

CITY OF ALHAMBRA

NOTICE OF REGULAR MEETING OF THE ALHAMBRA CITY COUNCIL

(Notice No. N2M21-54)

NOTICE IS HEREBY GIVEN that the **regular** meeting of the Alhambra City Council will be held on **Monday, May 10, 2021**, commencing at **6:00 p.m.** in the **Council Chambers** of the **Alhambra City Hall, 111 South First Street, Alhambra, California** pursuant to the order of the Mayor of the City of Alhambra, the Alhambra City Charter, the Alhambra Municipal Code, and Sections 54955 and 54956 of the Government Code of the State of California.

Consistent with Executive Orders No. N-29-20 and No. N-35-20 from the Executive Department of the State of California and the County of Los Angeles Department of Public Health Safer At Home Order, **the Alhambra City Council meeting will not be physically open to the public, although the public may participate by video conference or teleconference and some of the Council Members may choose to participate via video conference or teleconference rather than attend in person.**

An agenda of such regular meeting is attached hereto incorporated herein by reference and made a part hereof as though fully set forth herein.

LAUREN MYLES, CMC
CITY CLERK

Dated: May 6, 2021
Notice No. N2M21-54



Gateway
to the
San Gabriel Valley

CITY OF ALHAMBRA AGENDA MAY 10, 2021

MISSION STATEMENT

The City of Alhambra is dedicated to responsive, creative leadership and quality services, ensuring desirable neighborhoods and a supportive business environment, while being sensitive to the diversity of our community.

CORONAVIRUS (COVID-19) ADVISORY NOTICE

Consistent with Executive Orders No. N-29-20 and No. N-35-20 from the Executive Department of the State of California and the County of Los Angeles Department of Public Health Safer At Home Order, **the Alhambra City Council meeting will not be physically open to the public, although the public may participate by video conference or teleconference and some of the Council Members may choose to participate via video conference or teleconference rather than attend in person.**

To watch and listen to the meeting: To maximize public safety while still maintaining transparency and public access, members of the public can participate by using **Zoom Webinar** as follows:

Zoom Webinar direct link:

<https://cityofalhambra-org.zoom.us/j/88981479117?pwd=VENBc0VGK2prdUxyQW5QVkdzWkNvZz09>

Webinar ID: 889 8147 9117, Passcode: 594819

Or by **telephone** by dialing 888-475-4499 (Toll Free) or 833-548-0276 (Toll Free) or 833-548-0282 (Toll Free) or 877-853-5257 (Toll Free) or 1-669-900-9128 or 1-346-248-7799 or 1-253-215-8782 or 1-646-558-8656 or 1-301-715-8592 or 1-312-626-6799 and entering **Webinar ID: 889 8147 9117** and **Passcode: 594819**. **Please Note:** All members of the public calling or logging into the meeting will be muted so that the meeting can proceed.

For those wishing to speak on an agenda item, please email **Van Nguyen** at vnguyen@cityofalhambra.org by 5:00 p.m. prior to the meeting with the **item number you wish to speak on and the phone number you will use when calling or the name you will use when logging into the meeting**. You should then call or log into the meeting at least 10 minutes prior to its start time. Staff will unmute you and announce you when it is your time to speak. You will have five minutes to speak, unless that time is adjusted by the Mayor. If you do not have access to a computer please call **626-570-3248** to request public comment.

As an alternative to speaking during the meeting, you can email your comments to the City Clerk at lmyles@cityofalhambra.org **by no later than 5:00 p.m.** on May 10, 2021 to ensure that the City Clerk has time to print the emails prior to the beginning of the meeting. Comments will then be read into the record by the City Clerk, with a maximum allowance of 5 minutes per individual comment, subject to the Mayor's discretion. If a comment is received after 5:00 p.m. but before the conclusion of the meeting based upon its time stamp, the comment will still be included as a part of the record of the meeting but will not be read into the record.

Any member of the public who needs accommodations or who needs their comments translated should email or call the City Clerk at lmyles@cityofalhambra.org or (626) 570-5090 who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety. **Given the challenges of teleconference and video conference meetings, all participants are encouraged to email their comments prior to the beginning of the meeting.**



*Gateway
to the
San Gabriel Valley*

**CITY OF ALHAMBRA
AGENDA
Regular Meeting
ALHAMBRA CITY COUNCIL**
Council Chambers, 111 South First Street
May 10, 2021
6:00 p.m.

ROLL CALL:
COUNCIL:

Lee, Maza, Maloney, Andrade-Stadler, Pérez

FLAG SALUTE: Mayor Pérez

CITY CLERK REPORT - NOTICE NO. N2M21-54

The City Clerk hereby reports that she duly gave notice of the regular meeting of the City Council being held this evening pursuant to the order of the Mayor in accordance with Section 54955 and 54956 of the Government Code of the State of California.

READING OF ORDINANCE TITLES

Government Code Section 36934 requires that all ordinances be read in full prior to City Council taking action on the ordinance. By listing the ordinance title on the Council agenda, Council may determine that the title has been read.

Recommended Action: By motion, determine that the titles to all ordinances which appear on this public agenda have been read, and waive further reading.

CEREMONIALS

1. PROCLAMATION: ASIAN AMERICAN NATIVE HAWAIIAN PACIFIC ISLANDER HERITAGE MONTH – F2M21-3

Ratify the action of Mayor Pérez in proclaiming **May 2021** as **Asian American Native Hawaiian Pacific Islander Heritage Month** in Alhambra.

2. COMMENDATIONS: SUPPORTER OF ALHAMBRA'S CATALYTIC CONVERTER THEFT PREVENTION EVENT – F2M21-3

Mayor Pérez and the Alhambra City Council wish to recognize and thank **Neil's Express Automotive** and **Promax Motorsports** for their generous support at the Catalytic Converter Theft Prevention Event hosted by the Alhambra Police Department on April 24, 2021. Their support and help made it possible to have approximately 60 catalytic converters etched with license plate numbers of residents' vehicles which will aid officers in the return of catalytic converters to the owners in the event they are stolen and recovered. The City of Alhambra appreciates the efforts of Neil's Express Automotive and Promax Motorsports and their contribution to the safety of our community.

3. **CERTIFICATES OF SERVICE: OUTGOING BOARD & COMMISSION MEMBERS WHO SERVED 8-YEAR TERMS – F2M21-3, F2M21-31**

The City Council, on behalf of the citizens of Alhambra, wishes to recognize the City's outgoing Board and Commission members that served full, 8-year terms, for their outstanding and dedicated service to the City of Alhambra.

