

ORDINANCE NO. 2020-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AZUSA, CALIFORNIA, ADDING ARTICLE XXIV TO ARTICLE 18 AZUSA MUNICIPAL CODE, IMPOSING BUSINESS REGULATIONS ON TOBACCO RETAIL OUTLETS

WHEREAS, the City of Azusa, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, by virtue of the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens; 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 and to protect the health, safety, and welfare of our residents; and

WHEREAS, tobacco is the leading cause of preventable death in the United States and kills nearly 6 million people each year globally; and

WHEREAS, according to the Centers for Disease Control and Prevention, more than 400,000 deaths in the United States each year are attributable to tobacco use, including one-third of all cancer deaths; and

WHEREAS, despite state law prohibiting the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, minors continue to obtain cigarettes and other Tobacco Products at alarming rates; and,

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting; and,

WHEREAS, California Tobacco Retailers continue to sell tobacco to underage consumers; and

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates; and

WHEREAS, state law prohibits sales of "drug paraphernalia; and

WHEREAS, many retailers nevertheless sell items that are commonly known to be "drug paraphernalia," including bongs and pipes used to smoke methamphetamine and other illicit drugs, claiming that such items are intended for tobacco use; and

WHEREAS, restricting the area of signage that tobacco retailers display on windows promotes community safety by ensuring law enforcement can easily view store interiors from

public rights of way; and

WHEREAS, unlike cigarette use which 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; and

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than one hundred 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; and

WHEREAS, youth under age 18 are particularly responsive to changes in tobacco prices and novelty tobacco products; and

WHEREAS, the tobacco industry's price discounting strategies, such as coupons, multiple-package discounts, and cartons, are popular among consumers; and

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 allow the City to regulate the operation of lawful businesses and to discourage violations of federal, state, and local tobacco control and youth tobacco access laws; and,

WHEREAS, the City of Azusa has a substantial interest in promoting compliance with state laws prohibiting sales of cigarettes and Tobacco Products to minors, in promoting compliance with laws intended to discourage the purchase of Tobacco Products by minors, and in protecting children from illegally obtained tobacco; and,

WHEREAS, the City Council desires to add Article XXIV to Chapter 18 of the Azusa Municipal Code in order to promote the public interest in ensuring that Azusa businesses operate in compliance with applicable laws regulating tobacco, including laws prohibiting the sale of tobacco to minors and laws regulating smoking;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AZUSA DOES ORDAIN
AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as findings in support of the regulations contained in this Ordinance.

SECTION 2. CEQA Compliance. This ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") under the State CEQA Guidelines because the proposed action as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment as it imposes regulations for the internal operations of retail tobacco outlets. 14 Cal. Code Regs. §§ 15268, 15378(a). Further, this ordinance is exempt from CEQA as there is no possibility that this ordinance or its implementation would have a significant effect on the environment. 14 Cal. Code Regs. § 15061(b)(3).

SECTION 3. Article XXIV – “TOBACCO RETAILERS” is hereby added to Chapter 18 of the Azusa Municipal Code to read as follows:

“ARTICLE XXIV. – TOBACCO RETAILERS.

Sec. 18-2401. -- Purpose and Intent.

The purpose of this article is to ensure compliance with the business standards and practices of the City, 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.

Sec. 18-2402. - Definitions.

A. For the purposes of this article, the definitions contained in this section shall govern the meanings of the following terms, words, phrases, and their derivations:

B. “Applicant” means an applicant for a Tobacco Retailer License.

C. “Application” means the application submitted under this article for a Tobacco Retailer License.

D. “Arm's length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither 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 article is not an arm's length transaction.

E. “Business” means any sole proprietorship, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

F. “Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco weighing more than three pounds per thousand.

G. “Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of 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 the ingredient information.

