



STAFF REPORT

TO: Mayor and City Council

FROM: Jacqueline Graf-Reis, Lieutenant

SUBJECT: Second Reading of an Ordinance Updating Chapter 7.20 of the Mill Valley Municipal Code to Reflect Requested Changes to the Sale of Flavored Tobacco Products, Prohibit the Sale of Tobacco Products at Pharmacies, and Clarify Existing Tobacco Sales Regulations.

DATE: October 05, 2020

Approved for Forwarding:

 on behalf of
Alan E. Piombo, Jr., City Manager

Issue: Conduct a second reading of an Ordinance updating Chapter 7.20 of the Mill Valley Municipal Code to Reflect Requested Changes to the Sale of Flavored Tobacco Products, Prohibit the Sale of Tobacco Products at Pharmacies, and Clarify Existing Tobacco Sales Regulations.

Recommendation: Adopt the Ordinance.

Background: At the September 21, 2020 Regular City Council meeting, staff proposed changes to the Mill Valley Municipal Code related to the Sale of Flavored Tobacco Products, Prohibition of the Sale of Tobacco Products at Pharmacies, and Clarify Existing Tobacco Sales Regulations. A staff report was given, discussion was held, and the Council waived first reading. Public comments were received at the Council meeting.

Attachments:

1. Draft Ordinance
2. September 21, 2020 Staff Report

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ORDINANCE NO. 1320

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILL VALLEY AMENDING CHAPTER 7.20 (SMOKING PROHIBITIONS AND TOBACCO RETAILING REGULATIONS) OF THE MILL VALLEY MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS, PROHIBIT THE SALE OF TOBACCO PRODUCTS AT PHARMACIES, AND CLARIFY EXISTING TOBACCO SALES REGULATIONS

THE CITY COUNCIL OF THE CITY OF MILL VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council finds as follows:

(a) The City Council recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health and economic consequences. Tobacco use causes death and disease and continues to be an urgent public health threat for families throughout California, as evidenced by the fact that nearly 40,000 Californians die from a tobacco-related disease each year.¹

(b) The City Council further recognizes that tobacco product use is started and established primarily during adolescence. Each day, about 2,500 children in the United States try their first cigarette; and another 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 2015.² 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.

¹ [California Tobacco Control Program Overview](#), California Department of Public Health, June 2017

² See <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use> citing the most recent National Youth Tobacco Survey (NYTS) data.

(c) Electronic smoking devices such as electronic cigarettes (or "e-cigarettes") entered the marketplace around 2007, and since 2014, have been the most commonly used tobacco product among youth in the United States. The dramatic surge in youth e-cigarette use ("vaping") is no accident. Electronic smoking devices are frequently marketed in a variety of flavors with obvious appeal to youth, such as gummy bear, cotton candy, and fruit punch. As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online. In addition, e-cigarette companies have effectively used marketing strategies, including celebrity endorsements, slick magazine advertisements, social media campaigns, paid influencers, and music sponsorships, to reach youth and young adults. A 2016 study found that 78.2% of middle and high school students -- 20.5 million youth--had been exposed to e-cigarette advertisements from at least one source, an increase from 68.9% only two years before, in 2014.

(d) Since 2014, e-cigarette products have been the most commonly used tobacco product among youth in the U.S. Nationwide, e-cigarette use among middle and high school students increased 1,200% from 2011-2018. From 2017 to 2018, e-cigarette use among youth increased 78% among high school students and 48% among middle school students. The total number of children who are currently using e-cigarettes rose to an astonishing 3.6 million in 2018, 1.5 million more than the previous year alone.

(e) According to a recent study, one in five young adults use e-cigarettes daily or recreationally, believe e-cigarettes are harmless and not addictive, and think flavored e-cigarettes are less damaging to a person's health than non-flavored ones.

(f) According to the Centers for Disease Control and Prevention ("CDC"), the number of middle and high school students who reported being current users of tobacco products increased 36%-from 3.6 million to 4.9 million students-between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in the use of electronic smoking devices by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who were using e-cigarettes were using them more often. Frequent use of e-cigarettes increased from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.

(g) Through the sale of tobacco, pharmacies convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who patronize pharmacies to obtain medical prescriptions as well as information about medications, which lends to the perception that pharmacies are places that help individuals become healthier. Selling tobacco at pharmacies sends an inconsistent message to the public, particularly children, who are influenced by cues that smoking is acceptable.³

(h) In a Journal of the American Medical Association (JAMA) Viewpoint, the Chief Medical Officer of CVS Health, Troyen Brennan, and co-author Steven A. Schroeder, Director of the Smoking Cessation Leadership Center at the University of California, San Francisco also highlighted the conflict of interest arising from pharmacies' sale of both tobacco and

³ Katz MH. 2008. "Banning Tobacco Sales in Pharmacies: The Right Prescription." *Journal of the American Medical Association*. 300(12): 1451-1453; Hudmon KS, Fenlon CM, Corelli RL, et al. 2006. "Tobacco Sales in Pharmacies: Time to Quit." *Tobacco Control* 15(1): 35-38; DiFranza JR, Wellman RJ, Sargent JD, et al. 2006. "Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality." *Pediatrics* 6: e1237-e1248, [doi: 10.1542/peds.2005-1817](https://doi.org/10.1542/peds.2005-1817)

pharmaceuticals, writing: “The paradox of cigarette sales in pharmacies has become even more relevant recently, in large part because of changes in the pharmacy industry. Most pharmacy chains are retooling themselves as an integral part of the health care system.”⁴

(i) The Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drugstores and pharmacies. Several neighboring jurisdictions subsequently adopted bans on the sale of tobacco products in pharmacies.⁵

(j) The widespread use of e-cigarettes by youth has significant public health consequences. As stated by the Surgeon General, “Most e-cigarettes contain nicotine--the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain--which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.

(k) In December of 2018, the Surgeon General officially declared e-cigarette use among youth in the United States an epidemic. The Surgeon General issued an advisory on e-cigarette use among youth, noting that action must be promptly taken to protect the health of young people. The Surgeon General was joined by the Secretary of the U.S. Department of Health & Human Services, Alex Azar, who called the historic increase in e-cigarette use by youth, which has outpaced any other substance, an “unprecedented challenge.”

