/ethnic groups, except among American Indians/Alaskan Natives.²⁶³

Research suggests that among women smokers, menthol cigarette use is associated with higher tobacco dependence. More female menthol smokers, as compared to female non-menthol smokers, reported smoking their cigarette within five minutes of waking up in the morning and fewer quit attempts greater than 90 days.^{264,265}

A review of tobacco industry documents show extensive research was conducted on female smoking patterns, needs, and product preferences, including menthol brands. The tobacco industry has targeted some menthol brands to women, using women’s social and cosmetic concerns for cleanliness and freshness, and incorporated these themes in menthol cigarette product design and marketing.²⁶⁶

California and its tobacco control program have achieved great success in reducing the burden of tobacco use: over a 25 year period, cigarette consumption has decreased in California by 65%,²⁶⁷ with over 1 million lives saved²⁶⁸ and \$134 billion in averted health care costs.²⁶⁹ Despite this progress, tobacco use remains the chief risk factor for the leading causes of death in the state,²⁷⁰ and evidence shows that the tobacco industry continues to engage in efforts that entice a new generation of users. A foundation of this strategy is the use of candy and fruit flavors and cooling additives in tobacco products that are intended to attract and retain users by masking the naturally harsh taste of tobacco. More specifically, the combination of flavorings, the introduction of novel tobacco products, and deployment of predatory marketing has presented new public health threats in the form of increased initiation and sustained use of tobacco, particularly among certain vulnerable groups.

Contrary to popular beliefs, flavorings do not reduce the health impacts and risks associated with tobacco use, and are not safer than non-flavored tobacco products;²⁷¹ in fact, the literature suggests that flavored and mentholated tobacco products pose significant public health risks because they make these toxic tobacco substances more appealing and palatable upon use. There is also a

growing body of research which shows that these chemical flavorings and additives may present another level of exposure that has not been deemed safe for inhalation.

Furthermore, the literature shows that the tobacco industry has manipulated and marketed these flavor and menthol tobacco products to account for user preferences that skew younger, and reinforce sociocultural messages with priority populations. Research supports the finding that flavors and menthol tobacco products are “starter” products that establish daily habits and increase addiction to tobacco products, make it harder to quit, and increase use of multiple tobacco products concurrently.

Consumption of flavored tobacco products such as cigars, smokeless tobacco, hookah tobacco, and liquid nicotine solutions (used in electronic smoking devices) have increased in recent years, while menthol cigarettes continue to corner a large part of the U.S. cigarette market. Strong evidence supports the finding that youth, certain racial/ethnic groups, and other targeted priority populations (i.e., LGBT and women) are particularly vulnerable to sweet flavors and menthol, and are largely driving this increased uptake and sustained use of flavored tobacco products.

- 1 Tobacco Education and Research Oversight Committee. 2014. Changing Landscape: Countering New Threats, 2015-2017; [cited 2016 Jan 16]. Available from [http://www.cdph.ca.gov/programs/tobacco/Documents/TEROC/Master%20Plan/MasterPlan_15-](http://www.cdph.ca.gov/programs/tobacco/Documents/TEROC/Master%20Plan/MasterPlan_15-2015-2017.pdf)
- 2 Campaign for Tobacco-Free Kids. 2015. The Toll of Tobacco in California; [cited 2016 Jan 16]. Available from http://www.tobaccofreekids.org/facts_issues/toll_us/California.
- 3 California Department of Public Health, California Tobacco Control Program. 2015. California Tobacco Facts and Figures in 2015; [cited 2016 Jan 16]. Available from <https://www.cdph.ca.gov/programs/tobacco/Documents/Resources/Fact%20Sheets/2015FactsFigures-web2.pdf>.
- 4 Lee et al. Menthol: Putting the pieces together. *Tobacco Control*. 2011;20:iii1-ii7.
- 5 FDA (Food and Drug Administration). 2011. Fact Sheet: Flavored Tobacco Products; [cited 2016 Jan 16]. Available from <http://www.fda.gov/downloads/TobaccoProducts/Labeling/ProductsIngredientsComponents/UCM183215.pdf>.
- 6 FDA. 2009. Candy and fruit flavored cigarettes now illegal in United States; step is first under new tobacco law. [cited 2016 Jan 16]. Available from <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm183211.htm>.
- 7 DHHS (U.S. Department of Health and Human Services). 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Centers for Disease Control and Prevention; [cited 2016 Mar 28]. Available from <http://www.ncbi.nlm.nih.gov/books/NBK99237/>.
- 8 National Cancer Institute. 2010. Cigar Smoking and Cancer. National Institutes of Health; [cited 2016 Mar 28]. Available from <http://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cigars-fact-sheet>.
- 9 Maxwell JC. 2013. The Maxwell Report: Cigar Industry in 2013. Richmond, VA; [cited 2016 Mar 28].
- 10 Campaign for Tobacco-Free Kids. 2016. The Rise of Cigars and Cigar-Smoking Harms; [cited 2016 Mar 28]. Available from <https://www.tobaccofreekids.org/research/factsheets/pdf/0333.pdf>.
- 11 Campaign for Tobacco-Free Kids. 2016. Flavored Tobacco Products Attract Kids; [cited 2016 Mar 28]. Available from <https://www.tobaccofreekids.org/research/factsheets/pdf/0383.pdf>.
- 12 CDC (Centers for Disease Control and Prevention). We Can Make the Next Generation Tobacco Free. *CDC Features*; [cited 2016 Mar 28]. Available from <http://www.cdc.gov/Features/YouthTobaccoUse/>.
- 13 Kostygina et al. Tobacco industry use of flavors to recruit new users of little cigars and cigarillos. *Tobacco Control*. 2016;25:66-74.
- 14 McAfee, Tim. 2014 May 15. Ending Tobacco Use in the United States – Our Past, Present and Future. Testimony before the U.S. Senate Health, Education, Labor and Pensions Committee; [cited 2016 Mar 28]. Available from <http://www.cdc.gov/washington/testimony/2014/t20140515.htm>.
- 15 Brown et al. Candy Flavorings in Tobacco. *New England Journal of Medicine*. 2014;370:2250-2252.
- 16 Maxwell JC. 2013. The Maxwell Report: Cigar Industry in 2013. Richmond, VA; [cited 2016 Mar 28].
- 17 Eaton et al. Youth risk behavior surveillance-United States, 2011. *Morbidity and Mortality Weekly Report*. 2012;61(4):1-162.
- 18 SAMHSA (Substance Abuse and Mental Health Services Administration). 2013. Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings. *NSDUH Series*. 2013;H-46(13-4795).
- 19 Wadley, Jared. 2015. Cigarillo use increases estimates of teen smoking rates by half. *University of Michigan News Service*; [cited 2016 Mar 28]. Available from http://www.monitoringthefuture.org/pressreleases/15cigarillopr_complete.pdf.
- 20 Ambrose et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Journal of the American Medical Association*. 2015;314(17):1871-1873.
- 21 King et al. Flavored-little-cigar and flavored cigarette use among U.S. middle and high school students. *J Adolesc Health*. 2014;54(1):40-6.
- 22 King et al. Flavored cigar smoking among U.S. adults: Flavored Cigar Smoking Among U.S. Adults: Findings from the 2009–2010 National Adult Tobacco Survey. *Nicotine & Tobacco Research*. 2013;15:608–14.
- 23 Delnevo et al. Preference for flavoured cigar brands among youth, young adults and adults in the USA. *Tobacco Control*. 2015;24(4):389-94.
- 24 National Cancer Institute. 2010. Cigar Smoking and Cancer. National Institutes of Health; [cited 2016 Mar 28].

- 25 National Cancer Institute. 1998. Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends. *Behavioral Research Program*. [cited 2016 Mar 28]. Available from <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.
- 26 National Cancer Institute. 2010. Cigar Smoking and Cancer. National Institutes of Health; [cited 2016 Mar 28]. Available from <http://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cigars-fact-sheet>.
- 27 Chang et al. Systematic review of cigar smoking and all cause and smoking related mortality. *BMC Public Health*. 2015;15:390.
- 28 National Cancer Institute. 1998. Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends. *Behavioral Research Program*. [cited 2016 Mar 28]. Available from <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.
- 29 CDC. Cigars Fact Sheet. 2015.[cited 2016 Mar 28]. Available from http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/.
- 30 American Cancer Society. 2014. Tobacco Related Cancers Fact Sheet; [cited 2016 Mar 28]. Available from <http://www.cancer.org/cancer/cancercauses/tobaccocancer/tobacco-related-cancer-fact-sheet>.
- 31 Chen et al. Biomarkers of exposure among U.S. cigar smokers: An analysis of 1999-2012 National Health and Nutrition Examination Survey (NHANES) Data. *Cancer Epidemiol Biomarkers Prev*. 2014; 23(12):2906-15.
- 32 CDC. Cigars Fact Sheet. 2015.[cited 2016 Mar 28]. Available from http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/.
- 33 National Cancer Institute. 1998. Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends. *Behavioral Research Program*. [cited 2016 Mar 28]. Available from <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.
- 34 Nonnemaker et al. Mortality and Economic Costs from Regular Cigar Use in the United States. *American Journal of Public Health*. 2014;104(9): e86-e91.
- 35 Baker et al. Health Risks Associated With Cigar Smoking. *Journal of the American Medical Association*. 2000;284(6):735-740.
- 36 Rodriguez et al. The Association of Pipe and Cigar Use with Cotinine Levels, Lung Function, and Airflow Obstruction: A Cross-sectional Study. *Annals of Internal Medicine*. 2010;152:201-210.
- 37 McDonald et al. Deposition of Cigar Smoke Particles in the Lung: Evaluation with Ventilation Scan Using mTc-Labeled Sulfur Colloid Particles. *Journal of Nuclear Medicine*. 2002;43:1591-1595.
- 38 National Cancer Institute. 1998. Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends. *Behavioral Research Program*. [cited 2016 Mar 28]. Available from <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.
- 39 NCI (1998).
- 40 Jolly DH. Exploring the use of little cigars by students at a historically black university. *Preventing Chronic Disease*. 2008;5(3):1-9.
- 41 NCI (1998).
- 42 World Health Organization. 2007. Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines IARC *Monographs on the Evaluation of Carcinogenic Risks to Humans*. 2007;89(PDF–3.18 MB).
- 43 U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Centers for Disease Control and Prevention; [cited 2016 Mar 28]. Available from <http://www.ncbi.nlm.nih.gov/books/NBK99237/>.
- 44 Campaign for Tobacco-Free Kids. 2016. Smokeless Tobacco and Kids; [cited 2016 Mar 28]. Available from <https://www.tobaccofreekids.org/research/factsheets/pdf/0003.pdf>.
- 45 Maxwell JC. 2011. The Maxwell Report: Cigar Industry in 2011. Richmond, VA; [cited 2016 Mar 28].
- 46 Centers for Disease Control and Prevention. 2015. Economic Facts About U.S. Tobacco Production and Use; [cited 2016 Jan 16]. Available from http://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/.
- 47 Delnevo et al. Examining market trends in the United States smokeless tobacco use: 2005 – 2011. *Tobacco Control*. 2014;23(2):107-12.
- 48 Connolly G. The Marketing of Nicotine Addiction by One Oral Snuff Manufacturer. *Tobacco Control*. 1995;4(1):73-79.

- 49 National Cancer Institute. 2014. Smokeless Tobacco and Public Health: A Global Perspective. NIH Publication No. 14-7983; [cited 2016 Mar 28]. Available from <http://cancercontrol.cancer.gov/brp/tcrb/global-perspective/SmokelessTobaccoAndPublicHealth>.
- 50 *Ibid.*
- 51 CDC. Surveillance for Selected Tobacco-Use Behaviors—United States, 1900-1994. *Morbidity and Mortality Weekly Report*. 1994;43(SS-03).
- 52 CDC. Youth Risk Behavior Surveillance—United States, 2013. *Morbidity and Mortality Weekly Report*. 2014;63(4).
- 53 SAMHSA. 2014. Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings. *NSDUH Series*. 2013;H-48(14-4863).
- 54 *Ibid.*
- 55 DHHS. 2014. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General; [cited 2016 Mar 28]. Available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>.
- 56 Tomar SL, Giovino GA, Eriksen MP. Smokeless tobacco brand preference and brand switching among US adolescents and young adults. *Tobacco Control*. 1995;4(1):67–72.
- 57 Tomar SL. Is use of smokeless tobacco a risk factor for cigarette smoking? The U.S. experience. *Nicotine Tob Res*. 2003 Dec; 5(4): 561-569.
- 58 Grøtvedt et al. Patterns of snus and cigarette use: a study of Norwegian men followed from age 16 to 19. *Tobacco Control*. 2013;22(6):382-388.
- 59 Mejia AB, Ling PM. Tobacco industry consumer research on smokeless tobacco users and product development. *Am J Public Health*. 2010;100:78–87.
- 60 Carpenter CM, Connolly GN, Ayo-Yusuf OA, Wayne GF. Developing smokeless tobacco products for smokers: an examination of tobacco industry documents. *Tobacco Control*. 2009;18:54–9.
- 61 Rutqvist LE. Population-based survey of cessation aids used by Swedish smokers. *Harm Reduct J*. 2012;9:38.
- 62 DHHS. 2010. How tobacco smoke causes disease: the biology and behavioral basis for smoking-attributable disease: a report of the Surgeon General. [cited 2016 Mar 28]. Available from <http://www.ncbi.nlm.nih.gov/books/NBK53017/>.
- 63 Klesges et al. Tobacco use harm reduction, elimination, and escalation in a large military cohort. *American Journal of Public Health*. 2010;100(12):2487–92.
- 64 Tomar SL, Alpert HR, Connolly GN. Patterns of dual use of cigarettes and smokeless tobacco among US males findings from national surveys. *Tobacco Control*. 2010;19(2):104–9.
- 65 Cobb CO, Weaver MF, Eissenberg T. Evaluating the acute effects of oral, non-combustible potential reduced exposure products marketed to smokers. *Tobacco Control*. 2010;19:367–73.
- 66 Tomar SL, Fox BJ, Severson HH. Is smokeless tobacco use an appropriate public health strategy for reducing societal harm from cigarette smoking? *Int J Environ Res Public Health*. 2009;6(1):10–24.
- 67 National Cancer Institute. 2014. Smokeless Tobacco and Cancer. [cited 2016 Mar 28]; Available from <http://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/smokeless-fact-sheet>.
- 68 Mayo Clinic. 2014. Health risks of chewing tobacco and other forms of smokeless tobacco. *Healthy Lifestyle: Quit Smoking*; [cited 2016 Mar 28]; Available from <http://www.mayoclinic.org/healthy-lifestyle/quit-smoking/in-depth/chewing-tobacco/art-20047428?pg=2>.
- 69 DHHS, Public Health Service. 2014. Report on Carcinogens, Thirteenth Edition. [cited 2016 Mar 28]. Available from <http://ntp.niehs.nih.gov/pubhealth/roc/roc13>.
- 70 National Cancer Institute. 2014. Smokeless Tobacco and Cancer. [cited 2016 Mar 28]; Available from <http://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/smokeless-fact-sheet>.
- 71 *Ibid.*
- 72 *Ibid.*
- 73 Chen C, Isabelle LM, Pickworth WB, Pankow JF. Levels of mint and wintergreen flavorants: smokeless tobacco products vs. confectionery products. *Food Chem Toxicol*. 2010;48(2):755–63.

- 74 Rainey CL, Conder PA, Goodpaster JV. Chemical characterization of dissolvable tobacco products promoted to reduce harm. *Agric Food Chem.* 2011;23;59(6):2745–51.
- 75 World Health Organization. 2007. Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines IARC *Monographs on the Evaluation of Carcinogenic Risks to Humans.* 2007;89(PDF–3.18 MB).
- 76 Stepanov I, Jensen J, Hatsukami D, Hecht SS. New and traditional smokeless tobacco: comparison of toxicant and carcinogen levels. *Nicotine Tob Res.* 2008;10(12):1773–82.
- 77 Stanfill et al. Global surveillance of oral tobacco products: total nicotine, unionised nicotine and tobacco-specific N-nitrosamines. *Tob Control.* 2011;20(3):e2.
- 78 World Health Organization. 2007. Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines IARC *Monographs on the Evaluation of Carcinogenic Risks to Humans.* 2007;89(PDF–3.18 MB).
- 79 Hatsukami DK, Ebbert JO, Feuer RM, Stepanov I, Hecht SS. Changing smokeless tobacco products: new tobacco delivery systems. *Amer J Prev Med.* 2007;33(6):S368–78.
- 80 Boffetta P, Hecht S, Gray N, Gupta P, Straif K. Smokeless tobacco and cancer. *Lancet Oncol.* 2008;9(7):667–75.
- 81 Scientific Committee on Emerging and Newly Identified Health Risks. 2008. Health effects of smokeless tobacco products. [cited 2016 Mar 28]. Available from http://ec.europa.eu/health/ph_risk/committees/04_scenihp/docs/scenihp_o_013.pdf.
- 82 World Health Organization. 2007. Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines IARC *Monographs on the Evaluation of Carcinogenic Risks to Humans.* 2007;89(PDF–3.18 MB).
- 83 Kallischnigg G, Weitkunat R, Lee PN. Systematic review of the relation between smokeless tobacco and non-neoplastic oral diseases in Europe and the United States. *BMC Oral Health.* 2008;8:13.
- 84 Hatsukami D, Severson H. Oral Spit Tobacco: Addiction, Prevention and Treatment. *Nicotine & Tobacco Research.* 1999;1:21-44.
- 85 WHO (2007)
- 86 *Ibid*
- 87 Tomar SL. Chewing Tobacco Use and Dental Caries Among U.S. Men. *Journal of the American Dental Association.* 1999;130:160.
- 88 WHO (2007)
- 89 Piano et al. Impact of smokeless tobacco products on cardiovascular disease: implications for policy, prevention, and treatment. *Circulation.* 2010;122(15):1520–44.
- 90 Boffetta P, Straif K. Use of smokeless tobacco and risk of myocardial infarction and stroke: systematic review with meta-analysis. *BMJ.* 2009;339:b3060.
- 91 DHHS. 2014. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General; [cited 2016 Mar 28]. Available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>.
- 92 California Environmental Protection Agency. 2014. Safe Drinking Water and Toxic Enforcement Act of 1986: Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. California Environmental Protection Agency, Office of Environmental Health Hazard Assessment.
- 93 DHHS. 2010. How tobacco smoke causes disease: the biology and behavioral basis for smoking-attributable disease: a report of the Surgeon General. [cited 2016 Mar 28]. Available from <http://www.ncbi.nlm.nih.gov/books/NBK53017/>.
- 94 Benowitz et al. Exposure to nicotine and carcinogens among Southwestern Alaskan Native cigarette smokers and smokeless tobacco users. *Cancer Epidemiol Biomarkers Prev.* 2012;21(6):934–42.
- 95 American Lung Association. 2007. An Emerging Deadly Trend: Waterpipe Tobacco Use. *Tobacco Policy Trend Alert*; [cited 2016 Mar 28]. Available from http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf.
- 96 CDC. 2015. Hookah Fact Sheet; [cited 2016 Mar 28]. Available from http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs.
- 97 Tobacco Technology, Inc. Manufacture and Technology. 2013. Indulge Your Flavors. *Tobacco Journal International.* Available from <http://www.tobaccotech.com/docs/tji0113-p67ff.pdf>.
- 98 American Lung Association. 2007. An Emerging Deadly Trend: Waterpipe Tobacco Use. *Tobacco Policy Trend Alert*; [cited 2016 Mar 28]. Available from http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf.

- 99 WHO (World Health Organization), Study Group on Tobacco Product Regulation. 2015. Waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators—2nd ed. *TobReg Advisory Note*.
- 100 *Ibid*.
- 101 Cobb et al. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior*. 2010;34(3):275–85.
- 102 Barnett et al. Water pipe tobacco smoking among middle and high school students. *Am J Public Health*. 2009;99(11):2014–2019.
- 103 Primack BA, Walsh M, Bryce C, Eissenberg T. Water-pipe tobacco smoking among middle and high school students in Arizona. *Pediatrics*. 2009;123(2):e282–e288.
- 104 American College Health Association. 2009. Reference Group Data Report Fall 2008. National College Health Assessment II; [cited 2016 Mar 28]. Available from http://www.acha-ncha.org/docs/ACHA-NCHA_Reference_Group_Report_Fall2008.pdf.
- 105 Eissenberg T, Ward KD, Smith-Simone S, Maziak W. Waterpipe tobacco smoking on a US college campus: prevalence and correlates. *J Adolesc Health*. 2008;42(5):526–529.
- 106 Maziak W. The waterpipe: time for action. *Addiction*. 2008;103(11):1763–1767.
- 107 Maziak W, Ward KD, Afifi Soweid RA, Eissenberg T. Tobacco smoking using a waterpipe: a re-emerging strain in a global epidemic. *Tobacco Control*. 2004;13(4):327–333.
- 108 Primack BA, Sidani J, Agarwal AA, Shadel WG, Donny EC, Eissenberg TE. Prevalence of and associations with waterpipe tobacco smoking among US university students. *Annals of Behavioral Medicine*. 2008;36(1):81–86.
- 109 Smith et al. Increasing hookah use in California. *American Journal of Public Health*. 2011;101(10):1876-1879.
- 110 Soneji et al. Associations between initial water pipe tobacco smoking and snus use and subsequent cigarette smoking: results from a longitudinal study of US adolescents and young adults. *JAMA Pediatrics*. 2015;169(2):129-36.
- 111 Salloum et al. Waterpipe Tobacco Smoking and Susceptibility to Cigarette Smoking Among Young Adults in the United States, 2012–2013. *Prev Chronic Dis* 2016;13:150505.
- 112 WHO (World Health Organization), Study Group on Tobacco Product Regulation. 2015. Waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators—2nd ed. *TobReg Advisory Note*.
- 113 Maziak et al. The global epidemiology of waterpipe smoking. *Tobacco Control*. 2015;24(Suppl 1):i3–12.
- 114 *Ibid*.
- 115 Ambrose et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Journal of the American Medical Association*. 2015;314(17):1871-1873.
- 116 Corey et al. Flavored Tobacco Product Use Among Middle and High School Students—United States, 2014. *Morbidity and Mortality Weekly Report*. 2015;64(38):1066-1070.
- 117 Morris et al. Peer Reviewed: Opportunities for Policy Interventions to Reduce Youth Hookah Smoking in the United States. *Preventing Chronic Disease*. 2012;9:120082.
- 118 Primack et al. Systematic Review and Meta-Analysis of Inhaled Toxicants from Waterpipe and Cigarette Smoking. *Public Health Reports*. 2016;131(1):76-85.
- 119 American Lung Association. 2007. An Emerging Deadly Trend: Waterpipe Tobacco Use. *Tobacco Policy Trend Alert*; [cited 2016 Mar 28]. Available from http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf.
- 120 American Lung Association. 2011. Hookah Smoking: A Growing Threat to Public Health Issue Brief. Smokefree Communities Project; [cited 2016 Mar 28]. Available from <http://www.lung.org/assets/documents/tobacco/hookah-policy-brief-updated.pdf>.
- 121 WHO Study Group on Tobacco Product Regulation. 2005. Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators. *TobReg Advisory Note*. Available from http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf.
- 122 WHO (World Health Organization), Study Group on Tobacco Product Regulation. 2015. Waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators—2nd ed. *TobReg Advisory Note*.

- 123 Cobb CO, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior*. 2010;34(3):275–85.
- 124 Conference of the Parties to the WHO Framework Convention on Tobacco Control, Sixth session, Control and prevention of waterpipe tobacco products. Moscow, Russian Federation, 13–18 October 2014. Geneva: World Health Organization; 2014.
- 125 El Zaatari ZM, Chami HA, Zaatari, GS. Health effects associated with waterpipe smoking. *Tobacco Control*. 2015;24(1):i31–43.
- 126 Cobb CO, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior* 2010;34(3):275–85.
- 127 Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The Effects of Waterpipe Tobacco Smoking on Health Outcomes: A Systematic Review. *International Journal of Epidemiology*. 2010;39:834–57.
- 128 Chapman, Ron. 2015. State Health Officer’s Report on E-Cigarettes: A Community Health Threat. California Department of Public Health, Tobacco Control Program. Available at <https://www.cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf>.
- 129 Campaign for Tobacco-Free Kids. 2016. Electronic cigarettes: An overview of key issues; [cited 2016 Mar 28]. Available at <https://www.tobaccofreekids.org/research/factsheets/pdf/0379.pdf>.
- 130 *Ibid*.
- 131 Mincer, Jilian. 2015. The US vaporizer market is booming. *Business Insider*; [cited 2016 Mar 28]. Available from <http://www.businessinsider.com/r-in-rise-of-us-vape-shops-owners-eye-new-marijuana-market-2015-7>.
- 132 Craver R. 2013. Analyst projection: E-cigs will overtake traditional tobacco revenue at Reynolds in 2021. *Winston-Salem Journal*; [cited 2016 Mar 28]. Available from http://www.journalnow.com/business/business_news/local/analyst-projection-e-cigs-will-over-take-traditional-tobacco-revenue-at/article_948674ca-1ca9-11e3-a0ae-0019bb30f31a.html.
- 133 Mickle, Tripp. 2015. E-cigarette sales rapidly losing steam. *The Wall Street Journal*; [cited 2016 Mar 28]. Available from <http://www.wsj.com/articles/e-cig-sales-rapidly-lose-steam-1447798921>.
- 134 Zhu et al. Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation. *Tobacco Control*. 2014;23(3):iii3–iii9.
- 135 Campaign for Tobacco-Free Kids. 2016. Electronic Cigarettes and Youth; [cited 2016 Mar 28]. Available from <https://www.tobaccofreekids.org/research/factsheets/pdf/0382.pdf>.
- 136 CDC. Tobacco Use Among Middle and High School Students — United States, 2011–2014. *Morbidity and Mortality Weekly Report*. 2015;64(14):381–385.
- 137 Wadley, Jared. 2015. Most youth use e-cigarettes for novelty, flavors—not to quit smoking. University of Michigan News Service; [cited 2016 Mar 28]. Available from <http://ns.umich.edu/new/releases/23371-most-youth-use-e-cigarettes-for-novelty-flavors-not-to-quit-smoking>.
- 138 CDC. Frequency of Tobacco Use Among Middle and High School Students — United States, 2014. *Morbidity and Mortality Weekly Report*. 2015;64(38):1061–1065.
- 139 Bunnell et al. Intentions to smoke cigarettes among never-smoking U.S. middle and high school electronic cigarette users, National Youth Tobacco Survey, 2011–2013. *Nicotine & Tobacco Research*. 2015;17(2):228–35.
- 140 Ambrose et al. Flavored Tobacco Product Use Among US Youth Aged 12–17 Years, 2013–2014. *Journal of the American Medical Association*. 2015;314(17):1871–1873.
- 141 Chapman, State Health Officer’s Report on E-Cigarettes: A Community Health Threat (2015).
- 142 Willis et al. Longitudinal study of e-cigarette use and onset of smoking among high schools students in Hawaii. *Tobacco Control*. 2016;0:1–6.
- 143 Brian et al. Progression to Traditional Cigarette Smoking After Electronic Cigarette Use Among US Adolescents and Young Adults. *JAMA Pediatrics*. 2015;169(11):1018–1023.
- 144 Ji-Yeun Park, Dong-Chul Seo, and Hsien-Chang Lin. E-Cigarette Use and Intention to Initiate or Quit Smoking Among US Youths. *American Journal of Public Health*. 2016;106(4):672–678.

- 145 Cardenas et al. Use of electronic nicotine delivery systems and recent initiation of smoking among US youth. *Int J Public Health*. 2016;61(2):237-41.
- 146 National Institute on Drug Abuse. 2015. Electronic Cigarettes (e-Cigarettes). Drug Facts; [cited 2016 Mar 28]. Available from https://www.drugabuse.gov/sites/default/files/drugfacts_e-cigs_9_15.pdf.
- 147 Campaign for Tobacco-Free Kids. 2016. Electronic Cigarettes and Youth; [cited 2016 Mar 28]. Available from <https://www.tobaccofreekids.org/research/factsheets/pdf/0382.pdf>.
- 148 Chapman, State Health Officer's Report on E-Cigarettes: A Community Health Threat (2015).
- 149 England et al. Nicotine and the Developing Human: A Neglected Element in the Electronic Cigarette Debate. *Am J Prev Med*. 2015;49(2):286-293.
- 150 Tierney et al. Flavour chemicals in electronic cigarette fluids. *Tobacco Control*, 2015;0:1-6.
- 151 *Ibid*.
- 152 Allen et al. Flavoring Chemicals in E-Cigarettes: Diacetyl, 2,3-Pentanedione, and Acetoin in a Sample of 51 Products, Including Fruit-, Candy-, and Cocktail-Flavored E-Cigarettes. *Environmental Health Perspectives*. 2015.
- 153 Farsalinos et al., Evaluation of electronic cigarette liquids and aerosol for the presence of selected inhalation toxins. *Nicotine & Tobacco Research*. 2015;17(2):168-174.
- 154 Goniewicz et al. Cherry-flavoured electronic cigarettes expose users to the inhalation irritant, benzaldehyde. *Thorax*. 2016.
- 155 Mayer B. How much nicotine kills a human? Tracing back the generally accepted lethal dose to dubious self-experiments in the nineteenth century. *Archives of Toxicology*. 2014;88(1):5-7.
- 156 Chapman, State Health Officer's Report on E-Cigarettes: A Community Health Threat (2015).
- 157 Grana et al. E-Cigarettes: A Scientific Review. *Circulation*. 2014;129(19):1972-86.
- 158 King et al. Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011. *Nicotine & Tobacco Research*. 2013;15(9):1623-7.
- 159 Campaign for Tobacco-Free Kids. Electronic cigarettes: An overview of key issues. January 19, 2016.
- 160 King et al, *Nicotine & Tobacco Research* (2014).
- 161 Schoenborn et al. Electronic Cigarette Use Among Adults: United States, 2014. *National Center on Health Statistics (NCHS) Data Brief*. 2015(217).
- 162 Bullen et al. Electronic cigarettes for smoking cessation: a randomised controlled trial. *Lancet*. 2013;382:1629-37.
- 163 Grana et al. *Circulation* (2014).
- 164 Lee et al. *Tob Control* (2011).
- 165 Henningfield et al. Does menthol enhance the addictiveness of cigarettes? An agenda for research. *Nicotine & Tobacco Research*. 2003;5(1):9-11.
- 166 Giovino et al. (2004). Epidemiology of menthol cigarette use. *Nicotine & Tobacco Research*, 6 Suppl 1, S67-81.
- 167 Tobacco Products Scientific Advisory Committee (TPSAC). 2011. Menthol cigarettes and public health: Review of the scientific evidence and recommendations. FDA; [cited 2016 Mar 28]. Available at <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- 168 Sutton CD, Robinson RG. The marketing of menthol cigarettes in the United States: populations, messages, and channels. *Nicotine & Tobacco Research*. 2004;6(1):S83-91.
- 169 Lee et al. *Tob Control* (2011).
- 170 DHHS. 1998. Tobacco use among U.S. racial/ethnic minority groups—African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A report of the surgeon general; [cited 2016 Mar 28]. Available at http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.
- 171 SAMHSA (Substance Abuse and Mental Health Services Administration). 2009. Results from the 2008 National Survey on Drug Use and Health: Summary of National Findings. NSDUH Series. 2013;H-36(09-4434).

