



# City of Oroville

COMMUNITY DEVELOPMENT DEPARTMENT

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## City of Oroville PLANNING COMMISSION

CHAIR: Damon Robison  
VICE-CHAIR: Carl Durling  
MEMBERS: Adonna Brand; Randy Chapman; Wyatt Jenkins; Michael Britton; Justin McDavitt

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## SPECIAL PLANNING COMMISSION MEETING AGENDA

Thursday, January 18, 2018 at 7:00 p.m.  
MEETING AGENDA

OROVILLE CITY HALL  
1735 MONTGOMERY STREET, OROVILLE, CA 95965  
ALL MEETINGS ARE RECORDED

*This meeting may be broadcast remotely via audio and/or video conference at the following address:  
Cota Cole, LLP, 2261 Lava Ridge Court, Roseville, California 95661.*

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### ADMINISTRATIVE AGENDA

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1. CALL TO ORDER

2. ROLL CALL

Commissioners Adonna Brand, Michael Britton, Randy Chapman, Wyatt Jenkins, Justin McDavitt, Vice Chairperson Carl Durling, Chairperson Damon Robison

3. PLEDGE OF ALLEGIANCE

4. INSTRUCTIONS TO INDIVIDUALS WHO WISH TO SPEAK ON AGENDA ITEMS

This is the time the Chairperson will remind persons in the audience who wish to address the Commission on a matter that is on the agenda to fill out one of the

cards located in the lobby and hand it to the clerk of the meeting. The Chairperson will also remind persons in the audience that under Government Code Section 54954.3, the time allotted for each presentation may be limited.

5. **PUBLIC COMMENTS**

This is an opportunity for members of the public to address the Planning Commission on any subject relating to the Planning Commission, but not relative to items on the present agenda. The Planning Commission reserves the right to impose a reasonable limit on time afforded to any individual speaker.

6. **CORRESPONDENCE**

None.

7. **APPROVAL OF MINUTES**

Approve the minutes of the December 14, 2017 special Planning Commission meeting.

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**REGULAR AGENDA**

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8. **PUBLIC HEARINGS**

- 8.1 **ZC 17-02: Prohibiting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products** - The Oroville Planning Commission will conduct a public hearing to consider sending a recommendation to the Oroville City Council to prohibit the sale of menthol cigarettes and other flavored tobacco products and increase the fee of a tobacco retail license to cover the City's cost of administration, implementation, and enforcement (***This item continued from the December 14, 2017 Planning Commission Meeting***)

Staff Report: Luis A. Topete, Associate Planner

**Staff Recommendation:**

**Adopt Resolution No. P2017-18:** A RESOLUTION OF INTENTION OF THE OROVILLE PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL AMEND ORDINANCE NO. 1794 FOR THE PURPOSE OF PROHIBITING THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AND INCREASE THE FEE OF A TOBACCO RETAIL LICENSE

9. **REGULAR BUSINESS**

- 9.1 **Prioritization of the Transportation Capital Improvement Program (TCIP) Projects List** – The Oroville Planning Commission will review and prioritize the City's TCIP projects list to forward its recommendations to the City Council.

Staff Report: Luis A. Topete, Associate Planner

**Staff Recommendation:**

Staff recommends the Planning Commission forward a prioritized list of TCIP projects to the City Council for their review and consideration.

**10. DISCUSSION ITEMS**

None.

**11. DIRECTOR'S REPORT**

A verbal report may be given by the Community Development Director.

**12. COMMISSION REPORTS**

Reports by commission members on information they have received and meetings they have attended which would be of interest to the Commission or the public.

**13. ADJOURNMENT**

Adjourn to Thursday, February 22, 2018 at 7:00 P.M. in the Oroville City Council Chambers.