(l) This epidemic can therefore be attributed in large part to the appeal of flavored e-cigarette products to youth as well as the advertising and promotional activities by companies that glamorize use of nicotine products nationwide.

(m) The federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibits cigarettes with characterizing flavors other than tobacco and menthol, largely because these flavored products are marketed to youth and young adults, and younger smokers are more likely than older smokers to try these products. When Congress enacted the FSPTCA, it found that the use of tobacco products by the nation’s children is a pediatric disease of “considerable proportions” that results in new generations of tobacco dependent children and adults. Congress further found that virtually all new users of tobacco products are under the minimum legal age to buy the products. In addition, California law does not restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as electronic smoking devices, and the solutions used in these devices.

⁴ Brennan TA, Schroeder SA. Ending Sales of Tobacco Products in Pharmacies. *JAMA*. 2014;311(11):1105–1106. doi:10.1001/jama.2014.686, located at <https://jamanetwork.com/journals/jama/fullarticle/1828530>.

⁵ Tobacco Education and Research Oversight Committee for California. 2006. *Confronting a Relentless Adversary: A Plan for Success Toward a Tobacco-Free California 2006-2008*, p. 18, www.cdph.ca.gov/programs/tobacco/Documents/TEROC/2006-2008%20Master%20Plan.pdf

(n) Protecting the citizens, especially children, of Mill Valley against exposure to smoking represents sound public health and fiscal policy.

(o) It is the intent of the City Council of the City of Mill Valley to provide for the public's health, safety, and welfare by protecting its residents from misinformation about the dangers of tobacco use, and to prevent minors from commencing the inherently dangerous activity of smoking.

SECTION 2. Section 7.20.020 of Chapter 7.20 of Title 7 of the Mill Valley Municipal Code is hereby amended by: 1) deleting the definition of "Minor," to clarify the minimum age to purchase tobacco products; 2) amending the definition of "Tobacco product;" and 3) adding four new definitions to the Section in alphabetical order, to read as follows. All other definitions shall remain the same, except that the definitions shall be renumbered to maintain alphabetical order:

"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 the provision of ingredients information.

"Electronic Smoking Device" means an electronic device, which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic smoking device" includes any such Electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

"Flavored Tobacco Product" means any Tobacco Product that imparts a Characterizing Flavor.

"Pharmacy" means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A Pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.

"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, and 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.

SECTION 3. Section 7.20.030B.5 of Chapter 7.20 of Title 7 of the Mill Valley Municipal Code is hereby amended in its entirety to clarify that, amongst existing requirements, a retail tobacco store must prohibit persons below the minimum age for purchase of tobacco products from entering the store, to read as follows:

“5. Unless otherwise prohibited by law, smoking is not prohibited in the following enclosed areas:

a. Smoking at theatrical production sites is not prohibited by this subsection if smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.

b. Smoking inside a retail tobacco store is not prohibited if:

i. The retail tobacco store does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the business premises;

ii. The retail tobacco store prohibits individuals under twenty-one (21) years of age, except for active duty military personnel who are eighteen (18) years of age or older from entering the store at all times; and

iii. The premises of the retail tobacco store is an independent freestanding building unattached to any other structure or use.”

SECTION 4. Section 7.20.110 of Chapter 7.20.110 of Title 7 of the Mill Valley Municipal Code is hereby amended in its entirety to read as follows:

“7.20.110 Licensing of tobacco retailers.

A. Tobacco Retailer’s License Required. It is unlawful for any person to sell or offer for sale any tobacco products within City limits without first obtaining and maintaining a valid tobacco retailer’s license from the City of Mill Valley for each location where these sales are conducted. No person shall sell tobacco products, and no tobacco retailer’s license shall be issued for tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

B. Prohibition Against Tobacco Product Sales at Pharmacies. No license may issue, and no existing license may be renewed to authorize tobacco retailing in a pharmacy.

C. Sale of Flavored Tobacco Products Prohibited. It shall be a violation of this section 7.20.110 for any tobacco retailer or any tobacco retailer’s agents or employees to sell or offer for sale, any flavored tobacco product after May 5, 2021.

D. Application, Issuance, and Renewal Procedure.

1. An application for a tobacco retailer’s license shall be submitted to the City in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form available from the City and shall contain the name, address, and telephone number of the

applicant and the business name, address, and telephone number of each establishment where tobacco is to be sold. Existing tobacco retailers shall apply for a license within 90 days of the effective date of the ordinance codified in this chapter.

2. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30th. Licensees must apply for renewal before the tobacco retailer's license expires. Provided however, that any license issued to a pharmacy shall expire on May 5, 2021, and shall not be renewed.

3. A licensed tobacco retailer shall inform the City in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.

4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

E. Issuance, Display, and Transfer of License.

1. Upon receipt of a completed application for a tobacco retailer's license, the City will issue a tobacco retailer's license, unless any of the following grounds for denial exist:

- a. The application is incomplete or inaccurate;
- b. The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect;
- c. The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to any provision of the Mill Valley Municipal Code;
- d. Failure to pay an outstanding fine.

2. Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.

3. The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of notification of change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

F. Business License. If a tobacco retailer's license is denied, revoked, or suspended, the holder of a valid business license may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale tobacco products, unless otherwise prohibited.

G. Enforcement.

1. A tobacco retailer's license may be revoked or suspended for any violation of this section or any state or federal tobacco-related laws. A tobacco retailer's license may also be revoked or suspended on any of the following grounds:

- a. One or more of the grounds for denial of a tobacco retailer's license existed either when a license application was made or before the tobacco retailer's license was issued;
- b. The tobacco retailer's license has been transferred in violation of subsection B; or
- c. Two or more suspensions within a 12-month period.

2. If any grounds for revocation exist, the City may issue a notice of revocation or suspension hearing. The notice of revocation or suspension hearing will include all of the following information:

- a. The address or a definite description of the location where the tobacco retailer's license is issued;

b. The grounds for revocation or suspension;

c. The date of the revocation or suspension hearing before the administrative hearing officer designated by the City Manager. The notice of revocation or suspension hearing will set the hearing date no sooner than 20 days and no later than 45 days following the date the notice of revocation or suspension hearing is served.

3. A tobacco retailer's license may be revoked or suspended by the hearing officer after a tobacco retailer's license revocation or suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the grounds set forth in the notice of revocation or suspension hearing. After considering the testimony and evidence submitted at the hearing, the hearing officer will issue a written decision to revoke or suspend or not revoke or suspend the license and will list in the decision the reason(s) for that decision. A revocation or suspension is without prejudice to the filing of a new application for a tobacco retailer's license.

