

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
MUNICIPAL CODE CHAPTER 5.56 (TOBACCO RETAILER)
TO PROHIBIT THE SALE OF FLAVORED TOBACCO
PRODUCTS

WHEREAS, jurisdictions are becoming increasingly aware that cities play a critical role in supporting the health and well-being of their communities and, thus, the City of Chula Vista adopted the Healthy Chula Vista Action Plan on January 5, 2016; and

WHEREAS, the City recognizes that policy to limit exposure and access to smoking, especially in our youth, is important to prevent increasing the number of smokers in our community and to reduce the risk of chronic diseases; and

WHEREAS, in 2018, the City adopted various restrictions related to smoking prohibitions and tobacco sales through Ordinance 3413 (updating Chula Vista Municipal Code Chapter 8.22 (Regulation of Smoking in Public Places, Affordable Housing Projects and Places of Employment) and Ordinance 3417 (adding Chula Vista Municipal Code Chapter 5.56 (Tobacco Retailer) (“CVMC 5.56”)); and

WHEREAS, over 480,000 smoking related deaths are reported in the United States each year; and

WHEREAS, 99% of smokers report starting tobacco use before the age of 26; and

WHEREAS, electronic cigarettes, known as e-cigarettes, e-vaporizers, or electronic nicotine delivery systems, are battery-operated devices used to inhale aerosols that typically contain tobacco or nicotine; and

WHEREAS, in 2019, about one in every ten middle schoolers and more than one in every four high schoolers reported using electronic cigarettes in the past 30 days; and

WHEREAS, according to a 2021 University of San Diego study, youth who use electronic cigarettes are three times more likely to become daily cigarette smokers; and

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

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, federal law does not restrict the sale of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices; and

WHEREAS, in August of 2020, California Senate Bill 793 was signed into law, prohibiting a tobacco retailers in the State of California from selling flavored tobacco products or tobacco product flavor enhancers, and allowing local jurisdiction to impose greater restrictions on the access to tobacco products; and

WHEREAS, Proposition 31, a referendum on Senate Bill 793 qualified as a November 8, 2022 statewide California ballot measure that, if successful, would repeal Senate Bill 793 and remove the statewide prohibition on the sale of flavored tobacco products or enhancers; and

WHEREAS, Senate Bill 793 is currently suspended pending the outcome of the statewide vote on Proposition 31 on November 8, 2022; and

WHEREAS, according to the California Department of Public Health, e-cigarettes are available in over 15,000 flavors, many of which appeal to youth, such as cotton candy, bubble gum, or “unicorn poop,” with some flavored tobacco products sharing the same names, packaging, and flavor chemicals of popular candy brands; and

WHEREAS, 86.4 percent of youth tobacco users reported using flavored tobacco products; and

WHEREAS, the City Council wishes to strengthen local tobacco regulations and promote public health, safety, and welfare of the community, including to further limit the exposure of youth to starter products such as flavored tobacco products, by amending the Chula Vista Municipal Code to prohibit the sale of flavored tobacco products; and

WHEREAS, the Healthy Chula Vista Advisory Commission recommends that City Council adopt amendments to CVMC 5.56 to restrict the sale of flavored tobacco products.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I.

- A. Chapter 5.56, section 5.56.010 of the Chula Vista Municipal Code is amended to read as follows:

5.56.010 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:

- A. “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 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.

- B. “Applicant” means the Person applying for a permit pursuant to this chapter.
- C. “Chief of Police” means the Chief of Police of the City of Chula Vista, or his/her designee.
- D. “City” means the City of Chula Vista.
- E. “City Attorney” means the City Attorney for the City of Chula Vista, or his/her designee.
- F. “Crime of Moral Turpitude” means a crime involving a readiness to do evil, an act of moral depravity of any kind that has a tendency in reason to shake one’s confidence in their honesty, deceit, or fraud.
- G. “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.
- H. “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 a device, whether or not sold separately. “Electronic Smoking 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. “Electronic Smoking Device” also includes cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device charges, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.
- I. “Flavored Tobacco Product” means a Tobacco Product that contains or emits a taste or smell, other than the taste or smell of tobacco, including but not limited to, any taste or smell relating to fruit, mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, candy, dessert, alcoholic beverage, herb, or spice. Flavored Tobacco Products do not include products approved by the Food and Drug Administration (FDA) for sale either as a tobacco cessation product or for other therapeutic purposes, where the product is marketed and sold solely for such an FDA-approved purpose.
- J. “Loose-Leaf Tobacco” consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.
- K. “Owner” 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 20 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.
- L. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

M. “Premium Cigars” means any cigar that is handmade, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars. A Premium Cigar does not have filter, tip, or nontobacco mouth.

N. “Police Department” means the Chula Vista Police Department, and any agency or Person designated by the Department to enforce or administer the provisions of this chapter.

O. “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.

P. “Shisha” means a tobacco product that is mixed with molasses, honey, fruit, or dried fruits and is sold for use in a hookah.

Q. “Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of a Tobacco Product.

R. “Tobacco Product” means:

1. “Tobacco Products” means any substance containing derived from tobacco leaf or nicotine, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

2. Any Electronic Smoking Device.

3. Notwithstanding any provision of subsections [\(R\)\(1\)](#) and [\(R\)\(2\)](#) of this section to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

S. “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. Tobacco Retailer does not include persons licensed by the City to conduct commercial cannabis activity in accordance with Chapter [5.19](#) CVMC. (Ord. 3417 § 1, 2018).

[Section 5.56.020 through 5.56.090 remain unchanged.]

B. Chapter 5.56, section 5.56.095 of the Chula Vista Municipal Code is added to read as follows:

5.56.095 Sale of Certain Items Prohibited.

A. *Sale of Flavored Tobacco Prohibited.* Beginning January 1, 2023, it shall be unlawful for any Person to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product in the City of Chula Vista.

1. There shall be a permissive inference 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.

2. There shall be a permissive inference that a Tobacco Product is a Flavored Tobacco Product if:

- a. a public statement or claim is made or disseminated by the manufacturer of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statement concerning such tobacco product, that such Tobacco Product has or produces a taste or smell other than tobacco; or
- b. text and/or images on the Tobacco Product's Labeling or Packaging explicitly or implicitly indicates that the Tobacco Product is a Flavored Tobacco Product.

B. *Exempted Products.* This section does not apply to the sale of Shisha, Premium Cigars, or Loose-Leaf Tobacco.

[Section 5.56.100 through 5.56.130 remain unchanged.]

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on January 1, 2023.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Laura C. Black, AICP
Interim Director of Development Services

Glen R. Googins
City Attorney