DEBRA GARCIA
Planning Commission

BETTY HANSON
Board of Library Trustees

PUBLIC HEARING

4. **2021-2022 ANNUAL ACTION PLAN FOR CDBG AND HOME PROGRAMS – F2M21-38, N2M21-42, M2M21-48**

This is the time and place set by **Notice No. N2M21-42** for the City Council to hold a public hearing to consider the proposed Community Development Block Grant (CDBG) and HOME funding for the City of Alhambra's proposed 2021-2022 Annual Action Plan and to receive comment pursuant to and in compliance with the Federal Department of Housing and Urban Development (HUD) pre-submission requirements. For FY 2021-2022, HUD notified the City of its funding allocations: \$967,943 in CDBG Funds and \$569,254 in HOME Funds. These represent a decrease in CDBG funds of \$46,168 (approximately -4.55%) and a decrease in HOME Funds of \$94,671 (approximately -14.26%) from FY 2020-2021. On April 6, 2021 the Housing and Community Development Citizen Advisory (HCDA) Committee met to address the allocations and identify activities consistent with federal regulations, and in alignment with the City's 2020-2024 Consolidated Plan. The following programs were proposed to be funded from CDBG and HOME during FY 2021-2022:

CDBG Administration	\$ 168,589
Fair Housing Services	\$ 25,000
Housing Rehabilitation (Minor)	\$ 279,163
Code Enforcement/Proactive Rental Inspection	\$ 350,000
Public Services (Case Management)	\$ 145,191
CDBG Total	\$ 967,943
Administration	\$ 56,925
CHDO (New Construction)	\$ 85,388
Housing Rehabilitation (Major)	\$ 426,941
HOME Total	\$ 569,254

The HCDA Citizen Advisory Committee reviewed the one-year Action Plan as presented and voted unanimously to recommend approval to the City Council. The notice for this hearing and the 30-day public review of the 2021-2022 Annual Action Plan was published

in the Pasadena Star News, La Opinion, and World Journal newspapers. The plan was also available for review at City Hall and on the City's website. No public comments were received at the time the staff report was published.

Recommended Action: After receiving public testimony, the Mayor should close the public hearing and, at the City Council's discretion, approve the proposed 2021-2022 Annual Action Plan for the Community Development Block Grant (CDBG) and HOME programs and authorize staff to submit the plan to the U.S. Department of Housing and Urban Development (HUD). (M2M21-48)

PRESENTATIONS

5. RECEIVE AND FILE THE 2021-2022 ALHAMBRA STRATEGIC PLAN – F2M18-35

On March 11, 2021, the City Council and Executive Team held a full day planning session to update the City's Annual Strategic Plan. Strategic planning helps guide the work plan of the City. Further, it provides an important and effective way for the City Council to identify strategic goals and priorities to move Alhambra forward through work undertaken by the City's Departments under the oversight of the City Manager. During the City's strategic planning session, a total of 42 objectives were identified and retained under the following 13 goals: 1. Expand Affordable Housing; 2. Increase Economic Development; 3. Enhance Green Space; 4. Implement Historic Preservation Ordinance; 5. Develop Shorb Plan; 6. Recruit and Retain Police Officers; 7. Secure Grants; 8. Improve Transportation and Mobility; 9. Improve Sustainability; 10. Evaluate Boards & Commissions; 11. Modernize Services; 12. Continue Community Outreach; 13. Address Lifestyle Enhancements. Following the distribution of this Strategic Plan to the Council, staff is requesting Councilmembers numerically prioritize each objective. Staff will then aggregate the various rankings to determine the Council's highest priorities and bring the prioritized Strategic Plan back to the Council for final approval.

Recommended Action: City Council receive and file the 2021-2022 Alhambra Strategic Plan. Pending the final prioritization of goals and objectives and/or additional direction, the formal request to adopt the 2022-2022 Strategic Plan will be addressed under a future agenda item.

6. COUNCIL DIRECTION ON APPROVAL OF CONTRACT FOR FY 2021-2022 WITH THE ALHAMBRA CHAMBER OF COMMERCE – F2M21-43, F2M1-51, C2M21-25, M2M21-55

The City has contracted with the Chamber of Commerce for many years to conduct promotional activities on behalf of the City. Staff believes the services proposed for FY 2021-2022 are essential to maintaining active communication lines with the business community and encouraging partnerships within the City. The Alhambra Chamber of Commerce is requesting an increase in allocation from \$111,925 to \$120,000. The Chamber of Commerce will be adding programs, such as a Commercial Brokers/Developers round table to help with vacancies and a Valley Boulevard Committee to identify better ways to revitalize the West Valley boulevard corridor, to the scope of

work. The last increase in allocation of funds to the contract was in 2009. Staff is seeking direction from the Council on the approval of a contract for FY 2021-2022.

Recommended Action: City Council provide direction to staff to award a contract to the Alhambra Chamber of Commerce, subject to final language approval by the City Manager and City Attorney, in an amount not to exceed \$120,000 for FY 2021-2022; and, direct staff to undertake the steps necessary to finalize Council's action. (**M2M21-55**)

7. DISCUSSION ON THE RESTRUCTURING OF THE DESIGN REVIEW BOARD, HCDA CITIZEN ADVISORY COMMITTEE AND ENVIRONMENTAL COMMITTEE – F2M21-36

On February 22, 2021, the City Council received public comment and a request from staff for further direction on the possible restructuring of the City's boards, committees, and commissions pursuant to the Council's Strategic Plan and the goals of enhancing communications between Council and the residents through the role of resident volunteers and creating a more efficient and effective approach to board/committee/commission business. The Council received information on the City's ten commission groups, including their composition, purpose, and frequency of meetings. In addition, the Council heard comment regarding potential for overlap of work for select groups. In some instances, the original scope of the work as described in the Municipal Code is no longer applicable and/or is no longer in concert with what's needed today. Following public comment and Council discussion of the matter, the Council directed this item return at a later date with staggered review. Following public comment and Council discussion of the matter, the Council directed this item return at a later date with staggered review. On April 12, 2021, the Council addressed changes to the Transportation Commission and the Civil Service Commission. Thereafter, on April 26, 2021, the Council also reviewed the Library Board of Trustees, Parks and Recreation Commission, and the Arts and Cultural Events Committee. This evening, the focus will be on changes desired for the City's Environmental Commission, Design Review Board, and the HCDA Citizen Advisory Committee.

Recommended Action: City Council provide direction on any structuring changes to the City's Environmental Commission, Design Review Board, and the HCDA Citizen Advisory Committee.

CONSENT AGENDA (Item Nos. 8 – 25)

All items listed under the Consent Agenda are considered by the City Council to be routine and will be enacted by one motion unless a citizen or Council member requests otherwise; in which case, the item will be removed for separate consideration.

8. ALHAMBRA ROSE PARADE FLOAT FOUNDATION – F2M21-39, M2M21-49

At the April 12, 2021 City Council meeting, staff was authorized to enter into a two-year agreement with the Phoenix Decorating Company for the oversight and building of the Rose Float for \$107,625 in year one and \$110,315 in year two. Additionally, at this meeting, there was discussion amongst the Council to look into the possibility of initiating

an Alhambra Rose Float Foundation with a 501(c)(3) non-profit organization status to support the City of Alhambra Rose Parade Float and accept financial donations from the community. Upon authorization, staff will initiate the filing of articles of incorporation and create proposed bylaws, subject to the approval of the City Manager and City Attorney.