4. The decision of the hearing officer to revoke or suspend a tobacco retailer's license shall be final and conclusive. Within 20 days after the administrative hearing officer's filing and service of the order, a responsible party held liable under the decision may seek judicial review by filing an appeal to be heard by the Superior Court pursuant to California Government Code Section 53069.4. A copy of the notice of appeal shall be served in person or by first-class mail upon the City by the appellant.

5. The tobacco retailer's license revocation or suspension becomes a final administrative order at one of the following times:

a. On the date of the revocation or suspension hearing, if a tobacco retailer fails to appear at a scheduled revocation or suspension hearing;

b. On the date when the time for an appeal has expired without a written appeal on record."

SECTION 5. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only prohibits the sale of flavored tobacco and the sale of tobacco products at pharmacies. The adoption of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations. because the Ordinance is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

SECTION 7. Savings Clause. Neither the adoption of this ordinance nor the repeal or amendment by this ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

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321 **SECTION 8. Effective Date.** This Ordinance shall be effective thirty (30) days
322 following its adoption by the City Council. A summary of this Ordinance shall, within fifteen
323 (15) days after passage, be published in accordance with Section 36933 of the Government Code
324 of the State of California with the names of the City Council members voting for and against it.
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326 **INTRODUCED** at a regular meeting of the City Council of the City of Mill Valley on
327 the **21st** day of **September, 2020**, and
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329 **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Mill
330 Valley on the **5th** day of **October, 2020**, by the following vote:
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332 **AYES:**

333 **NOES:**

334 **ABSENT:**

335 **ABSTAIN:**
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338 _____
339 Sashi McEntee, Mayor
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341 **ATTEST:**
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343

344 _____
Kelsey Rogers, City Clerk/Administrative Analyst



STAFF REPORT

TO: Mayor and City Council

FROM: Jacqueline Graf-Reis, Police Lieutenant

SUBJECT: Consideration of an Ordinance Amending City's Tobacco Retail Regulations to Prohibit the Sale of Flavored Tobacco Products in the City and All Tobacco Products in Pharmacies, and Miscellaneous Clarifying Amendments

DATE: September 21, 2020

Approved for Forwarding:

Alan E. Piombo, Jr., City Manager

Issue: Discussion and review of regulations controlling the sale of flavored tobacco products and consideration of prohibition of sale of any tobacco products at pharmacies. Introduce the attached ordinance updating the City's tobacco retailing regulations located in Chapter 7.20 of the Mill Valley Municipal Code.

Recommendation: Receive staff recommendations on amending the City's existing tobacco regulations and provide feedback and direction as appropriate. Introduce the ordinance and waive first reading.

Background: At the November 4, 2019 meeting, staff shared with the City Council a presentation of a report titled "*Tobacco Retailer Regulations of the Sale of Flavored Tobacco Products*." Council expressed interest in adopting a flavor tobacco ban ordinance and asked staff to develop proposed modifications to the Mill Valley Municipal Code consistent with that direction.

On August 20, 2020, California Governor Gavin Newsom signed Senate Bill 793, banning the sale of flavored tobacco products. The ban goes into effect January 1, 2021. The City of Mill Valley may adopt regulations equally or more restrictive than the new State law, which would be accomplished under the proposed ordinance. The new State law (Attachment 3) does not prohibit the sale of tobacco products at pharmacies, which is proposed as an option in this report.

ATTACHMENT 2
~~ITEM 6~~

City Council Staff Report

Amending “Smoking Prohibitions and Tobacco Retailing Regulations” prohibiting the sale of flavored tobacco products.

September 21, 2020

Discussion: The Marin County Tobacco Control Program considers local Tobacco Retailer License regulations an effective deterrent to the violations of existing tobacco laws. Flavored tobacco products, including traditional tobacco products and electronic cigarettes (“e-cigarettes”), encourage smoking habits that can lead to long-term tobacco addiction. Flavored products are often the first tobacco products used by youth and young adults. The Centers for Disease Control and Prevention reported more than an 800% increase in e-cigarette use among middle school and high school students between 2011-2015. In addition, data from the National Youth Tobacco survey indicates that over 40% of U.S. middle school and high school smokers reported using flavored cigarillos or flavored cigarettes. By decreasing access to these products, younger members of the community will have diminished access to these products.

The purpose of the proposed ordinance is to adopt regulations restricting the sale of certain flavored tobacco products to reduce smoking, nicotine addiction, and promote public health in Mill Valley. By prohibiting the sale of all flavored tobacco products, including flavored e-cigarette solutions and flavored traditional tobacco products, Mill Valley will be in alignment with other cities and towns in the County of Marin. The Smoke Free Marin Coalition recommends adopting an ordinance prohibiting the sale of all flavored tobacco products.

Listed below are all cities and towns within Marin County that have banned flavored tobacco product sales and/or prohibited pharmacies from selling tobacco products.

OVERVIEW OF FLAVORED TOBACCO ORDINANCES IN MARIN COUNTY

LOCATION	Flavored Tobacco Ordinance	Includes Ban of Mint/Menthol	No Tobacco Sales at Pharmacies	Effective Date
County of Marin	Yes	Yes	Yes	Jul-19
Corte Madera	Yes	Yes	Yes	Jan-20
Fairfax	Yes	Yes	Yes	Dec-18
Larkspur	Yes	Yes	Yes	Jan-20
Novato	Yes	In process	Yes	Jan-18
San Anselmo	Yes	Yes	Yes	Jan-20
San Rafael	Yes	Yes	Yes	May-19
Sausalito	Yes	Yes	Yes	Nov-18
Tiburon	Yes	Yes	Yes	Sept-20
Towns that do not have a commercial business which sells tobacco products				
Belvedere	No	No	No	N/A
Ross	No	No	No	N/A

In reviewing other tobacco regulations established by the County of Marin, and neighboring cities and towns, staff identified an additional regulation Council might consider adopting concurrent with the flavored tobacco ban.

City Council Staff Report

Amending “Smoking Prohibitions and Tobacco Retailing Regulations” prohibiting the sale of flavored tobacco products.