Respectfully submitted by,



Donald Rust, Director  
Community Development Department

**\*\*\* NOTICE \*\*\***

*If requested, this agenda can be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact Donald Rust, Director for further information. In addition, a person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting should telephone or otherwise contact Donald Rust, Director as soon as possible and preferably at least 24 hours prior to the meeting. Donald Rust, Director may be reached at 530-538-2433, or at e-mail [rustdl@cityoforoville.org](mailto:rustdl@cityoforoville.org), or at the following address: City of Oroville Planning and Development Services Department, 1735 Montgomery Street, Oroville, CA 95965.*

**\*\*\* NOTICE \*\*\***

*Any person who is dissatisfied with the decisions of this Planning Commission may appeal to the City Council by filing with the Zoning Administrator within fifteen days from the date of the action. A written notice of appeal specifying the grounds and an appeal fee immediately payable to the City of Oroville must be submitted at the time of filing. The Oroville City Council may sustain, modify or overrule this decision.*



**CITY OF OROVILLE  
PLANNING COMMISSION MEETING MINUTES  
DECEMBER 14, 2017 – 7:00 PM**

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These minutes detail the action which was taken related to each agenda item and do not reflect any discussion that may have occurred. For information regarding what was discussed related to a particular item, if anything, you can obtain a copy of the audio recording for this meeting by sending an email to [cityclerk@cityoforoville.org](mailto:cityclerk@cityoforoville.org) or by calling the Clerk's office at 530-538-2535.

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The agenda for the December 14, 2017 regular meeting of the Oroville Planning Commission was posted on the bulletin board at the front of City Hall and in the City Council Chambers, and on the City of Oroville's website located at [www.cityoforoville.org](http://www.cityoforoville.org), on Monday, December 11, 2017, at 11:30 a.m.

**1. CALL TO ORDER**

The December 14, 2017 regular meeting of the Oroville Planning Commission was called to order by Chairperson Robison, at 7:00 p.m.

**2. ROLL CALL**

Present: Commissioners Brand, Britton, Chapman, Jenkins, , Vice Chairperson Durling, Chairperson Robison  
Absent: Commissioner McDavitt (excused)

**Staff Present:**

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Donald Rust, Acting City Administrator  
Dawn Nevers, Assistant Planner

Luis Topete, Associate Planner

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**3. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Chairperson Robison.

**4. RECOGNITION OF INDIVIDUALS WISHING TO SPEAK ON AGENDA ITEMS**

Scott Hubbard – Item No. 9.1

Mark Mendez – Item No. 9.3

**5. PUBLIC COMMENT - None**

**6. CORRESPONDENCE**

Letter from Ann E. Brodsky, Coordinator of Tobacco Use Prevention Education at the Chico Unified School District, in support of prohibiting the sale of menthol cigarettes and other flavored tobacco products.

Letter from Vanessa Marvin, VP Public Policy and Advocacy at the American Lung Association, in support of prohibiting the sale of menthol cigarettes and other flavored tobacco products.

Letter from Andrew Miller, M.D., Health Officer at Butte County Public Health, in support of prohibiting the sale of menthol cigarettes and other flavored tobacco products.

Letter from Bruce Baldwin, in support of prohibiting the sale of menthol cigarettes and other flavored tobacco products.

## 7. APPROVAL OF MINUTES

Approval of the minutes of the October 26, 2017 regular Planning Commission meeting.

A motion was made by Vice Chairperson Durling, seconded by Commissioner Chapman, to:

**Approve the minutes of the October 26, 2017 regular Planning Commission meeting with amendments identified by Commissioner Jenkins.**

The motion was passed by the following vote:

Ayes:	Commissioners Brand, Chapman, Jenkins, Vice Chairperson Durling, Chairperson Robison
Noes:	None
Abstain:	Commissioner Britton
Absent:	Commissioner McDavitt

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## REGULAR AGENDA

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### 8. PUBLIC HEARINGS

#### 8.1 **ZC 17-01: Rezone of 1355 Washington Avenue from MXD to MXC – staff report**

The Oroville Planning Commission conducted a public hearing to review and consider sending a recommendation to the Oroville City Council to Rezone the property identified as 1355 Washington Avenue (APN: 013-030-010) from Downtown Mixed Use (MXD) to Corridor Mixed Use (MXC). (**Luis A. Topete, Associate Planner**)

Chairperson Robison opened the public hearing.

Hearing no comments, the public hearing was closed.

