

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BURLINGAME AMENDING CHAPTER 8.18 OF THE MUNICIPAL CODE TO ADD PROVISIONS BANNING THE SALE OF FLAVORED TOBACCO PRODUCTS

WHEREAS, studies have shown that flavored tobacco products are frequently the first tobacco product used by new - and especially young - users; and

WHEREAS, the use of flavored tobacco products has been documented to induce migration to smoking and nicotine addiction; and

WHEREAS, since their introduction in 2007, e-cigarettes have not been subjected to or completed “pre-market” review by the federal Food and Drug Administration; and

WHEREAS, both nationally and within Burlingame, there has been a radical and well-documented rise in the use of e-cigarettes by minors; and

WHEREAS, studies have shown that repeated exposure of developing brains to nicotine can have long-term negative consequences for health and cognition; and

WHEREAS, efforts at the state and federal level to regulate flavored tobacco products effectively, including e-cigarettes and vaping liquids, have thus far failed while youth use continues to rise.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME ORDAINS AS FOLLOWS:

DIVISION 1:

Section 1: Burlingame Municipal Code Chapter 8.18 is amended to add the following:

“Section 8.18.120: Sale of Flavored Tobacco Products Prohibited

- (a) Definitions: for the purposes of this section, the following definitions shall govern unless the context clearly requires otherwise:

(1)"Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, 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.

(2)"Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(3)"Distinguishable" means perceivable by either the sense of smell or taste.

(4)"Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

(5)"Labeling" means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.

(6)"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.

(7)"Tobacco product" means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including 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 and the nicotine-containing liquids manufactured for use in such devices.

(8)"Tobacco retailer" means any store, stand, booth, concession or any other enterprise – including an online or e-commerce vendor -- that engages in the retail sale of tobacco products, including but not limited to stores that engage in the retail sale of food items.

(b) Sale or offer for sale of flavored tobacco products prohibited.

(1) The sale or offer for sale within the City of Burlingame, including a sale transacted remotely with delivery to an address within Burlingame, 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.

(2) 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.

(c) Enforcement; Violation a public nuisance. The provisions of this Section shall be enforced through the mechanisms provided in Title 1 of this Code, and violations may be subject to administrative, civil, or criminal remedies as determined within the discretion of the City Attorney as prosecutor. Violation of the provisions of this Section is deemed to constitute a public nuisance and may be abated as such. Further, violation of this Section shall constitute grounds for revocation of a violator's business license under Section 6.04.280.

(d) No conflict with state or federal 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.

DIVISION 2:

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 3:

This Ordinance shall be published in a newspaper of general circulation in accordance with California Government Code Section 36933, published, and circulated in the City of Burlingame, and shall be in full force and effect on April 1, 2020.

Donna Colson, Mayor

I, Meaghan Hassel-Shearer, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a public hearing at a regular meeting of the City Council held on the 4th day of November, 2019, and adopted thereafter at a regular meeting of the City Council held on the _____ day of _____ 2019, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

Meaghan Hassel-Shearer, City Clerk