September 21, 2020

Specifically, staff recommends the Council prohibit all tobacco product sales in pharmacies. This component is encouraged by the Marin County Tobacco Control Program due to the inference that the availability of tobacco products in pharmacies sends a mixed message to consumers, who typically purchase pharmaceuticals to improve health. Accordingly, the proposed Ordinance contains a regulation generally prohibiting the sale of all tobacco products, whether flavored or not, in pharmacies.

Under the definition of “tobacco product” proposed in the Ordinance, pharmacies would still be permitted to sell smoking cessation products specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. This definition and regulation are consistent with the countywide approach. As illustrated below, should the City adopt the regulation, the prohibition on the sale of tobacco products in pharmacies would be more consistently applied in our local area. The Smokefree Marin Coalition also concurs with this approach.

Despite the adoption of the proposed ordinances changes, non-flavored tobacco products would remain available through other businesses in our community who are licensed to sell tobacco products, such as tobacco shops, smoking lounges, gas stations and liquor stores). This is similarly the case throughout the County of Marin

Licensed Tobacco Retailers

With respect to implementing the proposed regulations, staff identified six (6) existing licensed tobacco retailers that could be impacted by the proposed Ordinance. Staff conducted site visits in July 2020 and contacted a representative of each establishment. The tobacco retailers and the products offered are summarized as follows:

- **7- Eleven, 349 Miller Avenue:** E-Cigarettes and vaping products mint/menthol flavored. Cigarettes mint/menthol flavored. Mint/Menthol and flavored chewing tobacco, and various flavored cigars are all sold on site.
- **Chevron, 5 Ashford Avenue:** E-Cigarettes and vaping products mint/menthol flavored. Cigarettes mint/menthol flavored. Min/Menthol and flavored chewing tobacco, and various flavored cigars are all sold on site.
- **Chevron, 340 Miller Avenue:** Cigarettes mint/menthol flavored. Mint/menthol flavored chewing tobacco are all sold on site.
- **Fuel 24/7, 458 Miller Avenue:** Cigarettes mint/menthol flavored. Mint/Menthol and flavored chewing tobacco and various flavored cigars are all sold on site.
- **Jolly King Liquors, 339 Miller Avenue:** Cigarettes mint/menthol flavored. Mint/Menthol and flavored chewing tobacco and regular cigars are all sold on site.
- **Rite Aid, 701 E. Blithedale Avenue:** Tobacco cigarettes in mint and menthol flavors and cigars with flavor are all sold on site.

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Amending "Smoking Prohibitions and Tobacco Retailing Regulations" prohibiting the sale
of flavored tobacco products.
September 21, 2020

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Tobacco Retailers in Mill Valley

Merchant	E-Cigarettes & Vaping Devices	Tobacco Cigarettes	Chewing Tobacco	Cigars
7-Eleven	Yes-M	Yes-M	Yes-M/F	Yes-F
Chevron -Ashford	Yes-M	Yes-M	Yes-M/F	Yes-F
Chevron- Miller	N/A	Yes-M	Yes-M	N/A
Fuel 24/7	N/A	Yes-M	Yes-M/F	Yes-F
Jolly King Liquors	N/A	Yes-M	Yes-M	Yes
Rite Aid	N/A	Yes-M	Yes	Yes-F

(F= Flavored, M=Mint/Menthol)

Researched 07/2020

94

95 None of the retailers are engaged in the exclusive sale of flavored tobacco products such that the
96 proposed Ordinance would eliminate all revenue. During the site visits, some retailers indicated
97 it would not be overly burdensome to eliminate these products from their respective inventories.
98 Additionally, the proposed Ordinance contains a "phase-out" period to exhaust inventories and
99 prohibit sales of these products after May 5, 2021.

100

101 The proposed Ordinance also contains certain clean-up language to clarify that retailers may not
102 sell tobacco products to individuals under the age of 21, consistent with State law. The current
103 regulations appear to limit this restriction to "minors," which incorrectly implies a lower minimum
104 age for purchase.

105

106 **Fiscal Impact:** The impact of banning flavored tobacco products could result in a modest
107 reduction of sales tax revenue associated with the otherwise lawful sales to adults in the
108 community. However, there are only six retail establishments selling tobacco products in the City
109 of Mill Valley. Staff believes the bulk of sales of flavored tobacco products, especially e-cigarettes
110 and vaping devices, occurs through online retailers with limited sales tax revenue to the City.

111

112 **General Plan Compliance:** Adoption of the ordinance is consistent with the City's General Plan.
113 The General Plan community health addresses the physical, mental, and social well-being of the
114 community. It is about creating a social and physical environment that supports good health and
115 an enhanced quality of life by promoting healthy development and healthy behaviors across all
116 stages of life.

117

118 **Recommendation:** Staff recommends the following:

City Council Staff Report
Amending "Smoking Prohibitions and Tobacco Retailing Regulations" prohibiting the sale
of flavored tobacco products.
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- 119 1. Prohibiting the sale of all flavored tobacco products citywide;
- 120 2. Prohibiting the sale of all tobacco products at pharmacies; and
- 121 3. Introducing the Proposed Ordinance and waive reading.

122

123 **Attachments:**

- 124 1. Staff Report for City Council titled "Tobacco Retailer Regulations of the Sale of
- 125 Flavored Tobacco" (November 4, 2019).
- 126 2. Proposed Ordinance: Amendments to Municipal Code Section 7.20 "Smoking Prohibitions
- 127 and Tobacco Retailing Regulations"
- 128 3. California Senate Bill 793



STAFF REPORT

TO: Mayor and City Council
FROM: Alan E. Piombo, Chief of Police
SUBJECT: Tobacco Retailer Regulations of the Sale of Flavored Tobacco Products
DATE: November 4, 2019

Approved for Forwarding:


James C. McCann, City Manager

- 1 **Issue:** Discussion and review of recommendations on regulations controlling the sale of
2 flavored tobacco products in the City of Mill Valley.
3
- 4 **Recommendation:** Receive staff recommendations on flavored tobacco regulations and
5 provide feedback and direction as appropriate.
6
- 7 **Background:** At the July 1, 2019 meeting, City Council received a presentation by
8 Police Chief Alan Piombo on the City's response to Marin County Civil Grand Jury
9 Report: "Vaping: An Under-the-Radar Epidemic" issued on May 9, 2019 (Attachment 1).
10 The Grand Jury issued the report in the interest of combating the negative effects of
11 flavored tobacco products and nicotine addiction on our youth. In the report the Marin
12 County Civil Grand Jury made several findings and recommendations regarding youth
13 access to flavored vaping products.
14
- 15 The report included the following findings:
16
- 17 • Most vaping products are nicotine delivery systems that are designed to appeal to
 - 18 youngsters, are highly addictive, and may cause life-long health problems.
 - 19 • Student vaping in Marin County is an epidemic that is increasing and reaching
 - 20 younger students including those in middle schools.
 - 21 • All government bodies in Marin County do not ban the sale of flavored tobacco.
 - 22 To be effective, a ban must be county-wide and be vigorously enforced.