Recommended Action: City Council authorize staff to initiate the process to create an Alhambra Float Foundation; subject to final language approval by the City Manager and City Attorney; and, direct staff to undertake the steps necessary to finalize the City Council's action. (M2M21-49)

9. RESOLUTION: ESTABLISH VOLUNTARY CONTRACTUAL ASSESSMENT PROGRAMS TO FINANCE OR REFINANCE RENEWABLE OR ENERGY EFFICIENT IMPROVEMENTS FOR PROPERTY OWNERS THROUGH THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OPEN PROPERTY ASSESSED CLEAN ENERGY PROGRAMS – F2M21-40, R2M21-19

The California Statewide Communities Development Authority (CSCDA) was created in 1988 and is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Alhambra. The CSCDA has two Open Property Assessed Clean Energy (PACE) programs to provide financing and refinancing to qualifying property owners for renewable energy, energy efficient, water efficient, and seismic strengthening improvements, electric vehicle charging infrastructure and other such improvements. The two programs, the CaliforniaFIRST Program and the CSCDA Open PACE Program, are entirely voluntary and are administered by a third-party program administrator. The programs work by levying special assessments on a property which allows a property owner to secure financing to install energy efficient improvements. In order establish these programs in Alhambra, the City Council must adopt a resolution of authorization. The CSCDA is allowed to provide these services under Chapter 29 of Division 7 of the Streets and Highway Code, and may issue bonds under this authority to finance or refinance energy efficient improvements. Prospective borrowers are advised to check with their current mortgage lender to ensure there are no restrictions to obtaining PACE financing.

Recommended Action: City Council adopt **Resolution No. R2M21-19** entitled: *A Resolution of the City Council of the City of Alhambra consenting to the inclusion of properties within the territory of the City in the California Statewide Communities Development Authority Open Pace Programs; authorizing the California Statewide Communities Development Authority to accept applications from property owners, conduct contractual assessment proceedings and levy contractual assessments within the territory of the City; and authorizing related actions*

10. CONTRACT AMENDMENT: REVENUE MANAGEMENT SOFTWARE SYSTEM SUPPORT PROFESSIONAL SERVICES – F2M13-40, C2M18-29, M2M21-50

In 2014, following an RFP process, Progressive Solutions Inc. (PSI) was chosen to provide Revenue Management Software System support services. PSI provides the City with software and support for cashiering and to track various licenses and permits (e.g.,

business license, overnight parking permits, paramedic subscribers, etc.) Since PSI is the developer of the software, they are the sole provider of software licenses, user support, and software updates. No other vendor can provide all the elements needed for support services and software upgrades. PSI is proposing to offer their services at \$58,020.48 for fiscal year 2021-2022, which is an increase of \$1,264.50 from the prior year. Staff is pleased with the services and software provided by PSI and they alone possess the technology expertise to service this software. Pursuant to Alhambra Municipal Code 3.36.080 (B)(2), the purchase method may be dispensed when the equipment can only be obtained from one source (sole source). Staff is recommending that the contract with Progressive Solutions, Inc. be extended from July 1, 2021 through June 30, 2022.

Recommended Action: City Council approve a Third Amendment, subject to final language approval by the City Manager and City Attorney, to the professional services agreement (Contract No. C2M18-29) with Progressive Solutions Inc. for the City's cashiering, license and permit systems from July 1, 2021 through June 30, 2022 in the amount of \$58,020.48; and, direct staff to undertake the steps necessary to finalize Council's action. **(M2M21-50)**

11. AUTHORIZE RFP: PREVENTIVE MAINTENANCE AND SERVICE REPAIR FOR EMERGENCY FIRE APPARATUS IN THE FIRE DEPARTMENT FLEET – F2M21-41, RFP2M21-10

The Fire Department has been using a contracted firm for preventive maintenance and service repair for all emergency fire apparatus in the Fire Department fleet. The contract expires on June 30, 2021. In order to continue current services, the Fire Department is seeking a qualified firm to provide general repair services, preventive maintenance services, emergency repair services and inspections for all emergency apparatus in the Fire Department.

Recommended Action: City Council authorize the distribution of a Request for Proposals (RFP) to qualified firms for preventive maintenance and service repair for all emergency fire apparatus in the Fire Department fleet under a three-year contract with two one-year extensions with proposals due no later than 4:00 p.m. on May 27, 2021; and, direct staff to undertake the steps necessary to finalize Council's action.

12. AUTHORIZE RFP: EMERGENCY MEDICAL/PARAMEDIC TRANSPORTATION BILLING AND COLLECTION SERVICES – F2M21-42, RFP2M21-11

The Fire Department has been using a contracted firm for emergency medical/paramedic transportation billing and cost recovery services for Emergency Medical Services (EMS). The contract will expire June 30, 2021. In order to continue current services, the Fire Department is seeking a qualified firm with extensive experience to provide invoicing, supervising and managing of ambulance billing and cost recovery systems/services.

Recommended Action: City Council authorize the distribution of a Request for Proposals (RFP) to qualified firms for emergency medical/paramedic transportation billing and collection services under a five-year contract with two one-year extensions with

proposals due no later than 4:00 p.m. on May 25, 2021; and, direct staff to undertake the steps necessary to finalize Council's action.

13. CONTRACT AMENDMENT: ANNUAL SUPPORT AND LICENSE AGREEMENT FOR EDEN SOFTWARE SYSTEM – F2M5-75, C2M7-55, M2M21-52

On September 22, 2007 the City of Alhambra entered into a contract agreement with Tyler Technologies Inc., for annual support, maintenance and license agreement for the EDEN software. The EDEN system provides several crucial software/database modules, including general ledger, accounts payable, payroll, and human resources. EDEN software is licensed to the City from Tyler Technologies, Inc. and is critical to the operations of the Finance Department. Tyler Technologies, Inc. is the sole provider of software licenses, user support, software updates, and version upgrades for the EDEN product. No other vendor can provide all the elements needed for support services and software upgrades. Therefore, pursuant to Alhambra Municipal Code Section 3.38.050, staff recommends that the contract with Tyler Technologies be extended from July 1, 2021 through June 30, 2022.

Recommended Action: City Council approve a Fourth Amendment, subject to final language approval by the City Manager and City Attorney, to the annual support and licensing agreement (Contract No. C2M7-55) with Tyler Technologies Inc. for the City's financial management system (EDEN) in an amount not to exceed \$65,294.19; and, direct staff to undertake the steps necessary to finalize Council's action. (**M2M21-52**)

14. AWARD CONTRACT: PROFESSIONAL REDISTRICTING CONSULTANT SERVICES – F2M21-28, RFP2M21-6, C2M21-23, M2M21-51

On February 22, 2021, the City Council authorized staff to circulate a Request for Proposals (RFP2M21-6) to seek qualified firms, individuals or contractors for the City of Alhambra to evaluate the City Council district boundaries following completion of the 2020 United States Census to ensure they meet the minimum requirements of law, including the Federal and California Civil Rights Acts, and the Fair Maps Act, and, if necessary, assist the City in developing new district boundaries. The RFP was posted on the City's website and sent to a list of demographic firms. The City received a total of four proposals as follows: Crimcard Consulting Services, Cooperative Strategies, Redistricting Partners and Bear Demographics & Research. A team of staff members consisting of the Assistant City Manager, City Attorney and City Clerk reviewed each of the proposals submitted. The proposals were evaluated based on qualifications of the firm; quality of references; background and experience of proposed staffing; thoroughness and reasonableness of the proposed schedule; scope of work; and, cost. At the conclusion of the evaluation process, two firms, with comparable base costs, were invited to present their proposal during an interview session. Following the interviews, staff pursued one proposal for reference check and then the team unanimously recommended Bear Demographics & Research for the award of contract due to the thoroughness of their proposal, the proposed work schedule, the extensive public outreach component (proposal included additional community workshops in addition to required public hearings) and comprehensive translation services included.