- 172 SAMHSA. 2011. Recent Trends in Menthol Cigarette Use. The NSDUH Report; [cited 2016 Mar 28]. Available at http://www.samhsa.gov/data/sites/default/files/WEB_SR_088/WEB_SR_088/WEB_SR_088.htm.
- 173 CDC. Tobacco Brand Preferences Fact Sheet; [cited 2016 Mar 28]. Available at http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/brand_preference/.
- 174 Trefis Team. 2015. What does the Reynolds-lorillard deal mean for Altria? Forbes; [cited 2016 Mar 28]. Available at <http://www.forbes.com/sites/greatspeculations/2015/05/12/what-does-the-reynolds-lorillard-deal-mean-for-altria/#5f3a39556c54>.
- 175 Kreslake et al. The menthol smoker: tobacco industry research on consumer sensory perception of menthol cigarettes and its role in smoking behavior. *Nicotine Tobacco & Research*. 2008;10:705–15.
- 176 Yerger et al. Menthol sensory qualities and smoking topography: a review of tobacco industry documents. *Tobacco Control*. 2011; 20(2):ii37–ii43.
- 177 Kreslake et al. The menthol smoker: tobacco industry research on consumer sensory perception of menthol cigarettes and in smoking behavior. *Nicotine Tob Res*. 2008;10(4): 705-15.
- 178 Wayne et al. Assessing internal tobacco industry knowledge of the neurobiology of tobacco dependence. *Nicotine Tob Res*. 2004;6(6): 927-940.
- 179 Hersey et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res*. 2006;8(3):403-13.
- 180 Kreslake et al. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health*. 2008;98(9):1685–1692.
- 181 Ahijevych K, Garrett BE. Menthol pharmacology and its potential impact on cigarette smoking behavior. *Nicotine Tob Res*. 2004;6(1):S17–S28.
- 182 Collins CC, Moolchan ET. Shorter time to first cigarette of the day in menthol adolescent cigarette smokers. *Addict Behav*. 2006;31(8):1460–1464.
- 183 Giovino et al. Differential trends in cigarette smoking in the USA: is menthol slowing progress? *Tob Control*. 2015;24:28-37.
- 184 *Ibid*.
- 185 TPSAC (2011).
- 186 Hickman et al., Menthol use among smokers with psychological distress: findings from the 2008 and 2009 National Survey on Drug Use and Health. *Tob Control*. 2014; 23(1): 7–13.
- 187 Cohn et al. Menthol tobacco use is correlated with mental health symptoms in a national sample of young adults: implications for future health risks and policy recommendations. *Tobacco Induced Diseases*. 2016;14:1.
- 188 Hersey et al. 2010. Menthol cigarettes, saliva cotinine, and nicotine dependence in adolescents. *Report for the Food and Drug Administration Center for Tobacco Products*; [cited 2016 Mar 28]. Available at <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM237553.pdf>.
- 189 Hersey et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res*. 2006;8(3), 403-413.
- 190 Fagan et al. Nicotine dependence and quitting behaviors among menthol and non-menthol smokers with similar consumptive patterns. *Addiction*. 2010;105(1): 55-74.
- 191 TPSAC (2011).
- 192 Okuyemi et al. Relationship between menthol cigarettes and smoking cessation among African American light smokers. *Addiction*. 2007;102(12).
- 193 Okuyemi et al. African-American menthol and nonmenthol smokers: differences in smoking and cessation experiences. *Journal of the National Medical Association*. 2004;96(9), 1208-1211.
- 194 Harris et al. Predictors of smoking cessation among African-Americans enrolled in a randomized controlled trial of bupropion. *Prev Med*. 2004;38(4), 498-502.
- 195 Stahre et al. Racial/ethnic differences in menthol cigarette smoking, population quit ratios and utilization of evidence-based tobacco cessation treatments. *Addiction*. 2010;105(1):75-83.
- 196 TPSAC (2011).

- 197 *Ibid.*
- 198 *Ibid.*
- 199 Kreslake et al. Tobacco Industry Knowledge of the Role of Menthol in Chemosensory Perception of Tobacco Smoke. *Nicotine & Tobacco Research*. 2010;12(2):S98-S101.
- 200 Garten et al., Continual smoking of mentholated cigarettes may mask the early warning symptoms of respiratory disease. *Preventive Medicine*. 2003;37(4):291-296.
- 201 Clark et al. Effect of Menthol Cigarettes on Biochemical Markers of Smoke Exposure Among Black and White Smokers. 1996;110(5): 194-8.
- 202 Caraballo R. Racial and ethnic differences in serum cotinine levels of cigarette smokers: The National Health and Nutrition Examination Survey, 1998-1991. *Journal of the American Medical Association*. 1998;280(2):135-9.
- 203 TPSAC (2011).
- 204 Vozoris NT. Mentholated Cigarettes and Cardiovascular and Pulmonary Diseases: A Population-Based Study. *Arch Intern Med*. 2012;172(7):590-593.
- 205 CDPH, Changing Landscape Countering New Threats (2015).
- 206 Ambrose et al (2015).
- 207 Villanti et al. Flavored Tobacco Product Use Among U.S. Young Adults. *American Journal of Preventive Medicine*. 2013;44(4):388-391.
- 208 Giovino et al. Differential trends in cigarette smoking in the USA: is menthol slowing progress? *Tobacco Control*, 2015;24(1):28-37.
- 209 SAMHSA. The NSDUH report: Use of menthol cigarettes.(2009).
- 210 King, et al (2013).
- 211 Lee YO, Glantz SA. Menthol: putting the pieces together. *Tob Control*. 2011;20:ii1-ii7 doi:10.1136/tc.2011.043604.
- 212 Kostygina, et al. Tobacco industry use of flavours to recruit new users of little cigars and cigarillos. *Tobacco Control*. 2014;25:66-74.
- 213 Hook et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Journal of the American Medical Association*. 2015;314(17):1871-1873.
- 214 U.S. Department of Health and Human Services, Preventing tobacco use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.
- 215 FDA. Flavored Tobacco Products Fact Sheet (2011).
- 216 U.S. Department of Health and Human Services, Preventing tobacco use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.
- 217 King et al. Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students. *Journal of Adolescent Health*. 2014;54(1):40-46.
- 218 Nonnemaker, J., et al., Initiation with menthol cigarettes and youth smoking uptake. *Addiction*, 2013. 108(1): p. 171-178.
- 219 El-Toukhy S, Choi K. A risk-continuum categorization of product use among U.S. youth tobacco users. *Nicotine Tob Res*. 2016.
- 220 DHHS. 2014. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General; [cited 2016 Mar 28]. Available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>.
- 221 Carpenter et al. New Cigarette Brands with Flavors That Appeal to Youth: Tobacco Marketing Strategies. *Health Affairs*. 2005;24(6):1601-1610.
- 222 Report from R.M. Manko Assoc. to Lorillard Tobacco Co. (Aug. 1978), available at <http://tobaccodocuments.org/lor/85093450-3480.html?pattern=85093450-3480#images>.
- 223 Brown et al. Candy flavorings in tobacco. *New England Journal of Medicine*. 2014;370(23):2250-2252.
- 224 *Ibid.*
- 225 Oregon Public Health Division. Flavored Tobacco: Sweet, Cheap, and Within Kids' Reach.CD Summary. 2014;63(21).

- 226 Campaign for Tobacco Free Kids (2016).
- 227 Campaign for Tobacco-Free Kids. 2015. Tobacco Company Marketing to African-Americans; [cited 2016 Mar 28]. Available at www.tobaccofreekids.org/research/factsheets/pdf/0208.pdf.
- 228 Wackowski et al. Young Adults' Risk Perceptions of Various Tobacco Products Relative to Cigarettes: Results From the National Young Adult Health Survey. *Health Education & Behavior*. 2015.
- 229 TPSAC (2011).
- 230 Cullen et al. Seven-year patterns in US cigar use epidemiology among young adults aged 18–25 years: a focus on race/ethnicity and brand. *American Journal of Public Health*. 2011;101(10): 1955-1962.
- 231 Levanthal et al. Association of Electronic Cigarette Use With Initiation of Combustible Tobacco Product Smoking in Early Adolescence. *Journal of the American Medical Association*. 2015;314(7):700-707.
- 232 Willis et al. Longitudinal study of e-cigarette use and onset of smoking among high schools students in Hawaii. *Tob Control*. 2016.
- 233 TPSAC (2011).
- 234 DDHS (1998).
- 235 CDC. 2013. Deaths: Final Data for 2013, Table 13. National Vital Statistics Reports. Atlanta: Centers for Disease Control and Prevention, National Center for Health Statistics.
- 236 DDHS (1998).
- 237 Pearson et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *American Journal of Public Health*. 2011;101(7): p. 1236.
- 238 Caraballo RS, Asman K. Epidemiology of menthol cigarette use in the United States. *Tob Induc Dis*. 2011;9(1): S1.
- 239 Appleyard J, Messeri P, Haviland ML. Smoking among Asian American and Hawaiian/Pacific Islander youth: data from the 2000 National Youth Tobacco Survey. *Asian Am Pac Isl J Health*. 2001;9(1):5–14.
- 240 Gundersen DA, Delnevo CD, Wackowski O. Exploring the relationship between race/ethnicity, menthol smoking, and cessation, in a nationally representative sample of adults. *Prev Med*. 2009;49:533–57.
- 241 Gardiner P, Clark PI. Menthol cigarettes: moving toward a broader definition of harm. *Nicotine & Tobacco Research*. 2010;12:85-93.
- 242 Trinidad et al. Menthol cigarettes and smoking cessation among racial/ethnic groups in the United States. *Addiction*. 2010; 105(0 1): 84–94.
- 243 Gandhi KK, Foulds J, Steinberg MB, Lu SE, Williams JM. Lower quit rates among African American and Latino menthol cigarette smokers at a tobacco treatment clinic. *Int J Clin Pract*. 2009;63:360–7.
- 244 U.S. Department of Health and Human Services, Preventing tobacco use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.
- 245 White VM, White MM, Freeman K. Cigarette promotional offers: who takes advantage? *Am J Prev Med* 2006; 30:225–231.
- 246 Gardiner PS. The African Americanization of menthol cigarette use in the United States. *Nicotine Tob Res*. 2004;6:S55–65.
- 247 Lee et al. A Systematic Review of Neighborhood Disparities in Point-of-Sale Tobacco Marketing. *American Journal of Public Health*. 2015;105(9):e8-18.
- 248 Iglesias-Rios L, Parascandola, M. A Historical Review of R.J. Reynolds' Strategies for Marketing.
- 249 Tobacco to Hispanics in the United States. *American Journal of Public Health*. 2013;103(5):e15-e27.
- 250 Altman DG, Schooler C, Basil MD. Alcohol and cigarette advertising on billboards. *Health Education Research*. 1991;6(4):487–490.
- 251 APPEAL for Communities. 2014 Tobacco and Health in Asian American, Native Hawaiian and Pacific Islander Communities in California; [cited 2016 Mar 28]. Available at http://www.appealforcommunities.org/wp-content/uploads/2014/06/4285_APPEALfactsheet_ENG_final.pdf.
- 252 Muggli ME, Pollay RW, Lew R, Joseph AM. Targeting of Asian Americans and Pacific Islanders by the tobacco industry: results from the Minnesota Tobacco Document Depository. *Tobacco Control*. 2002;11:201-209.

- 253 American Cancer Society. Tobacco and the GLBT Community. Available at <http://www.glbthealth.org/documents/GLBTobacco>
- 254 King, et al (2013).
- 255 Lee JG, Griffin GK, Melvin CL. Tobacco use among sexual minorities in the USA, 1987 to May 2007: a systematic review. *Tob Control*. 2009;18(4):275–282.
- 256 National Youth Advocacy Coalition, Coming Out about Smoking: A Report from the National LGBTQ Young Adult Tobacco Project 2010: Washington, DC.
- 257 Fallin, A. Menthol Cigarette Smoking among Lesbian, Gay, Bisexual, and Transgender Adults. *American Journal of Preventative Medicine*. 2014;8(1),93-97.
- 258 King, et al (2013).
- 259 Hagopian, A. 2015. E-cigarettes: Evidence and policy options for Washington State. Seattle, WA: University of Washington, WA Department of Health Services.
- 260 Jordan JN, McElroy JA, Everett KD. Smoking Initiation, Tobacco Product Use, and Secondhand Smoke Exposure Among General Population and Sexual Minority Youth, Missouri, 2011–2012. *Prev Chronic Dis*. 2014;11:140037.
- 261 Rosario et al. Sexual orientation disparities in cancer related risk behaviors of tobacco, alcohol, sexual behaviors, and diet and physical activity: pooled youth risk behavior surveys. *Am J Public Health*. 2014;104(2):245–54.
- 262 CDC. Current Cigarette Smoking Among Adults—United States, 2005-2014. *Morbidity and Mortality Weekly Report*. 2015;64(44):1233-1240.
- 263 TPSAC (2011).
- 264 Rosenbloom et al. A cross-sectional study on tobacco use and dependence among women: Does menthol matter? *Tobacco Induced Diseases*. 2012;10(1):19.
- 265 Ahijevych K, Parsley LA. Smoke constituent exposure and stage of change in black and white women cigarette smokers. *Addict Behav*. 1999;24:115–120.
- 266 Carpenter CM, Wayne GF, Connolly GN. Designing cigarettes for women: new findings from the tobacco industry documents. *Addiction*. 2005;100(6):837-851.
- 267 Tobacco Education and Research Oversight Committee. 2015. Changing Landscape Countering New Threats. Master Plan; [cited 2016 Mar 28]. Available at http://www.cdph.ca.gov/programs/tobacco/Documents/TEROC/Master%20Plan/MasterPlan_15-17.pdf.
- 268 California Department of Public Health, California Tobacco Control Program. About the tobacco control program. Sacramento, CA. 2012. Accessed at: <http://www.cdph.ca.gov/programs/tobacco/Documents/Archived%20Files/Making%20a%20Difference%2012012.pdf>.
- 269 Lightwood J, Glantz S. The effect of the California tobacco control program on smoking prevalence, cigarette consumption, and healthcare costs: 1989-2008. *PLoS One*. 2013;8(2):e47145.
- 270 CDC. National Health Report Highlights; [cited 2016 Mar 28]. Available at: <http://www.cdc.gov/healthreport/publications/compendium.pdf>.
- 271 FDA (2011).

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Alameda Ordinance No. 3230	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: November 27, 2018 Effective: July 1, 2019 Enforced: July 1, 2019	None	No TRLs may be issued to a pharmacy No TRLs may be issued within 300 feet of a youth populated area No TRL’s may be issued within 500 feet of another tobacco retailer The total number of TRLs within the city shall be limited to one for each 2,500 inhabitants of the city No tobacco retailers shall honor or redeem a coupon to allow a consumer to purchase a tobacco product for less than full price, sell a tobacco product through a multi-package discount, provide free or discounted items, or sell a tobacco product for less than full retail price Cigars and little cigars must be sold in packages of at least five Sets a minimum price of \$7 per package of cigarettes and \$5 for cigars	The City’s Planning, Building and transportation Department or any other City department shall inspect each tobacco retailers for compliance A violation of the provisions of this chapter within any five-year period may result in: <div><div>1.</div><div>A fine of \$1500 for a first violation</div></div> <div><div>2.</div><div>A 15 day suspension of the tobacco retail license for a second violation</div></div> <div><div>3.</div><div>A 30 day suspension of the tobacco retail license for a third violation</div></div> <div><div>4.</div><div>A license will be revoked for a fourth violation</div></div>	No
Albany Ordinance No. 2019-04	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: April 15, 2019 Effective: October 16, 2019	None	None	The City of Albany Police Department is responsible for enforcing this ordinance A tobacco retailer’s license shall be revoked if the licensee is found to have violated any of the provisions of this chapter After revocation at a location within any 60-month period: <div><div>1.</div><div>No new license may be issued at a location for 30 days after a first violation</div></div> <div><div>2.</div><div>No new license may be issued at a location for 90 days after a second violation and the retailer will be subject to a \$250 fine</div></div> <div><div>3.</div><div>No new license may be issued at a location for one year after a third violation and the retailer will be subject to a \$500 fine</div></div> <div><div>4.</div><div>No new license may be issued at a location for five years after four or more violations and the retailer will be subject to a \$1000 fine</div></div>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Berkeley Ordinance No. 7,441-N.S. Municipal Code Chapter 9.80	Prohibits the sale of flavored tobacco products, including menthol flavored tobacco products, within a 600 foot buffer zone of a school (public and private K-12 with at least 25 students enrolled)	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: September 2015 Effective: January 1, 2017 Enforced: January 1, 2020	Only applies to retailers located within 600 feet of schools Medical cannabis dispensaries are not required to have a tobacco retail license to sell electronic smoking devices or other tobacco paraphernalia if not accompanied by any tobacco product	No new TRL may be issued to a pharmacy or renewed by a pharmacy No new TRLs may be issued within 600 feet of school	Environmental Health staff is responsible for enforcement A violation of the provisions of this chapter within any five-year period may result in: <ol style="list-style-type: none">1. The suspension of a license for up to 30 days for a first violation2. The suspension of a license for up to 90 days for a second violation3. The suspension of a license for up to one year for a third violation4. The revocation of a license upon the fourth violation	Grace period of 3 years of effective date for retailers with “good cause showing”
Beverly Hills Ordinance No. 18-2758 Municipal Code Chapter 4-2-21	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: August 21, 2018 Effective: September 21, 2018 Enforced: December 21, 2018	None	The flavors policy is enforced through a TRL that must be paid annually	A violation of the provisions of this chapter will result in: <ol style="list-style-type: none">1. A civil penalty fine of \$250 for a first violation within any five year period2. The suspension of the TRL for 90 days and a civil penalty fine of \$750 for a second violation within a five year period3. The revocation of the TRL and a civil penalty fine of \$1,000 for a third violation within a five year period	No
Cloverdale Municipal Code Chapter 8.08	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excluding menthol flavored tobacco products)	No	Adopted: December 12, 2017	Menthol tobacco products, including cigarettes, are not included in the restrictions	Smoking (including tobacco and marijuana) is prohibited in enclosed places of employment, public places, sports arenas, and multi-unit residence common areas; and unenclosed places of employment, recreational areas, service areas, outdoor dining areas, public places, and multifamily residence common areas No tobacco retailers shall sell any single cigar or any package of cigars containing fewer than five cigars (does not apply to the sale of single cigars if the price exceeds \$5) Pharmacies may not sell tobacco products	Any person or business that violates the provisions of this chapter shall be guilty of an infraction, publishable by: <ol style="list-style-type: none">1. A fine not exceeding \$100 for a first violation2. A fine not exceeding \$200 for a second violation within one year3. A fine not exceeding \$500 for each additional violation within five years	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Contra Costa County Ordinance No. 2017-01 Municipal Code Chapter 445-2	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within 1,000 feet of schools (public and private), parks, playgrounds and libraries in the unincorporated areas of the county	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: July 18, 2017 Effective: August 1, 2017 Enforced: January 1, 2018	Only applies to retailers within 1,000 feet of schools, parks, playgrounds and libraries	No new tobacco retail licenses may be issued in pharmacies Little cigars must be sold in packs of at least 10, and cigarillos must be sold in packs of at least 10 unless the sales price of one cigar is over \$5 No new tobacco retail licenses will be granted to businesses located within 1,000 feet of schools, parks playgrounds or libraries, or within 500 feet of another business that sells tobacco Sets a cap on the total number of tobacco retailers Prohibits the redemption of coupons or redemptions Smoking is prohibited in specified enclosed and unenclosed areas and in all multi-unit residence areas, with some exceptions	A violation of the provisions of this chapter will result in: <ol style="list-style-type: none">1. The suspension of the TRL for up to 30 days for a first violation2. The suspension of the TRL for up to 90 days for a second violation that occurs within five years after the first violation3. The suspension of the TRL for up to one year for a third violation and for each subsequent violation that occurs within five years after the first violation	No
Corte Madera Ordinance No. 983	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: March 19, 2019 Effective: April 18, 2019 Enforced: January 1, 2020	None	Prohibits the sale of: <ol style="list-style-type: none">1. any single cigar ,whether or not packaged for individual sale2. any number of cigars fewer than then number contained in the manufacturer’s original consumer packaging designed for retail sale3. any package of cigars containing fewer than five cigars (this does not apply to the sale of a single cigar for which the retail price exceeds \$5) No new tobacco retail licenses may be issued in pharmacies	Compliance is monitored by the Town Manager Any peace officer may enforce the penal provisions of the policy. A violation of the provisions of this chapter will result in: <ol style="list-style-type: none">1. The issuance of a warning for a first violation2. The suspension of the license for 30 days for a second violation within a 60-month period3. The suspension of the license for 90 days for a third violation within a 60-month period4. The suspension of the license for one year for a fourth violation within a 60-month period5. The revocation of a license for five or more violations within a 60-month period	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jursidiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
El Cerrito Ordinance No. 2015-08 Municipal Code 6.100.160	Prohibits the sale of all flavored, non-cigarette tobacco products, including menthol flavored non-cigarette tobacco products, within the city limits	All flavored non-cigarette tobacco products, including e-cigarettes and menthol non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: October 2015 Effective: January 1, 2016 Enforced: October 2017	Menthol cigarettes are not included in the restrictions	<p>No new licenses may be issued to authorize tobacco retailing within 500 feet of schools, youth sensitive locations (parks and playgrounds, libraries), residential zones, or other tobacco retailers (tobacco retailers already in operation are exempt)</p> <p>No new licenses may be issued to authorize tobacco retailing within 1,000 feet of another tobacco retailer (tobacco retailers already in operation are exempt)</p> <p>Single cigar sales prohibited (except single cigars over \$5), a package of cigars must have at least five cigars</p> <p>Tobacco samples & coupons prohibited (except as allowed in adult-only businesses per state and federal law)</p> <p>Hookah lounges, cigar lounges, vape shops, or similar establishments are prohibited within the city limits</p> <p>New tobacco retailers may not operate as a “Significant Tobacco Retail Establishment” (use over 20% of the store display area for or derive over 50% of gross sales receipts from tobacco products or smoking paraphernalia) (existing tobacco retailers may seek an exception)</p> <p>Imitation tobacco products also included in prohibition</p>	<p>Compliance is monitored and enforced by the City’s Community Development Department, in conjunction with the El Cerrito Police Department</p> <p>A violation of the provisions of this chapter within a five year period will result in the suspension of a license for:</p> <ol style="list-style-type: none">1. 10 days for first violation2. 30 days for second violation3. 60 days for third violation4. Upon the fourth or more violations the license shall be revoked	Existing establishments within a certain distance of schools, youth sensitive areas and other tobacco retailers are allowed to continue to sell flavored tobacco products until January 1, 2018 but they must comply with all other TRL requirements
Fairfax Municipal Code 8.44.210	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excludes menthol flavored tobacco products)	No	Adopted: December 6, 2017 Effective: December 6, 2018 Enforced: January 1, 2019	Tobacco retailers may sell flavored tobacco products if the tobacco product: <ol style="list-style-type: none">1. Consists of a package of cigars containing at least five cigars or more2. Consists of a single cigar for which the retail price exceeds \$53. Consists of pipe tobacco4. Consists of a package of chewing tobacco or snuff containing at least five units or more	<p>It shall be a violation to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none">1. Any single cigar, whether or not packaged for individual sale2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer3. Any package of cigars containing fewer than five cigars <p>*(This does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5)</p> <p>Prohibits the sale of tobacco products in pharmacies</p>	<p>Regulations shall be monitored by the Town Manger and the Marin County Tobacco Program</p> <p>A violation of the provisions of this chapter within any 60-month period may result in:</p> <ol style="list-style-type: none">1. A 30 day suspension of a license for a first violation of this article2. A 90 day suspension of a license for a second violation of this article3. A one year suspension for a third violation of this article	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Half Moon Bay Municipal Code Section 7.60.120	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: October 2018 Effective: April 1, 2019	None	No tobacco retail permits may be issued to new or existing pharmacies (this provision effective April 1, 2019) No tobacco may be sold from a vending machine No person shall distribute free tobacco products or coupons for tobacco products	The ordinance will be enforced by the county of San Mateo, its officers, employees and agents A violation of the provisions of this chapter may result in: <ol style="list-style-type: none">1. A suspension of the license for up to 30 days for the first violation2. A suspension of the license for no less than 30 days and up to 90 days for the second violation of the ordinance within 24 months of the first determination3. A suspension of the license for no less than 90 days and up to one year for the third and each subsequent violation of the ordinance within 24 months of a prior determination	No
Hayward Municipal Code Sec. 10-1.2780	Prohibits the sale of flavored tobacco products with the exception of menthol flavored cigarettes within a 500-foot radius of schools (public and private kindergarten, elementary, middle, junior high or high school) for <i>new</i> tobacco retailers (established after the passage of this policy) within the city limits	All flavored non-cigarette tobacco products, including e-cigarettes and menthol non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: July 1, 2014 Effective: August 1, 2014	Menthol cigarettes are not included in restrictions Retailers that sold products before provisions took effect are exempt Restrictions only apply to retailers within 500 feet of schools	Prohibits the sale of cigar packages containing fewer than 5 cigars or a single cigar (unless the retail price exceeds \$5) No new tobacco retailers or new sales of flavored tobacco within 500 feet of a public or private K-12 school Vapor bars, lounges, smoking device bars, electronic smoking device lounges, and hookah bars and lounges are prohibited in all zoning districts Imitation tobacco products also included in prohibition	Regulations are enforced by the City’s Planning Director, in conjunction with the City’s Code Enforcement Division and the Hayward Police Department Any Tobacco Retail Sales Establishment that violates regulations in ordinance three times within a three-year period shall be subject to revocation of its tobacco retail license and/or its conditional use permit	Retailers selling flavored tobacco products prior to the ordinance effective date are exempt
Hermosa Beach Ordinance No. 18-1389	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: January 8, 2019 Effective: June 1, 2019	Flavored tobacco products may still be sold in stores that permits only patrons 21 years of age or older to enter	Tobacco retailers must be located at least 500 feet from a youth-populated area No license may be issued to authorize tobacco retail licensing at farmers’ markets, special temporary events, or mobile carts A TRL may not be issued to a pharmacy No TRL may be issued for businesses licensed to serve alcohol Minimum pack size requirement of 20 for little cigars	Compliance checks shall be conducted by any member of the Hermosa Beach Code Enforcement Department, Police Department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees Tobacco Retailer’s license shall be suspended or revoked for a violation of any provision of this chapter	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Larkspur Ordinance No. 1037	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: April 3, 2019 Effective: May 3, 2019 Enforced: January 1, 2020	None	Establishes a minimum pack size of five for cigars and prohibits the sale of a single cigar or any number of cigars fewer than the number contained in the original packaging (this does not apply to the sale of a single cigar for over \$5) Prohibits the sale of tobacco products in pharmacies	Compliance will be monitored by the City Manager and the Marin County Tobacco Program Any violation of the TRL within a 60-month period may result in: 1. A warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations	No
Los Gatos Ordinance No. 2259	Limits the sale of flavored tobacco products, including menthol flavored tobacco, to adult-only tobacco stores within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: May 16, 2017 Effective: January 1, 2018	Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited	TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer Limits storefront advertising to no more than 15% of the window and clear doors	Compliance will be monitored by the Town or its Designee; a peace officer may enforce the provisions in this policy Any violation of the TRL within a 12-month period may result in: 1. A fine not to exceed \$100 for a first violation 2. A fine not to exceed \$200 for a second violation 3. A fine not to exceed \$500 for each additional violation For any violation of the TRL within a 24-month period, permit suspension includes: 1. Permit suspension for up to 30 calendar days for a first violation 2. Permit suspension for up to 90 calendar days for a second violation 3. Permit suspension for up to one year for each additional violation	No
Manhattan Beach Ordinance No. 15-0020 Municipal Code 4.118.030	Limits the sale of flavored tobacco, with the exception of menthol flavored tobacco products, to adult-only tobacco stores with the city limits	All flavored tobacco products (excludes menthol flavored tobacco products)	No	Adopted: December 2015 Effective: January 1, 2016	Flavored tobacco products may still be sold in adult-only tobacco stores Menthol tobacco products are not included in the prohibition	No tobacco retailer permit may be issued within 500 feet of a school or an existing retailer	The retail permit may be revoked or suspended for two or more violations within a 36-month period	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Marin County Ordinance No. 3698	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: November 6, 2018 Effective: December 5, 2018 Enforced: July 1, 2019 (Non-Tobacco Stores) July 1, 2020 (Tobacco Stores)	None	It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from the County of Marin for each location where these sales are conducted	Enforcement shall be conducted by the Marin County Dept. of Health and Human Services A violation of the provisions of this chapter may result in: <ol style="list-style-type: none">1. An administrative citation and fine not less than \$200 for a first violation2. An administrative citation and fine not less than \$500/violation for subsequent violations	No
Mono County Ordinance No. 18-03 Municipal Code 7.92.070	Prohibits the sale of all flavored e-liquids, including menthol flavored e-liquids, within the unincorporated areas of the county	All flavored e-liquids (excludes all other flavored tobacco products)	Yes (only for menthol-flavored e-liquids)	Adopted: April 17, 2018 Effective: May 17, 2018	Does not include flavored tobacco products other than e-liquids	Prohibits smoking in all areas where smoking is prohibited by state or federal law, as well as county vehicles, public parks recreational areas, service areas, dining areas and public places when used for a public event Smoking may not occur closer than 20 feet outside any enclosed area and from entrances, windows, or ventilation systems * Limited flavored e-liquid sales policy is set to sunset in October 2019 and a complete ban on all flavored tobacco and menthol products will become effective Policy is not attached to a TRL	The Mono County Public Health Director or his/her designee is authorized to enforce this ordinance and to refer enforcement to the Mono County Code Compliance Division Any person or business found in violation of any provision of this Chapter shall be guilty of an infraction and subject to a fine of: <ol style="list-style-type: none">1. \$100 for the first violation2. \$200 for the second violation3. \$500 for any subsequent violation	No
Novato Ordinance No. 1615 Municipal Code 7-8	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and marijuana (excludes menthol flavored tobacco products)	No	Adopted: January 31, 2017 Effective: January 1, 2018 Enforced: January 1, 2019	Menthol tobacco products are not included in the prohibition Flavored tobacco products may be sold if the product is: <ol style="list-style-type: none">1. a package of cigars containing at least five cigars2. a single cigar for which the retail price exceeds five dollars3. pipe tobacco4. a package of chewing tobacco or snuff containing at least five units or more	Minimum pack size requirements prohibit the sale of: <ol style="list-style-type: none">1. A single cigar (unless the price of the single cigar exceeds \$5)2. A package of cigars containing fewer than five cigars, or any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer No pharmacies may sell tobacco products	Compliance will be monitored by the Department or other designated agency Any violation of this chapter within a 60-month period may result in: <ol style="list-style-type: none">1. A warning for a first violation2. The suspension of a license for 30 days for a second violation3. The suspension of a license for 90 days for a third violation4. The suspension of a license for one year for a fourth violation5. The revocation of a license for the fifth or more violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Oakland Municipal Code 5.91	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: September 19, 2017 Effective: July 1, 2018	Flavored tobacco products may still be sold in adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors under the age of 18 unless accompanied by a parent or legal guardian, and do not sell food or alcoholic beverages	An amendment allows clerks aged 18 and older to sell tobacco Tobacco retailers may not sell tobacco products at a discount less than full retail price, including honoring or redeeming coupons	The City designates the Oakland Police Department to enforce this Ordinance A violation of this Chapter at a location within any 60-month period may result in: <div><div>1.</div><div>An agreement to stop acting as a Tobacco Retailer for at least one day and a settlement payment to the City of at least \$1,000 for a first violation</div></div> <div><div>2.</div><div>An agreement to stop acting as a Tobacco Retailer for at least ten days and a settlement payment to the City of at least \$5,000 for a second violation</div></div> <div><div>3.</div><div>No new license may be issued until five years have passed from the date of the violation for a third or subsequent violation</div></div>	No
Palo Alto Ordinance No. 5418 Municipal Code 4.64.030	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: October 2, 2017 Effective: January 1, 2019	Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited	TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer	Compliance will be monitored by the City or its Designee, and any peace officer may enforce the penal provisions of the ordinance A violation of the provisions of this chapter may result in: <div><div>1.</div><div>A fine not to exceed \$100 (within a 12-month period) and a suspension up to 30 days (within any 24-month period) for a first violation</div></div> <div><div>2.</div><div>A fine not to exceed \$200 (within a 12-month period) and a suspension of the retailer permit for up to 90 days (within any 24-month period) for a second violation</div></div> <div><div>3.</div><div>A fine not to exceed \$500 (within a 12-month period) and the suspension of the retailer permit for up to one year (within any 24-month period) for each additional violation</div></div>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Portola Valley Ordinance No. 2018-425	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: September 12, 2018 Effective: October 11, 2018 January 1, 2019	None	No existing or new pharmacies may sell tobacco products	Compliance monitored will be conducted through the Environmental Health Division of San Mateo County Health Department Penalties for violation of this ordinance include: <div><div>1.</div><div>A suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation</div></div> <div><div>2.</div><div>A suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation</div></div> <div><div>3.</div><div>A suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations</div></div>	None
Richmond Ordinance No. 20-18 N.S. Municipal Code 7.106	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: July 17, 2018 Effective: April 17, 2019	None	The ordinance establishes a minimum pack-size of 20 cigars and cigarillos, except for cigars that sell for more than \$5 each, and prohibits the sale of any single little cigar or cigar Prohibits new tobacco retailers from opening within 500 feet of existing tobacco retailers and 1,000 feet from a school, park, playground or library	Compliance will be monitored by the Richmond Police Department A tobacco retail license shall be revoked if the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions in the municipal code. The enforcement agency may also enforce through administrative fines	Existing tobacco retailers not in line with the distance requirement for tobacco retailers from schools and other tobacco retailers are grandfathered in unless the business changes ownership
Sacramento Ordinance No. 2019-0012	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: April 16, 2019 Effective: January 1, 2020	None	No new tobacco retail licenses shall be issued or existing licenses renewed to authorize tobacco retailing within 1,000 feet of another tobacco retailer	Penalties for violation of ordinance within a 5 year period include: <div><div>1.</div><div>The suspension of a license for 30 days for a first violation</div></div> <div><div>2.</div><div>The suspension of a license for 90 days for a second violation</div></div> <div><div>3.</div><div>The revocation of a license for a third violation</div></div> Any person violating the provisions of this chapter shall also be liable for civil penalties of not less than \$250 or more than \$25,000 for each day the violation continues	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
San Carlos Ordinance No. 1544	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: April 8, 2019 Effective: May 8, 2019	None	No existing or new pharmacies may sell tobacco products Flavor Policy is not tied to a TRL	The City Manager or designee may enforce this chapter.	No
San Francisco Ordinance No. 140-17	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the county limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: June 27, 2017 Referendum Vote: June 5, 2018 Effective: July 20, 2018 Enforced: January 1, 2019	None	No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a school No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing tobacco retailer	Compliance will be monitored through the Director of Health or his or her designee For a violation of the ordinance, the Director of Health may suspend a Tobacco Sales Permit: <div><div>1.</div><div>For a maximum of 90 days of the first violation</div><div>2.</div><div>For a maximum of six months for a second violation that occurs within the first 12 months of the first violation</div><div>3.</div><div>For a maximum of one year for a third violation if within 12 months of the prior violation</div></div>	No
San Leandro Municipal Code 4-36	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits (including flavored products that do not contain nicotine)	All flavored tobacco products, including e-cigarettes (excluding menthol tobacco products)	No	Adopted: October 16, 2017 Effective: August 15, 2018	Menthol tobacco products are not included in the prohibition Wholesale companies are excluded from the ordinance if the tobacco products made or distributed in San Leandro are sold by retailers outside the city	No tobacco retailer shall sell, offer for sale, or exchange any <ol style="list-style-type: none">Single cigarAny pack of cigars at a price that is less than \$7.00 per five cigars (does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either five dollars or the dollar amount adopted by resolution of the City Council and adjusted from time to time, whichever is higher)	Compliance will be monitored by the San Leandro Police Department Penalties for violation of this ordinance within a 36 month period include: <ol style="list-style-type: none">A written warning and 30 days to correct violation for the first violationA \$2,500 fine for a second violationA 20 day license suspension for a third violationAfter four or more violations, the license shall be revoked and no new license may issue for the location or tobacco retailer until three years have passed from the date of revocation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
San Mateo County Ordinance No. 4799 Municipal Code 7.41	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: June 19, 2018 Effective: July 19, 2018 Enforcement: January 1, 2019	None	No existing or future pharmacies may sell tobacco products	Compliance will be monitored through the Environmental Health Division of San Mateo County Health Department Penalties for violation of ordinance include: <ol style="list-style-type: none">1. A suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation2. A suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation3. A suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations	No
San Pablo Ordinance No. 2018-006 Municipal Code 5.06	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: December 17, 2018 Effective: March 2019	None	Requires a minimum pack size for cigars (6 per pack), cigarillos (25 per pack) and little cigars (20 per pack) Requires a minimum price of \$10.00 per cigar	Penalties for violation of ordinance within any 60-month period include: <ol style="list-style-type: none">1. A suspension of the license for up to 30 days for a first violation. At the election of the tobacco retailer, the tobacco retailer may pay a penalty of \$1000 in lieu of such suspension2. A suspended of the license for one year for a second violation3. The revocation of the license for and the proprietor or proprietors who had been issued the license shall never again be issued a tobacco retailer’s license pursuant to this chapter for the third and subsequent violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Santa Clara County Ordinance No. NS-300.883	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores in the unincorporated areas of the County	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes (revised in 2016 to include menthol)	Adopted: June 2010 Effective: January 1, 2016 Revised version effective: July 1, 2017	Revised ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors, do not sell food or beverages, and post a sign outside saying that minors are prohibited	No TRLs may be issued to a retailer containing a pharmacy No TRLs may be issued to a retailer within 1,000 feet of a school (existing retailers exempt) No TRLs may be issued to a retailer located within 500 feet of another retailer (existing retailers exempt)	Compliance shall be monitored by the Department of Environmental Health Penalties for violations of this ordinance within a 12-month period include: 1. A fine not to exceed \$100 for the first violation within a 12-month period and a license suspension for up to 30 days within any 24-month period 2. A fine not to exceed \$200 for a second violation within a 12-month period and a license suspension for up to 90 days within any 24-month period 3. A fine not to exceed \$500 for each additional violation within a 12-month period and a license suspension for up to one year for each additional violation within any 24-month period	No
Santa Cruz Ordinance No. 2018-19 Municipal Code 6.07	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: November 27, 2018 Effective: June 11, 2019 Enforced: January 1, 2020	None	No license shall be issued to authorize tobacco retailing that is within six hundred feet of a high-risk alcohol outlet No license shall be issued to authorize tobacco retailing that is within that is within one thousand feet of a school *This prohibition shall not apply to a license applicant whose application seeks authorization to conduct tobacco retailing at a location where such retailing was taking place as of January 1, 2014, and has continued without interruption at that location since May 8, 2014	Every violation of this chapter determined to be an infraction is punishable by: 1. A fine not exceeding \$100 for a first violation and a license suspension for up to 60 days 2. A fine not exceeding \$200 for a second violation and the suspension of a license for 120 days 3. A fine not exceeding \$500 for a third and each additional violation and the suspension of a license for 180 days 4. The tobacco retailer’s license shall be revoked, and no new license may be issued for the location until five years have passed from the date of revocation upon the fourth and each subsequent violation	No
Saratoga Municipal Code 4-90	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: October 3, 2018	Menthol flavored tobacco products are not included in the policy	No tobacco retailer permit tobacco may be issued to a licensed pharmacy No tobacco retailers established after September 16, 2016 shall be granted a tobacco retailer license for a location which is within 500 feet of another retailer or within 1000 feet of an elementary, middle, or high school or a City park No tobacco product or paraphernalia may be sold from a vending machines	Penalties for violations of this ordinance within a 24 month period include: 1. The suspension of an existing license for up to 60 days from the date of the citation issuance for a first violation 2. The revocation of any existing license shall for up to 24months from the date of the administrative citation issuance for a second or subsequent citation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Sausalito Ordinance No. 1264	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes and menthol tobacco products	Yes	Adopted: July 2018 Effective: November 1, 2018	None	Ordinance amends city’s current “Clean Indoor Air and Health Protection” municipal code chapter to add “Tobacco Retail License Requirement and Prohibit the Sale of Flavored Tobacco Products” Smoking is prohibited in all enclosed places of employment, public places, recreational areas, common areas Smoking is prohibited in all unenclosed places of employment, recreational areas, services areas, dining areas, common areas that meet certain requirements Smoking restrictions included for multi-unit housing complexes and rental units	Anyone who violates a provision in this chapter will be deemed guilty of an infraction The City may seek the revocation or suspension of a tobacco retailer’s license	No
Sonoma Ordinance No. 04-2015 Municipal Code 7.25	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excluding menthol flavored tobacco products)	No	Adopted: June 1, 2015 Effective: September 1, 2015 Enforced: September 1, 2015	Menthol flavored tobacco products are not included in the policy Flavored tobacco products may still be sold if <ol style="list-style-type: none">the tobacco product consists of a package of cigars that contains at least five cigarsa single cigar for which the retail price exceeds \$5the tobacco product consists of pipe tobaccothe package of chewing tobacco or snuff contains at least five units or more	It is a violation to sell any single cigar (unless the retail price of the cigar exceeds \$5) and a package of cigars containing fewer than five cigars or the number of cigars contained in the manufacture’s original consumer packaging Limits the eligibility of retailers permitted to apply for a tobacco retail license	Decoy enforcement operations conducted annually by Sonoma Police Department Penalties for violations of this ordinance within a 60-month period include: <ol style="list-style-type: none">The suspension of a license for 30 days for a first violationThe suspension of a license for 90 days for a second violationThe suspension of a license for one year for a third violationThe revocation of a license for a fourth or subsequent violations Violations of this chapter are subject to a civil action punishable by a fine not less than \$250 and not exceeding \$1,000 per violation	No
West Hollywood Ordinance No. 16-991 Municipal Code 5.114	Prohibits the sale of all tobacco products, including flavored tobacco products and menthol flavored tobacco products, within 600 feet of a youth-populated area (school, youth center, child-care facility, etc.)	All tobacco products	Yes	Adopted: October 2016 Effective: November 2016	Tobacco retailers operating prior to May 1, 2016, adult-only facilities, and hotels that sell tobacco products as part of incidental sales on the premises may still sell all tobacco products regardless of location	Policy includes a ban on all tobacco products, not just flavored tobacco products No new tobacco retailer licenses may be issued for tobacco retailers within 600 feet of a school No new licenses may be issued for tobacco product shops within 1000 feet of a youth-populated area Little cigars must be sold in pack size of at least 20	Any member of the West Hollywood Code Compliance Division, Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees are authorized to monitor and enforce the provision	Yes, existing retailers operating prior to May 1, 2016 are grandfathered regardless of any change or transfer of ownership of the business

