



## ADMINISTRATIVE STAFF REPORT

# 5.4

TO: Mayor and Town Council

October 16, 2018

SUBJECT: Ordinance No. 2018-09, adding a new Section 32-95 to the Danville Municipal Code regulating the establishment of tobacco retailing businesses and prohibiting hookah or vapor lounges-ZTA 18-0001

### BACKGROUND AND DISCUSSION

On October 2, 2018, the Town Council unanimously introduced an ordinance adding Section 32-95 to the Danville Municipal Code. The ordinance regulates tobacco retailing businesses by requiring that any new business wishing to sell tobacco products (which as defined includes tobacco, e-cigarettes and paraphernalia) must be located at least 1,000 feet from schools, parks and libraries and 500 feet from other tobacco retailers. The ordinance also would prohibit significant tobacco retailers (any business where at least 20% of floor space or 50% of gross revenues are dedicated to tobacco products) and hookah or vapor lounges from opening in Town. The ordinance is now before the Council for adoption.

### PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

### FISCAL IMPACT

None.

### RECOMMENDATION

Adopt Ordinance No. 2018-09, adding a new Section 32-95 to the Danville Municipal Code regulating the establishment of tobacco retailing businesses and prohibiting hookah or vapor lounges-ZTA 18-0001.

Prepared by:

Robert B. Ewing  
City Attorney

Attachment: Ordinance No. 2018-09

**ORDINANCE NO. 2018-09**

**ADDING A NEW SECTION 32-95 TO THE DANVILLE MUNICIPAL CODE  
REGULATING THE ESTABLISHMENT OF TOBACCO RETAILING BUSINESSES  
AND PROHIBITING HOOKAH OR VAPOR LOUNGES-ZTA18-0001**

The Danville Town Council does ordain as follows:

**SECTION 1. FINDINGS.**

In enacting this ordinance, the Town Council makes the following findings:

1. The Town of Danville has previously adopted legislation aimed at discouraging the unlawful sale of tobacco products to minors (Town Ordinance No. 99-06).
2. Research studies have demonstrated that the proximity and density of tobacco retailers near schools correlates with an increased incidence of smoking by minors.
3. Research studies have also shown that the use of e-cigarettes and vaping by youth is increasing and correlates to subsequent use of tobacco.
4. The Town desires to address these public health concerns through use of appropriate zoning.

**SECTION 2. ADDING A NEW SECTION 32-95 TO THE DANVILLE MUNICIPAL CODE.**

A new Section 32-95 is hereby added to the Danville Municipal Code to read as follows:

**SECTION 32-95  
REGULATION OF TOBACCO RETAILERS, HOOKAH AND VAPOR LOUNGES**

**32-95.1 Definitions.**

For purposes of this section, the following definitions shall apply:

- (a) "Electronic smoking device" shall mean an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An "electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.
- (b) "Hookah Lounge" shall mean any facility, building, structure, or location where customers smoke tobacco or other substances through one or more hookah pipes (also commonly referred to as a hookah or waterpipe).
- (c) "Significant tobacco retailing business" shall mean any tobacco retailing business which meets either of the following criteria:

- i. Twenty percent or more of floor or display area is devoted to tobacco products, smoking paraphernalia, or both; or
  - ii. Fifty percent or more of gross retail sales receipts are derived from tobacco products, smoking paraphernalia, or both.
- (d) "Smoking paraphernalia" shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the consumption or preparation of tobacco or cannabis products; electronic smoking devices and items specifically designed for the preparation, charging, or use of electronic smoking devices including cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other electronic smoking device paraphernalia.
- (e) "Tobacco product" shall mean any of the following:
  - i. Any product containing, made from, 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.
  - ii. Any Electronic smoking device.
  - iii. Any component, part, or accessory of a tobacco product, whether or not it is sold separately.
  - iv. "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 the product is marketed and sold solely for that approved purpose.
- (f) "Tobacco retailer" shall mean any person or entity that sells tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, including retail or wholesale sales. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products or smoking paraphernalia sold, offered for sale, exchanged, or offered for exchange.
- (g) "Vapor Lounge" shall mean any facility, building, structure, or location where customers use one or more electronic smoking devices to deliver an inhaled dose of nicotine or other substance within the establishment.

### **32-95.2 Restrictions on the Location of Tobacco Retailing.**

In all land use districts where tobacco retailing would be an otherwise permitted use, it is unlawful to establish or open a tobacco retailing business if the physical location of the business is:

- (a) Within 1,000 feet of any parcel occupied by a public or private school, a park, playground or library.

- (b) Within 500 feet of any parcel occupied by any other tobacco retailing business.

### **32-95.3 Prohibition of Specified Tobacco Related Uses.**

The following land uses related to tobacco retailing and use are prohibited in all land use districts within the Town of Danville:

- (a) Hookah lounges.
- (b) Vapor lounges.
- (c) Significant tobacco retailing businesses.

**SECTION 3. CODIFICATION.** Section 2 of this ordinance shall be codified in the Danville Municipal Code.

**SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT.** The Town Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA") because the regulation of new Tobacco Retailing Businesses and prohibiting the establishment of Hooookah Lounges or Vapor Lounges within the Town will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)(2)), it is not a project under CEQA (CEQA Guidelines 15060(c)(3)) and it can be seen with certainty that there is no possibility that the ordinance will have a significant impact on the environment (CEQA Guidelines Section 15061(b)(3)).

**SECTION 5. SEVERABILITY.** 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 the ordinance. The Danville Town Council hereby declares that they would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases was declared invalid.

**SECTION 5. PUBLICATION AND EFFECTIVE DATE.** The City Clerk shall have a summary of this ordinance published twice in a newspaper of general circulation, once within five (5) days before its adoption and once within 15 (fifteen) days after adoption. This ordinance shall become effective 30 days after adoption.

The foregoing Ordinance was introduced on October 2, 2018 and approved and adopted by the Danville Town Council on October 16, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

\_\_\_\_\_  
**MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

  
\_\_\_\_\_  
**CITY ATTORNEY**

\_\_\_\_\_  
**CITY CLERK**

**CLERK'S CERTIFICATE**

I, Marie Sunseri, City Clerk of the Town of Danville, hereby certify that the foregoing is a true and accurate copy of Ordinance No. 2018-09 of said Town and that said ordinance was published according to law.

Dated: \_\_\_\_\_

\_\_\_\_\_  
City Clerk of the  
Town of Danville