H. “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.

- I. “City” means the City of Azusa, California.
- J. “City Council” means the City Council of the City of Azusa.
- K. “City Manager” means the City Manager of the City of Azusa.
- L. "Consumer" means a Person who purchases a Tobacco Product for consumption and not for Sale to another.
- M. “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.
- N. “Department” means the Economic & Community Development Department of the City and any agency or Person designated by the Department to enforce or administer the provisions of this article.
- O. “Drug Paraphernalia” has the meaning set forth in California Health and Safety Code section 11014.5, as that section may be amended from time to time
- P. “Electronic smoking 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 device whether or not sold separately. This definition 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 descript including any component, part or accessory of such device, whether or not sold separately. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease, where such product is marketed and sold separately for such an approved purpose.”
- Q. “Flavored tobacco product” means any tobacco product that imparts a characterizing flavor.
- R. “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.
- S. “Hookah Tobacco Lounge” means a restaurant that operates within the City pursuant to a valid City Business License that also engages, as an accessory use, in the retail sale of shisha tobacco products, Hookah, and Hookah smoking accessories. “Hookah” is defined as type of waterpipe, used to smoke shisha or other Tobacco Products, with a long flexible tube for drawing aerosol through water. Components of a Hookah may include heads, stems, bowls, and hoses.

T. “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.

U. “Manufacturer” means any Person, including any re-packer or re-labeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.

V. “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.

W. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

X. “Police Department” means the Azusa Police Department.

Y. “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 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.

Z. “Sale” or “Sell” means any transfer, exchange, barter, gift, and offer for sale or distribution for a commercial purpose, in any manner or by any means whatsoever.

AA. “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.

BB. “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

CC. “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 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 the device, including but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah, or vaping device.

DD. Notwithstanding any provision of subsection (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.

EE. "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, or who distributes free or low-cost samples of tobacco products or tobacco paraphernalia. Tobacco Retailer shall not include hookah lounges operating as accessory uses in restaurants.

Sec. 18-2403 – Tobacco Retailer License and Business License – Required.

- A. 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 License and Business License pursuant to this article for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer License and Business License shall be deemed a nuisance as a matter of law.
- B. Exemption. Subsection A of Section 18-2403 does not apply to Hookah Tobacco Lounges so long as it does not permit any person under 21 years of age to be present or to enter in the accessory use of the restaurant where Hookah and shisha are sold and/or consumed.

Sec. 18-2404 — License -- Application.

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

B. 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 Article, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Sec. 18-2416 of this Article. Nothing in this Article 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.

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

- 1. Name, address, e-mail and telephone number of each Proprietor of the business seeking the 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 Article. 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 granted a valid state Tobacco Retailer's License by the California Board of Equalization, if the Tobacco Retailer sells products that require such license;

5. Whether or not the applicant has previously been determined to have violated this article, and, if so, the dates and locations of all such violations within the past six years;

6. A statement signed by each Proprietor that no Drug Paraphernalia or cannabis or cannabis-infused products is or will be sold at the location for which the license is sought; and

7. Such other information as the Department deems necessary for the administration or enforcement of this ordinance.

D. Every Tobacco Retailer License holder shall report in writing to the Department any and all changes to any of the above listed information provided to the City within ten (10) calendar days of said change(s).

Sec. 18-2405 — License Issuance.

A. No license may be issued to authorize Tobacco Retailing at other than a fixed location.

B. Upon receipt of an Application for a Tobacco Retailer's License and the accompanying license fee required by this article, the Department shall issue a license unless substantial evidence demonstrates that one of the following conditions is present:

1. The application is incomplete or contains false or inaccurate information. Intentionally supplying inaccurate or false information shall be a violation of this article.

2. The application seeks authorization for Tobacco Retailing for an applicant, to whom this article prohibits a license to be issued.

3. The application seeks authorization for Tobacco Retailing at a location, for which this article prohibits a license to be issued.

4. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this article, that is unlawful pursuant to this Code, or that is unlawful pursuant to any other law.

Notwithstanding subsection 3, a license may be issued for a location that is in the process

of amortization of a previously established legal use, provided the applicant otherwise meets the requirements of this article.

C. The Department shall promptly provide notice to the applicant following the Department's determination that the application has been approved or denied. Notice shall be given by personal service or certified, registered, or first-class mail of the letter to the address shown on the application. The written notice shall state that the applicant may appeal a determination of denial to the Police Department and shall state the process, by which such appeal may be made. Service shall be deemed complete when personal service is made or when the notice letter is delivered by certified, registered, or first-class mail.

D. A Tobacco Retailer's License shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under this Section existed at the time application was made or at any time before the license issued and/or the licensee is in violation of any provision of this article. The decision by the Department shall be the final decision of the City. Such revocation shall be without prejudice to the filing of a new license application.

Sec. 18-2406 — License — Limits on Eligibility for a Tobacco Retailer License.