Recommended Action: City Council award a contract, subject to final language approval by City Manager and City Attorney, to Bear Demographics & Research in the amount of \$91,000 for professional redistricting consultant services; and, direct staff to undertake the steps necessary to finalize Council's action. (M2M21-51)

15. AWARD CONTRACT: PROFESSIONAL ENGINEERING DESIGN SERVICES FOR THE 2021 ALLEY REHABILITATION PROJECT – F2M20-73, RFP2M20-34, C2M21-24, M2M21-53

The 2021 Alley Rehabilitation Project consists of 10 alley segments all located within the City of Alhambra boundaries. The alley segments selected to be reconstructed are categorized as failed condition in the current Pavement Management System Report. Staff circulated a Request for Proposals (RFP) to qualified companies for Engineering Design Services for the completion of Plans-Specifications and Cost Estimates (PS&E) and received proposals from nine companies. A review committee comprised of Public Works staff reviewed and evaluated all of responding proposals. Based on format, understanding of work, experience, qualifications, and performance on previous projects evaluations, the proposal submitted by Kreuzer Consulting Group received the overall highest rating. This contract is for the preparation of plans, specifications, and cost estimates for the 2021 Alley Rehabilitation Project. Once plans and specifications have been completed a Notice Inviting Bids will be presented to the City Council for approval of the construction phase of the project.

Recommended Action: City Council award a contract, subject to final language approval by the City Manager and City Attorney, to Kreuzer Consulting Group for Professional Engineering Design Services for the 2021 Alley Rehabilitation Project in an amount not to exceed \$59,760.00; and, direct staff to undertake the steps necessary to finalize Council's action. (M2M21-53)

16. NOTICE OF COMPLETION: LONGDEN NO. 2 PUMP REPAIR PROJECT – F2M19-33, C2M19-42, M2M21-54

The City Council awarded a contract to General Pump Company for the Longden No. 2 Pump Repair and Rehabilitation in the amount of \$20,600. The project was completed for the contract amount. The project is complete in accordance with the City's requirements and specifications. As such, it would be appropriate for the City Council to accept the project as complete and instruct the City Clerk that the Notice of Completion be filed with the County of Los Angeles Recorder's Office.

Recommended Action: City Council accept the work of General Pump Company for the Longden No. 2 Pump Repair and Rehabilitation as complete in the amount of \$20,600; direct the City Clerk to file a Notice of Completion with the County of Los Angeles for recordation; director the Finance Director to release the retention 35 days from the date of recordation, if no liens are filed; and, direct staff to undertake the steps necessary to finalize Council's action. (M2M21-54)

17. ADOPTION OF A RESOLUTION ESTABLISHING A TOBACCO RETAIL LICENSE FEE – F2M21-16, R2M21-20

This evening, the City Council will adopt an ordinance to add Chapter 5.90 to the Alhambra Municipal Code. Chapter 5.90 establishes a tobacco retail licensing program. Section 5.90.050 requires the payment of an application fee, as well as an annual renewal fee to offset the cost of administering the program. The City's Code Enforcement division and Finance Department have determined that the initial application fee should be \$300.00 and the annual renewal fee should be \$300.00 to cover the administrative, inspection and enforcement costs of the program. The attached resolution establishes those fees.

Recommended Action: City Council adopt **Resolution No. R2M21-20** entitled: *A Resolution of the Alhambra City Council establishing a Tobacco Retail License Fee pursuant to Alhambra Municipal Code Section 5.90.100*

18. AWARD CONTRACT: 2021 SUMMER FOOD SERVICE PROGRAM – F2M21-27, N2M21-20, C2M21-26, M2M21-56

Staff requests that the City Council award a contract for the 2021 Summer Food Service Program. On February 22, 2021, the City Council authorized staff to invite bids for the federally funded 2021 Summer Food Service Program (SFSP), which provides nutritionally balanced free lunches and snacks during the summer to children who are between one year and eighteen years of age. On April 29, 2021, the City Clerk received two bids ranging from \$184,775 (School Nutrition Plus, Inc.) to \$380,000 (Cater Tots). The bid received from School Nutrition Plus, Inc. is the lowest responsive bid.

Recommended Action: City Council award a contract, subject to final language approval by the City Manager and City Attorney, to School Nutrition Plus Inc. in an amount not to exceed \$184,775 for the 2021 Summer Food Service Program; and, direct staff to undertake the steps necessary to finalize Council's action. (**M2M21-56**)

19. SPECIFIC PLAN AND ZONING AMENDMENT INITIATION PROPOSAL – F2M21-44, M2M21-57

The City has a long-term objective to provide homeless persons with the assistance they need, including a path toward permanent housing. To this end, the City has adopted two (2) strategies as part of Goal 1: Affordable Housing Ordinance of the 2020-2021 Strategic Plan. Strategy #4 pertains to the acquisition and upgrade of a motel and Strategy #6 calls for the attempting of a master lease of a motel. Staff has researched the various motel properties in the City for opportunities to either acquire or enter into a master lease for use of the motels as transitional housing for the homeless. Staff's research has found one motel property ("Property") located at 2800 West Valley Boulevard as a potential opportunity site for residential bridge (transitional) housing. The Property is presently improved with a one-story, 12-room motel built in 1935. There are zoning and land use issues associated with the current use of the Property as well as with the potential residential bridge housing use. The Property is zoned VSP (Valley Boulevard Corridor Specific Plan) with a corresponding land use designation of OP (Office Professional).

Motels uses are not permitted nor conditionally permitted anywhere in the VSP zone thus, the existing motel is a legal nonconforming use. If the Property is to be used for residential bridge (transitional) housing, the land use designation of the Property must be changed from OP to Residential Specific Plan (RSP). Should the City Council direct staff to initiate the change of land use designation, Staff will prepare a Specific Plan Amendment. The proposed Specific Plan Amendment will be presented to the Planning Commission for review and recommendation, followed by presentation to the City Council for action.

Recommended Action: City Council approve staff to initiate a Specific Plan and Zoning Amendment for 2800 West Valley Boulevard. (M2M21-57)

20. MINUTES

Recommended Action: City Council review and approve as submitted the Minutes of the February 24, 2021 regular meeting of the Alhambra City Council.

21. PERSONNEL ACTIONS – F2M21-2

Recommended Action: City Council ratify the actions of the City Manager set forth in that certain Personnel Actions document dated May 10, 2021 showing the various appointments, classifications, salary changes, etc., since the last City Council meeting.

22. DEMANDS - F2M21-1

Recommended Action: City Council approve as submitted Final Check List (220571 thru 220679) in the amount of \$362,257.13 for the period ending April 22, 2021; Final Check List (220680 thru 220829 and 220681 thru 220685 replacement checks) in the amount of \$1,714,603.69 for the period ending April 29, 2021; and, Final Check List (220830 thru 220975) in the amount of \$53,766.92 for the period ending May 3, 2021.