Following discussion, a motion was made by Commissioner Jenkins, seconded by Commissioner Brand, to:

**Adopt Resolution No. P2017-16: A RESOLUTION OF THE OROVILLE CITY PLANNING COMMISSION MAKING FINDINGS AND SENDING A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE THE REZONE OF 1355 WASHINGTON AVENUE (APN: 031-030-010) FROM DOWNTOWN MIXED USE (MXD) TO CORRIDOR MIXED USE (MXC)**

The motion was passed by the following vote:

Ayes: Commissioners Brand, Britton, Chapman, Jenkins, Vice Chairperson Durling, Chairperson Robison  
Noes: None  
Abstain: None  
Absent: Commissioner McDavitt

**8.2 ZC 17-02: Prohibiting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products – staff report**

The Oroville Planning Commission conducted a public hearing to consider sending a recommendation to the Oroville City Council to prohibit the sale of menthol cigarettes and other flavored tobacco products and increase the fee of a tobacco retail license to cover the City's cost of administration, implementation, and enforcement. **(Luis A. Topete, Associate Planner)**

Chairperson Robison opened the public hearing.

DeAnne Blakenship, Andy Miller, Dolores Vasquez, Carin Chwastyk, and Shelly Brantley spoke in support of prohibiting the sale of menthol cigarettes and other flavored tobacco products.

Hearing no further comments, the public hearing was closed.

Following discussion, a motion was made by Vice Chairperson Durling, seconded by Commissioner Chapman, to:

**Postpone the item until the January 25<sup>th</sup> regular Planning Commission meeting for review and comment from the Oroville Chief of Police.**

The motion was passed by the following vote:

Ayes: Commissioners Brand, Britton, Chapman, Jenkins, Vice Chairperson Durling, Chairperson Robison  
Noes: None  
Abstain: None  
Absent: Commissioner McDavitt

**9. REGULAR BUSINESS**

**9.1 Feather River Crossing Signage – staff report**

The Oroville Planning Commission reviewed and considered providing staff direction regarding the proposed signage for the repurposing of the commercial property at 355 Oro Dam Boulevard, the previous location of Walmart and future location of Feather River Crossing commercial complex. **(Luis A. Topete, Associate Planner)**

**Following discussion, the Commission directed staff to return with a proposal for a sign program.**

**9.2 Prioritization of the Transportation Capital Improvement Program (TCIP) Projects List – staff report**

The Oroville Planning Commission reviewed and discussed prioritization the City's TCIP projects list to forward its recommendations to the City Council. **(Luis Topete, Associate Planner)**

**Following discussion, the Commission requested prioritized lists submitted by Commissioner Jenkins and Vice Chair Durling be provided to all commissioners for review and consideration and continued this item to the next regular Planning Commission meeting for further discussion.**

**10. DISCUSSION ITEMS**

The Commission discussed a potential for foot bridge at end of Bridge Street.

**DIRECTOR'S REPORT**

Donald Rust, Director of Community Development, reported on the following:

- Development of former Walmart property – update
- Cannabis discussion help at the December 5, 2017 City Council meeting
- Rio d' Oro - update

**11. CHAIRPERSON/COMMISSIONERS REPORTS - none**

**14. ADJOURNMENT**

The meeting was adjourned at 8:39 p.m. A regular meeting of the Oroville Planning Commission will be held on Thursday, January 25, 2018, at 7:00 p.m.

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Donald Rust, Secretary

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Carl Durling, Vice Chairperson





# City of Oroville

Donald Rust  
DIRECTOR

## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION STAFF REPORT

January 18, 2018

**ZC 17-02: Prohibiting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products**  
- The Oroville Planning Commission will conduct a public hearing to consider sending a recommendation to the Oroville City Council to prohibit the sale of menthol cigarettes and other flavored tobacco products and increase the fee of a tobacco retail license to cover the City's cost of administration, implementation, and enforcement. ***(This item continued from the December 14, 2017 Planning Commission Meeting)***

**APPLICANT:** City of Oroville  
Planning Division  
1735 Montgomery Street  
Oroville, CA 95965

**LOCATION:** Citywide

**GENERAL PLAN:** N/A  
**ZONING:** N/A  
**FLOOD ZONE:** N/A

#### ENVIRONMENTAL DETERMINATION:

This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Title 14, California Code of Regulations, Section 15061(b)(3) "General Rule Exemption."