City Council Staff Report
Tobacco Retailer Regulations of the Sale of Flavored Tobacco Products
November 4, 2019

- Mentholated tobacco products are damaging to health, but not all flavored tobacco ordinances in the County ban them.

In addition, the report made recommendations requiring a response from the Mill Valley City Council. The recommendations and the City Council's corresponding responses were as follows:

- Recommendation: All municipalities in the county that have not banned the sale of flavored tobacco products should do so within the next year. Response: The City of Mill Valley partially agrees with this recommendation and will consider changes to the City's Municipal Code with an emphasis on protecting the health of our youth in our community within the next six months.
- Recommendation: All law enforcement agencies should coordinate the enforcement of sales bans on flavored tobacco. Response: The City of Mill Valley has identified six retail businesses that sell tobacco products within the City limits. The City of Mill Valley is in the processes of considering adding language to our Municipal Code to addresses flavored tobacco sales. Once implemented, the Mill Valley Police Department will work in conjunction with other allied Mann agencies to ensure compliance with our retail businesses.

Discussion: The Council directed staff to conduct further research on local tobacco retailers and regulations adopted in other Marin County jurisdictions, and to return for discussion and recommendations regarding interest in changing regulations controlling the sale of flavored tobacco products, e-cigarettes and vaping devices in the City of Mill Valley.

Licensed Tobacco Retailers

Currently, the City of Mill Valley has six licensed tobacco retailers. Staff conducted site visits and made contact with either the owner or manager of each establishment. The tobacco retailers and the products offered are summarized as follows:

- 7-Eleven, 349 Miller Avenue: Vaping products in mint and menthol flavors; chewing tobacco with some flavored, such as peach; and some flavored cigars. The business owner is willing to work on reducing "flavored products", but would like to keep all of the remaining products available to his customers (i.e. vaping devices, chewing tobacco and cigars).
- Chevron, 5 Ashford Avenue: Vaping products in regular and mint flavors; flavored tobacco products; and assorted flavored chewing tobacco and cigars. The manager said some vaping devices are being eliminated due to lack of sales, but the Juul device will remain in regular and mint only.
- Chevron, 340 Miller Avenue: No vaping products; regular and menthol tobacco products, wintergreen chewing tobacco; and a few "Swisher Sweet" cigars.

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- Fuel 24/7, 458 Miller Avenue: No vaping products; some tobacco products; flavored chewing tobacco; and flavored cigars. The manager stated they prefer to keep the flavored tobacco products (not vaping products) as to not impact lawful sales to adults.
- Jolly King, 339 Miller Avenue: No longer stocking vaping devices with only four "Blue" pens left; no flavored tobacco; regular tobacco cigarettes only. The owner believes it is a good idea not to have flavored tobacco products and said the elimination of flavored tobacco and vaping devices would have no impact on business, but would like to keep standard tobacco cigarettes.
- Rita Aid, 701 East Blithedale Avenue: No e-cigarettes or vaping devices; no chewing tobacco; flavored cigars; and regular tobacco cigarettes. The loss of cigarette sales would have a negative financial impact.

Tobacco Retailers in Mill Valley

Merchants	Chewing Tobacco	Tobacco Cigarettes	Cigars	E-Cigarettes & Vaping Devices
7-11	Yes - F	Yes	Yes - F	Yes (mint/menthol)
Chevron - Ashford	Yes - F	Yes - M	Yes - F	Yes (regular/mint)
Chevron - Miller	Yes - F	Yes - M	Yes - F	No
Fuel 24/7	Yes - F	Yes	Yes - F	No
Jolly King Liquors	Yes	Yes	Yes	Yes (no new stock)
Rite Aid	Yes	Yes	Yes - F	No

(F = Flavored, M = Menthol, Mint)

Researched 08/2019

Legislative Efforts

Legislation has been introduced on the federal level. SB 65570 and HR 149871, dubbed the Stop Appealing Flavors and E-cigarettes to Kids Act (SAFE Kids Act), were submitted in March 2019.

In late 2018, bills were introduced in the California Senate to ban the sale of flavored e-cigarettes and all other flavored tobacco products to combat use by youth (SB-38). Legislators introduced a bill to set stricter rules for age verification in sales of tobacco products online and by mail (SB39). In early 2019, the California Assembly began work on AB-739 to restrict sales of flavored tobacco, including menthol. All three of these bills are in the initial stages of the legislative process.

Marin County has enacted an ordinance banning the sale of flavored tobacco products including vaping liquids and mentholated cigarettes. The ban took effect on July 1, 2019 and applies to unincorporated areas in the county. Sales in one tobacco specialty store have been permitted to continue until January 1, 2020.

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In addition to the county, a number of municipalities in Marin have enacted flavored tobacco bans. A listing of those jurisdictions appears on the chart below.

	Flavored Tobacco Ordinance	Menthol Included	Effective Date
County of Marin	YES	YES	7/01/19
Belvedere	NO	NO	N/A
Corte Madera	YES	YES	1/01/20
Fairfax	YES	NO	12/06/18
Larkspur	YES	YES	1/01/20
Mill Valley	NO	NO	N/A
Novato	YES	NO	1/01/18
Ross	NO	NO	N/A
San Anselmo	YES	YES	1/01/20
San Rafael	YES	YES	1/01/21
Sausalito	YES	YES	11/01/18
Tiburon	NO	NO	N/A

Community Concerns

In Marin County, community organizations have come together and have been extremely proactive in working to curtail youth vaping. Local organizations that have taken leadership roles in this fight include: Marin County Office of Education; County of Marin Department of Health and Human Services; Coalition Connection; Marin County Tobacco Control Program; Smoke-Free Marin; Marin Prevention Network; Bay Area Community Resources; and MCOE School/Law Enforcement Partnership.

