

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

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ORDINANCE NO. ORD-21-0012

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY AMENDING AND RESTATING
SECTIONS 5.81.010 AND 5.81.070; AND BY REPEALING
CHAPTER 5.94, ALL RELATING TO THE SALE OF
FLAVORED TOBACCO PRODUCTS

WHEREAS, the City of Long Beach has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales; in discouraging the illegal purchase of tobacco products by persons under 21 years of age; in promoting compliance with laws prohibiting sales of tobacco products to persons under 21 years of age; and in protecting youth and underserved populations from the harms of tobacco; and

WHEREAS, State law expressly authorizes cities to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law. (California Business & Professions Code § 22971.3); and

WHEREAS, State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to persons under 21 years of age (California Penal Code § 308); and

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death; and

WHEREAS, data released by the United States Centers for Disease Control and Prevention (CDC) and the United States Food and Drug Administration (FDA) showed a rapid increase in use of electronic smoking devices by youth, with one (1) in

1 five (5) youth using electronic smoking devices in 2019 - an “epidemic” that requires
2 “historic action” according to the United States Surgeon General and the FDA; and

3 WHEREAS, according to the CDC as of February 18, 2020, there have
4 been 2,807 cases of E-cigarette, or Vaping, Product Use Associated Lung Injury (EVALI)
5 and 38 deaths nationally; and

6 WHEREAS, California has reported over 240 cases of EVALI as of January
7 5, 2021, including 5 deaths in patients; and

8 WHEREAS, in Long Beach, 3 cases of EVALI were reported by October
9 2019; and

10 WHEREAS, due to the public health crisis, the CDC and the CDPH are
11 urging everyone to refrain from vaping, no matter the substance or source; and

12 WHEREAS, no specific types of electronic smoking devices or liquids have
13 been conclusively identified to be the cause of the EVALI illnesses at this time; the FDA
14 is testing vaping products from cases around the United States to determine which
15 specific products or ingredients may be the cause; and

16 WHEREAS, 5.6 million of today’s Americans who are younger than 18 are
17 projected to die prematurely from a smoking-related illness; and

18 WHEREAS, nationwide, youth e-cigarette use has significantly increased,
19 nearly 20-fold in less than 10 years (from 1.5% in 2011 to 23.6% in 2020); and

20 WHEREAS, flavored tobacco products play a major role in the rise in youth
21 initiation and their continued use of e-cigarettes. In addition, flavors mask the taste of
22 tobacco and make it easier for new users to initiate tobacco use and create the false
23 impression that a tobacco product is less harmful than it really is, leading to increased
24 nicotine intake; and

25 WHEREAS, of youth who have ever used a tobacco product, 81% initiated
26 tobacco consumption with a flavored product, including vaping; and

27 WHEREAS, despite the State’s efforts to limit youth access to tobacco,
28 youth are still able to access tobacco products, as evidenced by the following:

1 • In California, over 67% of current and former adult smokers started
2 by the age of 18 and almost 100% start by age 26;

3 • In 2017, 22.8% of high school students in California had tried
4 cigarette smoking; and

5 WHEREAS, the federal Family Smoking Prevention and Tobacco Control
6 Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored
7 cigarettes, largely because these flavored products are marketed to youth and young
8 adults, and younger smokers were more likely than older smokers to have tried these
9 products; and

10 WHEREAS, as of today neither federal nor California state laws restrict the
11 sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars,
12 cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the
13 solutions used in these devices; and

14 WHEREAS, in 2016, an estimated 82% of tobacco retailers in California
15 sold flavored noncigarette tobacco products, over 90% of tobacco retailers sold menthol
16 cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette
17 tobacco products; and

18 WHEREAS, mentholated and flavored products have been shown to be
19 “starter” products for youth who begin using tobacco and these products help establish
20 tobacco habits that can lead to long-term addiction; and

21 WHEREAS, flavored tobacco has significant public health implications for
22 youth, people of color, low income populations, and members of LGBTQ+ communities
23 as a result of targeted industry marketing strategies and product manipulation; and