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Windsor Ordinance No. 2018-323 Municipal Code 3-11-115	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including e-cigarettes (excludes menthol tobacco products)	No	Adopted: March 7, 2018 Effective: April 6, 2018 Enforcement: July 30, 2018	Menthol flavored tobacco products are not included in the policy Tobacco retailers may sell flavored tobacco products if: <ol style="list-style-type: none">1. The tobacco product consists of a package of cigars containing at least five cigars or little cigars2. The tobacco product is a single cigar for which the retail price exceeds \$5.003. The tobacco product consists of pipe tobacco4. The package of chewing tobacco or snuff contains at least five units	<p>No tobacco retailer shall sell to a consumer:</p> <ol style="list-style-type: none">1. A package of cigarettes at a price that is less than \$7.00 per package of twenty 20 cigarettes, including all applicable taxes and fees2. A package of little cigars that is less than \$7.00 per package of five little cigars, including all applicable taxes and fees3. A package of cigars that is less than \$7.00 per five cigars, including all applicable taxes and fee.4. A package of chewing tobacco or snuff that is less than \$7.00 per package of five units <p>It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none">1. Any single cigar or little cigar, whether or not packaged for individual sale;2. Any number of cigars or little cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;3. Any package of cigars or little cigars containing fewer than five cigars.4. Any package of chewing tobacco or snuff containing fewer than five units. <p>*This section shall not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5.00</p> <p>No license may be issued to authorize tobacco retailing within 1,000 feet of a school (unless the retailer was operating before the date of the ordinance codified in this chapter)</p> <p>Limits the eligibility of retailers permitted to apply for a tobacco retail license</p>	<p>The policy will be enforced by the County of Sonoma Department of Health Services</p> <p>Penalties for violations of this ordinance within a 60-month period include:</p> <ol style="list-style-type: none">1. The suspension of a license for 30 days for a first violation2. The suspension of a license for 90 days for a second violation3. The suspension of a license for one year for a third violation4. 4. The revocation of a license for four or more violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Yolo County Ordinance No. 1474 Municipal Code 6-15.10	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the County	All flavored tobacco products, including e-cigarettes and menthol flavored tobacco products	Yes	Adopted: October 2016 Effective: May 1, 2017	None	Only existing tobacco retailers are eligible for a tobacco license	<p>Yolo County District Attorney is authorized to perform stings for any violations of the TRL</p> <p>Penalties for violations of this ordinance within a 60-month period include:</p> <ol style="list-style-type: none">1. A fine not less than \$250 and not exceeding \$1,000 and the suspension of a license for no less than 30 days for a first violation2. A fine not less than \$1,000 and not exceeding \$2,500 and the suspension of a license for no less than 90 days for a second violation3. A fine not less than \$2,500 and not exceeding \$5,000 and the suspension of a license for no less than five years for a third or subsequent violation <p>In addition to any other penalty authorized by law, a license shall be revoked if any court of competent jurisdiction determines, or if the Director finds after the Tobacco Retailer or Permittee is afforded notice and an opportunity to be heard, that the Tobacco Retailer or Permittee, or any of the Tobacco Retailer's or Permittee's officers, agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter</p>	No

Chapter 5.78
TOBACCO RETAILERS Revised 6/19 Revised 7/19

Sections:

- 5.78.010 Title.** Revised 6/19
- 5.78.020 Purpose.** Revised 6/19
- 5.78.030 Definitions.** Revised 6/19 Revised 7/19
- 5.78.040 Tobacco retailer license required.** Revised 6/19
- 5.78.050 Limits on eligibility and location.** Revised 6/19
- 5.78.060 License application procedure.** Revised 6/19
- 5.78.070 Issuance of tobacco retailer license.** Revised 6/19
- 5.78.080 Term and renewal.** Revised 6/19
- 5.78.090 License nontransferable.** Revised 6/19
- 5.78.100 Operating requirements.** Revised 6/19 Revised 7/19
- 5.78.110 Compliance monitoring and enforcement.** Revised 6/19
- 5.78.120 Violations.** Revised 6/19
- 5.78.130 Tobacco retailing without a valid license.** Revised 6/19
- 5.78.140 New license after revocation.** Revised 6/19
- 5.78.150 Implementing rules and regulations.** Revised 6/19

5.78.010 Title. Revised 6/19

This chapter shall be known as the "Tobacco Retailer Ordinance" of the city of Hermosa Beach. (Ord. 19-1389 §1 (part), 2019)

5.78.020 Purpose. Revised 6/19

In enacting this chapter, it is the intent of the city council to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those involving the sale or distribution of tobacco and nicotine products to youth. (Ord. 19-1389 §1 (part), 2019)

5.78.030 Definitions. Revised 6/19 Revised 7/19

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter, is not an arm's length transaction.

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

"Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.

"Electronic smoking device" has the same meaning as the term is defined in Section 8.40.010.

"Enforcement official" means any member of the Hermosa Beach Code enforcement department, the Hermosa Beach police department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County sheriff's department, or their designees.

"Flavored tobacco product" means any tobacco product that imparts a characterizing flavor.

"Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three (3) pounds per thousand. "Little cigar" includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "little cigar."

"Package" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

"Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

"Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the state of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

"Restaurant" means a place where people pay to sit and eat meals that are cooked and served on the premises.

"Restaurant" does not include a deli where prepared foods are ordered, purchased, and picked up by a person to be eaten outside or off the premises without service.

"Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

"Self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or retailer's agent or employee. A vending machine is a form of self-service display.

"Smoking" means the combustion, electrical ignition or vaporization and/or inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation that facilitates the release of gases, particles, or vapors into the air.

"Tobacco paraphernalia" means any item designed for the consumption, use, or preparation of tobacco products.

"Tobacco product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and
2. Any electronic smoking device, with or without nicotine.
3. Notwithstanding any provision of subsections (1), (2) and (3) of this definition to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

"Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ord. 19-1392 §1, 2019; Ord. 19-1389 §1 (part), 2019)

5.78.040 Tobacco retailer license required. Revised 6/19

It shall be unlawful for any person to engage in tobacco retailing in the city without first obtaining and maintaining a valid tobacco retailer license pursuant to the provisions of this chapter for each location at which that activity is to occur. (Ord. 19-1389 §1 (part), 2019)

5.78.050 Limits on eligibility and location. Revised 6/19

A. No license may be issued under this chapter to authorize tobacco retailing at other than a fixed location, such as on foot or from vehicles.

B. No license may be issued under this chapter to authorize tobacco retailing at a temporary or recurring temporary event, such as farmers' markets, special events, or mobile carts.

C. No license may be issued under this chapter to authorize tobacco retailing at any location that violates any provision of the Hermosa Beach Zoning Ordinance.

D. Pharmacies. No license may be issued to authorize tobacco retailing in a pharmacy.

E. Schools and Youth-Populated Areas. Tobacco retailing is prohibited near schools and areas with youth populations as follows:

1. No license may issue to authorize tobacco retailing within five hundred (500) feet of a youth-populated area as measured by a straight line from the nearest point of the property line of the parcel on which the youth-populated area is located to the nearest point of the property line of the parcel on which the applicant's business is located.

For the purposes of this subsection, a "youth-populated area" means a parcel in the city that is occupied by:

- a. A private or public kindergarten, elementary, middle, junior high, or high school;
- b. A library open to the public;
- c. A playground or sandbox area open to the public, as defined by California Health and Safety Code Section 104495; or
- d. A youth center, defined as a facility where children, ages six (6) to seventeen (17), inclusive, come together for programs and activities.

F. Premises Furnishing Alcohol and/or Food for On-Site Consumption. No license may issue to authorize tobacco retailing at any of the following locations: (1) a place that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); or (2) a restaurant, as the term is defined in this chapter.

G. Notwithstanding the foregoing, a tobacco retailer operating lawfully on the effective date of the ordinance codified in this chapter that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as: (1) the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); (2) the tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days; (3) the tobacco retailer does not substantially change the business premises or business operation; and (4) the tobacco retailer retains the right to operate under other applicable laws, including without limitation the Zoning Ordinance, building codes, and business license tax ordinance, (Ord. 19-1389 §1 (part), 2019)

5.78.060 License application procedure. Revised 6/19

A. Any person seeking a license pursuant to this chapter shall submit a completed application, on a city-approved form, to the finance department.

B. The application for a license under this chapter shall be submitted in the name of each and every business owner proposing to conduct retail tobacco sales for each location at which retail tobacco sales are being proposed and shall be signed by each business owner or an authorized agent thereof.

C. Said application shall contain the following information:

1. The name, address, and telephone number of each business owner seeking a license.

2. The business name, address, and telephone number of the single, fixed location for which a license is sought.

3. A single name and mailing address of an agent authorized by each business owner to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter. If an authorized agent is not supplied, each business owner shall be understood to consent to the provision of notice at the business address specified in subsection (C)(2) of this section.

4. Proof that the location for which a tobacco retailer license is sought has been issued a valid state tobacco retailer's license by the California Department of Tax and Fee Administration.

5. Whether any business owner or any agent of the business owner was previously issued a license pursuant to this chapter which was at any time suspended or revoked, and, if so, the dates of the suspension period or the date of the revocation.

6. Whether any business owner or any agent of the business owner has been determined to have violated any provision of this chapter or any state or federal tobacco-related law, and, if so, the dates of all such violations within the preceding five (5) years.

7. Such other information as the finance department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this chapter.

D. The city council may establish by resolution the amount of an application fee for the tobacco retailer license in an amount not to exceed the city's reasonable cost of providing the services required by this chapter, in which case the city shall accept no application unless accompanied by payment of such fee.

E. An applicant or agent thereof shall inform the finance department in writing of any change in the information submitted on an application for a tobacco retailer registration within ten (10) business days of a change. (Ord. 19-1389 §1 (part), 2019)

5.78.070 Issuance of tobacco retailer license. Revised 6/19

A. Upon the receipt of a completed application for a tobacco retailer license and the corresponding application fee, if any, the finance department, with consultation of community development department for location requirements, shall issue a license unless substantial evidence demonstrates that one (1) or more of the following bases for denial exists:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

2. The application seeks authorization for tobacco retailing at a location prohibited by Section 5.78.050.

3. The applicant has had a license issued pursuant to this chapter revoked within the preceding twelve (12) months.

4. The application seeks authorization for tobacco retailing that is otherwise prohibited pursuant to this chapter, that is unlawful pursuant to this Code (including without limitation the Hermosa Beach Zoning Ordinance and business license regulations), or that is unlawful pursuant to any other law.

5. The applicant is indebted to the city for any unpaid fee or fine.

B. Any applicant aggrieved by a decision denying a license pursuant to this chapter may contest the decision by appealing the decision to the city council by filing with the city manager a written notice of appeal within ten (10) business days of the date of receipt of the license denial. Upon receipt of a timely, written request for an appeal, the city clerk shall set a hearing to occur within forty-five (45) days before the council or its designated hearing officer and shall provide written notice of same by first class mail to the appellant. The city council shall sustain or overrule with conditions, the denial or intended revocation upon written findings within thirty (30) days of the conclusion of the hearing. (Ord. 19-1389 §1 (part), 2019)

5.78.080 Term and renewal. Revised 6/19

A. A tobacco retailer license issued pursuant to this chapter shall be valid for one (1) year after the date of issuance, unless it is revoked earlier in accordance with the provisions of this chapter. The expiration date of each tobacco retailer license shall be shown on the license itself and each tobacco retailer license shall expire at midnight on the expiration date.

B. Each tobacco retailer who seeks to renew a license issued pursuant to this chapter shall submit a renewal application on a city-approved form and tender any applicable fees to the finance department no later than thirty (30) calendar days prior to the expiration of the license. Any license issued pursuant to this chapter that is not timely renewed shall expire and become null and void at the end of its term.

C. An application to renew a license issued pursuant to this chapter may be denied by the finance department upon the grounds set forth in Section 5.78.070. (Ord. 19-1389 §1 (part), 2019)

5.78.090 License nontransferable. Revised 6/19

A. No person shall operate under a name, or conduct business under a designation, not specified on the license.

B. A license issued pursuant to this chapter may not be transferred from one (1) person to another or from one (1) location to another. A change in business owner, business name, or location shall render the license null and void, and shall require a new license to be obtained in accordance with the provisions of this chapter. (Ord. 19-1389 §1 (part), 2019)

5.78.100 Operating requirements. Revised 6/19 Revised 7/19

The following operating requirements shall be deemed conditions of any tobacco retailer license issued pursuant to the provisions of this chapter, and failure to comply with any such requirement shall be grounds for suspension, revocation, or the imposition of administrative fines in accordance with Section 5.78.120.

A. Posting of License. Each license issued pursuant to this chapter shall be prominently displayed in a publicly visible location at the permitted location.

B. Retail Sales to Persons under Twenty-One (21) Prohibited. No person engaged in tobacco retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any tobacco product to any person who is under the legal age under state law to purchase and possess tobacco products, which is age twenty-one (21) (or eighteen (18) if active military).

C. Positive Identification Required. No tobacco retailer shall sell or transfer a tobacco product to any person who appears to be under the age of thirty (30) years old without first examining the identification of that person to confirm that person is at least the minimum age under state law to purchase and possess the product. The tobacco retailer or agent thereof shall refuse the sale or transfer of any tobacco product to any person who appears to be under the age of thirty (30) years old, who fails to present valid, legal photo identification prior to the sale or transfer.

D. Minimum Age for Persons Selling Tobacco. No person who is younger than twenty-one (21) shall engage in tobacco retailing.

E. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.

F. Electronic Smoking Device.

1. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any electronic smoking device. The prohibition in the preceding sentence shall not apply to a retailer that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the tobacco product is sold.

2. There shall be a rebuttable presumption that a tobacco retailer in possession of four (4) or more electronic smoking devices, including but not limited to individual electronic smoking devices, packages of electronic smoking devices, or any combination thereof, possesses such electronic smoking devices with intent to sell or offer for sale.

G. Flavored Tobacco Products.

1. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.

2. There shall be a rebuttable presumption that a tobacco retailer in possession of four (4) or more flavored tobacco products, including but not limited to individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

3. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has done the following:

- a. Made a public statement or claim that the tobacco product imparts a characterizing flavor;
- b. Used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or
- c. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

H. Packaging and Labeling. No tobacco retailer shall sell any tobacco product to any consumer unless such product: (1) is sold in the original manufacturer's package intended for sale to consumers; and (2) conforms to all applicable federal labeling requirements.

I. Minimum Package Size for Little Cigars. No tobacco retailer shall sell to a consumer any little cigar unless it is sold in a package of at least twenty (20) little cigars.

J. False and Misleading Advertising Prohibited. A tobacco retailer who does not have a valid license pursuant to this chapter or whose license has been suspended or revoked shall not display any item or advertisement relating to tobacco products that promotes the sale or distribution of such products from the premises or that could lead a reasonable consumer to believe that tobacco products can be obtained at that location. Such display or advertisement in violation of this provision shall constitute tobacco retailing without a valid license. (Ord. 19-1392 §2, 2019; Ord. 19-1389 §1 (part), 2019)

5.78.110 Compliance monitoring and enforcement. Revised 6/19

A. Compliance checks shall be conducted so as to allow enforcement officials to determine, at a minimum, if a tobacco retailer is complying with laws regulating youth access to tobacco. The chief of police may also conduct compliance checks to determine compliance with other laws applicable to tobacco retailing.

B. During business hours, enforcement officials shall have the right to enter any place of business for which a license is required by this chapter for the purpose of making reasonable inspections to observe and enforce compliance with the provisions of this chapter and any other applicable regulations, laws, and statutes.

C. The Hermosa Beach police department (or designee thereof) may promulgate and adopt policies, procedures, and guidelines for the participation of persons under the minimum legal age for tobacco purchases in compliance checks pursuant to this chapter ("youth decoys").

D. Enforcement officials shall inspect each tobacco retailer at least one (1) time per every twelve (12) month period. Nothing in this subsection shall create a right of action in any licensee or other person against the city or its agents. (Ord. 19-1389 §1 (part), 2019)

5.78.120 Violations. Revised 6/19

A. Administrative Fine. In addition to any other penalty authorized by law, violations of this chapter are subject to the administrative citations and penalties provisions in Chapter 1.10.

B. Suspension or Revocation.

1. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if the city finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that any of the following has occurred:

- a. The licensee or his/her agent or employee has violated any provision of this chapter;

- b. The licensee or his/her agent or employee has continued to operate as a tobacco retailer after a license issued pursuant to this chapter has been suspended; or
- c. The retailer violates any provision of this chapter twice within any thirty-six (36) month period.

2. Notwithstanding the foregoing, a license may be revoked if it is determined that one (1) or more grounds for denial of a license under Section 5.78.070 existed at the time the application was made or at any time before the license was issued. No administrative fine shall accompany a revocation of a wrongly issued license.

3. Any applicant aggrieved by a decision revoking or suspending a license pursuant to this chapter may contest the decision in the same manner as a challenge of an administrative citation, pursuant to the procedure set forth in Section 5.78.070(B), (Ord. 19-1389 §1 (part), 2019)

5.78.130 Tobacco retailing without a valid license. Revised 6/19

In addition to any other penalty authorized by law, if the city based on a preponderance of evidence, after notice and an opportunity to be heard, determines that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

A. After a first violation of this section at a location, no new license may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until thirty (30) days have passed from the date of the violation.

B. After a second violation of this section at a location within any thirty-six (36) month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until ninety (90) days have passed from the date of the violation.