23. INTRODUCTION AND FIRST READING OF AN ORDINANCE ADDING CHAPTER 6.18 TO THE ALHAMBRA MUNICIPAL CODE FOR MANDATORY ORGANIC WASTE DISPOSAL REDUCTION – F2M20-39, O2M21-4787

In September 2016, Governor Brown signed Senate Bill 1383 (S.B. 1383) also known as the Short-Lived Climate Pollutants bill into law. The legislation targets short-lived climate pollutants by focusing on reducing greenhouse gas emissions emitted from landfills. This bill established a target diversion rate of 50 percent by 2020 and 75 percent by 2025 based on 2014 waste characterization levels. The State estimates that these reduction targets will result in an annual decrease of at least 4 million metric tons of greenhouse gas emissions by 2030. S.B. 1383 seeks to accomplish these target levels by recycling or diverting organic waste (organics) from being sent to landfills for disposal. CalRecycle estimates that two-thirds of the State's entire waste stream is comprised of organic waste. Under S.B. 1383, local jurisdictions must adopt a mandatory and enforceable organics waste recycling ordinance. The law mandates that jurisdictions are required to provide

organics collection and recycling services to all residential, both single family and multi-family dwellings, and commercial customers within their boundaries. For the purposes of S.B. 1383, organics are not only limited to food waste but also include green waste, wood waste, landscape and pruning waste, food-soiled paper waste, and fibers such as paper and cardboard. The proposed Ordinance is based upon a model ordinance provided by CalRecycle. The ordinance fulfills a major component of S.B. 1383 requirements and will work in concert with the City's new franchise waste hauler agreement to meet the additional provisions under State law. Jurisdictions that fail to pass a mandatory organics waste recycling ordinance by January 1, 2022, will face compliance actions from the State including administrative civil penalties up to \$10,000 per day.

In addition to S.B. 1383 requirements, the proposed Ordinance will also ensure the City is in compliance with prior State laws regarding recycling and diversion mandates. Prior State legislation includes: A.B. 939 - California Integrated Waste Management Act; A.B. 341 - Mandatory Commercial Recycling; A.B. 1594 - Use of Green Material as Alternative Daily Cover; A.B. 1826 - Mandatory Commercial Organics Recycling and A.B. 827 - Mandatory Commercial Organics Bins. All of these laws work in conjunction to divert as much waste as possible from being landfilled in order to offset the effects of climate change by reducing the levels of greenhouse gas emissions in California. The proposed ordinance, if approved, will become effective July 4, 2021, and will coincide with the commencement of the City's new franchise waste hauler agreement. These two components will work in tandem to ensure the City is in compliance with S.B. 1383.

Recommended Action: City Council introduce for first reading the following ordinance entitled:

Ordinance No. O2M21-4787: An Ordinance of the City Council of the City of Alhambra, California, adding Chapter 6.18 to the Alhambra Municipal Code for Mandatory Organic Waste Disposal Reduction

and direct staff to agendize said Ordinance for a second reading and possible adoption at the next regular Council meeting.

24. SECOND READING AND ADOPTION OF AN ORDINANCE UPDATING CHAPTER 9.18 OF THE ALHAMBRA MUNICIPAL CODE TO IDENTIFY ADDITIONAL AREAS WHERE SMOKING IS PROHIBITED – F2M21-16, O2M21-4785

At the February 22, 2021 and March 22, 2021 City Council meetings, the Council received presentations concerning the hazards of smoking and second-hand smoke. The City currently regulates smoking in certain areas in Chapter 9.18 of the Alhambra Municipal Code. After hearing the presentations, the Council gave direction to draft an ordinance modifying Chapter 9.18 to strengthen the restrictions on smoking. Based upon that direction, the attached ordinance would expand the prohibition on smoking to include outdoor dining areas and within 25 feet of same, within 20 feet of any entryway or operable window of a non-public building, public events, service areas, sidewalks, private apartment and condo common areas in complexes of at least 5 units (except in landlord designated areas at least 20 feet from other prohibited areas), within 20 feet of any vent into an enclosed area and any outdoor job or work sites (except in employer designated areas at least 20 feet from other prohibited areas). The ordinance includes extensive findings

concerning the hazards of smoking, based upon information provided by the Public Health Law Center's and American Lung Association's Law and Policy Partnership to End the Commercial Tobacco Epidemic. Additionally, the definition of smoking was updated to include the most recent state law code sections, as well as expressly reference cannabis products. The penalties section of the code was also amended to allow for issuance of administrative citations.

Recommended Action: Declare introduced for its second reading and adopt the following ordinance entitled:

Ordinance No. O2M21-4785: An Ordinance of the City Council of the City of Alhambra updating Chapter 9.18 of the Alhambra Municipal Code to identify additional areas where smoking is prohibited

25. SECOND READING AND ADOPTION OF AN ORDINANCE ADDING CHAPTER 5.90 TO THE ALHAMBRA MUNICIPAL CODE ESTABLISHING A TOBACCO RETAIL LICENSING PROGRAM AND PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS – F2M21-16, O2M21-4786

At the February 22, 2021 and March 22, 2021 City Council meetings, the Council received presentations concerning the hazards of smoking and second-hand smoke. The City currently regulates smoking in certain areas in Chapter 9.18 of the Alhambra Municipal Code. The presentations also suggested that the Council consider adopting a tobacco retail license (TRL) program and ban the sale of flavored tobacco products. After hearing the presentations, the Council gave direction to draft an ordinance for a TRL and to prohibit the sale of flavored tobacco products. The attached ordinance: 1. Includes extensive findings on the health hazards and concerns associated with smoking and flavored tobacco products; 2. Requires all businesses in the City that sell tobacco products (including e-cigarette and vaping products) to obtain a tobacco retail license no later than July 1, 2022, and then to annually renew such license; 3. Prohibits the sale of flavored tobacco products and drug paraphernalia after January 1, 2022 to allow existing retailers time to sell or otherwise dispose of their existing inventory; 4. Provides for penalties for violating any of the restrictions in the ordinance including, but not limited to, fines, license suspensions and revocations. Sale of tobacco products without a valid license is itself a violation of the ordinance.

Recommended Action: Declare introduced for its second reading and adopt the following ordinance entitled:

Ordinance No. O2M21-4786: An Ordinance of the City Council of the City of Alhambra adding Chapter 5.90 to the Alhambra Municipal Code establishing a Tobacco Retail Licensing Program and prohibiting the sale of flavored tobacco products

PUBLIC COMMENT FOR NON-AGENDIZED ITEMS (TIME LIMITATION - 5 MINUTES)

Citizens wishing to address the Council on any matter which is within the subject matter jurisdiction of the City Council not on the Agenda may do so at this time. Please note that while

the City Council values your comments, pursuant to the Brown Act, the City Council cannot take action unless the matter appears as an item on a forthcoming agenda.

COUNCIL COMMUNICATIONS (ANNOUNCEMENTS & FUTURE AGENDA ITEMS) F2M21-7

Each Councilmember at his/her discretion may address the Council and public on matters of general information and/or concern, including announcements and future agenda items.

CLOSED SESSION & CITY ATTORNEY ANNOUNCEMENT re SAME - F2M21-14

The City Council will move into a closed session pursuant to applicable law, including the Brown Act (Government Code Sec. 54950, *et seq.*) for the purposes of conferring with the City's Real Property negotiator, and/or conferring with the City Attorney on potential and/or existing litigation, and/or discussing matters covered under Government Code Section 54957 (Personnel), and/or conferring with the City's Labor Negotiators as follows; provided, however, prior to moving into closed session, the City Attorney shall make any announcements required by the Brown Act pertaining to such closed session matters:

Conference with City's Labor Negotiator (Govt. Code Section 54957.6): Mariam Ko, Director of Human Resources re: Executive Management and Confidential Employees, Alhambra Management Employees Association, Alhambra Police Miscellaneous Association, Alhambra Police Officers' Association, Alhambra Fire Management Association and the Alhambra City Employees' Association

RECONVENE & CITY ATTORNEY REPORT: In the event the City Council moves into a closed session, the City Council and the City Attorney shall report upon the closed session if required.