#### REPORT PREPARED BY:

Luis A. Topete, Associate Planner  
Community Development Department

#### REVIEWED BY:

Donald Rust, Director  
Community Development Department

#### RECOMMENDED ACTIONS:

City staff recommends that the Planning Commission take the following actions:

1. **HOLD** a public hearing and consider sending a recommendation to the Oroville City Council to prohibit the sale of menthol cigarettes and other flavored tobacco products and increase the fee of a tobacco retail license to cover the City's cost of administration, implementation, and enforcement; and
2. **ADOPT** the General Rule Exemption – Title 14, CCR, §15061(b)(3) as the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA) Statute and Guidelines (**Attachment H**); and
3. **ADOPT** Resolution No. P2017-18 (**Attachment I**).

## **BACKGROUND**

On September 22, 2017, staff met with members from the California Health Collaborative who were requesting the City consider restricting the sale of menthol cigarettes and other flavored tobacco products within the City limits.

On November 7, 2017, the Oroville City Council received a presentation from the Director of Program Services for the California Health Collaborative regarding flavored tobacco products in the City of Oroville. The Council gave direction to staff to amend Ordinance No. 1794 to restrict the sale of menthol cigarettes and other flavored tobacco products within the City, increase the fee for a Tobacco Retail License to recover City costs, and increase the fine for violations of the City's tobacco regulations.

On December 14, 2017, the Planning Commission reviewed and continued this item to the following Planning Commission meeting.

## **DISCUSSION**

Local governments in California and across the country have enacted laws restricting the sale of flavored tobacco, and initial evidence shows reductions in youth tobacco use in these communities. The federal Family Smoking Prevention and Tobacco Control Act allows local governments to regulate tobacco product sales, and multiple courts have upheld local laws restricting the sale of flavored tobacco. (**Attachment A**)

In the United States (U.S.), consumption of flavored tobacco products such as cigars, cigarillos, smokeless tobacco, shisha or hookah tobacco, and liquid nicotine solutions (used in electronic smoking devices) have increased in recent years. These products come in a variety of flavors including chocolate, berry, cherry, apple, wintergreen, and peach and are sold in colorful packaging, which make them especially appealing to young people. There is growing concern that flavored tobacco products help users develop habits that can lead to long term nicotine addiction. Both the U.S. Food and Drug Administration (FDA) and the Surgeon General have warned that flavored tobacco products help new users establish habits that can lead to long-term addiction. (**Attachment B**)

ChangeLab Solutions has developed a tobacco retailer license fee calculator to help cities

and counties determine the appropriate fee that adequately supports the costs associated with implementing and enforcing a tobacco retailer license program. Staff has used the calculator, provided by ChangeLab Solutions, to determine the appropriate fee adjustment that adequately supports the costs associated with implementing and enforcing the proposed amendments to Ordinance No. 1794. The resulting fee determination was \$238.64 for a tobacco retailer license, an increase of \$202.64 from the existing fee of \$36 to adequately administer, implement and enforce the proposed amendments. **(Attachments C & D)**

The City Council also directed staff to increase the fines for those found in violation with the City's Tobacco Retail Ordinance. It appears that the most common form of penalizing violators is a combination of suspending or revoking tobacco retailer licenses and imposing fines, both of which Oroville has included in the existing ordinance (No. 1794). Based off a review of and comparison of the City's current enforcement with that of other Cities, staff believes the current fines for a violation, ranging from \$250-\$1,000 per violation, are comparable to other Cities **(Attachment E)**. Additionally, per the California Government Code Section 36901, a city legislative body may impose fines, penalties, and forfeitures for violations of ordinances. However, a fine shall not exceed one thousand dollars (\$1,000). Currently violations are considered a public nuisance. However, as amended, violations may be prosecuted as infractions or misdemeanors.