In Mill Valley, there have been several community educational presentations and meetings sponsored by Mill Valley Aware, Tam PTSA and concerned citizens on the negative health impacts of youth vaping.

Staff consulted with representatives from Mill Valley Aware and members of the Mill Valley Youth Advisory Committee and found there a number of loopholes to recent legislation and regulatory efforts designed to limit youth access to vaping products. The access to vaping devices at local retailers is already limited, yet minors are still able to contact adult buyers through social media networks to arrange for purchases in a secondary market. Additionally, there are some remaining online retailers still shipping vaping products despite the challenges to age verification.

Staff consulted with Smoke Free Marin Coalition and discussed options for proposed modifications to the Mill Valley Municipal Code. The Smoke Free Marin Coalition recommended adopting an ordinance prohibiting the sale of all flavored tobacco products, including mint and menthol.

**City Council Staff Report
Tobacco Retailer Regulations of the Sale of Flavored Tobacco Products
November 4, 2019**

Options

Staff completed an analysis of Federal, State and Local efforts to introduce and adopt regulations to control the sale of flavored tobacco products, e-cigarettes and vaping devices and has identified the following potential options:

Option 1: Make no modifications to the Mill Valley Municipal Code at this time and defer to potential Federal and State legislation.

Option 2: Direct staff to develop proposed modifications to the Mill Valley Municipal Code prohibiting the sale of flavored tobacco products with the exception of mint and menthol.

Option 3: Direct staff to develop proposed modifications to the Mill Valley Municipal Code prohibiting the sale of flavored vaping products only and exempt cigarettes, cigars and chewing tobacco.

Option 4: Direct staff to develop proposed modifications to the Mill Valley Municipal Code prohibiting the sale of all flavored tobacco products.

Recommendation

Staff has considered the four options outlined above and recommends Council adopt option #3, direct staff to develop proposed modifications to the Mill Valley Municipal Code prohibiting the sale of flavored vaping products only and exempt cigarettes, cigars and chewing tobacco. This recommendation reflects input from Smoke Free Marin Coalition, MV Aware, Tamalpais High School PTSA, as well as other community organizations, and is responsive to the Marin County Civil Grand Jury.

Fiscal Impact:

The impact of banning flavored tobacco products could result in a modest reduction of sales tax revenue associated with the otherwise lawful sales to adults in the community. However, there are only six retail establishments selling tobacco products in the City of Mill Valley. Staff believes the bulk of sales of flavored tobacco products, especially e-cigarettes and vaping devices, occurs through online retailers with no current sales tax revenue to the City.

Attachments:

1. City Council Response to Marin County Civil Grand Jury Report "Vaping: An Under-the-Radar Epidemic" (May 9, 2019).

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ORDINANCE NO. 20-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILL VALLEY AMENDING CHAPTER 7.20 (SMOKING PROHIBITIONS AND TOBACCO RETAILING REGULATIONS) OF THE MILL VALLEY MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS, PROHIBIT THE SALE OF TOBACCO PRODUCTS AT PHARMACIES, AND CLARIFY EXISTING TOBACCO SALES REGULATIONS

THE CITY COUNCIL OF THE CITY OF MILL VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council finds as follows:

(a) The City Council recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health and economic consequences. Tobacco use causes death and disease and continues to be an urgent public health threat for families throughout California, as evidenced by the fact that nearly 40,000 Californians die from a tobacco-related disease each year.¹

(b) The City Council further recognizes that tobacco product use is started and established primarily during adolescence. Each day, about 2,500 children in the United States try their first cigarette; and another 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 2015.² 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.

¹ California Tobacco Control Program Overview, California Department of Public Health, June 2017

² See <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use> citing the most recent National Youth Tobacco Survey (NYTS) data.

(c) Electronic smoking devices such as electronic cigarettes (or "e-cigarettes") entered the marketplace around 2007, and since 2014, have been the most commonly used tobacco product among youth in the United States. The dramatic surge in youth e-cigarette use ("vaping") is no accident. Electronic smoking devices are frequently marketed in a variety of flavors with obvious appeal to youth, such as gummy bear, cotton candy, and fruit punch. As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online. In addition, e-cigarette companies have effectively used marketing strategies, including celebrity endorsements, slick magazine advertisements, social media campaigns, paid influencers, and music sponsorships, to reach youth and young adults. A 2016 study found that 78.2% of middle and high school students -- 20.5 million youth--had been exposed to e-cigarette advertisements from at least one source, an increase from 68.9% only two years before, in 2014.

(d) Since 2014, e-cigarette products have been the most commonly used tobacco product among youth in the U.S. Nationwide, e-cigarette use among middle and high school students increased 1,200% from 2011-2018. From 2017 to 2018, e-cigarette use among youth increased 78% among high school students and 48% among middle school students. The total number of children who are currently using e-cigarettes rose to an astonishing 3.6 million in 2018, 1.5 million more than the previous year alone.

(e) According to a recent study, one in five young adults use e-cigarettes daily or recreationally, believe e-cigarettes are harmless and not addictive, and think flavored e-cigarettes are less damaging to a person's health than non-flavored ones.

(f) According to the Centers for Disease Control and Prevention ("CDC"), the number of middle and high school students who reported being current users of tobacco products increased 36%-from 3.6 million to 4.9 million students-between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in the use of electronic smoking devices by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who were using e-cigarettes were using them more often. Frequent use of e-cigarettes increased from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.