ADJOURNMENT: The next regular meeting of the Alhambra City Council is scheduled for Monday, May 24, 2021 at 6:00 p.m.

NOTICE

Agenda Items: Copies of the staff reports or other written documentation relating to the items listed on this agenda are available on the City's website. If you would like to sign-up to receive the City Council meeting agenda and staff reports packet, please visit the City's website at www.cityofalhambra.org and you will be able to submit your email address on the homepage to the subscription service. Pursuant to Government Code Section 54957.5(b), materials related to agenda items for regular meetings of the Alhambra City Council that are distributed less than 72 hours prior to that meeting, will be made available for public inspection at the Alhambra City Clerk's Office.

Broadcast of Meeting: A live video stream of each Council meeting is available through the City's website. The regular meetings of the Alhambra City Council are recorded and are broadcast on Charter Channels 3 and 182 at 7:30 p.m. on Thursdays and Mondays following the meeting. Recordings are also available for viewing by the public on the City of Alhambra's website, and, upon appointment, in the City Clerk's Office.

LAUREN MYLES, CMC
CITY CLERK

ORDINANCE NO. O2M21-4786

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA
ADDING CHAPTER 5.90 TO THE ALHAMBRA MUNICIPAL CODE
ESTABLISHING A TOBACCO RETAIL LICENSING PROGRAM AND
PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS**

The City Council of the City of Alhambra hereby ordains as follows:

SECTION 1. Findings. The City Council of the City of Alhambra hereby declares and finds:

WHEREAS, the City Council received presentations on February 22 and March 22, 2021 concerning the hazards of smoking and flavored tobacco products; and

WHEREAS, the City Council was presented with a model tobacco retail license ordinance that largely mirrors those used in surrounding communities to address health issues; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City Council to protect the health, safety, and welfare of our residents; and

WHEREAS, the findings supporting the need for such an ordinance and the benefits of same are attached hereto and incorporated herein as Exhibit A to this ordinance.

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to youth, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

SECTION 2. Chapter 5.90 is hereby added to the Alhambra Municipal Code to read as follows:

CHAPTER 5.90 TOBACCO RETAIL LICENSE

5.90.010 DEFINITIONS

5.90.020. GENERAL REQUIREMENTS AND PROHIBITIONS

5.90.030. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

5.90.040. TOBACCO PRODUCT PRICING AND PACKAGING

5.90.050. APPLICATION PROCEDURE

5.90.060. ISSUANCE AND RENEWAL OF LICENSE

5.90.070 BUSINESS LICENSE REQUIRED

5.90.080. LICENSES NONTRANSFERABLE

5.90.090. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE

5.90.100. FEE FOR LICENSE

5.90.110. COMPLIANCE MONITORING

5.90.120. VIOLATIONS

5.90.130. SUSPENSION OR REVOCATION OF LICENSE

5.90.140 SUSPENSION OR REVOCATION PROCEDURE

5.90.150 VIOLATION—OTHER PENALTIES

5.90.160 CONFLICT WITH OTHER LAWS, SEVERABILITY, SAVING CLAUSE

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

ARM'S LENGTH TRANSACTION means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

CIGAR means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

CIGARETTE means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its Packaging and Labeling, is likely to be offered to, or purchased by, Consumers as a Cigarette described herein.

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

CONSUMER means a Person who purchases a Tobacco Product or Tobacco Paraphernalia for consumption and not for Sale to another.

COUPON means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

DEPARTMENT means the City's Finance Department and any agency or Person designated by the Department to enforce or administer the provisions of this Chapter.

DIRECTOR means the City's Finance Director or designee.

DRUG PARAPHERNALIA shall have the meaning set forth in California Health and Safety Code Sections 11014.5, 11364.5, and 11364.7 as those sections may be amended from time to time.

ELECTRONIC CIGARETTE shall have the same meaning as set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

ELECTRONIC DEVICE means an electronic device that 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 Device" includes any such 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.

FULL RETAIL PRICE means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

LABELING means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.

LITTLE CIGAR means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little Cigar" includes, but is not limited to, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.

MANUFACTURER means any Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.

PACKAGE or **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.

PERSON means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

PROPRIETOR means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

SALE or **SELL** means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

SELF-SERVICE DISPLAY means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

TOBACCO PARAPHERNALIA means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

TOBACCO PRODUCT means:

- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
- (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 drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO RETAILER means any Person who Sells, offers for Sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange.

YOUTH DECOY means a person under the age of eighteen (18), but not younger than fifteen (15), who is supervised by the police department or code enforcement division to conduct random onsite sting investigations against a Tobacco Retailer to determine compliance with tobacco retailing laws.

§ 5.90.020. GENERAL REQUIREMENTS AND PROHIBITIONS.

(A) TOBACCO RETAILER'S LICENSE REQUIRED. Commencing on January 1, 2022, it shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which Tobacco Retailing is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

(B) COMPLIANCE WITH ALL LAWS REQUIRED. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license is issued, it shall be a violation of this Chapter for any Person, Proprietor, or any of the Tobacco Retailer's agents or employees, to violate any local, State, or Federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(C) DISPLAY OF LICENSE. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(D) RETAIL SALES TO PERSONS YOUNGER THAN THE MINIMUM AGE UNDER STATE LAW PROHIBITED. No Person engaged in Tobacco Retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any Tobacco Products or Tobacco Paraphernalia to any Person who is younger than the legal age, under State law, to purchase and possess Tobacco Products or Tobacco Paraphernalia.

(E) MINIMUM AGE FOR PERSONS SELLING TOBACCO. No Person who is younger than the minimum age established by State law for the purchase or possession of any Tobacco Product or Tobacco Paraphernalia shall engage in tobacco retailing.

(F) POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of twenty-seven (27) years without first examining a valid, legal photo identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Products or Tobacco Paraphernalia. The Tobacco Retailer shall refuse sale of any Tobacco Products or Tobacco Paraphernalia to any Person who appears to be under the age of twenty-seven (27) years, who fails to present valid, legal photo identification prior to the sale or transfer.

(G) DRUG PARAPHERNALIA. It shall be a violation of this Chapter for any Person engaged in Tobacco Retailing or any of the Tobacco Retailer's agents or employees to violate any local, State, or Federal law regulating controlled substances or Drug Paraphernalia, except that conduct authorized pursuant to State law shall not be a violation of this Chapter.

(H) SELF-SERVICE DISPLAYS PROHIBITED. No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a self-service display or engage in Tobacco Retailing by means of a Self-Service Display. A Tobacco Retailer who chooses to display Tobacco Products or Tobacco Paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.

(I) WINDOWS.

- (1) In the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a license is issued, it shall be a violation of this Chapter for a Proprietor, or any of the Tobacco Retailer's agents or employees, to cover more than 10 percent of the window area with window signs unless otherwise prohibited in the applicable zone, whichever is more restrictive shall apply in accordance with Chapter 23.50 of this Code.

- (2) All windows and doors shall be maintained to ensure law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from exterior public rights-of-way or from the entrance. However, this subsection shall not apply to premises where there are no windows, or where the design or location of windows or landscaping precludes a view of the interior of the premises from exterior public rights-of-way or from the entrance.

(J) FALSE AND MISLEADING ADVERTISING PROHIBITED. A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:

- (1) shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a license; and
- (2) shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the Sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable Consumer to believe that such products can be obtained at that location.