C. After of a third or subsequent violation of this section at a location within any thirty-six (36) month period, no new license may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until three (3) years have passed from the date of the violation. (Ord. 19-1389 §1 (part), 2019)

5.78.140 New license after revocation. Revised 6/19

Notwithstanding any other provision of this chapter, no tobacco retailer's license shall be issued to a tobacco retailer (or business owner thereof) whose license has previously been revoked pursuant to this chapter for a period of twelve (12) months from the date of the prior revocation, unless ownership of the business at the location has been transferred in an arm's length transaction. (Ord. 19-1389 §1 (part), 2019)

5.78.150 Implementing rules and regulations. Revised 6/19

The city manager is hereby authorized to make and promulgate any rules and regulations necessary to implement the requirements of this chapter. The rules and regulations shall be in addition to the requirements set forth in this chapter. In the event of a conflict between a provision set forth in this chapter and a rule or regulation promulgated by the city manager pursuant to this section, the more stringent or restrictive requirement or condition shall apply. (Ord. 19-1389 §1 (part), 2019)

Web Version

ORDINANCE NO. 2019-0012

Adopted by the Sacramento City Council

April 16, 2019

**An Ordinance Amending Various Sections of Chapter 5.138 of the
Sacramento City Code, Relating to Tobacco Retailers**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 5.138.010 of the Sacramento City Code is amended to read as follows:

5.138.010 Legislative findings.

- A. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to persons under 21 years of age except active duty military personnel who are 18 years of age or older (California Penal Code § 308).
- B. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age (California Business & Professions Code § 22956) and provides procedures for using persons under 21 years of age to conduct onsite compliance checks of tobacco retailers (California Business & Professions Code § 22952).
- C. State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 21 years of age is illegal (California Business & Professions Code § 22952, California Penal Code § 308).
- D. State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (California Business & Professions Code § 22962).
- E. State law prohibits the sale of “bidis” (a type of hand-rolled filterless cigarette) except at those businesses that prohibit the presence of minors (California Penal Code § 308.1).
- F. State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than six-tenths of an ounce of tobacco (California Penal Code § 308.3).

- G. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (California Education Code § 48901(a)).
- H. Sacramento City Code section 5.140.040 prohibits the sale or distribution of tobacco products from vending machines.
- I. From 2013 to 2015, an estimated 15% of ninth and eleventh grade students in California reported using electronic smoking devices.
- J. Over 9% of high school students in California reported buying their own electronic cigarette from a store.
- K. In 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 80% tobacco retailers near schools sold flavored non-cigarette tobacco products.
- L. Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term addiction.
- M. Between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (18 to 25 years of age) and adults (over 26 years of age).
- N. Unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and, in some cases, increased among youth.
- O. Flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation.
- P. The density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day.
- Q. Adults who smoke have a harder time quitting when density of tobacco retailers is high.
- R. Policies to reduce tobacco retailer density have been shown to be effective and may reduce or eliminate inequities in the location and distribution of tobacco retailers.
- S. Neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, electronic smoking devices, or the solutions used in these devices.

- T. The city has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by persons under 21 years of age; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to persons under 21 years of age; and in protecting youth and underserved populations from the harms of tobacco use.
- U. California courts in Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, Bravo Vending v. City of Rancho Mirage (1993) 16 Cal.App.4th 383, and Prime Gas v. City of Sacramento (2010) 184 Cal.App.4th 697, have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.
- V. State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (California Business & Professions Code § 22971.3).
- W. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the city to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

SECTION 2.

Section 5.138.030 of the Sacramento City Code is amended to read as follows:

5.138.030 Definitions.

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

“Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be an “arm’s length transaction.”

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.

“City manager” means the city manager of the city or his or her designee.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor.

“Itinerant tobacco retailing” means engaging in tobacco retailing at other than a fixed location.

“License” means a tobacco retailer license issued by the city pursuant to this chapter.

“Licensee” means any proprietor holding a license issued by the city pursuant to this chapter.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

“Tobacco product” means:

1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff;
2. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah; and
3. Any component, part, or accessory of a tobacco product, whether or not sold separately.
4. “Tobacco product” does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

“Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of a tobacco product.

“Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailing” means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

SECTION 3.

Section 5.138.040 of the Sacramento City Code is amended to read as follows:

5.138.040 Requirement for tobacco retailer license.

- A. It shall be unlawful for any person to act as a tobacco retailer without a valid license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.
- B. No license shall issue, and no existing license shall be renewed, to authorize tobacco retailing within 1,000 feet of a tobacco retailer already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.
- C. Nothing in this chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the city identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by California Labor Code section 6404.5.

SECTION 4.

Section 5.138.060 of the Sacramento City Code is amended to read as follows:

5.138.060 Issuance and renewal of license.

- A. Upon the receipt of an application for a license and the applicable license fee, the city manager shall issue a license unless:
 - 1. The application is incomplete or inaccurate;
 - 2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:
 - a. The applicant provides the city with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction;
 - b. It has been more than five years since the most recent license for that location was revoked;

3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law; or
 4. The city manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding 30-day period.
- B. A license is valid for one year and must be renewed not later than 30 days prior to the expiration of the license, but no earlier than 60 days prior to the expiration of the license. Unless revoked on an earlier date, all licenses expire one year after the date of issuance. A license may be renewed for additional one-year periods by submitting an application to the city manager and payment of the applicable license fee; provided, however, a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. The application and license fee shall be submitted at least 30 days, but not more than 60 days, prior to the expiration of the current valid license. The applicant shall follow all of the procedures and provide all of the information required by section 5.138.050. The city manager shall process the application according to the provisions of this section.
- C. Notwithstanding section 5.138.040B, a tobacco retailer operating lawfully on the date this subsection C is effective that would otherwise be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as all of the following conditions are met:
1. The license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
 2. The tobacco retailer is not closed for business or has not ceased tobacco retailing for more than 60 consecutive days;
 3. The tobacco retailer does not substantially change the business premises or business operation for the purpose of increasing the sale or display of tobacco products; and
 4. The tobacco retailer retains the right to operate under all other applicable laws.
- D. When the city manager does not approve a license or renewal of a license, the city manager shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the California Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

SECTION 5.

Section 5.138.100 of the Sacramento City Code is amended to read as follows:

5.138.100 License violation.

- A. It is a violation of a license for a licensee or his or her agents or employees to sell or offer for sale any flavored tobacco product. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or its agents or employees has made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, or images on the product's labeling or packaging that are used to expressly or impliedly communicate that a tobacco product has a characterizing flavor.
- B. It is a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

SECTION 6.

Section 5.138.110 of the Sacramento City Code is amended to read as follows:

5.138.110 Suspension or revocation of license.

- A. In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section, if the city manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this chapter; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.
 - 1. Upon a finding by the city manager of a first license violation within any five-year period, the license shall be suspended for 30 days.
 - 2. Upon a finding by the city manager of a second license violation within any five-year period, the license shall be suspended for 90 days.
 - 3. Upon a finding by the city manager of a third license violation within any five-year period, the license shall be revoked.
- B. Notwithstanding section 5.138.110A, a license shall be revoked if the city manager finds that either one or both of the following conditions exist:
 - 1. One or more of the bases for denial of a license under section 5.138.060A existed at the time application was made or at any time before the license issued.
 - 2. The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

- C. In the event the city manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five days of the suspension or revocation in the manner prescribed in section 5.138.060D. The notice shall contain:
1. A brief statement of the specific grounds for such suspension or revocation;
 2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of section 5.138.120, to the city manager, within 10 calendar days of the date of service of the notice; and
 3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.
- D. A licensee for whom a license suspension is in effect, or whose license has been revoked, must cease all tobacco retailing and remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended or revoked license.

SECTION 7.

Section 5.138.120 of the Sacramento City Code is amended to read as follows:

5.138.120 Denial, suspension and revocation—Appeals.

- A. Any applicant or licensee aggrieved by the decision of the city manager in denying, suspending, or revoking a license, may appeal the decision by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, or revocation. The appeal must be accompanied by an appeal fee set by resolution of the city council. The written appeal shall contain:
1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
 2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
 3. The signatures of all parties named as appellants and their official mailing addresses; and
 4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- B. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

- C. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:
1. If the appeal is received by the city manager not later than 15 days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.
 2. If the appeal is received by the city manager on a date less than 15 days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.
- D. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
- E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion of the notice and order.
- F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
- G. Any suspension or revocation of a license shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section.

SECTION 8.

Section 5.138.140 of the Sacramento City Code is amended to read as follows:

5.138.140 Conduct of hearing.

- A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subdivisions (a), (b) and (c), shall apply to hearings under this chapter.
- B. Oral evidence shall be taken only upon oath or affirmation.
- C. Irrelevant and unduly repetitious evidence shall be excluded.
- D. Each party shall have these rights, among others:
1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 2. To introduce documentary and physical evidence;

3. To cross-examine opposing witnesses on any matter relevant to the issues on the hearing;
 4. To impeach any witness regardless of which party first called the witness to testify;
 5. To rebut the evidence presented against the party; and
 6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.
- E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

SECTION 9.

Section 5.138.150 of the Sacramento City Code is amended to read as follows:

5.138.150 Form and contents of decision—Finality of decision.

- A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the license, the hearing examiner shall affirm the city manager's decision to deny, suspend, or revoke the license. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.
- B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

SECTION 10.

Section 5.138.160 of the Sacramento City Code is amended to read as follows:

5.138.160 Enforcement.

- A. In addition to any other remedy, any person violating any provision of this chapter shall be guilty of a misdemeanor for each day such violation continues.
- B. Any violation of this chapter may be remedied by a civil action brought by the city attorney. The city may recover reasonable attorneys' fees and costs of suit in any civil action brought by the city attorney to remedy any violation of this chapter.

- C. Any person violating the provisions of this chapter shall also be liable for civil penalties of not less \$250 or more than \$25,000 for each day the violation continues.
- D. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the city.
- E. In addition to criminal sanctions, civil penalties as provided in this section, and other remedies set forth in this chapter, administrative penalties may be imposed pursuant to chapter 1.28 against any person violating any provision of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to chapter 1.28.

SECTION 11.

The effective date of this ordinance is January 1, 2020.

Adopted by the City of Sacramento City Council on April 16, 2019, by the following vote:

Ayes: Members Ashby, Guerra, Hansen, Harris, Jennings, Schenirer and
Mayor Steinberg

Noes: Member Carr

Abstain: None

Absent: Members Warren

Attest:

Mindy Cuppy Digitally signed by Mindy Cuppy
Date: 2019.04.29 12:10:02
-07'00'

Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

Passed for Publication: March 12, 2019

Published: March 15, 2019

Effective: January 1, 2020



ChangeLab Solutions

Law & policy innovation for the common good.

Item 9.

Model California Ordinance

Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products

Updated June 2017
(Originally published January 2014)

Developed by ChangeLab Solutions

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Table of Contents

1. Introduction and Report.....	3
Background	3
Menthol Cigarettes.....	4
Other Flavored Tobacco Products	5
Considerations When Regulating Flavored Tobacco Products	7
Legal Issues.....	8
i. Federal Preemption	8
ii. First Amendment.....	9
Conclusion.....	10
 2. Model Ordinance Provisions	 13
 3. Appendix A: Findings.	 22

Introduction and Report

This Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products (Model Ordinance) is one potential policy intervention to reduce the consumption of tobacco products. It is based on ChangeLab Solutions' legal research and analysis, as well as the research and evidence base regarding consumption of tobacco products and the rising popularity of flavored tobacco products. The Model Ordinance should complement other policy and programmatic efforts to reduce tobacco use.

This version of the Model Ordinance (revised in June 2017) includes the following changes from the previous version: (1) It prohibits the sale of flavored cigarettes (including menthol cigarettes), and (2) it provides an optional provision to grandfather certain businesses, which exempts those businesses from complying with the flavored tobacco prohibition for a limited period of time.

The Introduction and Report section summarizes our nonpartisan analysis of the health, equity, and policy issues related to the use and sale of menthol cigarettes and other flavored tobacco products, and it outlines why it is important to restrict the sale of such products. It should be distributed broadly to the public and local groups to help people understand the relevant data and the purpose of developing a policy restricting the sale of menthol cigarettes and other flavored tobacco products.

This Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data. It allows readers to draw their own conclusions about the merits of this Model Ordinance.

The Model Ordinance offers a variety of options. In some instances, blanks (e.g., [____]) prompt you to customize the language to fit your community's needs. In other cases, the ordinance offers you a choice of options (e.g., [choice one / choice two]). Some of the options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community's existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

Background

In 2009, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) banned the manufacture of flavored cigarettes. However, the law contains an exception for menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco. Moreover, California doesn't have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth.¹ These products also pose significant barriers to achieving health equity. Thanks to tobacco companies’ marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.

This Model Ordinance restricts the sale of all flavored tobacco products, including the following:

- (1) Flavored cigarettes already prohibited by the Tobacco Control Act;
- (2) Menthol cigarettes;
- (3) Flavored other tobacco products (OTPs), such as cigars, little cigars, cigarillos, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices (ESDs), and the solutions used in ESDs; and
- (4) Flavored components, parts, and accessories, such as flavored rolling papers, filters, and blunt wraps.

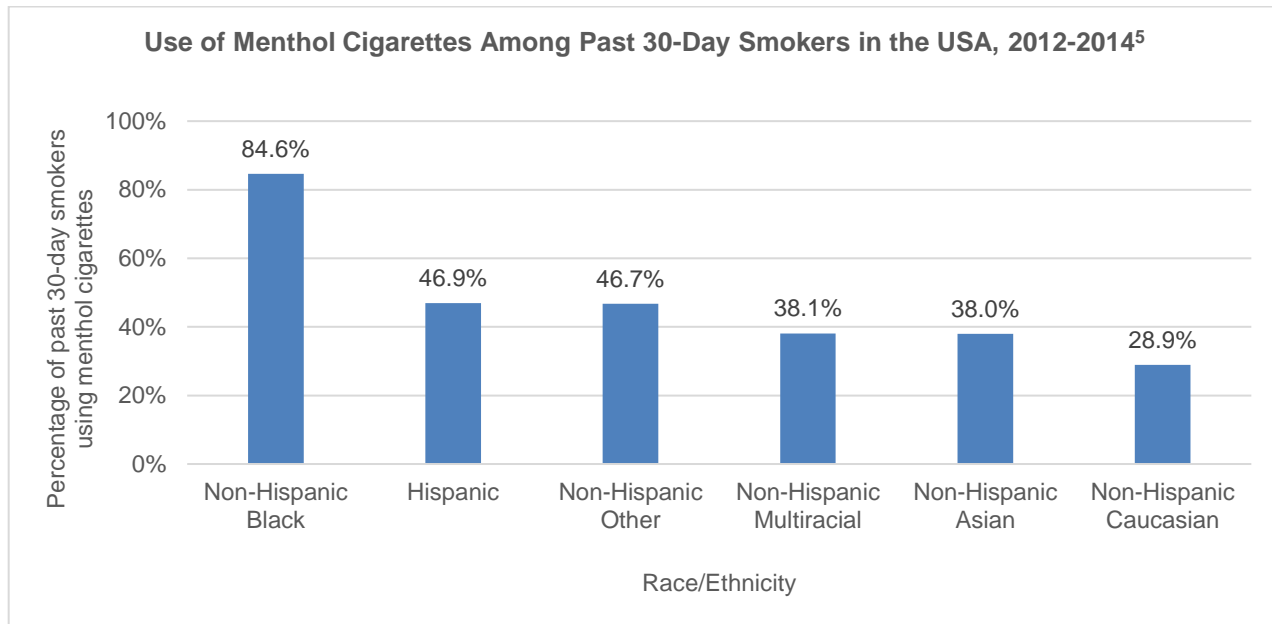
Menthol Cigarettes

For decades, tobacco companies have added menthol—a crisp, minty flavoring—to their products. By adding menthol to cigarettes, tobacco companies mask the natural harshness and taste of tobacco. The minty flavor makes tobacco products more mild, and therefore easier to use and more appealing to youth and new users.^{2,3}

Tobacco companies have manipulated the amount of menthol in cigarettes to encourage many people—particularly youth and populations targeted by the tobacco industry—to start and continue using tobacco.^{4,1} Smoking menthol cigarettes is associated with increased use of cigars and smokeless tobacco products,⁵ and it reduces the likelihood of successfully quitting smoking.^{3,6} Indeed, despite decreases in overall cigarette use in recent years, the proportion of cigarette smokers who use menthol cigarettes continues to rise.⁵ In 2014, more youth smokers used menthol cigarettes than non-mentholated cigarettes.⁵ Moreover, a 2017 study reported an increase in menthol cigarette use among youth cigarette smokers following the 2009 federal ban on flavored non-menthol cigarettes.⁷

Scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the US Food and Drug Administration (FDA) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire US population, and especially among youth, African Americans,³ and possibly Hispanic and Latino populations.⁶ Indeed, these groups bear the burden of menthol cigarette use: 84.6% of non-Hispanic Black smokers in the US reported smoking menthol cigarettes in the last month, in addition to 46.9% of Hispanic smokers, 38.1% of non-Hispanic multiracial smokers, 38% of non-Hispanic Asian smokers, and 46.7% of other smokers with non-Hispanic, non-Caucasian racial/ethnic backgrounds.⁵ Members of LGBTQ communities and young

adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use.^{8,9}



Tobacco companies have helped create and exacerbate these disparities. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to communities of color and youth.^{10,11} One analysis of cigarette advertising, promotions, and pack prices at stores near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of menthol cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.”¹² There was no such association found for non-mentholated cigarettes.¹² Similarly, a New York study found that promotions that reduce the price of menthol cigarettes are disproportionately targeted to youth.¹³

Other Flavored Tobacco Products

In addition to selling menthol cigarettes, tobacco companies have developed flavored OTPs that have the same youth-friendly characteristics as the banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.¹⁴ In fact, cigars follow only ESDs and cigarettes as the third most common form of tobacco used by youth.¹⁵ Smokeless tobacco products, including chewing tobacco, snuff, and snus, come in flavors such as mint, wintergreen, berry, cherry, and apple¹⁶ to mask the harsh taste of tobacco.^{14,17} Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.¹⁸ Nicotine solutions, also known as e-liquids and which are consumed via ESDs such as electronic

cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.¹⁹

Consumption of flavored tobacco products has grown in recent years. From 1995 to 2008, sales of little cigars increased by 316%,²⁰ and in 2014, “flavored cigars accounted for more than half of all cigar sales (53.3%).”²¹ A 2009-2010 survey found that 42.9% of adult cigar smokers used flavored cigars,² and a 2014 survey found that 66.4% of people who smoked little cigars or cigarillos used flavored products.²² In 2014, nearly two-thirds of US middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored ESD within the past 30 days.²³ Moreover, a 2013-2014 survey found higher rates of flavored cigar use among vulnerable populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”²⁴

Like menthol, flavorings such as chocolate or apple help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.² In fact, a 2013-2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”^{25,26} Policy interventions that target youth tobacco use are particularly critical because most individuals start using tobacco as minors or young adults.²⁷ In California, 64% of smokers start smoking by age 18, and 96% start smoking by age 26.²⁸ Compared with individuals who start smoking later in life, individuals who start smoking at a young age are at increased risk for severe addiction to nicotine.¹⁴

OTPs pose a threat to public health for several reasons. One major concern is that many users, especially young people, assume that OTPs do not pose significant health risks. Research shows that cigar smokers have misconceptions about the safety of cigars; for example, they often believe cigars are less harmful and less addictive than cigarettes.²⁰ Studies have found that young people believe smoking hookah is safer than smoking cigarettes, and incorrectly believe that hookah smoke is less toxic than cigarette smoke.^{29,30} Moreover, 58.8% of 12th-grade students report that they *don't* believe regular use of smokeless tobacco presents a great risk of harm.²⁷ The misperception among many young people that OTPs do not present significant health risks, coupled with the fact that many OTPs are flavored, may contribute to increased use of these products among young people.

Despite these misconceptions, the FDA has stated that “[a]ll tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products.”³¹ Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophagus cancers.³² Hookah use has been associated with lung cancer, respiratory illness, and periodontal disease.³³ Smokeless tobacco contains at least 28 carcinogens, and there is strong evidence that users have an increased risk of developing oral cancers.¹⁴ The Surgeon General has reported that e-cigarettes “contain harmful ingredients that are dangerous to youth” and that e-cigarette aerosol “can contain

harmful and potentially harmful constituents.”³⁴ Moreover, multiple studies have confirmed that e-cigarette vapor contains toxic substances.^{35–37} To reduce the health impacts of menthol cigarette use and OTP use, communities can adopt policy interventions to regulate tobacco industry efforts that encourage youth, low-income populations, and communities of color to use mentholated and flavored products.

Considerations When Regulating Flavored Tobacco Products

A combination of strategies can protect youth from using tobacco and reduce industry-driven health inequities. Many communities are exploring programmatic and policy approaches to address the chronic health conditions associated with tobacco use. Some viable approaches are requiring local tobacco retailer licenses, limiting tobacco retailer density, setting minimum package sizes, and restricting the distribution of free or low-cost tobacco products. ChangeLab Solutions has developed this Model Ordinance as one tool to help communities reduce tobacco use, particularly among young people and vulnerable populations.

Policies that regulate the sale of flavored tobacco products can raise tensions between the government’s duty to protect individual liberty and its duty to promote and protect public health and well-being. Tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth. However, despite youth access laws, young people continue to buy and use tobacco products. Indeed, overall youth tobacco use didn’t change significantly between 2011 and 2015, with a 2015 survey reporting that nearly one-third (31.4%) of high school students used cigarettes, cigars, smokeless tobacco, or ESDs in the 30 days preceding the survey.¹⁵ In particular, young people are using a variety of OTPs:

- In 2015, 10.3% of high school students reported using cigars, cigarillos, or little cigars.¹⁵
- Youth hookah use increased more than 75% from 2011 to 2015, and youth ESD use increased more than tenfold during the same period.³⁸
- The percentage of high school students using smokeless tobacco products increased from 6.4% in 2012³⁹ to 7.3% in 2015.¹⁵
- A significant percentage of youth cigarette smokers concurrently use OTPs, increasing their risk for addiction and other health problems.¹⁴
- In a 2013-2014 survey, more than two-thirds of youth who used a non-cigarette tobacco product within the past 30 days reported doing so “because they come in flavors I like.”²⁶

Due to industry practices, individuals from communities of color, particularly young adults of color, are also more likely to use OTPs, such as little cigars.⁴⁰ In addition, a study found that daily menthol cigarette users are significantly more likely than occasional, non-menthol smokers to use flavored little cigars and cigarillos.⁴¹ African Americans and other communities of color are burdened with

disproportionately high rates of menthol cigarette use; this data, coupled with the findings from the study mentioned above, suggest that these populations are also more likely to use flavored little cigars and cigarillos. Many of these disparities are likely the result of tobacco companies' efforts to make these products more available, more heavily advertised, and cheaper in African American communities.⁴² Accordingly, interventions such as a flavored tobacco restriction, may be necessary to regulate the marketing and sale of flavored tobacco products, including menthol cigarettes, to youth and in communities of color.

Tobacco industry representatives have asserted that laws restricting the sale of flavored tobacco products overreach because they strip adults of the ability to buy lawful flavored products that they may prefer to non-flavored products. Additionally, retailer associations have asserted that laws restricting flavored tobacco products will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by flavored tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation restricts the ability of adults to purchase these products or results in reduced tobacco sales for local retailers.

Congress grappled with this issue in enacting the Tobacco Control Act. They ultimately determined that the government couldn't meet the Act's goals of reducing the use of, dependence on, and social costs associated with tobacco products by allowing unrestrained access to all tobacco products. For that reason, Congress banned flavored cigarettes except menthol-flavored cigarettes (eg, fruit- and candy-flavored cigarettes), finding that a ban was appropriate given the strong youth appeal of these products.⁴³

Similarly, the US Court of Appeals for the Second Circuit found that New York City's flavored tobacco law advanced the Tobacco Control Act's goals of reducing the use of tobacco products and the harms resulting from such use.⁴⁴ Restricting the sale of flavored tobacco products is also consistent with the California legislature's decision in 2001 to ban the sale of *bidis*—hand-rolled filterless cigarettes that were sold in a variety of candy flavors. Although tobacco industry groups argued that the California bill overreached by prohibiting bidi sales to adults, state lawmakers decided to ban bidis based on the need to “reduce youth access to a particularly harmful and addictive form of tobacco.”⁴⁵

Legal Issues

Below we discuss some of the key legal issues associated with this Model Ordinance.

Federal Preemption

Preemption is a legal doctrine that provides that a higher level of government may limit, or even eliminate, the power of a lower level of government to regulate a certain issue. Under the US Constitution's “Supremacy Clause,” federal law governs over state or local law. So, if a state or local law conflicts with a federal law, the federal law trumps the lower-level law.

Tobacco industry groups and manufacturers have argued that the Tobacco Control Act, which prohibits the manufacture of flavored cigarettes (except menthol), preempts local regulation of flavored tobacco products. However, US cities have implemented ordinances restricting the sale of flavored tobacco products, including menthol cigarettes and/or flavored OTPs, and these ordinances have survived preemption challenges.

In 2009, New York City passed an ordinance restricting the sale of flavored OTPs. A smokeless tobacco manufacturer filed a lawsuit arguing that the Tobacco Control Act preempts localities from passing their own laws regulating flavored tobacco products. An appellate court upheld the ordinance, finding that federal law did not preempt New York City's ordinance because the ordinance regulated *the sale* of tobacco products, not the manufacture of those products.⁴⁴

In January 2012, Providence, RI, passed a similar law restricting the sale of flavored OTPs. Tobacco industry groups and manufacturers filed a lawsuit claiming that the Tobacco Control Act preempted the ordinance. A federal district court upheld the Providence law. The court found that the Tobacco Control Act does not preempt local laws related to the sale of tobacco products, such as Providence's ordinance restricting the sale of flavored OTPs. On September 30, 2013, the US Court of Appeals for the First Circuit affirmed the district court's decision.⁴⁶

In December 2013, Chicago passed a law prohibiting the sale of all flavored tobacco products, including menthol cigarettes, within 500 feet of any school. A trade group sued Chicago over the law, claiming that the Tobacco Control Act preempted the ordinance. On June 29, 2015, a US District Court in Illinois upheld the law, finding that the Tobacco Control Act does not preempt local laws that restrict the sale of menthol cigarettes and flavored OTPs.⁴⁷

Taken together, the decisions from Chicago, New York City, and Providence reaffirm the authority of state and local governments to enact laws regulating the sale of tobacco products and to adopt restrictions that are more stringent than federal law.

First Amendment

The First Amendment of the US Constitution protects the right to freedom of speech. Courts have determined that advertising and marketing are forms of expressive conduct—they communicate information about products to consumers. Thus, advertising, or commercial speech, is considered a type of speech under the First Amendment. For this reason, advertising has some degree of protection against government regulation; laws that attempt to restrict marketing, promotional content, or similar types of communication may not be permissible.

Under this Model Ordinance, a tobacco product is presumed to be flavored and cannot be sold if the text or images on its labeling or packaging indicate that the product imparts a flavor, taste, or aroma other

than that of tobacco. In Providence, tobacco industry groups argued that a similar provision in the city's ordinance was a marketing restriction that implicated the First Amendment. The Providence ordinance provides that a public statement made by a manufacturer that a tobacco product has a characterizing flavor constitutes presumptive evidence that the product is a flavored tobacco product. A federal court rejected the industry's First Amendment argument, finding that the use of a public statement made by a manufacturer to determine whether a product is flavored does not amount to a prohibition against speech.

The court noted that the sale of a flavored tobacco product in Providence is illegal, regardless of whether the product is specifically described as a flavored tobacco product. In other words, the court found that manufacturers are still free to describe their products as having a characterizing flavor, even though their flavored tobacco products cannot be sold in Providence. Thus, challenges to flavored tobacco regulations on First Amendment grounds have not been successful thus far.

Conclusion

Research has shown that cigarette and OTP use have serious health consequences. Young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes and OTPs. These products are considered “starter” products that help establish long-term tobacco use. Moreover, flavored tobacco products, particularly menthol cigarettes, pose significant barriers to achieving health equity. Thanks to tobacco companies' marketing efforts, communities of color, low-income populations, and LGBTQ communities are significantly more likely to use menthol cigarettes and disproportionately bear the burden of tobacco-related harm. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

References

1. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.*; 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
2. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res.* 2013;15(2):608-614. doi:10.1093/ntr/nts178.
3. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes.*; 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
4. Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health.* 2008;98(9):1685-1692. doi:10.2105/AJPH.2007.125542.
5. Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014. *Tob Control.* October 2016. doi:10.1136/tobaccocontrol-2016-053329.
6. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations.*; 2011. www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf.
7. Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med.* January 2017. doi:10.1016/j.amepre.2016.11.019.
8. Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med.* 2015;48(1):93-97. doi:10.1016/j.amepre.2014.07.044.
9. Cohn AM, Johnson AL, Hair E, Rath JM, Villanti AC. Menthol tobacco use is correlated with mental health symptoms in a national sample of young adults: implications for future health risks and policy recommendations. *Tob Induc Dis.* 2016;14(1):1. doi:10.1186/s12971-015-0066-3.
10. United States v. Philip Morris, 449 F. Supp. 2d 1, 71 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C. Cir. 2009).
11. Yerger VB, Przewoznik J, Malone RE. Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities. *J Health Care Poor Underserved.* 2007;18(4A):10-38. doi:10.1353/hpu.2007.0120.
12. Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res.* 2012;14(1):116-121. doi:10.1093/ntr/ntr122.
13. Waddell EN, Sacks R, Farley SM, Johns M. Point-of-Sale Tobacco Marketing to Youth in New York State. *J Adolesc Heal.* 2016;59(3):365-367. doi:10.1016/j.jadohealth.2016.05.013.
14. U.S. Surgeon General. Preventing Tobacco Use Among Youth and Young Adults. A report from the Surgeon General. *US Dep Heal Hum Serv.* 2012;1395. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/factsheet.ht...
15. Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance United States, 2015. *MMWR Surveill Summ.* 2016;65(6):1-174. doi:10.15585/mmwr.ss6506a1.
16. Chen C, Isabelle LM, Pickworth WB, Pankow JF. Levels of mint and wintergreen flavorants: Smokeless tobacco products vs. confectionery products. *Food Chem Toxicol.* 2010;48(2):755-763. doi:10.1016/j.fct.2009.12.015.
17. Nelson DE, Mowery P, Tomar S, Marcus S, Giovino G, Zhao L. Trends in smokeless tobacco use among adults and adolescents in the United States. *Am J Public Health.* 2006;96(5):897-905. doi:10.2105/AJPH.2004.061580.
18. Morris DS, Fiala SC, Pawlak R. Opportunities for policy interventions to reduce youth hookah smoking in the United States. *Prev Chronic Dis.* 2012;9(8):E165. doi:10.5888/pcd9.120082.
19. Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control.* 2014;23(1):77-78. doi:10.1136/tobaccocontrol-2012-050604.
20. Cullen J, Mowery P, Delnevo C, et al. Seven-year patterns in US cigar use epidemiology among young adults aged 18-25 years: A focus on race/ethnicity and brand. *Am J Public Health.* 2011;101(10):1955-1962. doi:10.2105/AJPH.2011.300209.
21. Viola AS, Giovenco DP, Miller Lo EJ, Delnevo CD. A cigar by any other name would taste as sweet. *Tob Control.* 2016;25(5):605-606. doi:10.1136/tobaccocontrol-2015-052518.
22. Nyman AL, Sterling KL, Weaver SR, Majeed BA, Eriksen MP. Little Cigars and Cigarillos: Users, Perceptions, and Reasons for Use. *Tob Regul Sci.* 2016;2(3):239-251. doi:10.18001/TRS.2.3.4.
23. Corey C, Ambrose B, Apelberg B, King B. Flavored Tobacco Product Use Among Middle and High School Students - United States, 2014. *Morb Mortal Wkly Rep.* 2015;64(38):1066-1070. www.cdc.gov/mmwr/preview/mmwrhtml/mm6438a2.htm.
24. Bonhomme MG, Holder-Hayes E, Ambrose BK, et al. Flavoured non-cigarette tobacco product use among US adults: 2013–2014. *Tob Control.* October 2016;tobaccocontrol-2016-053373. doi:10.1136/tobaccocontrol-2016-053373.
25. American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Stroke Association, American Lung Association, Campaign for Tobacco-Free Kids. *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars.*; 2017.