24 WHEREAS, as a result of the FDA ban on all flavored cigarette products
25 (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth
26 becoming a cigarette smoker post flavor ban fell by 17%; and

27 WHEREAS, similar to flavored cigars and little cigars, electronic cigarette
28 companies have marketed to minors with sweet flavors to “graduate” users toward

1 unflavored tobacco products:

- 2 • The National Youth Tobacco Survey reported that the most
3 commonly selected reasons for use of e-cigarettes among middle and high school
4 students included the availability of “flavors such as mint candy, fruit, or chocolate” (31%
5 of respondents);
- 6 • There was also a 7% increase of high school students who used
7 flavored e-cigarettes from 61% in 2017 to 68% in 2018, unlike the steady decline of
8 cigarette use seen among youth;
- 9 • The Surgeon General has concluded that e-cigarette use among
10 youths and young adults is of public health concern; exposure to nicotine during
11 adolescence can cause addiction and can harm the developing adolescent brain;
- 12 • E-cigarette use is strongly associated with the use of other tobacco
13 products among youth and young adults, particularly the use of combustible tobacco
14 products. For example, in 2015, 58.8% of high school students who were current users of
15 combustible tobacco products were also current users of e-cigarettes; and

16 WHEREAS, youth whose first tobacco product was flavored are more likely
17 to become current tobacco users than those whose first product was tobacco-flavored.
18 Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S.
19 middle and high school smokers report using flavored little cigars or flavored cigarettes;
20 and

21 WHEREAS, although federal and state law ban the sale of individual
22 cigarettes, neither federal nor California state laws restrict the sale of individual little
23 cigars and cigars; and

24 WHEREAS, many retailers sell little cigars and cigars individually, making
25 them more affordable and appealing to youth. For example:

- 26 • 87.4% of California tobacco retailers sell a popular brand of youth-
27 friendly cigars for less than \$1.00;
- 28 • From 1995 to 2008, annual sales of cigarillos increased by 255%,

1 and sales of little cigars increased by 316%; and

2 WHEREAS, the availability of inexpensive tobacco products leads to
3 increased tobacco use as evidenced by more than 100 academic studies that
4 conclusively show that when tobacco products are made more expensive, fewer people
5 use tobacco, fewer initiate tobacco use, and more people quit tobacco use; and

6 WHEREAS, on March 10, 2020, the City Council of the City of Long Beach
7 recognized that an emergency did exist and unanimously passed a Resolution ratifying the
8 City Manager's Proclamation of a Local Emergency and the Public Health Officer's
9 Declaration of Local Health Emergency all due to COVID-19; and

10 WHEREAS, COVID-19 is a disease caused by SARS-CoV-2 that can
11 trigger a respiratory tract infection of the upper respiratory tract (sinuses, nose, and
12 throat) or lower respiratory tract (windpipe and lungs); and

13 WHEREAS, researchers at the Stanford University School of Medicine
14 conducted a study that shows teenagers and young adults who vape face a higher risk of
15 developing COVID-19. Among young people who were specifically tested for COVID-19,
16 participants who used e-cigarettes were 5 times more likely to be infected with the virus,
17 in comparison to their peers who did not vape; and

18 WHEREAS, in a review of 5 studies, smoking doubles the risk of getting
19 sicker from COVID-19. In the largest study, people who smoke were 2.4 times more
20 likely to have severe outcomes (e.g. admitted to an intensive care unit, needing
21 mechanical ventilation, dying) compared to people who did not smoke; and

22 WHEREAS, according the CDC, being a current or former cigarette smoker
23 increases your risk of severe illness from COVID-19; and

24 WHEREAS, to the extent this ordinance applies to minors, diversion and
25 education are preferred alternatives to the imposition of criminal penalties;

26 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
27 follows:

28 ///

1 Section 1. Findings. The City Council finds and determines that the facts
2 set forth in the recitals of this Ordinance are true and correct and hereby incorporates
3 them herein by this reference.

4
5 Section 2. Section 5.81.010 to the Long Beach Municipal Code is hereby
6 amended and restated to read as follows:

7 5.81.010 Definitions.