§ 5.90.030. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

(A) Commencing July 1, 2022, it shall be a violation of this chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any Flavored Tobacco Product.

(B) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.

(C) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

- (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
- (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- (3) taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.

§ 5.90.040. TOBACCO PRODUCT PRICING AND PACKAGING.

(A) PACKAGING AND LABELING. No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer's Packaging

intended for Sale to Consumers; and (2) conforms to all applicable federal Labeling requirements.

(B) DISPLAY OF PRICE. The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.

(C) PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No Tobacco Retailer shall:

- (1) honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than the Full Retail Price;
- (2) sell any Tobacco Product to a Consumer through a multiple-Package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
- (3) provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

§ 5.90.050. APPLICATION PROCEDURE.

(A) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco Sales and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the City that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 5.90.130 of this chapter. Nothing in this chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

- (1) The name, address, and telephone number of each Proprietor of the business seeking a license.
- (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
- (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this chapter. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.

- (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state license for the Sale of Tobacco Products, if the Tobacco Retailer sells products that require such license.
- (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years.
- (6) Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- (7) A statement signed by each Proprietor that no Drug Paraphernalia is or will be sold at the business seeking the license.

(B) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.

(C) 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.

§ 5.90.060. ISSUANCE AND RENEWAL OF LICENSE.

(A) Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (1) The application is incomplete, inaccurate, false, or misleading;
- (2) The Department has information that the applicant, or the applicant's agent(s) or employee(s), violated any local, State, or federal tobacco control law within the preceding 180 days; or
- (3) The application seeks authorization for tobacco retailing at an address where a previous Tobacco Retail License has been suspended, revoked, or is subject to suspension or revocation proceedings for any violation of any of the provisions of this Chapter. However, this shall not constitute a basis for denial of a Tobacco Retail License if either or both of the following apply:
 - (a) The applicant provides documentation which clearly demonstrates that the applicant has acquired or is in the process of acquiring the premises or business in an Arm's Length Transaction; or
 - (b) It has been more than five years since the most recent Tobacco Retail License for that location was revoked.

(B) **Renewal of Tobacco Retail License.** A Tobacco Retail License shall be valid for one year and must be renewed between 30 and 60 days prior to the expiration of the Tobacco Retail License. A Tobacco Retail License may be renewed for additional one

year periods by submission of a renewal application and the applicable fee. Any Tobacco Retail License that is suspended, has been revoked within the previous five years, or is subject to suspension or revocation proceedings shall not be renewed until suspension or revocation proceedings are complete and the suspension or revocation period, if any, is over.

§ 5.90.070 BUSINESS LICENSE REQUIRED.

In addition to the Tobacco Retail License, any Tobacco Retailer must have a valid business license as required by Title 5 of this Code.

§ 5.90.080. LICENSES NONTRANSFERABLE.

A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

§ 5.90.090. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the permit. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including, but not limited to:

(A) any provision of this code, including but not limited to zoning, building and business license provisions; and/or

(B) any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. Obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

§ 5.90.100. FEE FOR LICENSE.

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

§ 5.90.110. COMPLIANCE MONITORING.

Compliance with this chapter shall be monitored by the Department and the City's Code Enforcement Division. In addition, any peace officer may enforce the penal provisions of this chapter. The City may designate additional Persons to monitor compliance with this chapter.

Monitoring may include, but is not limited to, unannounced inspections and/or youth decoy operations during a Tobacco Retailer's hours of operation.

The City shall not enforce any law establishing a minimum age for Tobacco Products or Tobacco Paraphernalia purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "youth decoy") if the potential violation occurs when:

- (1) The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City.
- (2) The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations.
- (3) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a Person under the age of 18 years old including but not limited to a youth decoy operation, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented by the City.

§ 5.90.120. VIOLATIONS.

(A) It shall be a violation of this Chapter for any Person, tobacco retailer/licensee, or its agent(s) or employee(s), to violate any federal, State, or local tobacco law or regulation, including any provision of this Chapter. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

(B) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.

(C) The failure of the tobacco retailer/licensee, or the applicant's agent(s) or employee(s) to allow any peace officer, the Director, or any authorized City official to conduct unscheduled inspections of the premises of the business for the purpose of ensuring compliance with any federal, State, or local tobacco law or regulation, including any provision of this Chapter, at any time the business is open for business shall constitute a violation.

(D) No tobacco retailer/licensee or its agent(s) or employee(s) may sell or offer for sale any little cigar or cigarillo unless it is sold in a package of at least 20 little cigars or cigarillos. Little cigars or cigarillos may not be sold individually or in packages of less than 20 units.

(E) Tobacco retailing by means of a self-service display is prohibited, pursuant to State law.

(F) A Tobacco Retail License may be issued to authorize tobacco retailing at a fixed location only. Tobacco retailing on foot or from vehicles, carts, or any other non-fixed location, is prohibited and shall be considered a violation of this Chapter.

(G) No Drug Paraphernalia. It shall be a violation of this Chapter for a tobacco retailer/licensee, or its agent(s) or employee(s) to violate any local, State or Federal law regulating controlled substances or Drug Paraphernalia, such as, for example, California Health and Safety Code Sections 11014.5, 11364.5, and 11364.7.

§ 5.90.130. SUSPENSION OR REVOCATION OF LICENSE.

(A) In addition to any other remedy authorized by law, a Tobacco Retail License may be suspended or revoked as provided in this Section if it is discovered that any of the following occurred:

(1) The licensee, or the licensee's agent(s) or employee(s), violated any provision of this Chapter. Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee, nor shall violations by a prior licensee at the same location be accumulated against a subsequent licensee at the same location;

(2) The original or renewal application contained incomplete, inaccurate, false, or misleading information;

(3) One or more of the bases for denial listed in Section 5.90.060 existed before the Tobacco Retail License was issued; or

(4) A licensee is convicted of a misdemeanor or felony violation of any federal, State, or local tobacco law or regulation, including any provision of this Code.

(B) During any period of suspension or revocation, the licensee shall remove all tobacco products and tobacco paraphernalia from view, including from displays and behind counter storage areas, whether or not visible to the public. All tobacco products and tobacco paraphernalia must be placed in a room that is separate from the area where point of sale transactions occur, or removed from the tobacco retail location entirely. Failure to do so may be considered a subsequent violation.

(C) During any period of suspension or revocation, the tobacco retailer/licensee shall conspicuously post, at each point of sale register and near the entrance door of the tobacco retail location, a notice of a Tobacco Retail License suspension provided by the Department. The notice shall include the suspension or revocation period, reason for suspension or revocation, tobacco retailer/licensee and location information, and Department contact information to report violations.

(D) When the Director finds a violation as set forth in this Chapter, the Tobacco Retail License may be suspended or revoked as follows:

(1) Upon finding by the Director of a first Tobacco Retail License violation within any five year period, the Tobacco Retail License may be suspended for up to 30 days;

(2) Upon a finding by the Director of a second Tobacco Retail License violation within any five year period, the Tobacco Retail License may be suspended for up to 90 days;

(3) Upon a finding by the Director of a third Tobacco Retail License violation in any five year period, the Tobacco Retail License may be suspended for up to 120 days; and

(4) Upon a finding by the Director of a fourth Tobacco Retail License violation within a five year period, the Tobacco Retail License shall be revoked.