- www.tobaccofreekids.org/microsites/flavortrap/full_report.pdf.
26. Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA*. 2015;314(17):1871. doi:10.1001/jama.2015.13802.
 27. U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. Atlanta, GA; 2000. www.cdc.gov/tobacco/data_statistics/sgr/2000/complete_report/pdfs/fullreport.pdf.
 28. Chapman R. *State Health Officer's Report on Tobacco Use and Promotion in California*. Sacramento; 2013. www.cdph.ca.gov/programs/tobacco/Documents/Resources/Publications/CA Health Officers Report on Tobacco_FINAL_revised 01 02 13.pdf.
 29. Wray RJ, Jupka K, Berman S, Zellin S, Vijaykumar S. Young adults' perceptions about established and emerging tobacco products: results from eight focus groups. *Nicotine Tob Res*. 2012;14(2):184-190. doi:10.1093/ntr/ntr168.
 30. Aljarrah K, Ababneh ZQ, Al-Delaimy WK. Perceptions of hookah smoking harmfulness: predictors and characteristics among current hookah users. *Tob Induc Dis*. 2009;5(1):16. doi:10.1186/1617-9625-5-16.
 31. U.S. Food and Drug Administration. *Flavored Tobacco Product Fact Sheet*.; 2011. www.fda.gov/syn/html/ucm183198.
 32. Shanks TG, Burns DM. "Chapter 4: Disease Consequences of Cigar Smoking" *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends*.; 1998. http://cancercontrol.cancer.gov/brp/tcrb/monographs/9/m9_4.pdf.
 33. Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The effects of waterpipe tobacco smoking on health outcomes: A systematic review. *Int J Epidemiol*. 2010;39(3):834-857. doi:10.1093/ije/dyq002.
 34. U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA; 2016.
 35. Goniewicz ML, Knysak J, Gawron M, et al. Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tob Control*. 2014;23(2):133-139. doi:10.1136/tobaccocontrol-2012-050859.
 36. Cheng T. Chemical evaluation of electronic cigarettes. *Tob Control*. 2014;23(suppl 2):ii11-ii17. doi:10.1136/tobaccocontrol-2013-051482.
 37. Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P. Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. *PLoS One*. 2013;8(3):1-12. doi:10.1371/journal.pone.0057987.
 38. Singh T, Arrazola RA, Corey CG, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2015. *MMWR Morb Mortal Wkly Rep*. 2016;65(14):361-367. doi:10.15585/mmwr.mm6514a1.
 39. Arrazola R, Dube S, King B. Tobacco Product Use Among Middle and High School Students — United States , 2011 and 2012. *Mortal Morb Wkly*. 2013;62(45):893-897. www.cdc.gov/mmwr/preview/mmwrhtml/mm6245a2.htm.
 40. Sterling K, Berg CJ, Thomas AN, Glantz SA, Ahluwalia JS. Factors associated with small cigar use among college students. *Am J Health Behav*. 2013;37(3):325-333. doi:10.5993/AJHB.37.3.5.
 41. Sterling K, Fryer C, Pagano I, Jones D, Fagan P. Association between menthol-flavoured cigarette smoking and flavoured little cigar and cigarillo use among African-American, Hispanic, and white young and middle-aged adult smokers. *Tob Control*. October 2016;tobaccocontrol-2016-053203. doi:10.1136/tobaccocontrol-2016-053203.
 42. Cantrell J, Kreslake JM, Ganz O, et al. Marketing little cigars and cigarillos: Advertising, price, and associations with neighborhood demographics. *Am J Public Health*. 2013;103(10):1902-1909. doi:10.2105/AJPH.2013.301362.
 43. H.R. Rep. No. 111–58, pt. 1 (2009).
 44. U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428 (2d Cir. 2013).
 45. Assembly Committee on Governmental Organization, Committee Analysis, S.B. 322, 2001–2002 Sess. (Cal. 2001).
 46. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013).
 47. Indep. Gas & Serv. Stations Ass'ns, Inc. v. City of Chi., 112 F.Supp.3d 749 (N.D. Ill. 2015).

AN ORDINANCE OF THE [CITY / COUNTY] OF [____] RESTRICTING THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AND AMENDING THE [____] MUNICIPAL CODE

The [City Council of the City / Board of Supervisors of the County] of [____] does ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. [See **Appendix A: Findings**]

COMMENT: A draft ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this legislation. The findings section is part of the ordinance and legislative record, and it contains information explaining the health and equity issues that the law would help address. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 22. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

SECTION II. [Article / Section] of the [____] Municipal Code is hereby amended to read as follows:

Sec. [____ (*1)]. DEFINITIONS. The following words and phrases, whenever used in this [article / chapter], shall have the meanings defined in this section unless the context clearly requires otherwise:

COMMENT: Some terms defined in this Model Ordinance may already be defined in the jurisdiction’s municipal code. Include only the definitions that are necessary, and review all definitions for consistency. For example, the definition of Tobacco Product below covers a broad range of tobacco products (including electronic smoking devices), and may be more expansive than an existing definition in the municipal code. In restricting the sale of flavored tobacco products, jurisdictions with an existing definition of Tobacco Product need to decide whether to use this Model Ordinance’s definition or rely on their current definition. A jurisdiction is allowed to use different definitions of Tobacco Product in separate sections of its municipal code. However, to avoid confusion, the jurisdiction should make clear which sections of the municipal code are governed by a particular definition.

- (a) “Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- (b) “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

COMMENT: This definition of Flavored Tobacco Product includes cigarettes. Federal law already prohibits the manufacture of flavored cigarettes, but it excludes menthol cigarettes from its prohibition. This Model Ordinance is more restrictive than federal law because it prohibits both the sale of menthol cigarettes and the sale of other flavored tobacco products. Below are some examples of the types of products prohibited by this Model Ordinance.

- Menthol cigarettes, roll-your-own tobacco, and components (eg, menthol flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- All other flavored cigarettes, roll-your-own tobacco, and components (eg, flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- Flavored cigars and little cigars
- Flavored smokeless tobacco
- Flavored electronic smoking devices
- Flavored non-cigarette components, parts, and accessories (eg, flavored blunt wraps and flavored additives for e-liquids)

- (c) “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (d) “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- (e) “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

- (f) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (g) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (h) “Tobacco Product” means:
- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff;
 - (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

COMMENT: This definition of Tobacco Product is designed to cover a wide variety of tobacco products, including cigarettes, cigars, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices, and the solutions and component parts that are used in these devices. The definition includes electronic smoking devices with or without nicotine. The definition also includes any component, part, or accessory normally used with a Tobacco Product.

- (i) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Sec. [____ (*2)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

- (a) It shall be a violation of this [article / chapter] for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.

COMMENT: Some communities have created “buffer zones” by prohibiting the sale of flavored tobacco products within a specific distance of youth-populated areas, such as schools. For example, Berkeley, CA, and Chicago, IL prohibit the sale of flavored tobacco products, including menthol cigarettes, within 600 feet of any school and within 500 feet of any high school, respectively. Although these buffer zones are an important intervention, they're not comprehensive prohibitions on flavored tobacco product sales.

Communities can consider similar policies, but they should weigh the benefits and drawbacks of implementing a non-comprehensive flavored tobacco prohibition. A buffer zone approach may not provide the same public health benefits as a comprehensive, communitywide flavored tobacco restriction. Moreover, local jurisdictions that create buffer zones will likely face increased costs for implementation and potential enforcement challenges. For example, before a community can implement a buffer zone, it must conduct mapping surveys to determine the location of schools and tobacco retailers and measure the distances between them. Communities must routinely update the maps to reflect changes that affect where flavored tobacco products may be sold (eg, if a school opens, closes, or relocates). Developing and updating these maps may require significant resources.

Local jurisdictions must also educate tobacco retailers and the general public on how to determine whether a store is located within a buffer zone that prohibits the sale of flavored tobacco. This may include developing appropriate tools and resources for tobacco retailers to determine whether their store is within a buffer zone.

Despite these considerations, buffer zones remain a viable policy option for communities. If your community is interested in adopting a flavored tobacco product buffer zone, contact ChangeLab Solutions for assistance. This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

- (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.
- (c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

- (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
- (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

-----OPTIONAL PROVISION-----

[(d) A Tobacco Retailer lawfully operating as of the date this ordinance is adopted is exempt from subsection (a) for a period of up to [6 months] from the effective date of this ordinance, provided that all of the following requirements are met:

- (1) Within [thirty (30) days] of the effective date of this ordinance, the Tobacco Retailer submits to the [City Manager / County Manager] written notice that it seeks temporary exemption from subsection (a) and documentation that demonstrates: (i) the Tobacco Retailer was lawfully operating as of the date this ordinance was adopted; (ii) [seventy percent (70%)] or more of gross sales receipts are derived from Tobacco Products, Tobacco Paraphernalia, or both, or [fifty percent (50%)] or more of completed sales transactions include Tobacco Products, Tobacco Paraphernalia, or both; and (iii) the amortization period afforded by the [6-month] period for the effectiveness of the ordinance adopting this section is insufficient to allow the Tobacco Retailer to sell, return to the distributor or wholesaler, or otherwise obtain the benefit of, property which has no lawful use by virtue of the ordinance adopting this section. The submission shall include all information and documentation the [City Manager / County Manager] may request to determine the Tobacco Retailer's qualifications for this exemption.
- (2) The [City Manager / County Manager] determines the Tobacco Retailer meets the qualifications set forth in [subsection (d)(1)].
- (3) The Tobacco Retailer submits all information and documentation requested by the [City Manager / County Manager] to determine continued qualification for this exemption. This exemption to subsection (a) shall not apply if the [City Manager / County Manager] determines that the Tobacco Retailer no longer meets the qualifications set forth in [subsection (d)(1)].
- (4) The [City Manager / County Manager] shall offer the Tobacco Retailer an opportunity for an oral or paper hearing and render a written decision on the record of that hearing.

That decision shall be final as to the [City / County] and subject to judicial review pursuant to Code of Civil Procedure section 1094.5.]

COMMENT: This Model Ordinance provides a 6-month delay between when a jurisdiction adopts the ordinance and when the flavored tobacco prohibition goes into effect (see “SECTION IV. Effective Date” on page 21). This delay provides all tobacco retailers with a 6-month period to sell their remaining inventory of flavored tobacco products. The delay also provides the local government with time to plan for implementation and enforcement.

The optional provision above (subsection (d)) temporarily grandfathers certain tobacco retailers, which exempts them from having to comply with the flavored tobacco prohibition in subsection (a) for an additional limited period of up to 6 months. Thus, a local jurisdiction that includes the optional subsection (d) above is granting certain tobacco retailers a period of 12 months in which to comply with the prohibition following the adoption of the ordinance (6 months is allowed for all tobacco retailers pursuant to SECTION IV on page 21, and an additional 6 months is allowed for certain tobacco retailers pursuant to subsection (d) above). The exemption in subsection (d) applies only to tobacco retailers that primarily sell tobacco products and/or tobacco paraphernalia, as specified above (we refer to these businesses informally as “significant tobacco retailers”). To qualify for the exemption in subsection (d), a retailer must meet the following requirements.

Requirements to Qualify for the Exemption:

- (1) The Tobacco Retailer submits a written notice indicating a request for temporary exemption and documentation that demonstrates the following:
 - (a) The Tobacco Retailer was lawfully operating on the date the ordinance was adopted;
 - (b) 70% or more of gross sales receipts are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both, or 50% or more of completed sales transactions are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both; and
 - (c) The amortization period (see explanation below) provided between the date of adoption and the effective date is insufficient to allow the Tobacco Retailer to sell or return its inventory of prohibited Flavored Tobacco Products.
- (2) The government determines the Tobacco Retailer meets these qualifications and grants it an additional 6 months to comply with the prohibition.

Importantly, this exemption lapses if at any time the government determines the tobacco retailer no longer meets these qualifications. The government’s decision is not subject to an internal appeal, but it can be reviewed in court under the administrative mandamus statute.

Jurisdictions seeking the maximum public health impact from this Model Ordinance should not insert this optional provision. Many public health laws take effect immediately and apply to all existing businesses without exception. The findings in this Model Ordinance (page 22) explain how a flavored tobacco prohibition protects public health, and in particular, how it protects youth from the significant harms of tobacco use. Exempting businesses, even temporarily, can slow progress and undermine the benefits of this Model Ordinance.

Takings

Sometimes government staff ask whether applying a prohibition on flavored tobacco sales to existing businesses is a taking. A taking is a restriction on private property—which, in this case, is flavored tobacco products—that is so burdensome that a court determines that the government must pay just compensation for the property (because the government has effectively “taken” the property). Whether a law amounts to a taking is case-specific—it depends on the business—and the burden of proof falls on the business. In most settings, allowing the regulated business a reasonable time (typically a few months) to amortize the value of any investment in property—selling any remaining flavored tobacco products, for instance—that cannot be used after the prohibition takes effect prevents a taking.

An amortization period gives certain existing businesses a period of time to do business as usual before they must make changes to comply with a new law. Amortization periods are constitutional ways for local governments to balance the public interest and any financial impact on a private business. These periods are often short, measured in months, not years.

It is important to note that the financial impact is less severe for a business that sells many other products in addition to tobacco products (eg, convenience stores and grocery stores), and that inventory can be returned to the wholesaler or resold for retail sale outside the city or county adopting the prohibition. Moreover, the time between adoption of an ordinance and its effective date is sufficient to amortize minor investments in inventory and signage. For these reasons, the optional temporary grandfathering provision applies only to tobacco retailers that sell a significant amount of tobacco products and/or tobacco paraphernalia; these businesses may be most affected by a flavored tobacco prohibition. Nevertheless, a flavored tobacco prohibition does not require businesses to close, or even to stop selling all tobacco products. It is a reasonable restriction on a type of tobacco product that is particularly harmful, especially to youth. Examples of reasonable amortization periods in different contexts include the following.

- An amortization period of 1 to 4 years is sufficient for a billboard removal ordinance. *Metromedia, Inc. v. City of San Diego*, 28 Cal.3d 848, 882 (1980), reversed on other grounds, 453 U.S. 490 (1981).
- An amortization period of 32 months is sufficient to amortize a billboard. *People ex. rel. Department of Pub. Wks. v. Adco Advertisers*, 35 Cal.App.3d 507 (1979). (Note: Amortization is often litigated in the context of billboards.)
- An amortization period of 18 months is sufficient to terminate operation of an automobile wrecking yard. *People v. Gates*, 41 Cal. App. 3d 590 (1974).
- An amortization period of 20 months is sufficient to change or relocate an adult entertainment business. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004).
- An amortization period of 24 months is sufficient to terminate operation of a cement batching plant that invested \$98,000 (1950 dollars) in the business. *Livingston Rock & Gravel Co. v. Los Angeles County*, 43 Cal. 2d 121 (1954).

Notably, a federal district court upheld a San Francisco law prohibiting the sale of all tobacco products in pharmacies and requiring that pharmacies comply by the effective date of the ordinance. In other words, the law didn’t grant an amortization period. The court explained that

the ordinance “merely regulates the sale of tobacco products; it does not force Plaintiff to engage in a certain type of business.” The court further concluded that “although Plaintiff has alleged it has a vested property right in its [tobacco retailer] permits, it cannot overcome the fact that the enactment of the amended ordinance was a reasonable and permissible use of Defendants’ police power.” *Safeway Inc. v. City & Cty. of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).

-----END OPTIONAL PROVISION-----

Sec. [____ (*3)]. ENFORCEMENT.

- (a) The remedies provided by this [article / chapter] are cumulative and in addition to any other remedies available at law or in equity.

COMMENT: The subsections below offer a variety of enforcement options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency has the discretion to choose which enforcement tools to use in each case. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

The enforcement options included in this Model Ordinance penalize Tobacco Retailers who sell or offer to sell Flavored Tobacco Products. In other words, this Model Ordinance does *not* penalize individuals for purchasing, attempting to purchase, possessing, or using Flavored Tobacco Products. Well-enforced laws targeting retailers are more effective and provide greater public health benefits than laws penalizing users. Moreover, laws penalizing purchasers and users raise significant equity concerns because their enforcement often disproportionately affects communities of color.

Some communities face challenges in enforcing their Flavored Tobacco Product ordinances. For example, enforcement officials may have trouble determining when a Tobacco Product qualifies as a Flavored Tobacco Product, particularly when the packaging and marketing materials do not explicitly identify a Characterizing Flavor (eg, Tobacco Products using “concept flavors” like “Arctic” and “Lightning”). Communities should consider potential challenges and develop guidelines for staff enforcement. If your community is concerned about enforcement, please contact ChangeLab Solutions for assistance.

- (b) Violations of this [article / chapter] are subject to a civil action brought by the [City Prosecutor / District Attorney] or the [City Attorney / County Counsel], punishable by a civil fine not less than [two hundred fifty dollars (\$250)] and not exceeding [one thousand dollars (\$1,000)] per violation.

COMMENT: This provision outlines the civil fines for violations of the ordinance. It requires the

city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. Government Code section 36901.

- (c) Violations of this [article / chapter] may, at the discretion of the [City Prosecutor / District Attorney], be prosecuted as infractions or misdemeanors when the interests of justice so require.

COMMENT: Sometimes called a “wobbler,” this provision affords the prosecuting attorney discretion to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or 6 months in a county jail). Alternatively, violations can be set as either an infraction or a misdemeanor in all circumstances. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.

SECTION III. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The [City Council / Board of Supervisors] of the [City / County] of [____] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

COMMENT: This is standard language. Often this “boilerplate” is found at the end of an ordinance, but its location is irrelevant.

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [6 months after date of enactment].

COMMENT: This section specifies the effective date of the ordinance, and it should be tailored to give the enforcing agency adequate time to educate tobacco retailers and the general public. The agency should also use this time to determine enforcement protocols for flavored tobacco products. General law cities and counties in California must provide a minimum of 30 days between an ordinance’s adoption and its effective date.

Appendix A: Findings.

The [City Council of the City / Board of Supervisors of the County] of [____] hereby finds and declares as follows:

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹ largely because these flavored products were marketed to youth and young adults,² and younger smokers were more likely than older smokers to have tried these products;³ and

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law,⁴ neither federal law nor California law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices; and

WHEREAS, flavored tobacco products are very common in California tobacco retailers as evidenced by the following:

- 97.4% of stores that sell cigarettes sell menthol cigarettes;⁵
- 94.5% of stores that sell little cigars sell them in flavored varieties;⁶
- 84.2% of stores that sell electronic smoking devices sell flavored varieties;⁷ and
- 83.8% of stores that sell chew or snus sell flavored varieties;⁸ and

WHEREAS, more than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes);⁹ and

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco¹⁰ and that these products help establish tobacco habits that can lead to long-term addiction;¹¹ and

WHEREAS, at least one study has found that the majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product;¹² and

WHEREAS, young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco;¹³ and

WHEREAS, 70% of middle school and high school students who currently use tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets;¹⁴ and

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of US middle school and high school smokers report using flavored little cigars or flavored cigarettes;¹⁵ and

WHEREAS, much of the growing popularity of small cigars and smokeless tobacco is among young adults and appears to be linked to use of flavored products;¹⁶ and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015;¹⁷

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸ and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;¹⁹ and

WHEREAS, between 2004 and 2014 use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);²⁰ and

WHEREAS, people ages 12 and older from communities of color are more likely to smoke mentholated cigarettes, as evidenced by the following percentages of people who smoke cigarettes reported smoking mentholated cigarettes in the last month:²¹

- 82.6% of Black or African American individuals;
- 53.2% of Native Hawaiians or Other Pacific Islanders;
- 36.9% of individuals with multiracial backgrounds;
- 32.3% of Hispanic or Latino individuals;
- 31.2% of Asian individuals;
- 24.8% of American Indians or Alaska Natives; and
- 23.8% of White or Caucasian individuals; and

WHEREAS, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos, and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these

products easier to use and increasing their appeal among youth;²² and

WHEREAS, the tobacco industry has been manipulating the dose of menthol in cigarettes to ensure the uptake and continued use of tobacco, especially by young people and vulnerable populations for many years;²³ and

WHEREAS, smoking mentholated cigarettes reduces the likelihood of successfully quitting smoking;²⁴ and

WHEREAS, the tobacco industry has a well-documented history of developing and marketing mentholated brands to communities of color and youth;²⁵ and

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;²⁶ and

WHEREAS, a New York study found that price reduction promotions for menthol cigarettes are disproportionately targeted to youth markets;²⁷ and

WHEREAS, scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, and especially among youth, African Americans,²⁸ and possibly Hispanic and Latino individuals;²⁹

WHEREAS, scientific studies on the impact of a national ban on menthol in cigarettes found 36.5% of menthol cigarette users would try to quit smoking if menthol was banned³⁰ and between 300,000 and 600,000 lives would be saved by 2050;³¹ and

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco.³²

1. 21 U.S.C. § 387g(a)(1)(A).
2. Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: Tobacco marketing strategies. Tobacco industry documents reveal a deliberate strategy to add flavors known to appeal to younger people. *Health Aff.* 2005;24(6):1601-1610. doi:10.1377/hlthaff.24.6.1601. Lewis MJ, Wackowski O. Dealing with an innovative industry: A look at flavored cigarettes promoted by mainstream brands. *Am J Public Health.* 2006;96(2):244-251. doi:10.2105/AJPH.2004.061200. Connolly GN. Sweet and spicy flavours: new brands for minorities and youth. *Tob Control.* 2004;13(3):211-212. doi:10.1136/tc.2004.009191. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
3. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
4. 21 U.S.C. § 387g(a)(1)(A).
5. Schleicher N, Johnson T, Ahmad I, Henriksen L. Tobacco Marketing in California's Retail Environment Final report for the California Tobacco Advertising Survey (2011-2014) Submitted to the California Tobacco Control Program , California Department of Public Health. 2015. http://www.cdph.ca.gov/programs/tobacco/Documents/CDPH%20CTCP%20Refresh/Research%20and%20Evaluation/Reports/Tobacco%20Marketing%20in%20Californias%20Retail%20Environment_Notations_Final%209.16.pdf.
6. *Id.*
7. *Id.*
8. *Id.*
9. California Department of Public Health California Tobacco Control Program. *Healthy Stores for a Healthy Community: Alameda County.* 2014. [www.healthystoreshealthycommunity.com/documents/counties/Alameda County Data \(English\).pdf](http://www.healthystoreshealthycommunity.com/documents/counties/Alameda%20County%20Data%20(English).pdf).
10. Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006;8(3):403-413. doi:10.1080/14622200600670389. Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007;32(9):1964-1969. doi:10.1016/j.addbeh.2006.12.023. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
11. U.S. Food and Drug Administration. Flavored Tobacco Product Fact Sheet. 2011. www.fda.gov/syn/html/ucm183198. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
12. Oliver AJ, Jensen J a, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res.* 2013;15(1):88-92. doi:10.1093/ntr/nts093.
13. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res.* 2013;15(2):608-614. doi:10.1093/ntr/nts178. Villanti AC, Richardson A, Vallone DM, Rath JM. Flavored tobacco product use among U.S. young adults. *Am J Prev Med.* 2013;44(4):388-391. doi:10.1016/j.amepre.2012.11.031. Substance Abuse and Mental Health Services Administration. *The NSDUH Report: Recent Trends in Menthol Cigarette Use.* Rockville, MD; 2011. www.samhsa.gov/data/sites/default/files/WEB_SR_088/WEB_SR_088/WEB_SR_088.htm.
14. Corey C, Ambrose B, Apelberg B, King B. Flavored Tobacco Product Use Among Middle and High School Students - United States, 2014. *Morb Mortal Wkly Rep.* 2015;64(38):1066-1070. www.cdc.gov/mmwr/preview/mmwrhtml/mm6438a2.htm.
15. King BA, Tynan MA, Dube SR, Arrazola R. Flavored-little-cigar and flavored-cigarette use among U.S. middle and high school students. *J Adolesc Heal.* 2014;54(1):40-46. doi:10.1016/j.jadohealth.2013.07.033.
16. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
17. Singh T, Arrazola RA, Corey CG, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2015. *MMWR Morb Mortal Wkly Rep.* 2016;65(14):361-367. doi:10.15585/mmwr.mm6514a1.
18. Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control.* 2014;23(1):77-78. doi:10.1136/tobaccocontrol-2012-050604. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
19. Press Release, State of California Department of Justice, Office of the Attorney General, Brown Announces Electronic Cigarette Maker's Agreement to Stop Deceptive Marketing and Sales to Minors (Aug. 3, 2010), oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing.
20. Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino DB. Changes in the prevalence and correlates of

- menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016;25:ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.
21. Substance Abuse and Mental Health Services Administration. *The NSDUH Report: Use of Menthol Cigarettes*. 2009. <https://perma.cc/4UG9-HUQ2>.
22. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res*. 2013;15(2):608-614. doi:10.1093/ntr/nts178. Nelson DE, Mowery P, Tomar S, Marcus S, Giovino G, Zhao L. Trends in smokeless tobacco use among adults and adolescents in the United States. *Am J Public Health*. 2006;96(5):897-905. doi:10.2105/AJPH.2004.061580. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
23. Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health*. 2008;98(9):1685-1692. doi:10.2105/AJPH.2007.125542. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General. 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
24. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
25. United States v. Philip Morris, 449 F. Supp. 2d 1, 71 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C. Cir. 2009). Yerger VB, Przewoznik J, Malone RE. Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities. *J Health Care Poor Underserved*. 2007;18(4A):10-38. doi:10.1353/hpu.2007.0120.
26. Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res*. 2012;14(1):116-121. doi:10.1093/ntr/ntr122
27. Waddell EN, Sacks R, Farley SM, Johns M. Point-of-Sale Tobacco Marketing to Youth in New York State. *J Adolesc Heal*. 2016;59(3):365-367. doi:10.1016/j.jadohealth.2016.05.013.
28. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
29. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf.
30. O'Connor RJ, Bansal-Travers M, Carter LP, Cummings KM. What would menthol smokers do if menthol in cigarettes were banned? Behavioral intentions and simulated demand. *Addiction*. 2012;107(7):1330-1338. doi:10.1111/j.1360-0443.2012.03822.x.
31. Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.
32. Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. February 2016:tobaccocontrol-2015-052418. doi:10.1136/tobaccocontrol-2015-052418.



City of Oroville

Leonardo DePaola
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PLANNING COMMISSION STAFF REPORT

Thursday, October 24, 2019

RE: ORDINANCE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN OROVILLE

SUMMARY: The Planning Commission may consider recommending to the City Council adoption of changes to Title 17 of the Oroville Municipal Code in order to prohibit the sale of flavored tobacco products.

RECOMMENDATION: Recommend that the City Council adopt changes to Oroville Municipal Code 17.04.060, and corresponding changes to Oroville Municipal Code 5.28.010

APPLICANTS: None

LOCATION: City wide

GENERAL PLAN: NA

ZONING: NA

FLOOD ZONE: NA

ENVIRONMENTAL DETERMINATION: Not a project under CEQA (para 21065 & CEQA Guidelines 15378(b)(5))

REPORT PREPARED BY:

REVIEWED BY:

Wes Ervin, Senior Planner
Community Development Department

Leonardo DePaola, Director
Community Development Director

DISCUSSION

In the interest of improved public health and especially for Oroville's youth, on October 1, 2019, the City Council directed staff to prepare an ordinance to prohibit the sale of flavored tobacco products within the City limits.

Some of these changes involve amendments to Title 17, which is the purview of the Planning Commission. Accordingly, the Commission is asked to review at its earliest opportunity recommended changes to Title 17 and Title 5 of the Oroville Municipal Code, and to forward the Commission's recommendations to the City Council for action.



Assembly Committees on Governmental Organization, Business & Professions, and Health Joint Informational Hearing:

**Vaping Tobacco and Cannabis Products: Health Effects
and Deficiencies in Regulation and Current Law
Wednesday, October 16, 2019
1:00 p.m., Room 4202**

INTRODUCTION

This will be the first of two hearings. This hearing will provide an overview of the issues related to vaping, including the health effects and regulatory landscape, with testimony provided by medical professionals, tobacco and vaping experts, and state government regulators. The hearing will also look into the growing popularity of e-cigarettes and vaping, and examine the overall impact on youth and general consumers.

BACKGROUND

On September 10, 2019, President Trump, Health and Human Services Secretary Alex Azar, and Dr. Ned Sharpless, the acting Commissioner of the Food and Drug Administration (FDA) announced they would issue a draft ban on most flavored e-cigarettes within several weeks. The agencies stated that the announcement was prompted by recent findings from the National Youth Tobacco Survey that indicate a rise in youth vaping, with over 25% of high school students stating they have used e-cigarettes in the past 30 days. Pursuant to a final rule from August 8, 2016, all electronic smoking devices (ESD) or electronic nicotine delivery system (ENDS) products would be required to file premarket tobacco product applications within two years; however, the FDA had delayed the requirements until August 2021. In July 2019, a federal judge overseeing a lawsuit brought against the FDA by the American Academy of Pediatrics over the delay of the rule, ruled that e-cigarette companies must submit their products for FDA review within 10 months, or by May 2020. However, the judge held that these products would be allowed to remain on the market in the interim and for up to one year while the FDA reviews the applications.

The September 10 announcement is an indication that the FDA intends to finalize enforcement guidance to require any non-tobacco flavored product (i.e. kid-appealing flavors) to be removed from the market until an application for premarket approval has been obtained under the Tobacco Control

Act. To provide a non-combustible nicotine option for adults, tobacco-flavored products will be exempt from the enforcement order. However, Acting Commissioner Sharpless stated action would be taken against tobacco-flavored products if children start to migrate to those products as well.