A. RESTRICTED AREAS. Tobacco Retailing is prohibited in the following areas of the City as follows:

1. No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within 1000 feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area is located to the nearest point of the property line of the parcel on which the applicant's business is located. For the purpose of this subsection and subsection (2), a "Youth-Populated Area" means a parcel in the City that is occupied by:

- a. a private or public kindergarten, elementary, middle, junior high, or high school;
- b. a library open to the public;
- c. a playground open to the public;
- d. a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
- e. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. "Recreation facility" includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;
- f. an arcade open to the public;
- g. a park open to the public or to all the residents of a private community;

- h. a licensed child-care facility or preschool as defined in California Health & Safety Code § 1596.78;
- 2. Another Tobacco Retailer that is otherwise required to obtain a Tobacco Retailer License.
- 3. A Tobacco Retailer operating lawfully on the effective date this ordinance, which does not conform to the provisions of the restricted areas in this section shall be considered nonconforming and shall be terminated and removed within twelve (12) months of the effective date of the ordinance. Notwithstanding such termination requirements, a nonconforming tobacco retailer may apply under the provisions of this section to the Department for an extension of time within which to terminate the nonconforming use.
 - a. An application for an extension of time within which to terminate a use made nonconforming by the provisions of this Section, may be filed by the owner of the real property upon which such use is operated, or by the operator of the use. Such an application must be filed with the Department within sixty (60) days of the adoption of this ordinance.
 - b. The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be in amounts established by Resolution of the City Council. The schedule for such fee shall remain on file in the offices of the City Clerk.
 - c. The City Manager shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within 45 days of receipt of the application.
 - d. The decision of the hearing officer shall be final.
 - e. An extension under the provisions of this section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all of the following findings:
 - f. The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted into another use; and such investment was made prior to the date this ordinance is adopted;
 - g. The applicant will be unable to recoup said investment as of the date established for termination of the use; and
 - h. The applicant has made good faith efforts to recoup investment and to relocate the use to a location in conformance with this Section.
- 4. A nonconforming tobacco retailer operating during the initial twelve (12) month

amortization period or any period extended pursuant to this section, may be granted a conditional Tobacco Retailer License, provided they otherwise meet the requirements of this article.

Sec. 18-2407 - License — Appeal of Application Denial.

A. In the event that an applicant receives notice that his or her application has been denied, the applicant may appeal the decision to deny the application to the City Manager or assigned designee. The appeal must be filed with the City Clerk within ten (10) calendar days from the date, on which notice is deemed complete. The appeal must be accompanied by appropriate Fee as determined by a Resolution of the City Council to reimburse the City for the cost to process the Appeal and must include the following information:

1. Name, telephone number, email address, and address of appellant;
2. Date, on which the original application was filed with the Department;
3. A copy of the original application and any accompanying materials;
4. Grounds for appealing the Department's determination; and
5. Such other information as is requested by the City Manager.

B. Upon receipt of a timely appeal, the City Manager or assigned designee shall schedule and conduct a hearing in the same manner and by the same standards provided for in Sec. 18-2418 of this article. The City Manager's decision or assigned designee shall be final.

Sec. 18-2408- License - Limited, Conditional Privilege Conveyed.

Nothing in this article 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 license. Nothing in the article shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including, but not limited to any provision of this code.

Sec. 18-2409 — License -- Nontransferable.

A Tobacco Retailer's License is nontransferable. A new Tobacco Retailer's License is required whenever a Tobacco Retailing location has a change in Proprietor(s).

Sec. 18-2410 — License — Fees.

A Tobacco Retailer's License is invalid if the appropriate fee has not been timely paid in full within thirty (30) calendar days of its due date. The fee to issue or to renew a Tobacco Retailer's License shall be established by resolution of the City Council. The fee shall be calculated as to recover the total cost of both license administration and license enforcement. Fees are nonrefundable except as may be required by law.

Sec. 18-2411— License – Term.

A Tobacco Retailer License is invalid if the term of the license has expired and the license has not been timely renewed. A Tobacco Retailer License may be issued at any point in the calendar year and shall remain valid through December 31st of that year.

Sec. 18-2412— License — Renewal.

Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's License thirty (30) calendar days prior to the expiration of the license term. Renewals shall be processed and investigated in the same manner and by the same standards used to process and investigate the initial license application. Additionally, the applicant is required to submit all information, which has changed from the last application or renewal to the Department.