8 The following words as used in this Chapter shall have the meanings
9 set forth in this Section unless otherwise clearly apparent from the context:

10 A. "Characterizing flavor" means an artificial or naturally-
11 occurring substance that has a distinguishable taste or aroma, or both,
12 other than the taste or aroma of tobacco, imparted by a tobacco product or
13 any byproduct produced by the tobacco product. Characterizing flavors
14 include, but are not limited to, tastes or aromas relating to any fruit,
15 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
16 menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be
17 determined to have a characterizing flavor solely because of the use of
18 additives or flavorings or the provision of ingredient information. Rather, it is
19 the presence of a distinguishable taste or aroma, or both, as described in
20 the first sentence of this definition, that constitutes a characterizing flavor.

21 B. "Constituent" means any ingredient, substance, chemical, or
22 compound, other than tobacco, water, or reconstituted tobacco sheet, that
23 is added by the manufacturer to a tobacco product during the processing,
24 manufacture, or packing of the tobacco product.

25 C. "Electronic cigarette" means an electronic and/or battery-
26 operated device, the use of which may resemble smoking, which can be
27 used to deliver an inhaled dose of nicotine or other substances in
28 aerosolized or vaporized form to a person, including, but not limited to any

1 other device manufactured, distributed, marketed, or sold as an electronic
2 cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an
3 electronic hookah, vapes, vaporizers, vape pens, or any other product
4 name or descriptor that can be used to deliver nicotine in aerosolized or
5 vaporized form to a person, including any component, part, or accessory of
6 the device that is intended or reasonably expected to be used during its
7 operation, whether or not sold separately. Electronic cigarette does not
8 include any product that has been approved by the United States Food and
9 Drug Administration for sale as a tobacco cessation product or for other
10 therapeutic purposes where that product is marketed and sold solely for
11 such approved use.

12 D. "Electronic cigarette paraphernalia" means any item designed,
13 marketed, or reasonably expected to be used for the consumption, use, or
14 preparation of an electronic cigarette, which includes, but is not limited to,
15 cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic
16 cigarette batteries, electronic cigarette chargers, and any other item
17 designed for the preparation, storing, charging, or use of electronic
18 cigarettes.

19 E. "E-liquid" means any liquid, gel or other substance designed
20 for use with an electronic cigarette, including but not limited to e-juice,
21 smoke juice or any other product name or descriptor. Excluded from this
22 definition is any non-nicotine containing liquid, gel or other substance that
23 contains cannabis in any form as its active ingredient.

24 F. "Flavored tobacco product" means any tobacco product that
25 contains a constituent that imparts a characterizing flavor.

26 G. "Flavored shisha tobacco product" means any shisha tobacco
27 product that contains a constituent that imparts a characterizing flavor.

28 H. "Hookah" means a type of waterpipe, used to smoke shisha or

1 other tobacco products, with a long flexible tube for drawing aerosol through
2 water. Components of a hookah may include heads, stems, bowls, and
3 hoses.

4 I. "Hookah tobacco retailer" means a tobacco retailer that is
5 engaged in the retail sale of shisha tobacco products, hookah, and hookah
6 smoking accessories.

7 J. "Loose-leaf tobacco" consists of cut or shredded pipe tobacco,
8 usually sold in pouches, excluding any tobacco product which, because of
9 its appearance, type, packaging, or labeling, is suitable for use and likely to
10 be offered to, or purchased by, consumers as tobacco for making
11 cigarettes, including roll-your-own cigarettes.

12 K. "Nominal cost" means the cost of any item imposed for the
13 transfer from one person to another for less than the total of: (1) twenty-five
14 percent (25%) of the fair market value of the item exclusive of taxes and
15 government fees; plus (2) all taxes and government fees previously paid
16 and all taxes and government fees still due on the item at the time of
17 transfer.

18 L. "Nonsale distribution" means to give, furnish, or cause or
19 allow to be given or furnished within the jurisdictional limits of the City, a
20 tobacco product, tobacco paraphernalia, an electronic cigarette or
21 electronic cigarette paraphernalia at no cost or at nominal cost to a person
22 who is not a retailer.