Prior to this announcement, in September 2018, Dr. Scott Gottlieb, the FDA Commissioner at the time, declared that youth vaping is now an epidemic, and the FDA initiated the Youth Tobacco Prevention Plan, which focuses on preventing youth access to tobacco products, curbing the marketing of tobacco products aimed at youth, and educating teens about the dangers of using any tobacco products. The FDA then issued 12 warning letters to companies that continued to advertise and sell products to youth. The FDA also sent letters to five ESD manufacturers whose products were sold to kids during the FDA's ramped up enforcement period: JUUL, Vuse, MarkTen, blu e-cigs, and Logic, which comprise 97% of the e-cigarette market. The FDA requested that these companies provide robust plans on how they will address the widespread use of their products by minors or face increased enforcement.

These federal initiatives are a result of a multistate outbreak of lung injuries related to vaping. According to the Centers for Disease Control and Prevention (CDC), as of October 8, 2019, 1,299 lung injury cases associated with using e-cigarette, or vaping, products have been reported to CDC from 49 states and one U.S. territory. Twenty-six deaths have been confirmed in 21 states, including three in California. All patients have reported a history of using e-cigarette, or vaping, products. Most patients report a history of using products containing Tetrahydrocannabinol (THC) [the psychotropic ingredient in marijuana]. The latest national and regional findings suggest products containing THC play a role in the outbreak. Health officials are advising that people avoid using vaping devices of all kinds, whether loaded with nicotine or THC from cannabis. According to the CDC, the demographics of the lung injury cases are as follows: approximately 70% of patients are male; approximately 80% of patients are under 35 years old; sixteen percent of patients are under 18 years old; and 21% of patients are 18 to 20 years old.

It should be noted that e-cigarettes are not currently approved by the FDA as an aid to quit smoking. The U.S. Preventive Services Task Force, a group of health experts that makes recommendations about preventive health care, has concluded that evidence is insufficient to recommend e-cigarettes for smoking cessation in adults, including pregnant women. However, e-cigarettes may help non-pregnant adult smokers if used as a complete substitute for all cigarettes and other smoked tobacco products. To date, the few studies on the issue are mixed. A Cochrane Review found evidence from two randomized controlled trials that e-cigarettes with nicotine can help smokers stop smoking in the long term compared with placebo (non-nicotine) e-cigarettes. However, there are some limitations to the existing research, including the small number of trials, small sample sizes, and wide margins of error around the estimates. A recent CDC study found that many adults are using e-cigarettes in an attempt to quit smoking. However, most adult e-cigarette users do not stop smoking cigarettes and are instead continuing to use both products (known as "dual use").

According to Jeff Chen, Director of the UCLA Cannabis Research Initiative, to date there has never been a study on vaping cannabis. The current vaping crisis has focused attention on the substances used to dilute cannabis oil for vaping and little is known about what happens when those products are heated. There are also concerns about the devices used to vape nicotine and cannabis, which almost exclusively come from China. The federal government has left it to the states to create testing standards, while companies in the industry have sought to reassure consumers that their cannabis oil does not contain harmful chemicals. California tests cannabis and vaping products for pesticides and other contaminants from licensed entities. The lack of research stems from a longstanding federal prohibition on cannabis that has further impacted health studies on overall vaping products, which happens to be the fastest-growing market.

Within the last month, Massachusetts announced a four-month ban on the sale of all vaping products. New York and Michigan imposed bans on sales of flavored products, and the retailers Walmart and Kroger announced they would stop selling e-cigarettes. On September 27, 2019, Washington Governor Jay Inslee, through an executive order, called for the state to impose an emergency ban on all flavored vaping products, including those that contain nicotine and THC. On October 2, 2019, Utah health officials announced emergency rules requiring all tobacco retailers that sell e-cigarettes to post notices regarding the dangers of vaping unregulated THC products, and on October 7, 2019, Hawaii state officials issued an advisory to vaping.

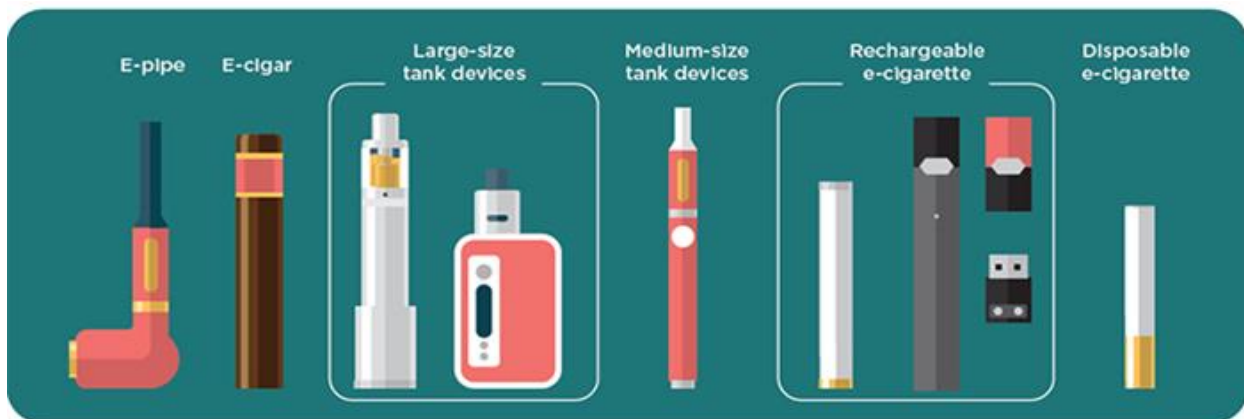
CALIFORNIA INITIATIVES

On September 16, 2019, Governor Gavin Newsom issued an executive order directing the California Department of Public Health (DPH) to launch a \$20 million statewide digital and social media public awareness campaign to educate youth, young adults, and parents about the health risks associated with vaping nicotine and cannabis products. DPH was also tasked with developing recommendations to reduce smoking among young adults and teens by establishing warning signs with health risks where vaping product are sold, and on product advertisements. The Governors' executive order also directs the California Department of Tax and Fee Administration (CDTFA) to develop recommendations to remove illegal and counterfeit vaping products from stores and include nicotine content in the calculation of the existing tax on electronic cigarettes. On September 24, 2019, DPH issued a health advisory urging everyone to refrain from vaping, no matter the substance or source.

DPH, other states, the CDC, the FDA, local health departments, and health care providers are investigating what is in the vape materials that is making people sick. In the health advisory DPH notes that, "All individuals put themselves at risk any time they inhale a foreign substance into their lungs. The risk of vaping for any individual may include serious illness and death. Vaping is not just a concern for youth; the vaping cases under investigation affect youth and adults alike."

VAPORIZERS, E-CIGARETTES, AND ENDS

According to the FDA, vapes, vaporizers, vape pens, hookah pens, electronic cigarettes (e-cigarettes or e-cigs), and e-pipes are some of the many terms used to describe ENDS. ENDS are noncombustible tobacco products. These products, or devices, use an “e-liquid” that may contain nicotine, as well as varying compositions of flavorings, propylene glycol, vegetable glycerin, and other ingredients. The liquid is heated to create an aerosol that the user inhales. ENDS may be manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or “mods,” bear little or no resemblance to cigarettes. These devices are also used to vaporize cannabis.



Use of e-cigarettes, now the most popular tobacco product among teens, has jumped 78% among high school students compared with 2017, with 20.8% (more than 3 million) of high schoolers now using e-cigarettes, according to new FDA data. The data also show that more than half of those high schoolers (51.2%) use menthol- or mint-flavored e-cigarettes. Research has demonstrated that flavored tobacco products play an important role in youth vaping. Almost a third of the middle and high school students who used e-cigarettes in 2016 said the availability of flavors is a main reason they used the products, according to a report from the CDC and the FDA. A study that included both middle and high school students found that 43% of youth who ever used e-cigarettes tried them because of appealing flavors. The majority of youth e-cigarette users think they vaped only flavoring, not nicotine, the last time they used a product, according to an annual national survey of more than 40,000 students from the University of Michigan *2016 Monitoring the Future* study, even though 99% of e-cigarettes sold in most brick-and-mortar stores contain nicotine. California monitors smoking rates among high school students using the California Student Tobacco Survey, administered by DPH on a biennial basis. One in eight California high school students currently use tobacco products, with the most used product among all student being ESDs (10.9%). In addition, 86.4% of youth tobacco users reported using flavored tobacco products

HEALTH IMPACTS OF VAPING

While there is little research on the health effects of vaping THC, in light of the recent outbreak of vaping related injuries/illnesses, the CDC recommends while the investigation is ongoing, that people consider refraining from using e-cigarette, or vaping products, particularly those containing THC. Adults who used e-cigarettes containing nicotine to quit cigarette smoking are encouraged not to return to smoking cigarettes, and anyone who recently used an e-cigarette or vaping product having symptoms like those reported in this outbreak, see a healthcare provider.

The CDC also states that anyone who uses an e-cigarette or vaping product should not buy these products (e.g., e-cigarette or vaping products with THC or Cannabidiol (CBD) oils) off the street, and should not modify or add any substances to these products that are not intended by the manufacturer. The CDC notes that youth, young adults, and pregnant women should not use e-cigarette or vaping products and adults who do not currently use tobacco products should not start using e-cigarette or vaping products.

The CDC's recommendations are bolstered by a growing body of research on the effects of e-cigarette use. A survey of recent studies, published in 2019 in the *American Journal of Respiratory and Critical Care Medicine*, *Journal of the American College of Cardiology*, and *Cardiovascular Toxicology*, found that e-cigarette aerosol with nicotine caused a significant increase in heart rate and arterial stiffness, having an acute impact on vascular and pulmonary function. A Yale study published in July of 2019 in the *American Journal of Preventative Medicine*, focused on the effects of the common flavoring vanillin, which is banned from combustible cigarettes, but allowed in e-cigarettes, and was found to irritate airways when combined with the acetals (molecules) in the aerosol, also known as vapor, produced by JUUL. A March 2018 Dartmouth study, published in the peer reviewed *Public Library of Science Journal*, concluded that, based on existing scientific evidence related to e-cigarettes and optimistic assumptions about the relative harm of e-cigarette use compared to cigarette smoking, e-cigarette use currently represents more population-level harm than benefit. The study also shows that, for every additional adult who quits smoking using e-cigarettes; there are 80 additional youth who initiate daily tobacco use through e-cigarettes.

Although there have been claims that e-cigarettes assist in quitting smoking, e-cigarettes are not currently approved by the FDA as a quit smoking aid. The U.S. Preventive Services Task Force, a group of health experts that makes recommendations about preventive health care, has concluded that evidence is insufficient to recommend e-cigarettes for smoking cessation in adults, including pregnant women.

TOBACCO LAWS AND REGULATIONS

Although there are robust combustible tobacco laws and regulations at the federal level, e-cigarettes have not yet been the subject of final federal regulations. In 1992, Congress passed

Section 1926 of Title XIX of the federal Public Health Service Act, commonly called the Synar Amendment. The Synar Amendment requires states to pass and enforce laws that prohibit the sale of tobacco to individuals under 18 years of age. It also requires federal alcohol and substance abuse block grant funding to be applied to enforce state law in a manner that can reasonably be expected to reduce the illegal sales rate of tobacco products to minors. Up to 40% of the block grant funding can be withheld from states for not complying with the Synar Amendment. In response to the Synar Amendment, in September 1994, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act) was signed into law in California to address the increase in tobacco sales to minors and fulfill the federal mandate. The STAKE Act created a new statewide enforcement program authorizing regulatory actions against businesses that illegally sell tobacco to minors.

Federal law banning cigarette advertisements on television and radio went into effect in 1971; however, smokeless tobacco products were not banned until 1986. The Master Settlement Agreement (MSA) is an accord reached in November 1998 between the state Attorneys General of 46 states (including California), five U.S. territories, the District of Columbia, and the five largest tobacco companies in the U.S. concerning the advertising, marketing, and promotion of tobacco products. In addition to requiring the tobacco industry to pay the settling states approximately \$10 billion annually for the indefinite future, the MSA set standards for, and imposed restrictions on, the sale and marketing of cigarettes by participating cigarette manufacturers including targeting youth, using cartoons to advertise tobacco products, using brand-name merchandise, and sponsoring youth-oriented events. E-cigarettes are not part of this agreement. Under the MSA, states must pass laws requiring non-participating manufacturers to make payments to the state based on their cigarette sales, and, to diligently enforce the payments requirements by tracking all cigarettes sold in the state.

In California, e-cigarettes are included in the definition of tobacco products and the same limits apply to e-cigarettes as to combustible cigarettes, including limits on where they may be used. Existing California law prohibits the sale of tobacco products, including electronic cigarettes to individuals under age 21, but does not limit or restrict the types of flavors of electronic cigarettes. Recent efforts at the state and local level have focused on restricting the sale of tobacco products instead of advertising practices to avoid First Amendment challenges. Over 30 cities in California have passed local ordinances that ban the sale of flavored tobacco products. For example, the City of San Francisco recently banned the sale of all flavored tobacco products and e-cigarettes, including mint and menthol. The Los Angeles County Board of Supervisors voted unanimously on October 1, 2019, to ban flavored tobacco products, including menthol, taking effect in 30 days from the vote.

Approved by voters in 2016, Proposition 56 increased taxes on cigarettes and other tobacco products, including e-cigarettes, by \$2.00 starting in April 2017. It should be noted that that the

current vapor product tax is collected based on a percentage of the wholesale price of the end product sold to the consumer. The Proposition specifically allocates \$30 million of annual revenue to the California Department of Justice (DOJ). These funds support local agencies to enforce tobacco-related statutes and ordinances, including reducing the illegal sale of tobacco products to minors. Grantees may use grant funds to enforce state and local laws related to the illegal sale and marketing of tobacco products to minors and youth including: retailer compliance checks, retailer training programs, installation of signage, youth outreach, tobacco retail license inspections, and/or preventing and deterring use of tobacco products on school premises. On October 2, 2019, the Attorney General announced that 76 local agencies would receive a total of \$30.5 million in Proposition 56-authorized funds for 2019-20 through the DOJ's Tobacco Grant Program. The local entities, which include school districts, police departments and sheriff's offices, can use the money to hire additional officers and roll out enforcement programs and educational outreach initiatives.

In addition to being required to verify the purchasers' age for tobacco sales, retailers of cigarettes and tobacco products in California must have a Cigarette and Tobacco Products Retailer's License. As of June 9, 2016, state law expanded the definition of a tobacco product for cigarette and tobacco products retail licensing purposes to include nicotine products, electronic nicotine or other vaporized liquid delivery devices, and any component, part, or accessory of a tobacco product. Effective January 1, 2017, any retailer that sells any product included in the expanded definition of tobacco products is required to obtain and maintain a Cigarette and Tobacco Products Retailer's License from the CDTFA in order to engage in the retail sale of these products. A retailer's license is valid for a 12-month period, is not assignable or transferable, and must be renewed annually. A license fee payment is required for each retail location at initial registration, every year at the time of renewal. Many cities also have local licensing requirements, which may be more restrictive than state licensing requirements.

DPH also enforces the STAKE Act and its enforcement authority includes conducting unannounced inspections of retailers selling tobacco products to ensure retailers are not selling to youth. According to DPH, it conducted 4,675 compliance inspections and collected \$265,100 in civil penalties in fiscal year (FY) 2018-19. Currently, DPH is required to notify the CDTFA within 60 days of the final adjudication of a retailer's third, fourth, or fifth violation within a five-year time frame, however, DPH did not have any retailers that fit these criteria in FY 2018-19. DPH received an additional \$1.9 million in local assistance funding in FY 2019-20 to allocate grants to local entities for enforcement activities. According to CDTFA as of August 1, 2019, there are 30,685 registered cigarette and tobacco retail locations in California.

CANNABIS LAWS AND REGULATIONS

The regulation and study of the cannabis industry is particularly complex. Although the federal government considers cannabis a controlled substance, 33 states now allow its use for

either recreational or medicinal purposes, or both. Hundreds of cannabis products are sold, legally and illegally, such as THC oil, or cannabis oil with THC. The FDA has warned some sellers of cannabis product supplement not to make health claims, but so many are doing so that the agency cannot monitor them all. Liquid nicotine and THC, sometimes sold in cartridges for use in vaping devices can each contain oils that may be safe to swallow but can damage the lung when vaporized into a mix of unknown chemicals. The CDC has noted that many vaping injuries have been linked to unregulated THC products.

California first legalized cannabis for medical consumption through Proposition 215, also known as the Compassionate Use Act, in 1996. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes. The Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. MCRSA established for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the Bureau of Cannabis Control within the Department of Consumer Affairs, DPH, and the California Department of Food and Agriculture.

Shortly following the passage of MCRSA in November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" (AUMA), which legalized adult-use cannabis. In California, licensed cannabis retailers are required to sell products obtained from a licensed cannabis manufacturer that have been tested by a licensed laboratory. Cannabis products sold by licensed sources are tested for a variety of chemicals, pesticides, microbial impurities, and heavy metals. Under MCRSA, DPH was given the duty of promulgating regulations governing the labeling of all manufactured cannabis products, including determining a universal symbol to be used to mark all edible cannabis products.

DPH's Manufactured Cannabis Safety Branch (MCSB) released its final regulations in January of 2019. Under these regulations, a universal symbol must be placed on an inhaled product container, like a vape cartridge, if that container is separable from the outer-most packaging, like a vape pen. Existing emergency regulations required the universal symbol to be at least one-half inch by one-half inch and to be black in color.



CONCLUSION

Vaping has reached epidemic proportions across the nation and in California. The detrimental impact of smoking on health has been documented for many years and much like tobacco-use, vaping can be considered a risk factor for vascular and pulmonary diseases, as discussed above. Exposure to tobacco smoke is a risk factor for chronic diseases and is considered a human carcinogen. Acute effects of secondhand smoke are serious and include increased frequency and severity of asthma attacks, respiratory symptoms such as coughing and shortness of breath, and respiratory infections such as bronchitis and pneumonia. In addition, using tobacco or being exposed to tobacco smoke during pregnancy is detrimental in fetal development and increases the risk of sudden infant death syndrome.

The safety and long-term health effects of using e-cigarettes or other vaping products are not well known. Relating to the current crisis, federal and state officials have reported hundreds of total possible cases of pulmonary disease and several deaths related to vaping. State and federal health authorities state that the latest finding from their investigation into lung injuries suggest products containing THC play a role in the outbreak, however no single product or substance has been linked to all lung injury cases. According to the CDC, “THC use has been associated with a wide range of health effects, particularly with prolonged heavy use. The best way to avoid potentially harmful effects is to not use THC, including through e-cigarette, or vaping products.

Although the economic costs of vaping to society is not well established, the economic costs of smoking nationwide is more than \$300 billion a year, including nearly \$170 billion in direct medical care for adults and more than \$156 billion in lost productivity due to premature death and exposure to secondhand smoke. The 2012 California DPH State Health Officer's Report on Tobacco Use and Promotion in California estimated that adult tobacco related health care expenditures cost California \$6.5 billion that year, or about \$400 per taxpayer. Those figures did not include other health care costs for children, costs resulting from secondhand smoke exposure, the value of lost time/productivity, or lives lost.

The Governor's initiatives are prudent first steps to addressing the growing vaping epidemic but more needs to be done to address the long-term health and economic cost of vaping, especially curbing its use among the youth. A second joint hearing, yet to be scheduled, will focus on how best to solve the problem, and how to identify and address obstacles to reducing the incidence of vaping, and the associated health risks.

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Alameda Ordinance No. 3230	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: November 27, 2018 Effective: July 1, 2019 Enforced: July 1, 2019	None	No TRLs may be issued to a pharmacy No TRLs may be issued within 300 feet of a youth populated area No TRL’s may be issued within 500 feet of another tobacco retailer The total number of TRLs within the city shall be limited to one for each 2,500 inhabitants of the city No tobacco retailers shall honor or redeem a coupon to allow a consumer to purchase a tobacco product for less than full price, sell a tobacco product through a multi-package discount, provide free or discounted items, or sell a tobacco product for less than full retail price Cigars and little cigars must be sold in packages of at least five Sets a minimum price of \$7 per package of cigarettes and \$5 for cigars	The City’s Planning, Building and transportation Department or any other City department shall inspect each tobacco retailers for compliance A violation of the provisions of this chapter within any five-year period may result in: <div><div>1.</div><div>A fine of \$1500 for a first violation</div></div> <div><div>2.</div><div>A 15 day suspension of the tobacco retail license for a second violation</div></div> <div><div>3.</div><div>A 30 day suspension of the tobacco retail license for a third violation</div></div> <div><div>4.</div><div>A license will be revoked for a fourth violation</div></div>	No
Albany Ordinance No. 2019-04	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 15, 2019 Effective: October 16, 2019	None	No tobacco retailers shall allow a consumer to purchase tobacco for less than full retail price through a coupon, multi-package discount, or provide a tobacco products for free No retailer shall sell: 1. Any little cigar unless it is sold in a package of at least twenty little cigars or 2. Any cigar unless it is sold in a package of at least six cigars (this does not apply to a cigar that has a price of at least \$8.00 per cigar, including all fees and taxes) No retailers shall sell cigarettes, little cigars, or a single cigar at a price that is less than \$8.00, including all applicable fees and taxes *the minimum price shall be adjusted annually by increments of \$.25 in proportion with the Consumer Price Index	The City of Albany Police Department is responsible for enforcing this ordinance A tobacco retailer’s license shall be revoked if the licensee is found to have violated any of the provisions of this chapter After revocation at a location within any 60-month period: <div><div>1.</div><div>No new license may be issued at a location for 30 days after a first violation</div></div> <div><div>2.</div><div>No new license may be issued at a location for 90 days after a second violation and the retailer will be subject to a \$250 fine</div></div> <div><div>3.</div><div>No new license may be issued at a location for one year after a third violation and the retailer will be subject to a \$500 fine</div></div> <div><div>4.</div><div>No new license may be issued at a location for five years after four or more violations and the retailer will be subject to a \$1000 fine</div></div>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Berkeley Ordinance No. 7.672-N.S. Municipal Code Chapter 9.80	Prohibits the sale of flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: September 2015 Effective: January 1, 2017 Enforced: January 1, 2020 Updated: July 23, 2019	None	No new TRL may be issued to a pharmacy or renewed by a pharmacy No new TRL may be issued within 600 feet of school Little cigars/cigarillos must be sold in packages of at least 20 and cigars must be sold in packages of at least 6 No tobacco retailer may sell cigarettes at a price less than \$8 per package of 20 cigarettes, little cigars at a price less than \$8 per package of little cigars, and cigars at a price less than \$7 per cigar, including all taxes and fees (the established minimum prices shall be adjusted annually) Tobacco retailers may not honor or redeem coupons, sell tobacco products through a multi-package discount, or provide free or discounted tobacco products	A violation of the provisions of this chapter within any five-year period may result in: <ol style="list-style-type: none">1. The suspension of a license for up to 30 days for a first violation2. The suspension of a license for up to 90 days for a second violation3. The suspension of a license for up to one year for a third violation4. The revocation of a license upon the fourth violation	
Beverly Hills Ordinance No. 18-2758 Municipal Code Chapter 4-2-21	Prohibits the sale of all tobacco products, including flavored and menthol flavored tobacco products, within the city limits	All tobacco products	Yes	Adopted: August 21, 2018 Effective: September 21, 2018 Enforced: December 21, 2018	None	The flavors policy is enforced through a TRL that must be paid annually	A violation of the provisions of this chapter will result in: <ol style="list-style-type: none">1. A civil penalty fine of \$250 for a first violation within any five year period2. The suspension of the TRL for 90 days and a civil penalty fine of \$750 for a second violation within a five year period3. The revocation of the TRL and a civil penalty fine of \$1,000 for a third violation within a five year period	No
Burbank Ordinance No. 19-3.921 Municipal Code Chapter 3-4-25	Restricts the sale of all flavored tobacco products, with the exception of flavored hookah tobacco for use in a non-e-hookah, to a tobacco bar within the city limits	All tobacco products (with the exemption of hookah)	Yes	Adopted: October, 2019 Effective: November, 2019 Enforced: May 1, 2020	Ordinance exempts tobacco bars (including smoking bars and hookah bars) Ordinance exempts the sale of hookah tobacco for use in a non-e-hookah from any tobacco retailer	A tobacco bar is defined as a smoking bar including a hookah bar that, in the calendar year ending December 31, 2018, and each calendared year thereafter, generated 70 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors or hookah pipes, not including any sales from vending machines, and is registered with the Department. Existing hookah lounges are exempted from the 70 minimum revenue percentage as long as the business remains in its current location AND under current ownership. This policy not only applies to the sale of hookah tobacco at any location, but also to any flavored tobacco intended for onsite consumption at any tobacco bar. Further, it exempts existing hookah bars from the 70% sales requirement, which might theoretically mean that those shops could begin selling any type of flavored tobacco product as long as they still offer some (even minimal) amount of hookah smoking onsite.	Compliance is monitored by the Burbank Police Department. A violation of the provisions of this chapter will result in: <ol style="list-style-type: none">1. The suspension of the license for up to 30 days for a first violation2. The suspension of the license for up to 90 days for a second violation within a five year period of the first violation3. The revocation of the license for a third violation within a five year period of the first violation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Capitola Ordinance No. 1031 Municipal Code Section 8.38.130	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: July 25, 2019 Enforced: January 1, 2020	None	No new TRL may be issued within 1,000 feet of a school and/or a public library	A violation of the provisions of this chapter within six months of the first violation will result in: <div><div>1.</div><div>A fine of \$100 and the suspension of the TRL for up to 30 days for a first violation</div><div>2.</div><div>A fine of \$200 and the suspension for the TRL for 90 days for a second violation</div><div>3.</div><div>A fine \$400 and the revocation of the TRL for a third violation</div><div>4.</div><div>A fine of \$800 for the fourth and each subsequent violation</div></div>	No
Cloverdale Municipal Code Chapter 8.08	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: December 12, 2017 Effective: November 14, 2017	Menthol tobacco products, including cigarettes, are not included in the restrictions	Smoking (including tobacco and marijuana) is prohibited in enclosed places of employment, public places, sports arenas, and multi-unit residence common areas; and unenclosed places of employment, recreational areas, service areas, outdoor dining areas, public places, and multifamily residence common areas No tobacco retailers shall sell any single cigar or any package of cigars containing fewer than five cigars (does not apply to the sale of single cigars if the price exceeds \$5) Pharmacies may not sell tobacco products	Any person or business that violates the provisions of this chapter shall be guilty of an infraction, publishable by: <div><div>1.</div><div>A fine not exceeding \$100 for a first violation</div><div>2.</div><div>A fine not exceeding \$200 for a second violation within one year</div><div>3.</div><div>A fine not exceeding \$500 for each additional violation within five years</div></div>	No
Contra Costa County Ordinance No. 2017-01 Municipal Code Chapter 445-2	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within 1,000 feet of schools (public and private), parks, playgrounds and libraries in the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: July 18, 2017 Effective: August 1, 2017 Enforced: January 1, 2018	Only applies to retailers within 1,000 feet of schools, parks, playgrounds and libraries	No new tobacco retail licenses may be issued in pharmacies Little cigars must be sold in packs of at least 10, and cigarillos must be sold in packs of at least 10 unless the sales price of one cigar is over \$5 No new tobacco retail licenses will be granted to businesses located within 1,000 feet of schools, parks playgrounds or libraries, or within 500 feet of another business that sells tobacco Sets a cap on the total number of tobacco retailers Prohibits the redemption of coupons or redemptions Smoking is prohibited in specified enclosed and unenclosed areas and in all multi-unit residence areas, with some exceptions	A violation of the provisions of this chapter will result in: <div><div>1.</div><div>The suspension of the TRL for up to 30 days for a first violation</div><div>2.</div><div>The suspension of the TRL for up to 90 days for a second violation that occurs within five years after the first violation</div><div>3.</div><div>The suspension of the TRL for up to one year for a third violation and for each subsequent violation that occurs within five years after the first violation</div></div>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Corte Madera Ordinance No. 983	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: March 19, 2019 Effective: April 18, 2019 Enforced: January 1, 2020	None	Prohibits the sale of: <ol style="list-style-type: none">any single cigar ,whether or not packaged for individual saleany number of cigars fewer than then number contained in the manufacturer’s original consumer packaging designed for retail saleany package of cigars containing fewer than five cigars (this does not apply to the sale of a single cigar for which the retail price exceeds \$5) No new tobacco retail licenses may be issued in pharmacies	Compliance is monitored by the Town Manager Any peace officer may enforce the penal provisions of the policy. A violation of the provisions of this chapter within a 60-month period will result in: <ol style="list-style-type: none">The issuance of a warning for a first violationThe suspension of the license for 30 days for a second violationThe suspension of the license for 90 days for a third violationThe suspension of the license for one year for a fourth violationThe revocation of a license for five or more violations	No
Culver City Ordinance No 2019-013 § 3 Municipal Code Chapter 11.15	Prohibits the sale of all flavored tobacco products, with the exception of flavored tobacco products sold in a hookah lounge, within the city limits	All flavored tobacco products	Yes	Adopted: October 17, 2019 Effective: November 27, 2020 (for all tobacco stores with a valid TRL as of October 14, 2019) May 25, 2020 (for all other tobacco retailers)	The ordinance exempts hookah lounges that have a valid tobacco retail license and continue under the same ownership and control existing as of October 14, 2019	A hookah lounge is defined as an establishment holding a valid Tobacco Retail License that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of hookah tobacco for consumption by customers on the premises; (ii) generates more than 70% of its gross revenues annually from the sale of hookah tobacco and the rental of on-site hookahs; (iii) does not sell food or beverages for consumption on the premises; and (iv) prohibits entry to anyone under 21 years of age	Compliance shall be monitored by the Finance Department, Police Department and/or Enforcement Services Division A violation of the provisions of this chapter will result in: <ol style="list-style-type: none">The suspension of the license for 30 days for a first violationThe suspension of the license for 90 days for a second violation within five years of the first violationThe revocation of the license for a third violation within five years of the first violation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
El Cerrito Ordinance No. 2015-08 Municipal Code 6.100.160	Prohibits the sale of all flavored, non-cigarette tobacco products, including menthol flavored non-cigarette tobacco products, within the city limits	All flavored non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: October 2015 Effective: January 1, 2016 Enforced: October 2017	Menthol cigarettes are not included in the restrictions	<p>No new licenses may be issued to authorize tobacco retailing within 500 feet of schools, youth sensitive locations (parks and playgrounds, libraries), residential zones, or other tobacco retailers (tobacco retailers already in operation are exempt)</p> <p>No new licenses may be issued to authorize tobacco retailing within 1,000 feet of another tobacco retailer (tobacco retailers already in operation are exempt)</p> <p>Single cigar sales prohibited (except single cigars over \$5), a package of cigars must have at least five cigars</p> <p>Tobacco samples & coupons prohibited (except as allowed in adult-only businesses per state and federal law)</p> <p>Hookah lounges, cigar lounges, vape shops, or similar establishments are prohibited within the city limits</p> <p>New tobacco retailers may not operate as a “Significant Tobacco Retail Establishment” (use over 20% of the store display area for or derive over 50% of gross sales receipts from tobacco products or smoking paraphernalia) (existing tobacco retailers may seek an exception)</p> <p>Imitation tobacco products also included in prohibition</p>	<p>Compliance is monitored and enforced by the City’s Community Development Department, in conjunction with the El Cerrito Police Department</p> <p>A violation of the provisions of this chapter within a five year period will result in the suspension of a license for:</p> <ol style="list-style-type: none">1. 10 days for first violation2. 30 days for second violation3. 60 days for third violation4. Upon the fourth or more violations the license shall be revoked	Existing establishments within a certain distance of schools, youth sensitive areas and other tobacco retailers are allowed to continue to sell flavored tobacco products until January 1, 2018 but they must comply with all other TRL requirements
Fairfax Ordinance No Municipal Code Chapter 8.44	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: December 6, 2017 Effective: December 6, 2018 Enforced: January 1, 2019 Updated: September 4, 2019 Effective: September 1, 2020	None	<p>It shall be a violation to sell, offer for sale, or exchange for any form of consideration:</p> <ol style="list-style-type: none">1. Any single cigar, whether or not packaged for individual sale2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer3. Any package of cigars containing fewer than five cigars <p>*(This does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5)</p> <p>Prohibits the sale of tobacco products in pharmacies</p>	<p>Regulations shall be monitored by the Town Manger and the Marin County Tobacco Program</p> <p>A violation of the provisions of this chapter within any 60-month period may result in:</p> <ol style="list-style-type: none">1. A 30 day suspension of a license for a first violation of this article2. A 90 day suspension of a license for a second violation of this article3. A one-year suspension for a third violation of this article4. The revocation of a license for five years for a fourth violation of this article	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Fremont Ordinance No	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: October 8, 2019 Effective: November 7, 2019	None	Prohibits the sale of cigar packages containing fewer than 5 cigars or a single cigar (unless the retail price exceeds \$5) Requires a pack of cigars to be sold for a minimum price of \$8 Prohibits the sale of cigarette packages containing fewer than 20 cigarettes or a single cigarette Requires cigarettes to be sold for a minimum price of \$8 per pack (including tax and fees)	This ordinance will be enforced by a designee named by the city manager or a peace officer A violation of the provisions of this chapter within a 60 month period shall result in the issuance of a notice of violation and no new license may be issued to the violator for: 1. 30 days for a first violation 2. 90 days for a second violation 3. 12 months for a third violation 4. Revocation of the license for four or more violations	No
Half Moon Bay Municipal Code Section 7.60.120	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: October 2018 Effective: April 1, 2019	None	No tobacco retail permits may be issued to new or existing pharmacies (this provision effective April 1, 2019) No tobacco may be sold from a vending machine No person shall distribute free tobacco products or coupons for tobacco products	The ordinance will be enforced by the county of San Mateo, its officers, employees and agents A violation of the provisions of this chapter may result in: 1. A suspension of the license for up to 30 days for the first violation 2. A suspension of the license for no less than 30 days and up to 90 days for the second violation of the ordinance within 24 months of the first determination 3. A suspension of the license for no less than 90 days and up to one year for the third and each subsequent violation of the ordinance within 24 months of a prior determination	No
Hayward Municipal Code Sec. 10-1.2780	Prohibits the sale of flavored tobacco products with the exception of menthol flavored cigarettes within a 500-foot radius of schools (public and private kindergarten, elementary, middle, junior high or high school) for <i>new</i> tobacco retailers (established after the passage of this policy) within the city limits	All flavored non-cigarette tobacco products, (excludes menthol cigarettes)	Yes (only for non-cigarette tobacco products)	Adopted: July 1, 2014 Effective: August 1, 2014	Menthol cigarettes are not included in restrictions Retailers that sold products before provisions took effect are exempt Restrictions only apply to retailers within 500 feet of schools	Prohibits the sale of cigar packages containing fewer than 5 cigars or a single cigar (unless the retail price exceeds \$5) No new tobacco retailers or new sales of flavored tobacco within 500 feet of a public or private K-12 school Vapor bars, lounges, smoking device bars, electronic smoking device lounges, and hookah bars and lounges are prohibited in all zoning districts Imitation tobacco products also included in prohibition	Regulations are enforced by the City’s Planning Director, in conjunction with the City’s Code Enforcement Division and the Hayward Police Department Any Tobacco Retail Sales Establishment that violates regulations in ordinance three times within a three-year period shall be subject to revocation of its tobacco retail license and/or its conditional use permit	Retailers selling flavored tobacco products prior to the ordinance effective date are exempt