(g) Through the sale of tobacco, pharmacies convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who patronize pharmacies to obtain medical prescriptions as well as information about medications, which lends to the perception that pharmacies are places that help individuals become healthier. Selling tobacco at pharmacies sends an inconsistent message to the public, particularly children, who are influenced by cues that smoking is acceptable.³

(h) In a Journal of the American Medical Association (JAMA) Viewpoint, the Chief Medical Officer of CVS Health, Troyen Brennan, and co-author Steven A. Schroeder, Director of the Smoking Cessation Leadership Center at the University of California, San Francisco also highlighted the conflict of interest arising from pharmacies' sale of both tobacco and

³ Katz MH. 2008. "Banning Tobacco Sales in Pharmacies: The Right Prescription." *Journal of the American Medical Association*. 300(12): 1451-1453; Hudmon KS, Fenlon CM, Corelli RL, et al. 2006. "Tobacco Sales in Pharmacies: Time to Quit." *Tobacco Control* 15(1): 35-38; DiFranza JR, Wellman RJ, Sargent JD, et al. 2006. "Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality." *Pediatrics* 6: e1237-e1248, doi: 10.1542/peds.2005-1817

86 pharmaceuticals, writing: "The paradox of cigarette sales in pharmacies has become even more
87 relevant recently, in large part because of changes in the pharmacy industry. Most pharmacy
88 chains are retooling themselves as an integral part of the health care system."⁴

89
90 (i) The Tobacco Education and Research Oversight Committee for California, as
91 well as the American Pharmacists Association, the California Pharmacists Association, and the
92 California Medical Association have called for the adoption of state and local prohibitions of
93 tobacco sales in drugstores and pharmacies. Several neighboring jurisdictions subsequently
94 adopted bans on the sale of tobacco products in pharmacies.⁵

95
96 (j) The widespread use of e-cigarettes by youth has significant public health
97 consequences. As stated by the Surgeon General, "Most e-cigarettes contain nicotine--the
98 addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during
99 adolescence can harm the developing brain--which continues to develop until about age 25.
100 Nicotine exposure during adolescence can impact learning, memory, and attention. Using
101 nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to
102 nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both
103 themselves and bystanders to other harmful substances, including heavy metals, volatile organic
104 compounds, and ultrafine particles that can be inhaled deeply into the lungs.

105
106 (k) In December of 2018, the Surgeon General officially declared e-cigarette use
107 among youth in the United States an epidemic. The Surgeon General issued an advisory on e-
108 cigarette use among youth, noting that action must be promptly taken to protect the health of
109 young people. The Surgeon General was joined by the Secretary of the U.S. Department of
110 Health & Human Services, Alex Azar, who called the historic increase in e-cigarette use by
111 youth, which has outpaced any other substance, an "unprecedented challenge."

112
113 (l) This epidemic can therefore be attributed in large part to the appeal of flavored e-
114 cigarette products to youth as well as the advertising and promotional activities by companies
115 that glamorize use of nicotine products nationwide.

116
117 (m) The federal Family Smoking Prevention and Tobacco Control Act (FSPTCA),
118 enacted in 2009, prohibits cigarettes with characterizing flavors other than tobacco and menthol,
119 largely because these flavored products are marketed to youth and young adults, and younger
120 smokers are more likely than older smokers to try these products. When Congress enacted the
121 FSPTCA, it found that the use of tobacco products by the nation's children is a pediatric disease
122 of "considerable proportions" that results in new generations of tobacco dependent children and
123 adults. Congress further found that virtually all new users of tobacco products are under the
124 minimum legal age to buy the products. In addition, California law does not restrict the sale of
125 menthol cigarettes or flavored non-cigarette tobacco products, such as electronic smoking
126 devices, and the solutions used in these devices.

⁴ Brennan TA, Schroeder SA. Ending Sales of Tobacco Products in Pharmacies. *JAMA*. 2014;311(11):1105–1106.
doi:10.1001/jama.2014.686, located at <https://jamanetwork.com/journals/jama/fullarticle/1828530>.

⁵ Tobacco Education and Research Oversight Committee for California. 2006. *Confronting a Relentless Adversary: A Plan for Success Toward a Tobacco-Free California 2006-2008*, p. 18, www.cdph.ca.gov/programs/tobacco/Documents/TEROC/2006-2008%20Master%20Plan.pdf

(n) Protecting the citizens, especially children, of Mill Valley against exposure to smoking represents sound public health and fiscal policy.

(o) It is the intent of the City Council of the City of Mill Valley to provide for the public's health, safety, and welfare by protecting its residents from misinformation about the dangers of tobacco use, and to prevent minors from commencing the inherently dangerous activity of smoking.

SECTION 2. Section 7.20.020 of Chapter 7.20 of Title 7 of the Mill Valley Municipal Code is hereby amended by: 1) deleting the definition of "Minor," to clarify the minimum age to purchase tobacco products; 2) amending the definition of "Tobacco product;" and 3) adding four new definitions to the Section in alphabetical order, to read as follows. All other definitions shall remain the same, except that the definitions shall be renumbered to maintain alphabetical order:

"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 the provision of ingredients information.

"Electronic Smoking Device" means an electronic device, which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic smoking device" includes any such Electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

"Flavored Tobacco Product" means any Tobacco Product that imparts a Characterizing Flavor.

"Pharmacy" means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A Pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.

"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, and 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.

SECTION 3. Section 7.20.030B.5 of Chapter 7.20 of Title 7 of the Mill Valley Municipal Code is hereby amended in its entirety to clarify that, amongst existing requirements, a retail tobacco store must prohibit persons below the minimum age for purchase of tobacco products from entering the store, to read as follows:

“5. Unless otherwise prohibited by law, smoking is not prohibited in the following enclosed areas:

a. Smoking at theatrical production sites is not prohibited by this subsection if smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.

b. Smoking inside a retail tobacco store is not prohibited if:

i. The retail tobacco store does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the business premises;

ii. The retail tobacco store prohibits individuals under twenty-one (21) years of age, except for active duty military personnel who are eighteen (18) years of age or older from entering the store at all times; and

iii. The premises of the retail tobacco store is an independent freestanding building unattached to any other structure or use.”

SECTION 4. Section 7.20.110 of Chapter 7.20.110 of Title 7 of the Mill Valley Municipal Code is hereby amended in its entirety to read as follows:

“7.20.110 Licensing of tobacco retailers.

A. Tobacco Retailer’s License Required. It is unlawful for any person to sell or offer for sale any tobacco products within City limits without first obtaining and maintaining a valid tobacco retailer’s license from the City of Mill Valley for each location where these sales are conducted. No person shall sell tobacco products, and no tobacco retailer’s license shall be issued for tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

B. Prohibition Against Tobacco Product Sales at Pharmacies. No license may issue, and no existing license may be renewed to authorize tobacco retailing in a pharmacy.

C. Sale of Flavored Tobacco Products Prohibited. It shall be a violation of this section 7.20.110 for any tobacco retailer or any tobacco retailer’s agents or employees to sell or offer for sale, any flavored tobacco product after May 5, 2021.