The proposed ordinance has been drafted using ChangeLab Solutions' Model California Ordinance for restricting the sale of menthol cigarettes and other flavored tobacco products, updated June 2017. It is based on ChangeLab Solutions' legal research and analysis, as well as the research and evidence base regarding consumption of tobacco products and the rising popularity of flavored tobacco products. **(Attachment F)**

This proposed ordinance restricts the sale of all flavored tobacco products, including the following:

- Flavored cigarettes already prohibited by the Tobacco Control Act;
- Menthol cigarettes;
- Other flavored tobacco products, such as cigars, little cigars, cigarillos, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices (ESDs), and the solutions used in ESDs; and
- Flavored components, parts, and accessories, such as flavored rolling papers, filters, and blunt wraps.

## **ENVIRONMENTAL REVIEW**

This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Title 14, California Code of Regulations, Section 15061(b)(3) "General Rule Exemption." **(Attachment H)**

## **FISCAL IMPACT**

Fees that are collected as a result of the adoption of this ordinance are intended to cover

the cost of City staff time spent on work tasks that result from the adoption of this ordinance. Any revenues that may result from this ordinance would likely come from the collection of fines from those found in violation of this ordinance.

## **ATTACHMENTS**

- A – Policy Options Fact Sheet
- B – Flavored Tobacco Products Fact Sheet
- C – Tobacco Retailer License Fee Calculation
- D – Tobacco Retail License Fees of Other California Cities
- E – Policy Matrix of Other California Cities
- F – ChangeLab Solutions' Model California Ordinance
- G – Ordinance No. 1794
- H – Notice of Exemption
- I – Resolution No. P2017-18
- J – City Council Meeting Minutes from November 7, 2017
- K – Smoke Free North State Implementation Plan
- L – Public Comments Received

## ATTACHMENT - A

# Policy Options for Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products



*This fact sheet outlines local policy options to restrict the sale of menthol cigarettes and other flavored tobacco products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, and electronic smoking devices.*

Due to tobacco companies' marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use menthol cigarettes and other flavored tobacco products. These groups disproportionately bear the burden of tobacco-related harm.

Restrictions on Flavored Tobacco Products	Federal Law	California Law
Flavored Cigarettes & Components <sup>1</sup> (excluding menthol)	Prohibited	No restrictions
Flavored Roll-your-own Tobacco (excluding menthol)	Prohibited	No restrictions
Menthol Cigarettes & Roll-your-own Tobacco	No restrictions	
Flavored Cigars & Little Cigars		
Flavored Smokeless Tobacco		
Flavored Electronic Smoking Devices		
Flavored Non-cigarette Components, Parts, & Accessories <sup>2</sup>		

<sup>1</sup>eg, flavored rolling papers and filters intended for use with roll-your-own tobacco

<sup>2</sup>eg, flavored blunt wraps and additives for e-liquids



## What can communities do?

Local governments in California and across the country have enacted laws restricting the sale of flavored tobacco, and initial evidence shows reductions in youth tobacco use in these communities.<sup>1</sup> Your community can pursue similar sales restrictions. The federal Family Smoking Prevention and Tobacco Control Act allows local governments to regulate tobacco product sales,<sup>2</sup> and multiple courts have upheld local laws restricting the sale of flavored tobacco.<sup>3</sup>

## Policy Solution

A comprehensive prohibition on the sale of all flavored tobacco products provides a significant public health benefit. It may counter the tobacco industry's marketing tactics and reduce tobacco use, especially among vulnerable populations. ChangeLab Solutions' *Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products* (Model Ordinance) provides a comprehensive approach by prohibiting all tobacco retailers from selling any tobacco product that has a taste or aroma other than tobacco. The Model Ordinance's definition of tobacco products includes flavored accessories such as cigarette rolling papers and blunt wraps.

Jurisdictions with local tobacco retailer licensing (TRL) can implement and enforce these sales restrictions through licensing. The Model Ordinance recommends a 6-month delay between the day a jurisdiction adopts the ordinance and the day the prohibition goes into effect. This delay provides tobacco retailers time to sell their existing inventory of flavored tobacco and provides local government time to plan for implementation and enforcement.<sup>4</sup> Importantly, the Model Ordinance does not prohibit or penalize the purchase, use, or possession of flavored tobacco products. Only tobacco retailers who sell flavored tobacco products are subject to penalty.