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	/products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Hermosa Beach Ordinance No. 18-1389	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: January 8, 2019 Effective: June 1, 2019	None	Tobacco retailers must be located at least 500 feet from a youth-populated area No license may be issued to authorize tobacco retail licensing at farmers’ markets, special temporary events, or mobile carts A TRL may not be issued to a pharmacy No TRL may be issued for businesses licensed to serve alcohol Minimum pack size requirement of 20 for little cigars	Compliance checks shall be conducted by any member of the Hermosa Beach Code Enforcement Department, Police Department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees Tobacco Retailer’s license shall be suspended or revoked for a violation of any provision of this chapter	No
Lafayette Ordinance No. 675	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: May 28, 2019 Effective: August 26, 2019	None	No tobacco retailer shall: 1. honor a redeem a coupon to allow a consumer to purchase tobacco for less than full price 2. sell a tobacco product through a multiple-package discount or for less than the full retail price 3. provide free or discounted items to a consumer Prohibits the sale of tobacco products in pharmacies The total number of tobacco retailer licenses within the city is limited to 1 for each 2,500 inhabitants of the city All tobacco sales shall be conducted in-person and tobacco products may not be delivered to the consumer	Compliance will be monitored by an agency or department designated by the city manager, or a peace officer Any violation of the TRL within a 5-year period may result in: 1. The suspension of a license for 30 days for a first violation 2. The suspension of a license for 90 days for a second violation 3. The suspension of a license for up to one year without the possibility for renewal for a year for a third violation 4. The revocation of a license for the fourth or more violations	Some tobacco retailers operating lawfully at the date of this chapter may apply for an additional 180 days before terminating sale of flavored tobacco products
Larkspur Ordinance No. 1037	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 3, 2019 Effective: May 3, 2019 Enforced: January 1, 2020	None	Establishes a minimum pack size of five for cigars, little cigars and cigarillos and prohibits the sale of a single cigar or any number of cigars fewer than the number contained in the original packaging (this does not apply to the sale of a single cigar for over \$5) Prohibits the sale of tobacco products in pharmacies	Compliance will be monitored by the City Manager and the Marin County Tobacco Program Any violation of the TRL within a 60-month period may result in: 1. A warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Livermore Ordinance No. 2088	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: July 8, 2019 Effective: August 7, 2019 Enforced: January 1, 2020	None	The sale of electronic smoking devices or electronic smoking device fluid is prohibited No tobacco retailing license shall be issued or existing license renewed within 1,000 feet of a youth populated area	Compliance shall be monitored by the Livermore Police Department or any other City designee Any violation of the TRL within a 5-year period may result in: <div><div>1. The suspension of a license for 30 days for a first violation</div><div>2. The suspension of a license for one year for a second violation</div><div>3. The revocation of a license for a third or more violations</div></div> The licensee may request an alternative to these penalties for a first or second violation of this chapter, which includes: <div><div>1. The cessation of all tobacco retailing and removal of all tobacco products from public view for one day, a payment of \$1,000, and the admission that the violation occurred for the first violation</div><div>2. The cessation of all tobacco retailing and removal of all tobacco products from public view for 10 days, a payment of at least \$5,000, and the admission that the violation occurred for the second violation</div></div>	No
Los Angeles County Ordinance No.	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: October 1, 2019 Effective: November 1, 2019 Enforced: May 4, 2020	None	Establishes a minimum pack size of 20 for little cigars or cigarillos, and these products may not be sold individually Prohibits the sale of tobacco products in pharmacies Tobacco shops are required to have a tobacco retail license and a tobacco business license to sell tobacco products	Compliance shall be monitored by the Los Angeles County Department of Public Health or any law enforcement officer Any violation of the TRL within a 5-year period may result in: <div><div>1. The suspension of the license for up to 30 days for a first violation</div><div>2. The suspension of the license for up to 90 days for a second violation</div><div>3. The suspension of the license for up to 120 days for a third violation</div><div>4. The revocation of the license for a fourth violation</div></div>	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Los Gatos Ordinance No. 2259	Limits the sale of flavored tobacco products, including menthol flavored tobacco, to adult-only tobacco stores within the city limits	All flavored tobacco products	Yes	Adopted: May 16, 2017 Effective: January 1, 2018	Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited	TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer Limits storefront advertising to no more than 15% of the window and clear doors	Compliance will be monitored by the Town or its Designee; a peace officer may enforce the provisions in this policy Any violation of the TRL within a 12-month period may result in: 1. A fine not to exceed \$100 for a first violation 2. A fine not to exceed \$200 for a second violation 3. A fine not to exceed \$500 for each additional violation For any violation of the TRL within a 24-month period, permit suspension includes: 1. Permit suspension for up to 30 calendar days for a first violation 2. Permit suspension for up to 90 calendar days for a second violation 3. Permit suspension for up to one year for each additional violation	No
Manhattan Beach Ordinance No. 19-0016-U Municipal Code 4.118.030	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: December 2015 Effective: January 1, 2016 Updated to Include Menthol: November 5, 2019	None	No tobacco retailer permit may be issued within 500 feet of a school or an existing retailer	The retail permit may be revoked or suspended for two or more violations within a 36-month period	No
Marin County Ordinance No. 3698	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: November 6, 2018 Effective: December 5, 2018 Enforced: July 1, 2019 (Non-Tobacco Stores) July 1, 2020 (Tobacco Stores)	None	It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from the County of Marin for each location where these sales are conducted	Enforcement shall be conducted by the Marin County Dept. of Health and Human Services A violation of the provisions of this chapter may result in: 1. An administrative citation and fine not less than \$200 for a first violation 2. An administrative citation and fine not less than \$500/violation for subsequent violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Mono County Ordinance No. 18-03 Municipal Code 7.92.070	Prohibits the sale of all flavored e-liquids, including menthol flavored e-liquids, within the unincorporated areas of the county	All flavored e-liquids (excludes all other flavored tobacco products)	Yes (only for menthol-flavored e-liquids)	Adopted: April 17, 2018 Effective: May 17, 2018	Does not include flavored tobacco products other than e-liquids	Prohibits smoking in all areas where smoking is prohibited by state or federal law, as well as county vehicles, public parks recreational areas, service areas, dining areas and public places when used for a public event Smoking may not occur closer than 20 feet outside any enclosed area and from entrances, windows, or ventilation systems * Limited flavored e-liquid sales policy is set to sunset in October 2019 and a complete ban on all flavored tobacco and menthol products will become effective Policy is not attached to a TRL	The Mono County Public Health Director or his/her designee is authorized to enforce this ordinance and to refer enforcement to the Mono County Code Compliance Division Any person or business found in violation of any provision of this Chapter shall be guilty of an infraction and subject to a fine of: 1. \$100 for the first violation 2. \$200 for the second violation 3. \$500 for any subsequent violation	No
Novato Ordinance No. 1615 Municipal Code 7-8	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products, including marijuana (excludes menthol flavored tobacco products)	No	Adopted: January 31, 2017 Effective: January 1, 2018 Enforced: January 1, 2019	Menthol tobacco products are not included in the prohibition Flavored tobacco products may be sold if the product is: 1. a package of cigars containing at least five cigars 2. a single cigar for which the retail price exceeds five dollars 3. pipe tobacco 4. a package of chewing tobacco or snuff containing at least five units or more	Minimum pack size requirements prohibit the sale of: 1. A single cigar (unless the price of the single cigar exceeds \$5) 2. A package of cigars containing fewer than five cigars, or any number of cigars fewer than the number contained in the manufacturer’s original consumer packaging designed for retail sale to a consumer No pharmacies may sell tobacco products Policy includes flavored marijuana	Compliance will be monitored by the Department or other designated agency Any violation of this chapter within a 60-month period may result in: 1. A warning for a first violation 2. The suspension of a license for 30 days for a second violation 3. The suspension of a license for 90 days for a third violation 4. The suspension of a license for one year for a fourth violation 5. The revocation of a license for the fifth or more violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Oakland Municipal Code 5.91	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits	All flavored tobacco products	Yes	Adopted: September 19, 2017 Effective: July 1, 2018	Flavored tobacco products may still be sold in adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors under the age of 18 unless accompanied by a parent or legal guardian, and do not sell food or alcoholic beverages	An amendment allows clerks aged 18 and older to sell tobacco Tobacco retailers may not sell tobacco products at a discount less than full retail price, including honoring or redeeming coupons	The City designates the Oakland Police Department to enforce this Ordinance A violation of this Chapter at a location within any 60-month period may result in: <ol style="list-style-type: none">1. An agreement to stop acting as a Tobacco Retailer for at least one day and a settlement payment to the City of at least \$1,000 for a first violation2. An agreement to stop acting as a Tobacco Retailer for at least ten days and a settlement payment to the City of at least \$5,000 for a second violation3. No new license may be issued until five years have passed from the date of the violation for a third or subsequent violation	No
Palo Alto Ordinance No. 5418 Municipal Code 4.64.030	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores within the city limits	All flavored tobacco products	Yes	Adopted: October 2, 2017 Effective: January 1, 2019	Ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow anyone under 21, do not sell food or alcoholic beverages for consumption on the premises, and post a sign outside saying that minors are prohibited	TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer	Compliance will be monitored by the City or its Designee, and any peace officer may enforce the penal provisions of the ordinance A violation of the provisions of this chapter may result in: <ol style="list-style-type: none">1. A fine not to exceed \$100 (within a 12-month period) and a suspension up to 30 days (within any 24-month period) for a first violation2. A fine not to exceed \$200 (within a 12-month period) and a suspension of the retailer permit for up to 90 days (within any 24-month period) for a second violation3. A fine not to exceed \$500 (within a 12-month period) and the suspension of the retailer permit for up to one year (within any 24-month period) for each additional violation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Portola Valley Ordinance No. 2018-425	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: September 12, 2018 Effective: October 11, 2018 Enforced: January 1, 2019	None	No existing or new pharmacies may sell tobacco products	Compliance monitored will be conducted through the Environmental Health Division of San Mateo County Health Department Penalties for violation of this ordinance include: <div><div>1.</div><div>The suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violation</div></div> <div><div>2.</div><div>The suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violation</div></div> <div><div>3.</div><div>The suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations</div></div>	No
Redondo Beach Ordinance No. O-3194-19	Prohibits the sale of all flavored tobacco products, with the exception of hookah sold in licensed hookah businesses, within the city limits	All flavored tobacco products	Yes	Adopted: October 15, 2019 Effective: November 14, 2019	The ordinance exempts licensed hookah business that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location	To meet the qualifications for the exemption, a licensed hookah business must only permit patrons 21 years of age or older, or active duty military personnel who are 18 years of age or older, to enter the location where the tobacco product may be consumed or purchased	Compliance will be monitored by the Chief of Police and other designated enforcement officials Penalties for violation of this ordinance include: <div><div>1.</div><div>The suspension of the license for 60 days for the first violation</div></div> <div><div>2.</div><div>The suspension of the license for 90 days for the second violation</div></div> <div><div>3.</div><div>The revocation of the license for the third violation</div></div>	No
Richmond Ordinance No. 20-18 N.S. Municipal Code 7.106	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the city limits	All electronic smoking devices* and other flavored tobacco products *until approved by the FDA	Yes	Adopted: July 17, 2018 Effective: April 17, 2019 E-cigarette ban adopted: September 10, 2019 E-cigarette ban Enforced: January 1, 2020	None	No e-cigarettes may be sold in stores and online with the city The ordinance establishes a minimum pack-size of 20 cigars and cigarillos, except for single cigars that sell for more than \$5 each, and prohibits the sale of any single little cigar or cigar Prohibits new tobacco retailers from opening within 500 feet of existing tobacco retailers and 1,000 feet from a school, park, playground or library	Compliance will be monitored by the Richmond Police Department A tobacco retail license shall be revoked if the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions in the municipal code. The enforcement agency may also enforce through administrative fines	Existing tobacco retailers not in line with the distance requirement for tobacco retailers from schools and other tobacco retailers are grandfathered in unless the business changes ownership

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Sacramento Ordinance No. 2019-0012	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 16, 2019 Effective: January 1, 2020	None	No new tobacco retail licenses shall be issued or existing licenses renewed to authorize tobacco retailing within 1,000 feet of another tobacco retailer	Penalties for violation of ordinance within a 5 year period include: <div><div>1. The suspension of a license for 30 days for a first violation</div><div>2. The suspension of a license for 90 days for a second violation</div><div>3. The revocation of a license for a third violation</div></div> Any person violating the provisions of this chapter shall also be liable for civil penalties of not less than \$250 or more than \$25,000 for each day the violation continues	No
San Anselmo Ordinance No.	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: March 26, 2019 Effective: April 25, 2019 Enforced: January 1, 2020	None	The ordinance establishes a minimum pack-size of 5 cigars, little cigars and cigarillos, except for single cigars that sell for more than \$5 each, and prohibits the sale of any single cigar, little cigar or cigar No existing or new pharmacies may sell tobacco products	Compliance will be monitored by the Finance Department, a designee or a peace officer Penalties for violation of this ordinance within a 60-month period include: <div><div>1. The issuance of a warning for a first violation</div><div>2. The suspension of a license for 30 days for a second violation</div><div>3. The suspension of a license for 90 days for a third violation</div><div>4. The suspension of a license for one year for a fourth violation</div><div>5. The revocation of a license for the fifth or more violations</div></div>	No
San Carlos Ordinance No. 1544	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: April 8, 2019 Effective: May 8, 2019	None	No existing or new pharmacies may sell tobacco products Flavor Policy is not tied to a TRL	The City Manager or designee may enforce this chapter.	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered	Menthol Included	Effective date	Exemptions	Notes	Enforcement	Grandfathering
San Francisco Ordinance No. 140-17	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the county limits	All electronic smoking devices* and other flavored tobacco products *until approved by the FDA	Yes	Adopted: June 27, 2017 Referendum Vote: June 5, 2018 Effective: July 20, 2018 Enforced: January 1, 2019	None	No e-cigarettes may be sold in stores and online with the county No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a school No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing tobacco retailer No existing or new pharmacies may sell tobacco products	Compliance will be monitored through the Director of Health or his or her designee For a violation of the ordinance, the Director of Health may suspend a Tobacco Sales Permit: <ol style="list-style-type: none">For a maximum of 90 days of the first violationFor a maximum of six months for a second violation that occurs within the first 12 months of the first violationFor a maximum of one year for a third violation if within 12 months of the prior violation	No
San Leandro Municipal Code 4-36	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits (including flavored products that do not contain nicotine)	All flavored tobacco products (excluding menthol tobacco products)	No	Adopted: October 16, 2017 Effective: August 15, 2018	Menthol tobacco products are not included in the prohibition Wholesale companies are excluded from the ordinance if the tobacco products made or distributed in San Leandro are sold by retailers outside the city	No tobacco retailer shall sell, offer for sale, or exchange any <ol style="list-style-type: none">Single cigarAny pack of cigars at a price that is less than \$7.00 per five cigars (does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either five dollars or the dollar amount adopted by resolution of the City Council and adjusted from time to time, whichever is higher)	Compliance will be monitored by the San Leandro Police Department Penalties for violation of this ordinance within a 36 month period include: <ol style="list-style-type: none">A written warning and 30 days to correct violation for the first violationA \$2,500 fine for a second violationA 20 day license suspension for a third violationAfter four or more violations, the license shall be revoked and no new license may issue for the location or tobacco retailer until three years have passed from the date of revocation	No
San Mateo County Ordinance No. 4799 Municipal Code 7.41	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the county	All flavored tobacco products	Yes	Adopted: June 19, 2018 Effective: July 19, 2018 Enforcement: January 1, 2019	None	No existing or future pharmacies may sell tobacco products	Compliance will be monitored through the Environmental Health Division of San Mateo County Health Department Penalties for violation of ordinance include: <ol style="list-style-type: none">A suspension of the TRL for up to 30 days and a fine not exceeding \$100 for the first violationA suspension of the TRL for no less than 30 days and up to 90 days and a fine not exceeding \$200 for the second violation within 24 months of the first violationA suspension of no less than 90 days and up to one year of the TRL and a fine not exceeding \$500 for the third violation and subsequent violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
San Pablo Ordinance No. 2018-006 Municipal Code 5.06	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: December 17, 2018 Effective: March 2019	None	Requires a minimum pack size for cigars (6 per pack), cigarillos (25 per pack) and little cigars (20 per pack) Requires a minimum price of \$10.00 per cigar	Penalties for violation of ordinance within any 60-month period include: <ol style="list-style-type: none">1. A suspension of the license for up to 30 days for a first violation. At the election of the tobacco retailer, the tobacco retailer may pay a penalty of \$1000 in lieu of such suspension2. A suspended of the license for one year for a second violation3. The revocation of the license for and the proprietor or proprietors who had been issued the license shall never again be issued a tobacco retailer’s license pursuant to this chapter for the third and subsequent violations	No
San Rafael Ordinance No. 1970 Municipal Code Chapter 8.15	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: June 3, 2019 Effective: January 1, 2021	None	No person shall place any advertisement or promotion of tobacco products within 500 feet of an elementary, secondary or high school, public playground or public park unless the tobacco product is located inside a commercial establishment, on a vehicle, on a sign located inside or immediately outside a commercial establishment, or on tobacco packaging No existing or future pharmacies may sell tobacco products	Compliance will be monitored through the Director of Community Development or designee Penalties for violation of ordinance within any 12-month period include: <ol style="list-style-type: none">1. The suspension of a license for 90 days unless the permittee submits a training plan for the training of all sales employees in the law pertaining to the sale, advertising, and display of tobacco products to minor, and the permittee files satisfactory evidence that the training in the training plan has been completed for a first violation2. The suspension of a license for 120 days for a second violation3. The suspension of a license for one year upon each subsequent violation A license shall be revoked after not less than 10 days’ notice if one or more of the bases for denial of a permit exists	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Santa Clara County Ordinance No. NS-300.883	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores in the unincorporated areas of the County	All flavored tobacco products	Yes (revised in 2016 to include menthol)	Adopted: June 2010 Effective: February 2015 Amended: October 2016 Amended version effective: July 2017	Revised ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors, do not sell food or beverages, and post a sign outside saying that minors are prohibited	No TRLs may be issued to a retailer containing a pharmacy No TRLs may be issued to a retailer within 1,000 feet of a school (existing retailers exempt) No TRLs may be issued to a retailer located within 500 feet of another retailer (existing retailers exempt)	Compliance shall be monitored by the Department of Environmental Health Penalties for violations of this ordinance within a 12-month period include: 1. A fine not to exceed \$100 for the first violation within a 12-month period and a license suspension for up to 30 days within any 24-month period 2. A fine not to exceed \$200 for a second violation within a 12-month period and a license suspension for up to 90 days within any 24-month period 3. A fine not to exceed \$500 for each additional violation within a 12-month period and a license suspension for up to one year for each additional violation within any 24-month period	No
Santa Cruz Ordinance No. 2018-19 Municipal Code 6.07	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: November 27, 2018 Effective: June 11, 2019 Enforced: January 1, 2020	None	No license shall be issued to authorize tobacco retailing that is within six hundred feet of a high-risk alcohol outlet No license shall be issued to authorize tobacco retailing that is within that is within one thousand feet of a school *This prohibition shall not apply to a license applicant whose application seeks authorization to conduct tobacco retailing at a location where such retailing was taking place as of January 1, 2014, and has continued without interruption at that location since May 8, 2014	Every violation of this chapter determined to be an infraction is punishable by: 1. A fine not exceeding \$100 for a first violation and a license suspension for up to 60 days 2. A fine not exceeding \$200 for a second violation and the suspension of a license for 120 days 3. A fine not exceeding \$500 for a third and each additional violation and the suspension of a license for 180 days 4. The tobacco retailer’s license shall be revoked, and no new license may be issued for the location until five years have passed from the date of revocation upon the fourth and each subsequent violation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Santa Cruz County Ordinance No.5300 Municipal Code Chapter 5.60	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: June 11, 2019 Effective: January 1, 2020	None	No new license shall be issued to authorize tobacco retailing that is within six hundred feet of a youth-populated area (private or public kindergarten, elementary, middle, junior high, or high school)	Compliance shall be monitored by the Santa Cruz County Health Services Agency or any law enforcement officer Penalties for violations of this ordinance within any 60-month period include: 1. The suspension of a license for 60 days for a first violation 2. The suspension of a license for 120 days for a second violation 3. The suspension of a license for 180 days for a third violation 4. The revocation of a license for a fourth violation, and no new license shall be issued for five years	No
Saratoga Municipal Code 4-90	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: October 3, 2018 Effective: November 17, 2018	Menthol flavored tobacco products are not included in the policy	No tobacco retailer permit tobacco may be issued to a licensed pharmacy No tobacco retailers established after September 16, 2016 shall be granted a tobacco retailer license for a location which is within 500 feet of another retailer or within 1000 feet of an elementary, middle, or high school or a City park No tobacco product or paraphernalia may be sold from a vending machines	Penalties for violations of this ordinance within a 24 month period include: 1. The suspension of an existing license for up to 60 days from the date of the citation issuance for a first violation 2. The revocation of any existing license shall for up to 24months from the date of the administrative citation issuance for a second or subsequent citation	No
Sausalito Ordinance No. 1264	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All flavored tobacco products	Yes	Adopted: July 2018 Effective: November 1, 2018	None	Ordinance amends city’s current “Clean Indoor Air and Health Protection” municipal code chapter to add “Tobacco Retail License Requirement and Prohibit the Sale of Flavored Tobacco Products” Smoking is prohibited in all enclosed places of employment, public places, recreational areas, common areas Smoking is prohibited in all unenclosed places of employment, recreational areas, services areas, dining areas, common areas that meet certain requirements Smoking restrictions included for multi-unit housing complexes and rental units	Anyone who violates a provision in this chapter will be deemed guilty of an infraction The City may seek the revocation or suspension of a tobacco retailer’s license	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Sonoma Ordinance No. 04-2015 Municipal Code 7.25	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excluding menthol flavored tobacco products)	No	Adopted: June 1, 2015 Effective: September 1, 2015 Enforced: September 1, 2015	Menthol flavored tobacco products are not included in the policy Flavored tobacco products may still be sold if <ol style="list-style-type: none">the tobacco product consists of a package of cigars that contains at least five cigarsa single cigar for which the retail price exceeds \$5the tobacco product consists of pipe tobaccothe package of chewing tobacco or snuff contains at least five units or more	It is a violation to sell any single cigar (unless the retail price of the cigar exceeds \$5) and a package of cigars containing fewer than five cigars or the number of cigars contained in the manufacture’s original consumer packaging Limits the eligibility of retailers permitted to apply for a tobacco retail license	Decoy enforcement operations conducted annually by Sonoma Police Department Penalties for violations of this ordinance within a 60-month period include: <ol style="list-style-type: none">The suspension of a license for 30 days for a first violationThe suspension of a license for 90 days for a second violationThe suspension of a license for one year for a third violationThe revocation of a license for a fourth or subsequent violations Violations of this chapter are subject to a civil action punishable by a fine not less than \$250 and not exceeding \$1,000 per violation	No
South San Francisco Ordinance No. 1455	Limits the sale of flavored tobacco products, including menthol flavored tobacco products, to adult-only tobacco stores in the city limits	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: October 9, 2019 Effective: January 1, 2020	Ordinance exempts adult-only retailer stores, significant tobacco retailers lawfully established before the effective date of the ordinance, and hookah bars and smoking lounges	No tobacco retailer permit tobacco may be issued to a licensed pharmacy or renewed by an existing pharmacy Significant tobacco retailers are prohibited in all zones throughout the city	The City Manager or his or her designee may enforce the provisions of this ordinance	No
Watsonville	Prohibits the sale of all electronic smoking devices and other flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas	All electronic smoking devices and other flavored tobacco products	Yes	Adopted: October 22, 2019 Effective: November 23, 2019	None	No tobacco retailer permit tobacco may be issued to a licensed pharmacy or renewed by an existing pharmacy	Penalties for violations of this ordinance include: <ol style="list-style-type: none">The suspension of a license for up to 60 days for a first violationThe suspension of a license for 120 days for a second violation within 60 months of the first determinationThe suspension of a license for 180 days for a third violation within 60 months of the prior determinationThe revocation of a license for a fourth or subsequent violations within 60 months of the prior determination	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
West Hollywood Ordinance No. 16-991 Municipal Code 5.114	Prohibits the sale of all tobacco products within 600 feet of a youth-populated area (school, youth center, child-care facility, etc.) within the city limits	All tobacco products	Yes	Adopted: October 2016 Effective: November 2016	Tobacco retailers operating prior to May 1, 2016, adult-only facilities, and hotels that sell tobacco products as part of incidental sales on the premises may still sell all tobacco products regardless of location	Policy includes a ban on the sale of all tobacco products within 600 feet of youth populated areas No new tobacco retailer licenses may be issued for tobacco retailers within 600 feet of a school No new licenses may be issued for tobacco product shops within 1000 feet of a youth-populated area Little cigars must be sold in pack size of at least 20	Any member of the West Hollywood Code Compliance Division, Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s Department, or their designees are authorized to monitor and enforce the provision	Yes, existing retailers operating prior to May 1, 2016 are grandfathered regardless of any change or transfer of ownership of the business
Windsor Ordinance No. 2018-323 Municipal Code 3-11-115	Prohibits the sale of all flavored tobacco products, with the exception of menthol flavored tobacco products, within the city limits	All flavored tobacco products (excludes menthol tobacco products)	No	Adopted: March 7, 2018 Effective: April 6, 2018 Enforcement: July 30, 2018	Menthol flavored tobacco products are not included in the policy Tobacco retailers may sell flavored tobacco products if: <ol style="list-style-type: none">1. The tobacco product consists of a package of cigars containing at least five cigars or little cigars2. The tobacco product is a single cigar for which the retail price exceeds \$5.003. The tobacco product consists of pipe tobacco4. The package of chewing tobacco or snuff contains at least five units	No tobacco retailer shall sell to a consumer: <ol style="list-style-type: none">1. A package of cigarettes at a price that is less than \$7.00 per package of twenty 20 cigarettes, including all applicable taxes and fees2. A package of little cigars that is less than \$7.00 per package of five little cigars, including all applicable taxes and fees3. A package of cigars that is less than \$7.00 per five cigars, including all applicable taxes and fee.4. A package of chewing tobacco or snuff that is less than \$7.00 per package of five units It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration: <ol style="list-style-type: none">1. Any single cigar or little cigar, whether or not packaged for individual sale;2. Any number of cigars or little cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;3. Any package of cigars or little cigars containing fewer than five cigars.4. Any package of chewing tobacco or snuff containing fewer than five units. *This section shall not apply to the sale or offer for sale of a single cigar for which the retail price exceeds \$5.00 No license may be issued to authorize tobacco retailing within 1,000 feet of a school (unless the retailer was operating before the date of the ordinance codified in this chapter) Limits the eligibility of retailers permitted to apply for a tobacco retail license	The policy will be enforced by the County of Sonoma Department of Health Services Penalties for violations of this ordinance within a 60-month period include: <ol style="list-style-type: none">1. The suspension of a license for 30 days for a first violation2. The suspension of a license for 90 days for a second violation3. The suspension of a license for one year for a third violation4. 4. The revocation of a license for four or more violations	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Grandfathering
Woodland Ordinance No. 1652	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the city limits	All tobacco products	Yes	Adopted: November 5, 2019 Effective: April 1, 2020	None	Only existing tobacco retailers are eligible for a tobacco license	A tobacco retail license shall be revoked for a violation of this ordinance. After a license is revoked, a new permit may be issued <div><div>1.</div><div>After 10 days have passed from the date of the revocation for a first violation within any 60 month period</div><div>2.</div><div>After 90 days have passed from the date of the revocation for a second violation within any 60 month period</div><div>3.</div><div>After a year has passed from the date of the revocation for a third violation within any 60 month period</div><div>4.</div><div>After 5 years have passed from the date of the revocation for the fourth or more violations within any 60 month period</div></div>	No
Yolo County Ordinance No. 1474 Municipal Code 6-15.10	Prohibits the sale of all flavored tobacco products, including menthol flavored tobacco products, within the unincorporated areas of the County	All flavored tobacco products	Yes	Adopted: October 2016 Effective: May 1, 2017	None	Only existing tobacco retailers are eligible for a tobacco license	Yolo County District Attorney is authorized to perform stings for any violations of the TRL A tobacco retail license shall be revoked for a violation of this ordinance. After a license is revoked, a new permit may be issued <div><div>1.</div><div>After 10 days have passed from the date of the revocation for a first violation within any 60 month period</div><div>2.</div><div>After 90 days have passed from the date of the revocation for a second violation within any 60 month period</div><div>3.</div><div>After a year has passed from the date of the revocation for a third violation within any 60 month period</div><div>4.</div><div>After 5 years have passed from the date of the revocation for the fourth or more violations within any 60 month period</div></div>	No



acscan.org

October 24, 2019

Oroville City Hall
1735 Montgomery Street
Oroville, CA 95965

Re: Support—Ordinance to prohibit the sale of all flavored tobacco products

Dear Chairperson Robinson and Members of the Oroville Planning Commission:

The American Cancer Society Cancer Action Network is committed to protecting the health and well-being of the citizens of Oroville through evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As such, we are writing to support the effort to prohibit the sale of menthol and other flavored tobacco products citywide. This is an effort to protect the young people in Oroville from a deadly lifelong addiction. While the proposal would prohibit the sale of flavored tobacco products in Oroville, there is **NO prohibition** on using or possessing those deadly products in the city.