23 M. "Premium cigar" means any cigar that is handmade, is not
24 mass produced by use of mechanization, has a wrapper that is made
25 entirely from whole tobacco leaf, and has a wholesale price of no less than
26 twelve dollars (\$12). A premium cigar does not have a filter, tip, or
27 nontobacco mouthpiece and is capped by hand.

28 N. "Proprietor" means a person with an ownership or managerial

1 interest in a business. An ownership interest shall be deemed to exist when
2 a person has a ten percent (10%) or greater interest in the stock, assets, or
3 income of a business other than the sole interest of security for debt. A
4 managerial interest shall be deemed to exist when a person can or does
5 have, or can or does share, ultimate control over the day-to-day operations
6 of a business.

7 O. "Shisha tobacco product" means a tobacco product smoked or
8 intended to be smoked in a hookah. "Shisha tobacco product" includes, and
9 may be referred to as, hookah tobacco, waterpipe tobacco, massel,
10 narghile, and argileh. "Shisha tobacco product" does not include electronic
11 cigarettes.

12 P. "Self-service display" means the open display or storage of
13 tobacco products, tobacco paraphernalia, electronic cigarettes or electronic
14 cigarette paraphernalia in a manner that is physically accessible in any way
15 to the general public without the assistance of a retailer or employee of a
16 retailer and a direct person-to-person transfer between a retailer or
17 employee of a retailer and any other person. A vending machine is a form
18 of self-service display.

19 Q. "Tobacco paraphernalia" means any item designed,
20 marketed, or reasonably expected to be used for the consumption, use, or
21 preparation of a tobacco product, including, but not limited to, cigarette
22 papers or wrappers, pipe holders of smoking materials of all types, cigarette
23 rolling machines, hookahs, and any other item designed for the smoking or
24 ingestion of tobacco products.

25 R. "Tobacco product" means the following:

26 1. Any product containing, made from, or derived from
27 tobacco or nicotine, whether natural or synthetic, that is intended for human
28 consumption, whether smoked, heated, chewed, absorbed, dissolved,

1 inhaled, snorted, sniffed, vaped, or ingested by any other means, including,
2 but not limited to, cigarettes, cigars, cigarillos, chewing tobacco, pipe
3 tobacco, snuff, shisha; or

4 2. Any electronic cigarette; or

5 3. Any e-liquid; or

6 4. Any tobacco paraphernalia; or

7 5. Any electronic cigarette paraphernalia; or

8 6. "Tobacco product" does not include drugs, devices, or
9 any combination of products authorized by the United States Food and
10 Drug Administration, as those terms are defined in the Federal Food, Drug
11 and Cosmetic Act.

12 S. "Tobacco retailer" means any person, in whole or in part, and
13 all associated owners, employees, managers, or agents, who sells, offers
14 for sale, or offers to exchange for any form of consideration, tobacco,
15 tobacco products or tobacco paraphernalia; "tobacco retailing" shall mean
16 engaging in any of these things.

17
18 Section 3. Section 5.81.070 to the Long Beach Municipal Code is hereby
19 amended and restated to read as follows:

20 5.81.070 Permit - Retailing requirements and prohibitions.

21 A. Sale to minors prohibited. It shall be a violation of the permit
22 to sell, give or furnish, or cause to be sold, given or furnished, a tobacco
23 product or tobacco paraphernalia to a natural person under twenty-one (21)
24 years of age in any place within the City.

25 B. Positive identification required. No retailer shall sell, give or
26 furnish a tobacco product or tobacco paraphernalia to a natural person who
27 appears to be under the age of twenty-seven (27) years without first
28 examining identification to confirm that the recipient is at least twenty-one

1 (21) years of age.

2 C. Self-service displays of tobacco products or tobacco
3 paraphernalia are prohibited.

4 D. Nonsale distribution prohibited. No person, motivated by an
5 economic or a business purpose, shall engage in the nonsale distribution of
6 any tobacco product or tobacco paraphernalia in any public place.