<sup>4</sup> The Model Ordinance includes an optional provision to temporarily grandfather certain businesses, which exempts those businesses from complying with the flavored tobacco prohibition for an additional 6 months. Thus, certain businesses have 12 months to comply with the law following its adoption. The optional exemption applies only to tobacco retailers that primarily sell tobacco products or tobacco paraphernalia.



Communities can consider non-comprehensive restrictions, too. However, because these restrictions may not apply to all stores, they may have a smaller public health benefit and cost more to implement and enforce. For example, a jurisdiction can prohibit sales within a certain distance of youth-populated areas, such as schools (creating a "buffer zone"), or allow sales only in certain types of stores, such as those *primarily* selling tobacco. However, buffer zones require additional resources to develop and keep maps of youth-populated areas and tobacco retailers up to date. Moreover, communities must ensure the local government, business community, and general public know which retailers are restricted from selling flavored tobacco. Communities considering approaches like these should consider increased implementation costs and potential enforcement challenges.

## Conclusion

Menthol cigarettes and other flavored tobacco products pose a significant threat to health, especially for populations targeted by the tobacco industry, such as youth, low-income communities, communities of color, and the LGBTQ community. Local governments can promote health and equity by prohibiting the sale of menthol cigarettes and other flavored tobacco products. They can use ChangeLab Solutions' *Model Ordinance* and request *technical assistance* from ChangeLab Solutions.

*ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

*This fact sheet was made possible by funds received from Grant Number 09-11182 with the California Department of Public Health, California Tobacco Control Program.*

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<sup>1</sup> Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. February 2016;tobaccocontrol-2015-052418, doi:10.1136/tobaccocontrol-2015-052418.

<sup>2</sup> 21 U.S.C. § 387p(a)(1).

<sup>3</sup> U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428 (2d Cir. 2013); Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013); Indep. Gas & Serv. Stations Ass'n, Inc. v. City of Chi., 112 F.Supp.3d 749 (N.D. Ill. 2015).



# Flavored Tobacco Products



## Fact Sheet

**Overview:** In the United States (U.S.), consumption of flavored tobacco products such as cigars, cigarillos, smokeless tobacco, shisha or hookah tobacco, and liquid nicotine solutions (used in electronic smoking devices) have increased in recent years [1]. These products come in a variety of flavors including chocolate, berry, cherry, apple, wintergreen, and peach [2] and are sold in colorful packaging, which make them especially appealing to young people. There is growing concern that flavored tobacco products help users develop habits that can lead to long term nicotine addiction [3].

### Types of Flavored Products

#### Cigars

There are three types of cigars sold in the U.S.: little cigars, which are the same size and shape as cigarettes; cigarillos, which are a slimmer version of large cigars and usually do not have a filter; and large cigars, which are larger and weigh more than little cigars and cigarillos [4].

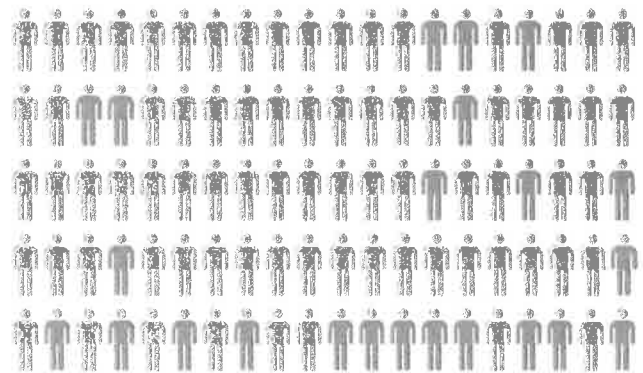


Cigars are the second most common form of tobacco used by youth [5]. Many of the brands that are popular among youth come in flavors such as apple, chocolate, grape, and peach [6], while other less traditional flavors are branded with appealing names like “Fruit Squirts,” “Waikiki Watermelon,” “Tutti Frutti,” “Blue Water Punch,” “Oatmeal Cookie,” and “Alien Blood” [7].