Sec. 18-2413— License – Expiration.

If a renewal application, appropriate fees, and all required information for the renewal are not received within thirty (30) calendar days prior to the license expiration date or a timely submitted renewal application is not subsequently approved, the Tobacco Retailer License shall be deemed expired on the date of expiration and no privilege to engage in Tobacco Retailing in the city shall exist.

Sec. 18-2414 - Operating Requirements.

A. Failure by any person, or any person's agents or employees' who are engaged in the act of Tobacco Retailing, to meet any of the operating requirements contained herein shall be considered a violation of this article and shall constitute grounds for the suspension or revocation of the tobacco retailer license:

1. **DISPLAY OF LICENSE.** The current Tobacco Retailer License shall be prominently displayed in a publicly visible location at the licensed location.

2. **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.

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

4. **PROHIBITION OF REDEMPTION OF TOBACCO COUPONS AND DISCOUNTS.** No Tobacco Retailer shall:

a. 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;

b. 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

c. Provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

5. SIGNAGE. Notwithstanding the regulations contained in the Azusa Development Code, in the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a license issued, it shall be a violation of this article for a licensee, or any of the licensee's agents or employees, to cover more than any portion of the area of each window and clear door of the location with signs of any sort, excluding signage mandated by local, state, or Federal law. For the purposes of this subsection, the area covered shall be computed to include (i) all clear areas within signs; and (ii) signs that are not attached to windows or clear doors but are visible from exterior public rights of way in the same manner as if they were attached to windows or clear doors.

All signs shall be placed and 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.

6. TOBACCO PARAPHERNALIA. No person engaged in Tobacco Retailing shall sell or transfer any tobacco product or smoking paraphernalia to another person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase the tobacco product, electronic smoking device or smoking paraphernalia.

7. DRUG PARAPHERNALIA. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this article for any licensee or any of the licensee's agents or employees to violate any local, state, or federal law regulating controlled substances or Drug Paraphernalia, such as, for example, California Health and Safety Code section 11364.7, as that section may be amended from time to time.

8. LOCAL, STATE, AND FEDERAL LAW. It shall be a violation of this article for any person, or any of the person's agents or employees, to violate any local, state, and/or federal laws applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

9. SELF-SERVICE DISPLAYS PROHIBITED. Tobacco Retailing by means of a Self-Service Display is prohibited.

10. CANNABIS AND FLAVORED TOBACCO PRODUCTS

PROHIBITED. It shall be a violation of this article and this code to offer for sale or sell any Flavored Tobacco or cannabis products.

Sec. 18-2415 - Compliance Monitoring.

Compliance with this article shall be monitored by the Police Department. In addition, any peace officer may enforce the penal provisions of this article. The City Manager may designate additional Persons to monitor compliance with this article.

Sec. 18-2416 — License — Suspension or Revocation.

A. In addition to any other penalty authorized by law, a Tobacco Retailer's License shall be suspended or revoked if any court of competent jurisdiction determines, or the Police Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this article or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any regulation designated in this Article.

B. Upon a finding by the Police Department of a first violation of this article at a location within any five (5) year period, the license shall be suspended for thirty (30) days.

C. Upon a finding by the Police Department of a second violation of this article at a location within any five (5) year period, the license shall be suspended for ninety (90) days.

D. Upon a finding by the Police Department of a third violation of this article at a location within any five (5) year period, the license shall be suspended for one (1) year.

E. Upon a finding by the Police Department of four or more violations of this article at a location within any five (5) period, the license shall be revoked.

Sec. 18-2417- License — Suspension or Revocation Notice.

A. Written notice stating the grounds for the proposed revocation or suspension shall be given to the Tobacco Retail License holder promptly upon determination made by the Police Department that good cause exists for the revocation or suspension. Notice shall be given by personal service or certified, registered, or first-class mail of the letter to the address shown on the last application or renewal. The written notice shall state that the Tobacco Retail License holder may appeal the Police Department determination and shall state the process, by which such appeal may be made.

B. Service shall be deemed complete when personal service is made or when the notice letter is delivered by certified, registered, or first-class mail

Sec. 18-2418 - License — Suspension or Revocation Appeal.