D. Application, Issuance, and Renewal Procedure.

1. An application for a tobacco retailer’s license shall be submitted to the City in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form available from the City and shall contain the name, address, and telephone number of the

applicant and the business name, address, and telephone number of each establishment where tobacco is to be sold. Existing tobacco retailers shall apply for a license within 90 days of the effective date of the ordinance codified in this chapter.

2. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30th. Licensees must apply for renewal before the tobacco retailer's license expires. Provided however, that any license issued to a pharmacy shall expire on May 5, 2021, and shall not be renewed.

3. A licensed tobacco retailer shall inform the City in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.

4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

E. Issuance, Display, and Transfer of License.

1. Upon receipt of a completed application for a tobacco retailer's license, the City will issue a tobacco retailer's license, unless any of the following grounds for denial exist:

- a. The application is incomplete or inaccurate;
- b. The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect;
- c. The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to any provision of the Mill Valley Municipal Code;
- d. Failure to pay an outstanding fine.

2. Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.

3. The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of notification of change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

F. Business License. If a tobacco retailer's license is denied, revoked, or suspended, the holder of a valid business license may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale tobacco products, unless otherwise prohibited.

G. Enforcement.

1. A tobacco retailer's license may be revoked or suspended for any violation of this section or any state or federal tobacco-related laws. A tobacco retailer's license may also be revoked or suspended on any of the following grounds:

- a. One or more of the grounds for denial of a tobacco retailer's license existed either when a license application was made or before the tobacco retailer's license was issued;
- b. The tobacco retailer's license has been transferred in violation of subsection B; or
- c. Two or more suspensions within a 12-month period.

2. If any grounds for revocation exist, the City may issue a notice of revocation or suspension hearing. The notice of revocation or suspension hearing will include all of the following information:

- a. The address or a definite description of the location where the tobacco retailer's license is issued;

b. The grounds for revocation or suspension;
c. The date of the revocation or suspension hearing before the administrative hearing officer designated by the City Manager. The notice of revocation or suspension hearing will set the hearing date no sooner than 20 days and no later than 45 days following the date the notice of revocation or suspension hearing is served.

3. A tobacco retailer's license may be revoked or suspended by the hearing officer after a tobacco retailer's license revocation or suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the grounds set forth in the notice of revocation or suspension hearing. After considering the testimony and evidence submitted at the hearing, the hearing officer will issue a written decision to revoke or suspend or not revoke or suspend the license and will list in the decision the reason(s) for that decision. A revocation or suspension is without prejudice to the filing of a new application for a tobacco retailer's license.

4. The decision of the hearing officer to revoke or suspend a tobacco retailer's license shall be final and conclusive. Within 20 days after the administrative hearing officer's filing and service of the order, a responsible party held liable under the decision may seek judicial review by filing an appeal to be heard by the Superior Court pursuant to California Government Code Section 53069.4. A copy of the notice of appeal shall be served in person or by first-class mail upon the City by the appellant.

5. The tobacco retailer's license revocation or suspension becomes a final administrative order at one of the following times:

a. On the date of the revocation or suspension hearing, if a tobacco retailer fails to appear at a scheduled revocation or suspension hearing;

b. On the date when the time for an appeal has expired without a written appeal on record."

SECTION 5. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only prohibits the sale of flavored tobacco and the sale of tobacco products at pharmacies. The adoption of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations. because the Ordinance is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

SECTION 7. Savings Clause. Neither the adoption of this ordinance nor the repeal or amendment by this ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

320
321 **SECTION 8. Effective Date.** This Ordinance shall be effective thirty (30) days
322 following its adoption by the City Council. A summary of this Ordinance shall, within fifteen
323 (15) days after passage, be published in accordance with Section 36933 of the Government Code
324 of the State of California with the names of the City Council members voting for and against it.

325
326 **INTRODUCED** at a regular meeting of the City Council of the City of Mill Valley on
327 the **21st** day of **September, 2020**, and

328
329 **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Mill
330 Valley on the _____ day of _____ **2020**, by the following vote:

331
332 **AYES:**

333 **NOES:**

334 **ABSENT:**

335 **ABSTAIN:**

336
337
338 _____
339 Sashi McEntee, Mayor

340
341 **ATTEST:**

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*California*

LEGISLATIVE INFORMATION

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An act to add Article 5 (commencing with Section 104559.5) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco products.

[Approved by Governor August 28, 2020. Filed with Secretary of State August 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 793, Hill. Flavored tobacco products.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products, as defined, to a person under 21 years of age. Existing law also prohibits the use of tobacco products in county offices of education, on charter school or school district property, or near a playground or youth sports event, as specified.

This bill would prohibit a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer, as those terms are defined, except as specified. The bill would make a violation of this prohibition an infraction punishable by a fine of \$250 for each violation. The bill would state the intent of the Legislature that these provisions do not preempt or prohibit the adoption and implementation of local ordinances that impose greater restrictions on the access to tobacco products than the restrictions imposed by the bill, as specified. The bill would state that its provisions are severable. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 5 (commencing with Section 104559.5) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article 5. Tobacco Sale Prohibition

104559.5. (a) For purposes of this section, the following definitions apply:

~~ATTACHMENT 3~~

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

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

(5) "Hookah" means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

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

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

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

(9) "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.

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

(11) "Retail location" means both of the following:

(A) A building from which tobacco products are sold at retail.

(B) A vending machine.

(12) "Sale" or "sold" means a sale as that term is defined in Section 30006 of the Revenue and Taxation Code.

(13) "Shisha tobacco product" means a tobacco product smoked or intended to be smoked in a hookah. "Shisha tobacco product" includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. "Shisha tobacco product" does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

(14) "Tobacco product" means a tobacco product as defined in paragraph (8) of subdivision (a) of Section 104495, as that provision may be amended from time to time.

(15) "Tobacco product flavor enhancer" means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

(16) "Tobacco retailer" means a person who engages in this state in the sale of tobacco products directly to the public from a retail location. "Tobacco retailer" includes a person who operates vending machines from which tobacco products are sold in this state.

(b) (1) A tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.

(2) There is 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, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(c) Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

(1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.

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

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

(4) 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.

(d) Subdivision (b) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

(e) Subdivision (b) does not apply to loose leaf tobacco or premium cigars.

(f) A tobacco retailer, or agent or employee of a tobacco retailer, who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars (\$250) for each violation of this section.

(g) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.