A recent study found that more than 87 percent of adolescents who used cigarillos in the past 30 days used flavored cigarillos [8].

Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophagus cancer [9]. Heavy cigar use and deep inhalation has also been linked to elevated risk of heart disease and chronic obstructive pulmonary disease [10].

Cigars contain higher levels of nitrosamines—which are compounds that cause cancer—more tar, and higher concentrations of toxins than cigarettes [11].



**87%** of adolescents who used cigarillos in the past 30 days used flavored cigarillos.

## Smokeless Tobacco



Smokeless tobacco products include chewing tobacco, dip, snuff, and snus and come in flavors such as mint, wintergreen, berry, cherry, and apple [12].

These products contain at least 28 carcinogens [13] and have been shown to cause gum disease and cancers of the mouth, lip, tongue, cheek, throat, stomach, pancreas, kidney, and bladder [14].

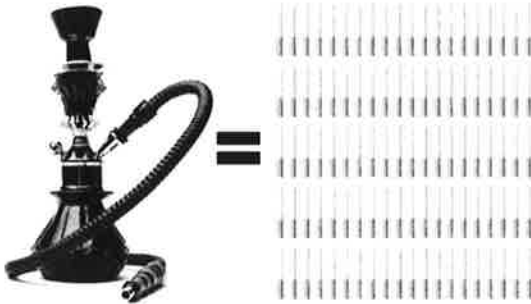
Smokeless tobacco products increase the risk of developing oral cancer by 80 percent, and esophageal and pancreatic cancer by 60 percent [15].

## Shisha or Hookah Tobacco

Shisha is also known as hookah, water pipe, narghile, or goza tobacco and is available in an array of fruit, alcoholic beverage, and herbal flavors [12].

Hookah smoking has been associated with lung cancer, respiratory illness, and periodontal disease [9].

Many young adults falsely believe that hookah smoking is safer than cigarette smoking [16]. However, smoking hookah for 45 to 60 minutes can be equivalent to smoking 100 or more cigarettes [17].

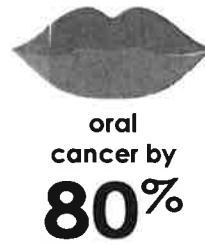


**Smoking hookah for 45 to 60 minutes can be equivalent to smoking 100 or more cigarettes**

One hookah session delivers approximately 125 times the smoke, 25 times the tar, 2.5 times the nicotine and 10 times the carbon monoxide as a single cigarette [18].

A 2014 study found that teens who use hookah are two-to-three times more likely to start smoking cigarettes or to become current smokers than teens who have not tried hookah [19].

## Smokeless tobacco products increase the risk of developing



## Liquid Nicotine Solution

Liquid nicotine solution, also called “e-juice” or “e-liquid,” is used in electronic smoking devices such as e-cigarettes.

There are more than 7,000 e-liquid flavors [20] including cotton candy, gummy bear, and chocolate mint, as well as flavors named after brand name candy and cereal products such as Wrigley’s Big Red Gum and Quaker Oats’ Cap’n Crunch [21].



E-liquids, when heated, form an aerosol that emits toxic chemicals known to cause cancer, birth defects, and other reproductive harm [22].

E-liquid solutions contain varying concentrations of nicotine, ranging from no nicotine to 100 mg per milliliter (a milliliter is approximately a fifth of a teaspoon). The lethal dose of nicotine is estimated to be 60 mg or less for an adult and 10 mg for a child. The toxicity of a 60 mg dose of liquid nicotine is similar to or even higher than that of cyanide [23].