A. Any Decision of the Police Department to suspend or revoke a license of a Tobacco Retailer may be Appealed to the City Manager or appointed designee. The Appeal Shall

be filed in writing with the City Clerk within ten (10) Days of any Decision by the Police Department. Unless an Appeal is filed within such period, any action or Decision of the Police Department shall be final and the City Manager shall lack jurisdiction to act on such Appeal. No Appeal shall be valid unless accompanied by the appropriate Fee as determined by a Resolution of the City Council to reimburse the City for the cost to process the Appeal.

B. The statement of Appeal shall identify the specific action of the Police Department from which the Appeal is taken, specify the grounds for the Appeal, and identify the relief requested from the City Manager.

C. Upon receipt of a statement of Appeal, the City Manager or appointed designee shall promptly set the matter for a hearing. The City Manager or appointed designee may either hear the Appeal or Designate another Person or panel to hear the Appeal, provided that no member of the Police Department may hear the Appeal. If the City Manager or appointed designee wishes to have a Hearing Officer who is not a City Employee, officer, or elected official, or a hearing panel which is not composed entirely of City Employees, officers, or elected officials, such Hearing Officer or hearing panel must be Designated by a neutral body Designated by the City Manager. The City Manager, or the City Manager's Designee, may deny the Appeal or may grant the Appeal, in whole or in Part. Within ten (10) days following the conclusion of the hearing, the City Manager, or the City Manager's Designee, shall render a Decision on the Appeal which shall address each Matter raised by the Appeal. The Decision of the City Manager, or the City Manager's Designee, shall be final.

Sec. 18-2419 — Agreed Penalty in Lieu of Hearing.

A. For a first or second alleged violation of this article within any 3 month period, the Police Department may allow a Tobacco Retailer alleged to have violated this article to agree to the penalties provided in this section in lieu of the penalties that would otherwise apply under this article and to forego a hearing on the allegations. Notice of any agreement shall be provided to the Department and no hearing shall be held. Agreements shall not be confidential and shall contain the following terms as well as any other non-criminal provisions established by the City Attorney in the interests of justice:

1. After a first alleged violation of this article at a location:
 - a. an agreement to stop acting as a Tobacco Retailer for one (1) day;
 - b. an administrative penalty of one thousand dollars \$1000; and
 - c. an admission that the violation occurred and an acknowledgment that the violation will be considered in determining the fine or penalty for any future violation.
2. After a second alleged violation of this article at a location within a 3 month period:
 - a. an agreement to stop acting as a Tobacco Retailer for ten (10) days;

- b. an administrative penalty of at least five thousand dollars (\$5,000); and
- c. an admission that the violation occurred and an acknowledgment that the violation will be considered in determining the fine or penalty for any future violations.

Sec. 18-2420 — 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:

- A. 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
- B. 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.

Sec. 18-2421 — License — Tobacco Retailing Without a Valid License.

A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Police Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's License, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

- 1. After a first violation of this section at a location within any five (5) year period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty (30) days have passed from the date of the violation.
- 2. After a second violation of this section at a location within any five (5) year period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety (90) days have passed from the date of the violation.
- 3. After of a third or subsequent violation of this section at a location within any five (5) year period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until five (5) years have passed from the date of the violation.

B. For the purposes of the civil remedies provided in this article:

1. Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for Sale in violation of this article shall constitute a separate violation of this article; and

2. Each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for Sale in violation of this article shall constitute a separate violation of this article.

Sec. 18-2422 — Additional Remedies.

A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity or Chapter 1 of this code.

B. Violations of this article are subject to a civil action brought by the District Attorney or the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

C. Violations of this article are hereby declared to be public nuisances.

D. Violations of this article may, in the discretion of the District Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.

E. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.

F. In addition to other remedies provided by this Article or by other law, any violations of this Article may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.”

SECTION 4. Severability. If any section, sentence, clause or phrase of this ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council of the City of Azusa hereby declares that it would have adopted this ordinance and each section, sentence, clause, and phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases might be declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective thirty (30) days after its adoption by the City Council.

SECTION 6. Publication. The City Clerk shall certify to the adoption of this ordinance. Not later than 15 days following the passage of this ordinance, the ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Azusa, California, at a regular meeting of the City Council held on the ___th day of November, 2020, by

the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF AZUSA:

Robert Gonzales, Mayor

ATTEST:

Jeffrey Cornejo, City Clerk

APPROVED AS TO FORM:

Marco A. Martinez, City Attorney