The 2014 Surgeon General's Report found that more than 43 million Americans still smoke, and tobacco will cause an estimated 480,000 deaths this year in the U.S. Of the 9 million youth currently living in our state, nearly 1.4 million of them will become smokers, and approximately 440,000 of those kids will die prematurely as a result of tobacco use.

In 2009, Congress, prohibited the sale of cigarettes with flavors other than tobacco or menthol. Tobacco companies responded by expanding the types of non-cigarette flavored tobacco products they offer, and now make most of those products available in a growing array of kid-friendly flavors. Little cigars, smokeless tobacco, and e-cigarettes are marketed in a wide array of sweet flavors and colorful packaging that appeals to youth. According to the California Department of Public Health, young people are much more likely to use candy and fruit flavored products than adults. Prohibiting the sale of flavored tobacco products, including menthol cigarettes, helps to remove some of the appeal of these products to beginning smokers.

Adolescents are still going through critical periods of brain growth and development, and they are especially vulnerable to the toxic effects of nicotine. Both opponents of smoking and purveyors of cigarettes have long recognized the significance of adolescence as the period during which smoking behaviors are typically developed. The anesthetizing effect of menthol masks the harshness of tobacco, making menthol cigarettes more appealing to beginning smokers, and menthol smokers demonstrate greater dependence, and are less likely to quit.

California Office

1029 J Street, Suite 450 • Sacramento, CA 95814
t) 916.448.0500 • f) 916.447.6931



acscan.org

While cigarette smoking has declined in the U.S., sales of menthol cigarettes have steadily increased in recent years, especially among young people and new smokers. Prohibiting the sale of flavored tobacco products can help to keep kids from ever starting to smoke, and can encourage those who do smoke to quit. We should be doing everything we can to protect young people from ever establishing this deadly addiction, and the cancer it causes, as well as supporting those who are trying to quit. ACS CAN appreciates Oroville's leadership in bringing these issues forward, and we encourage the planning commission to send this critical proposal back to the city council with a support recommendation.

Sincerely,

Tim Gibbs
Senior Director, Government Relations

Cc: Members, Oroville Planning Commission

California Office

1029 J Street, Suite 450 • Sacramento, CA 95814

t) 916.448.0500 • f) 916.447.6931



November 12, 2019

RE: City of Oroville Proposed Flavored Tobacco Ban

Dear Mr. Ervin,

Thank you for meeting APCA representatives concerning the City of Oroville's proposed flavored tobacco ban ordinance. As you saw at the meeting the Commissioners, Retailers and customers are opposed to this Ordinance. We write on behalf of the American Petroleum and Convenience Store Association (APCA). APCA represents several licensed tobacco retailers in Oroville. Our members include convenience stores, gas stations and liquor stores located throughout the City.

Tobacco sales are an important component to the overall viability of our businesses – not because we make a lot of money selling tobacco – we don't. Tobacco sales drive ancillary sales of gas, food and other items sold at our stores and gas stations. If we lose the ability to sell flavored tobacco products, our customers will go elsewhere to buy gas, food, and snacks – everything they currently buy in our stores. Tobacco Sales should be not limited to few Tobacco stores. Tobacco sales consists of 25-35% of our ancillary sales for all convince stores and would greatly impact our businesses.

Banning legal products at licensed retail locations would undermine the city's and the state's tobacco retail licensing program which has successfully limited youth access to tobacco, protected consumers from adulterated products and given government tools for enforcement. Moreover, local bans on tobacco products creates an illicit market. In localities with flavored tobacco bans, single menthol cigarettes are being sold illegally on the street for \$1.00 - \$2.00. That is an enormous profit margin driving illegal sales in those locales.

As you see with information enclosed, the impact of flavor ban hurts retailers, decreases local tax revenue; which helps to pay for community services and creates an illegal market; granting our youth to easier access to tobacco products.

We believe that city of Oroville should wait on the state to develop and implement a comprehensive solution to this issue. It is our understanding after attending a hearing about this issue, Assembly member Adam Gray along with several of his colleagues plan to introduce a bill that will address the concerns of many cities throughout the state of California. As retailers we take our responsibility seriously and make it a point to check IDs to ensure that youth do not have access to Tobacco products. Assembly member Gray released a report stating that 94.5% of retailers have been checking IDs and not selling to minors. Given this data and the high rate of compliance by licensed tobacco retailers, we ask that any city policy related to flavored tobacco sales ban Mr. Grey is collecting data for a full state action.



As retailers with ties to the community of Oroville, we would welcome the opportunity to work with the City, local Health and Education Stakeholders about educating the youth and their families about the danger of Tobacco usage. As stakeholders it is critical that we build strong relationships to ensure that we are preventing youth from accessing Tobacco products and at the same time protecting the rights of adult (over 21) consumers. We would support the city in efforts to place a moratorium on new Tobacco licenses in the city until state mandates have been put in place and punishing retailers who violate the law with stiffer fines.

We appreciate your considerations of our comments and look forward to creating a partnership to keep our community and youth safe while protecting the local small business community.

Thank you for your continuous support.

Sincerely,

Porsche Middleton

CEO, APCA

Wes Ervin

From: kavinder chatkara <kinnychatkara@gmail.com>
Sent: Tuesday, November 12, 2019 3:18 PM
To: Kinny Chatkara; Porsche; Wes Ervin
Subject: Tobacco Flavor Ordinance nov 2019

Hello Wes, 11/12/2019
Hope all is well, it was nice meeting you yesterday with Porsche concerning the City of Oroville, Tobacco Ordinance. Here are some of the key points to keep in mind among those we spoke yesterday.

We provided 92 opposition letters for Consumers, Residents, Retailers and Visitors to City of Oroville which impacts the revenue and services to all stakeholders.

1. Since 2016, the legal age to purchase all tobacco products in California including vaping devices has been 21 (except for active military with valid ID)
2. Raising the age to purchase all tobacco products to 21 ensures that teens who may turn 18 while still in high school can no longer purchase tobacco products for their underage friends thereby cutting off the most common social source for tobacco products.
3. All tobacco products, including vape products are required to be behind the counter and not available to any customers without the assistance of a sales clerk.
4. Many of our members have invested in age verification software that provides sales clerks with an additional tool to verify the customer's identity and age.
5. Licensed tobacco retailers are subject to regular compliance and sting operations to ensure that tobacco and alcohol are not sold to minors.
6. Banning flavored tobacco products at licensed tobacco retailers will push these sales onto the Internet or into the illicit market where no one checks ID's and products may be counterfeit.
7. State wide data collected by the Department of Public Health show that teens use of combustible tobacco products have dropped to historic lows — smoking is no longer cool. Banning traditional tobacco products will do nothing to address the vaping issue and will deprive adult consumers of products they legally purchase in our stores.
8. Traditional tobacco products such as menthol cigarettes, wintergreen chewing tobacco, snus, and cigars are not being used by minors and should not be included in any sales ban that is targeted to reduce teen vaping

Thank you for all your support in listening to the concern of local retailers and helping them save their businesses and continue providing sales tax revenues to City of Oroville.

We will be sending you additional information soon. Thank you

Sincerely,

Kavinder (Kinny) K. Chatkara, Pres
Apcsa Sacramento Chapter

Impact on sales from Tobacco Flavor Ban , please protect the rights of adult consumers and help educate the youth from the danger of Tobacco use.

OAKLAND FLAVOR BAN IMPACT

Oakland Flavor Ban	Average Before	Average After	Difference	Percentage
	Ban	Ban		Drop
Fuel Sales (gallons)	72,069	63,531	(8,538)	-11.85%
Cigarettes & OTP	29,323	14,088	(15,235)	-51.96%
Total Store Sales	74,374	59,148	(15,226)	-20.47%
Lottery				
Scratchers	13,890	11,883	(2,007)	-14.45%
Online	1,977	1,219	(759)	-38.37%
Total Lottery	15,867	13,102	(2,766)	-17.43%
Store Transactions	22,775	18,930	(3,845)	-16.88%

Oroville Municipal Code

Proposed changes to affect a prohibition on flavored tobacco products

These changes are intended to prohibit the sale of flavored tobacco products in the City of Oroville. The changes will:

1. Effectively remove flavored tobacco products from smoke shops and from stores that sell tobacco under a Tobacco Retailers License;
2. Continue to prohibit sale of tobacco products and/or paraphernalia to persons younger than the minimum age;
3. Will not eliminate the sale of electronic cigarettes, but will prohibit selling any product other than tobacco or nicotine for use with them;
4. "Smoking" as defined in OMC 9.04.170 includes ... "inhaling, exhaling burning or carrying any lightedcombustible substance in any manner and in any form." Smoking, including vaping, will thus continue to be prohibited in enclosed public places and other places as defined;

ORDINANCE OF THE CITY OF OROVILLE AMENDING SECTIONS 17.04.060 AND 5.28.010 AND ADDING SECTIONS 5.28.095, 5.28.130 AND 5.28.140 OF THE OROVILLE MUNICIPAL CODE REGARDING PROHIBITING THE SALE OF FLAVORED TOBACCO

WHEREAS, tobacco use remains the leading cause of preventable death in the United States, killing more than 480, 000 people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes. the financial costs it imposes on society, and the burdens it places on our health care system; and

WHEREAS, flavored tobacco products are commonly sold by California tobacco retailers. For example: 97.4% of stores that sell cigarettes sell menthol cigarettes; 94.5% of stores that sell little cigars sell them in flavored varieties; 84.2% of stores that sell electronic smoking devices sell flavored varieties; and 83.8% of stores that sell chew or snus sell flavored varieties; and

WHEREAS, each day, approximately 2,500 children in the United States try their first cigarette; and another 8,400 children under 18 years of age become new regular, daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored. Flavored tobacco products promote youth initiation of tobacco

use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely to use menthol-, candy and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah tobacco, than adults. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using flavored little cigars or flavored cigarettes. Further, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015. Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum; and

WHEREAS, much as young people disproportionately use flavored tobacco products including menthol cigarettes, the same can be said of certain minority groups. In one survey, the percentage of people who smoke cigarettes that reported smoking menthol cigarettes in the prior month included, most dramatically, 82.6% of Blacks or African-Americans who smoke cigarettes. The statistics for other groups were: 53.2% of Native Hawaiians or other Pacific Islanders who smoke cigarettes; 36.9% of individuals with multiracial backgrounds who smoke cigarettes; 32.3% of Hispanics or Latinos who smoke cigarettes; 31.2% of Asians who smoke cigarettes; 24.8% of American Indians or Alaska Natives who smoke cigarettes; and 23.8% of Whites or Caucasians who smoke cigarettes. People who identify as LGBT and young adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use. The disproportionate use of menthol cigarettes among targeted groups, especially the extremely high use among African-Americans, is troubling because of the long-term adverse health impacts on those groups; and

WHEREAS, between 2004 and 2014, overall smoking prevalence decreased, but use of menthol cigarettes increased among both young adults (ages 18-25) and other adults (ages 26+). These statistics are consistent with the finding that smoking menthol cigarettes reduces the likelihood of successfully quitting smoking. Scientific modeling has projected that a national ban on menthol cigarettes could save between 300,000 and 600,000 lives by 2050.

NOW THEREFORE, the City Council of the City of Oroville does ordain as follows:

SECTION 1. Oroville Municipal Code Section 17.04.060 is hereby amended as follows:

Characterizing Flavor. *A taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.*

"Flavored tobacco product" *means any tobacco product that contains a constituent that imparts a characterizing flavor.*

.....

Tobacco paraphernalia. Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this title, electronic cigarette supplies are considered tobacco paraphernalia.

Tobacco product. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this title, electronic cigarettes are considered a tobacco product. For the purposes of this title, tobacco products exclude products with a characterizing flavor.

SECTION 2. Oroville Municipal Code Section 5.28.010 is hereby amended to read as follows:

"5.28.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between 2 informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

“Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

“Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

“Self-service display” means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

“Smoking.” Refer to Section 9.04.170 for definition.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.

“Tobacco product” means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this chapter, electronic cigarettes are considered a tobacco product. *For the purposes of this title, tobacco products exclude products with a characterizing flavor.*

“Tobacco retailer” means any person who sells, offers for sale, or exchanges for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco

products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ord. 1794 § 1)”

SECTION 3. Section 5.28.095 is hereby added to the Oroville Municipal Code to read as follows:

“5.28.095 Sale or offer for sale of flavored tobacco products prohibited.

(a)The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.

(b)There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.”

SECTION 4. Sections 5.28.130 and 5.28.140 are hereby added to the Oroville Municipal Code to read as follows:

“5.28.130 No conflict with federal or state law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

5.28.140 Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 5.28, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The City Council hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional.”

**OROVILLE CITY COUNCIL
STAFF REPORT**

TO: MAYOR CHUCK REYNOLDS AND COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR
SCOTT E. HUBER, CITY ATTORNEY

RE: RESOLUTION OF INTENT TO INITIATE PROCEDURES FOR ESTABLISHING AND
IMPLEMENTING BY-DISTRICT ELECTIONS FOR COUNCIL MEMBERS

DATE:

SUMMARY The Council may consider the adoption of Resolution No. 8823 to initiate procedures for establishing and implementing by-district elections for Council Members of the City of Oroville.

DISCUSSION. Public agencies throughout the State of California have increasingly been facing legal challenges under the California Voting Rights Act ("CVRA") to their "at-large" systems of electing public officials. The CVRA was adopted to address racially polarized voting in at large elections. Almost all agencies facing CVRA claims have settled out of court by voluntarily shifting to district-based elections. The City of Oroville received such a claim from the law firm of Shenkman & Hughes PC.

To date, no public agency has successfully litigated a CVRA case to verdict. Recently, the City of Santa Monica litigated the issue of whether that City's at-large voting violated the CVRA. The City was unsuccessful in the litigation. In addition, a number of public agencies have proceeded down the litigation path, only to settle. The settlements entered into by public agencies typically have included paying the plaintiff's attorneys' fees. For example, the City of Santa Barbara in February 2015, reportedly paid \$900,000 in attorneys' fees and expert costs to settle their CVRA lawsuit. As another example, the City of Palmdale incurred expenses in excess of \$4,500,000 in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. To date, staff is unaware of any city that has prevailed in defending its "at-large" system of election under a claim filed by any individual or group under the CVRA.

Previously, the City Council determined that it would voluntarily shift to "by-district" elections. Through counsel, the City Council will engage the services of Karin MacDonald of Q2 Data & Research LLC. Ms. MacDonald is the principal consultant for Q2 and has extensive experience with demographics and the drawing of "by-district" election boundaries for public agencies.

Approval of a public resolution is the next step in the process to move to "by-district" elections. If approved, the attached resolution would direct staff to engage the services of Karin MacDonald and Q2 Data & Research LLC, and move forward with transitioning the City away from at-large voting to "by-district" voting for the election of Council Members. This process will be in place for the 2020 general election in November and will only affect the council member positions. The City Charter and the Government Code provide for a separately elected Mayor to be elected at-large throughout the City, which does not violate the CVRA

The Board will consider adoption of the Resolution.

BUDGET EFFECT. The estimated cost for Q2 Data & Research LLC's services are approximately \$25,000.

RECOMMENDATION. Adoption of Resolution No. 8823 – A Resolution of the Oroville City Council Expressing the Council's Intention, Pursuant to Elections Code Section 10010 to Initiate Procedures for Establishing and Implementing By-District Elections for Council Members.

ATTACHMENTS. Resolution No. 8823

RESOLUTION NO. 8823**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA EXPRESSING THE CITY COUNCIL'S INTENTION, PURSUANT TO ELECTIONS CODE SECTION 10010, TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS FOR COUNCIL MEMBERS**

WHEREAS, the council members of the City of Oroville are currently elected in at-large elections, in which each Council Member is elected by all registered voters of the entire City; and

WHEREAS, at-large election systems such as those presently employed by the City to elect Council Members, are subject to challenge under the California Voting Rights Act of 2001, codified at sections 14025, et seq., of the California Elections Code ("CVRA"); and

WHEREAS, "by-council member area" electoral systems, whereby only voters residing within a specific council district vote only for the council member representing that council district, are not similarly vulnerable to challenge under the CVRA; and

WHEREAS, the City Council previously determined that it is in the best interest of the City to move from its current at-large electoral system to a by-district election for members of the City Council in furtherance of the purposes of CVRA; and

WHEREAS, because the City Charter outlines a separately elected position of Mayor and the Government Code separately authorizes the position of Mayor elected throughout the City at-large, the by-district voting will be applicable to elect City Council Members; and

WHEREAS, the City Council will work with Q2 Data & Research LLC to prepare by-council member area election system map options for the City Council's consideration; and

WHEREAS, before drawing a draft map of the proposed boundaries of the districts, pursuant to Section 10010 of the Elections Code, the City will hold at least two (2) public hearings over no more than thirty (30) days, at which time the public is invited to provide input regarding the composition of the districts; and

WHEREAS, the City will then publish and make available for release at least one (1) draft map of the new electoral districts, including the potential sequence of elections shown; and

WHEREAS, once the draft map has been published for at least seven (7) days, the City will hold at least two (2) additional public hearings, over no more than forty-five (45) days, at which time the public is invited to provide input regarding the content of the

draft map and the proposed sequence of elections prior to the public hearing at which the City Council adopts a map; and

WHEREAS, if a draft map is revised at or following a public hearing, the revised map will be published and made available to the public at least seven (7) days before the City chooses to adopt it; and

WHEREAS, in determining the final sequence of staggered district elections, the City Council will give special consideration to the purposes of the CVRA, and will take in to account the preferences expressed by the members of the districts; and

WHEREAS, the City Council now wishes to adopt criteria to guide the establishment of electoral districts consistent with legal requirements, including reasonable equal population and section 2 of the federal Voting Rights Act, as well as other concerns and considerations important to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OROVILLE AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council hereby resolves, pursuant to Elections Code section 10010, to adopt a by-district election system by ordinance as authorized by the California Government Code, for use in the City's General Municipal Election for Council Members.

SECTION 4. The City Council further resolves to continue working with Q2 Data & Research LLC, a qualified demographer, to hold at least five (5) public hearings and to publish at least one (1) draft map and staggering sequence.

SECTION 5. The City Council's redistricting/ demographic consulting firm, acting under the supervision of the City Administrator and City Attorney, is hereby authorized to direct and formulate one or more electoral district scenarios for review by the public and City Council at two or more public hearings if necessary, in accordance with the City's proposed timeline.

SECTION 6. Working with the demographic consulting firm, staff is directed to publicize relevant maps, information, notices, agendas and other materials regarding by-district elections and to establish means of communication to answer questions from the public.

SECTION 7. All public hearings shall be noticed as follows: posting on the City website at least ten (10) calendar days in advance of the hearing and publication at least ten (10) days in advance of the hearing in the newspaper adjudicated to provide notice within the City.

SECTION 8. The City Administrator is authorized to take any and all other necessary actions to give effect to this Resolution.

SECTION 9. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF OROVILLE: This 3rd day of December 2019, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chuck Reynolds, Mayor

APPROVED AS TO FORM

ATTEST:

Scott E. Huber, City Attorney

Jackie Glover, Assistant City Clerk

DATE: November 12, 2019

Item i.

TO: STATE, CITY AND LOCAL OFFICIALS

NOTICE OF PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST TO CHANGE RATES FOR INCOME QUALIFIED PROGRAMS (A.19-11-003)

Summary

On November 4, 2019, Pacific Gas and Electric Company (PG&E) filed its Income Qualified Programs Application (A.19-11-003) with the California Public Utilities Commission (CPUC).

The application seeks recovery of approximately \$1.2 billion needed to administer and enhance income qualified programs, including California Alternate Rates for Energy (CARE), Family Electric Rate Assistance (FERA) and the Energy Savings Assistance Program.

The application covers a six-year period from 2021 to 2026. If the CPUC approves this application, PG&E will begin to recover costs in electric and gas rates beginning January 2021 and continue throughout the six years covered in the application.

On an annual basis, PG&E is requesting less funding for these programs than previously authorized amounts, with the exception of FERA, which is being expanded per CPUC mandate. On average, residential electric customers will see a decrease in their monthly bill amount. Certain gas customers will also see a decrease in their monthly bill amount but, on average, residential gas customers will see a small increase.

CARE and FERA are PG&E discount programs that help eligible customers pay their energy bills.

- CARE offers a monthly discount on energy bills for qualifying households.
- FERA offers a monthly discount on electric bills for households of three or more people with a slightly higher income than required for CARE.

Energy Savings Assistance Program provides qualified customers with energy-saving improvements, such as energy efficient appliances and home weatherization, at no charge for customers.

To learn more about these programs, customers can visit pge.com/programs.

Background

The programs included in this application have provided income qualified customers assistance in lowering energy consumption and costs while increasing their comfort, health and safety since 1983 and have offered rate assistance through a monthly discount to qualifying customers since 1989. PG&E is required to file an application updating its program proposals and costs for these income qualified programs. This recurring application is filed on a schedule approved by the CPUC.

How will the application affect electric rates?

Bundled electric customers receive electric generation, transmission and distribution services from PG&E.

Based on rates currently in effect, the bill for a typical residential nonCARE customer using 500 kWh per month would decrease from \$121.17 to \$120.89, or -0.2% in the first year.

Direct Access and Community Choice Aggregation customers only receive electric transmission and distribution services from PG&E. On average, these customers would see a decrease of -0.3% in the first year.

Another category of nonbundled customers is Departing Load. These customers do not receive electric generation, transmission or distribution services from PG&E. However, these customers are required to pay certain charges by law or CPUC decision. The impact of PG&E's application on these customers is an average decrease of -2.3% in the first year.

Actual impacts will vary depending on usage.

How will the application affect gas rates?

Bundled gas customers receive transmission, distribution and procurement services from PG&E.

Based on rates currently in effect, the gas bill for a typical residential nonCARE customer averaging 32 therms per month would increase from \$52.32 to \$52.38, or 0.1% in the first year.

Actual impacts will vary depending on usage.

How do I find out more about PG&E's proposals?

If you have questions about PG&E's filing, please contact PG&E at **1-800-743-5000**. Para más detalles llame al **1-800-660-6789** • 詳情請致電 **1-800-893-9555**. For TTY, call **1-800-652-4712**. If you would like a copy of PG&E's filing and exhibits, please write to PG&E at the address below:

Pacific Gas and Electric Company
Income Qualified Programs Application (A.19-11-003)
P.O. Box 7442
San Francisco, CA 94120

A copy of PG&E's filing and exhibits is also available for review at the CPUC's Central Files office by appointment only. For more information, contact aljcentralfilesid@cpuc.ca.gov or **1-415-703-2045**. PG&E's application (without exhibits) is available on the CPUC's website at www.cpuc.ca.gov.

CPUC process

This application will be assigned to an Administrative Law Judge (Judge) who will determine how to receive evidence and other related information necessary for the CPUC to establish a record upon which to base its decision. Evidentiary Hearings (EHs) may be held where parties will present their testimony and may be subject to cross-examination by other parties. These EHs are open to the public, but only those who are formal parties in the case can participate.

After considering all proposals and evidence presented during the hearings, the assigned Judge will issue a proposed decision which may adopt PG&E's proposal, modify it or deny it. Any of the five CPUC Commissioners may sponsor an alternate decision. The proposed decision, and any alternate decisions, will be discussed and voted upon at a scheduled CPUC Voting Meeting that is open to the public.

The California Public Advocates Office (CalPA) may review this application. CalPA is the independent consumer advocate within the CPUC with a legislative mandate to represent investor-owned utility customers to obtain the lowest possible rate for service consistent with reliable and safe service levels. CalPA has a multidisciplinary staff with expertise in economics, finance, accounting and engineering. For more information about CalPA, please call **1-415-703-1584**, email PublicAdvocatesOffice@cpuc.ca.gov or visit CalPA's website at www.publicadvocates.cpuc.ca.gov.

Stay informed

If you would like to follow this proceeding, or any other issue before the CPUC, you may use the CPUC's free subscription service. Sign up at: <http://subscribecpuc.cpuc.ca.gov>. If you would like to learn how you can participate in the proceeding, have informal comments about the application or have questions about the CPUC processes, you may access the CPUC's Public Advisor's Office (PAO) webpage at <http://consumers.cpuc.ca.gov/paol>.

You may also contact the PAO as follows:

Email: public.advisor@cpuc.ca.gov

Mail: CPUC

Public Advisor's Office

505 Van Ness Avenue

San Francisco, CA 94102

Call: **1-866-849-8390** (toll-free) or **1-415-703-2074**

TTY: **1-866-836-7825** (toll-free) or **1-415-703-5282**

Please reference **PG&E's Income Qualified Programs Application (A.19-11-003)** in any communications you have with the CPUC regarding this matter. All public comments will become part of the public correspondence file for this proceeding and made available for review by the assigned Judge, Commissioners and appropriate CPUC staff.

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections – San Francisco Regional Office
100 First Street, Suite 2300
San Francisco, CA 94105-3084
(415) 369-3300 Office – (415) 369-3322 Facsimile

November 18, 2019

In reply refer to:
Project No. 2088-CA
NATDAM Nos. CA00268,
CA00269, CA00272,
CA00274, CA00275

Mr. Rath Moseley
General Manager
South Feather Water & Power Agency
2310 Oro-Quincy Highway
Oroville, CA 95966

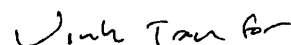
Re: 2018 Dam Safety Surveillance and Monitoring Report

Dear Mr. Moseley:

This is in response to a letter from Mr. Matt Colwell dated August 14, 2019 that transmitted the 2018 Chief Dam Safety Engineer (CDSE) annual statement for continued operation for the Little Grass Valley, Sly Creek, Lost Creek, Ponderosa, and Miner's Ranch Dams, which are parts of the South Feather Power Project, FERC No. 2088. We have reviewed the annual statement and have no additional comments.

We appreciate your continued cooperation in this aspect of the Commission's dam safety program. If you have questions, please contact Mr. Ricardo Galdamez at (415) 369-3310.

Sincerely,



Frank L. Blackett, P.E.
Regional Engineer

From: Piper, Stacy <SPiper@buttecounty.net>
Sent: Wednesday, November 20, 2019 4:51 PM
To: Wes Ervin
Subject: Nicotine flavors in Oroville

Oroville Planning Commission

1735 Montgomery Street
City of Oroville Administration
Oroville, Ca 95965
Phone: 530-538-2535

Dear Chairperson Damon Robison c/o City Planner Wes Ervin:

I would like to submit this letter of support for the proposed nicotine **flavor ban** in Oroville.

As a parent of teenagers, as well as a dedicated employee of Public Health, I strongly believe that flavored nicotine products encourage people to take up using various nicotine products including e-cigarettes/vaping devices. Having flavors can only further encourage nicotine product use making them taste better, and amusing to try all the flavors.

Please consider that **added flavor** in nicotine products like e-cigarettes/vaping devices:

- Makes them more alluring, likeable, and fun.
- Discourages people to stop using them because flavors add to the fascination and taste.
- Creates an appealing challenge for folks to keep buying them so they can try different flavors.
- Is definitely a marketing technique to boost sales for tobacco companies and retailers.
- **Specifically** encourage youth, by making the products more tempting, attractive, likable, and enticing (like candy).
- Are a gateway for youth to use more tobacco products.

Mr. Robison and Mr. Ervin, Oroville is under the spot light on this issue, as Butte County try's to address the youth vaping epidemic. A flavored nicotine ban is critical in this endeavor.

Thank you,

Stacy M. Piper, BA, CLEC
Public Health Educational Specialist
Communicable Diseases

Opioid Overdose Prevention Program
BUTTE COUNTY PUBLIC HEALTH
202 Mira Loma Drive. Oroville CA 95965
CD Department Oroville: 530-552-3929
Stacy Direct: 530-552-3975.
Fax: 530-538-5387
Email- spiper@buttecounty.net

Item iii.

Nationally Accredited, 09/13/17"

[FACEBOOK](#) | [TWITTER](#)

<http://www.buttecounty.net/publichealth/>

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