§ 5.90.140 SUSPENSION OR REVOCATION PROCEDURE.

(A) Before a Tobacco Retail License is suspended or revoked, the Director shall provide written notice to the licensee. Said notice shall include the following:

(1) A statement that the proprietor's Tobacco Retail License is being suspended or revoked pursuant to this Chapter;

(2) The Code Section violated by licensee or licensee's agents or employees;

(3) A description of the violation that occurred;

(4) The address of the business where the violation occurred; and

(5) The procedure for requesting an administrative review.

(B) A licensee served with a notice of suspension or revocation may request an administrative review to contest the suspension or revocation. The request must be made in writing and filed with the City Manager within 10 calendar days of service of the notice of suspension or revocation. Failure to timely request an administrative review shall be deemed a waiver of the right to request such a review and a failure to exhaust administrative remedies.

(C) After receiving a timely administrative review request, the City Manager shall schedule an administrative review within 20 calendar days of receipt of the written request and designate a reviewing officer. The City Manager may appoint as a reviewing officer, any Department or other City employee who is not directly involved in inspection or enforcement of tobacco retailing establishments.

(D) The proprietor shall be given written notice of the date, time, and location of the administrative review and the name of the reviewing officer who will conduct the administrative review at least 10 calendar days in advance of the review.

(E) The reviewing officer, in their discretion, may grant a reasonable continuance upon the written request and showing of good cause.

(F) At the administrative review, the Department has the burden of providing by a preponderance of the evidence that the alleged violation occurred.

(G) The failure to appear at the administrative review shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

(H) Within 10 calendar days after the close of the administrative review, the reviewing officer shall issue a written decision on the suspension or revocation of the Tobacco Retail License, including a statement of the basis for the decision. The reviewing officer's written decision shall constitute the final administrative decision of the City.

(I) If the Director revokes a Tobacco Retail License, no new Tobacco Retail License may be issued for five years after that revocation.

§ 5.90.150 VIOLATION—OTHER PENALTIES.

(A) In addition to any other penalties and remedies provided by law, including the provisions of this Chapter, any violation of the provisions of this Chapter may be charged as a misdemeanor pursuant to Chapter 1.12 of this Code, or, in the discretion of the prosecutor, as an infraction. Any person who violates any provision of this Chapter is subject to an administrative citation pursuant to Chapter 1.13 as well as a civil action, including but not limited to, an injunction, as well as prosecution for any criminal violation.

(B) In addition to any other penalty under this Chapter, a person found to have engaged in tobacco retailing without a valid Tobacco Retail License shall be ineligible to apply for or be issued a Tobacco Retail License as follows:

(1) After a person is caught in violation of this Section, no new Tobacco Retail License may be issued for the person as a proprietor until 30 days have passed from the date of the violation; and

(2) Each day that a person engages in tobacco retailing without a valid Tobacco Retail License shall constitute a separate violation.

(C) Any person found by the Director to be ineligible to be issued a Tobacco Retail License pursuant to this Section may request an administrative review within 10 days of notice of the violation. The request must be made to the Director in writing. Any administrative review shall be held pursuant to the provisions of Section 5.90.140 of this Chapter.

(D) Violations of this Chapter are hereby declared to be public nuisances pursuant to this Code.

§ 5.90.160 CONFLICT WITH OTHER LAWS, SEVERABILITY, SAVING CLAUSE.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter or the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION 3. The Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves

procedures for protection of the environment. The Ordinance is also exempt from CEQA pursuant to Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance takes effect 40 days from the date of its adoption.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, 2021.

Mayor Sasha Renee Perez

ATTEST:

Lauren Myles, City Clerk

APPROVED AS TO FORM

Joseph M. Montes, City Attorney

I, Lauren Myles, City Clerk of the City of Alhambra, certify Ordinance No. O2M21-4786 was adopted by the City Council at a regular meeting held _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

Lauren Myles, City Clerk

Exhibit A

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;¹

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;³²

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;¹

WHEREAS, tobacco use is the number one cause of preventable death in California³³ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;
- More than 25% of all adult cancer deaths in California are attributable to smoking;³⁴
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;³⁵
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;¹

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);³⁶
- More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;³⁶
- From 2002 to 2012, smoking prevalence increased among African American youth;³⁶
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;³⁶
- Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their population in California;³⁶
- Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;³⁶

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;³⁶
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;³⁶
- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases;^{35,37}
- In 2017, 22.8% of high school students in California had tried cigarette smoking;^{38,39}

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,² as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;²⁴
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;⁴⁰
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;³⁵

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;^{38,39}
- 7.6% of California tobacco retailers unlawfully sold tobacco products to minors in 2015;³⁶

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the City Council to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

- Cigarettes are the number one product sold in U.S. convenience stores, and in 2012, they generated an average of \$622,248 in sales per store;⁴¹
- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth tobacco sales laws;^{4,42}
- Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;
- A review of 33 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 32 of these communities after the ordinances were enacted, with an average decrease of 28% in the youth sales rate;³

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,⁵ largely because these flavored products are marketed to youth and young adults,^{4,9,43} and younger smokers were more likely than older smokers to have tried these products;⁴

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

WHEREAS, in 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;⁴⁴

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{4,45,46} and that these products help establish tobacco habits that can lead to long-term addiction;^{4,47}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);⁶

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;^{2,4,48,49}

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;⁵⁰

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,⁷ and possibly Hispanic and Latino individuals;⁸ and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American menthol smokers;⁷

WHEREAS, as a result of the FDA ban on all flavored cigarette products (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker post flavor ban fell by 17%;⁵¹

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco;⁵²

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;⁵³⁻⁶⁰

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and in some cases actually increased among youth;^{4, 61-65}

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use;^{1, 11-14,16-19}

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;⁶⁶

WHEREAS, a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;¹²

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{17, 19}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{4,15} and evidence suggests that tobacco companies deliberately target youth with price reductions;^{14,22-24,67}

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,³¹ Newport menthol cigarettes cost less in areas with higher proportions of African Americans,³¹ and underserved communities are targeted with price discounts and coupons;^{68,69}

WHEREAS, tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their marketing budgets on price discounts, accounting for nearly \$8 billion of \$8.7 billion advertising and promotional expenditures in 2016;^{13,14,20}

WHEREAS, the tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average \$1.04 per pack (or 18.6% off the total);²⁶

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;²¹

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{27,70} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.²⁸ For example:

- 87.4% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;⁴⁴
- From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%;¹⁰

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales⁷¹ and may significantly reduce cigar use among youth;⁷²

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;²⁹

WHEREAS, studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%;²⁵ the impact of a \$10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt 10 million smokers to quit; and that state-level minimum floor price laws designed to raise the average price of cigarette packs by \$2.00 could decrease cigarette consumption by 15.9% and reduce income-based smoking disparities more than a comparable excise tax increase;³⁰

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{4,73}

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (eg, requiring identification checks) is necessary to achieve reductions in youth tobacco sales;⁷⁴

WHEREAS, the National Academy of Medicine recommends imposing penalties on business owners to provide sufficient incentives to comply with the law, and business owners with an economic incentive to avoid violations are more likely to establish company-wide policies and incorporate instruction on tobacco laws into employee training;⁷⁵

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, California courts have affirmed the power of the City Council to regulate business activity to discourage violations of law. See, eg, *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010);

WHEREAS, over 130 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco.⁴⁹

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