7 E. It is a violation of the permit to violate any federal, State, or
8 local laws relating to youth and tobacco products or youth and tobacco
9 paraphernalia, including, for example, violations of: California Penal Code
10 Section 308; the Stake Act (California Business and Professions Code
11 Sections 22950 et seq.); any laws relating to self-service displays, signage,
12 sale of bidis or single cigarettes, pack size, sampling, or mail order and
13 internet sales; or any other law relating to youth and tobacco products.

14 F. Sale of flavored tobacco products prohibited. It shall be a
15 violation of a tobacco retailer's permit for the tobacco retailer, or any of the
16 tobacco retailer's agents or employees, to sell, possess with the intent to
17 sell, or offer for sale a flavored tobacco product.

18 1. There is a rebuttable presumption that a tobacco
19 product is a flavored tobacco product if a manufacturer or any of the
20 manufacturer's agents or employees, in the course of their agency or
21 employment, has made a statement or claim directed to consumers or to
22 the public that the tobacco product has or produces a characterizing flavor,
23 including, but not limited to, text, color, images, or all, on the product's
24 labeling or packaging that are used to explicitly or implicitly communicate
25 that the tobacco product has a characterizing flavor.

26 2. This Section does not apply to:

27 a. The sale of flavored shisha tobacco products by
28 a hookah tobacco retailer if all the following conditions are met:

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(i) The hookah tobacco retailer holds a valid State license pursuant to California Business and Professions Code section 22970 et seq.

(ii) The hookah tobacco retailer holds valid City licenses and permits required by this Code to sell shisha tobacco products.

(iii) The hookah tobacco retailer does not permit any person under twenty-one (21) years of age to be present or enter the premises at any time.

(iv) The hookah tobacco retailer shall operate in accordance with all relevant State and local laws relating to the sale of tobacco products.

(v) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

b. The sale of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

c. The sale of loose-leaf tobacco or premium cigars.

3. It shall not be a violation of this Chapter until ninety (90) days from the effective date of this Section for a tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, possess with the intent to sell, or offer for sale a flavored tobacco product.

4. This Section shall become inoperative and is repealed on the effective date of any Statewide prohibition on the sale of flavored

1 tobacco products. Unless and until the effective date of a Statewide
2 prohibition on the sale of flavored tobacco products, this Section may be
3 amended or repealed at any time by an ordinance adopted by the City
4 Council.

5
6 Section 4. Chapter 5.94 of the Long Beach Municipal Code is hereby
7 repealed.

8
9 Section 5. The City Clerk shall certify to the passage of this ordinance by
10 the City Council and cause it to be posted in three (3) conspicuous places in the City of
11 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
12 Mayor.

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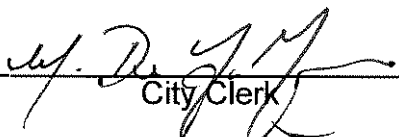
1 I hereby certify that the foregoing Ordinance was adopted by the City
2 Council of the City of Long Beach at its meeting of April 13, 2021, by the following
3 vote:

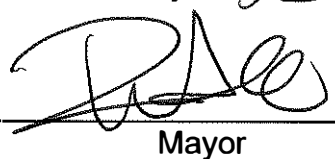
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5 Ayes: Councilmembers: Zendejas, Allen, Price, Supernaw,
6 Mungo, Saro, Uranga, Austin,
7 Richardson.

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9 Noes: Councilmembers: None.

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11 Absent: Councilmembers: None.

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13 Recusal(s): Councilmembers: None.

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16 City Clerk

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19 Mayor

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Approved: 4/15/21
(Date)

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 W. Ocean Boulevard, 9th Floor
Lona Beach, CA 90802

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA) ss
COUNTY OF LOS ANGELES)
CITY OF LONG BEACH)

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 14th day of April, 2021, I posted three true and correct copies of ORD-21-0012 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the lobby of Civic Chambers; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.



Subscribed and sworn to before me
This 14th day of April 2021.



CITY CLERK