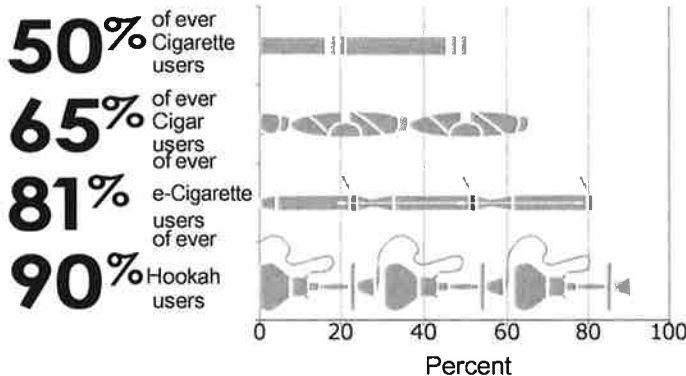


## Using Flavored Tobacco Products

Recent declines in the prevalence of cigarette smoking among youth have coincided with an increased use of e-cigarettes and hookah tobacco [24]. In the U.S., cigarettes are prohibited from containing flavors other than menthol; however, other tobacco products such as e-cigarettes and hookah tobacco are exempt from this regulation.

A 2015 study of adolescents ages 12 to 17 found that among those who self-reported ever experimenting with tobacco, the majority started with a flavored product. It also found that most current youth tobacco users reported use of flavored products [25].

Teens report that their tobacco use typically started with a flavored tobacco product. One study reported that almost 90 percent of ever hookah users, 81 percent of ever e-cigarette users, 65 percent of ever users of any cigar type, and 50 percent of ever cigarette smokers said the first tobacco product they used was flavored [25].



**said the first tobacco product they used was flavored**

A study conducted by the Centers for Disease Control and Prevention (CDC) found that more than two out of every five middle and high school students who smoke reported either using flavored little cigars or flavored cigarettes [26].

A 2014 CDC survey of U.S. youth found that 70 percent of U.S. middle and high school tobacco users have used at least one flavored tobacco product in the past 30 days [1].



**Two out of every five middle and high school students who smoke reported either using flavored little cigars or flavored cigarettes**

This survey also found that 18 percent of all high school students in the U.S. reported using at least one flavored tobacco product in the last 30 days [1]. Among current middle and high school tobacco users, more than 63 percent had used a flavored e-cigarette, more than 60 percent had used flavored hookah tobacco, and more than 63 percent had used a flavored cigar in the past 30 days [1].

Findings from the 2015 nationwide Monitoring the Future study found that about 40 percent of all students in 8th,

10th, and 12th grades who used vaporizers, such as e-cigarettes, said that they used them because the flavors tasted good, compared to the 10 percent that used them in an attempt to quit smoking combustible cigarettes [27].

## Flavored Tobacco Products are Heavily Marketed to Young People [28] with Sweet Flavors and Colorful Packaging

Flavored tobacco products are very enticing to children and even share the same names, packaging, and logos as popular candy brands like Jolly Rancher, Kool-Aid, and Life Savers [29] and gaming systems like Wii and Gameboy.

Many of the flavoring chemicals used to flavor “cherry,” “grape,” “apple,” “peach,” and “berry” tobacco products are the same ones used to flavor Jolly Rancher candies, Life Savers, Zotz candy, and Kool-Aid drink mix [29].

Tobacco companies market their products to young people through the use of youthful models, celebrities, sex appeal, and peer oriented slogans [30].

Young people are much more likely to use candy-and fruit-flavored tobacco products than adults [31].

Bright packaging and product placement at the register, near candy, and often at children’s eye-level, make tobacco flavored products very visible to kids [32].



# Flavors Make it More Enticing to Smoke Tobacco and More Difficult to Quit

Flavorings help mask the naturally harsh taste of tobacco, making flavored tobacco products more appealing to youth and easier for youth to initiate and sustain tobacco use [31].

Both the U.S. Food and Drug Administration (FDA) and the Surgeon General have warned that flavored tobacco products help new users establish habits that can lead to long-term addiction [3, 6].

Studies show that individuals who begin smoking at a younger age are more likely to develop a more severe addiction to nicotine than those who start later [6].

Not only do flavors make it easier for new users to begin smoking, but the presence of flavors like menthol in tobacco products also make it more difficult for tobacco users to quit [33].

## Flavors in tobacco products:

**make it more appealing for new users to buy and smoke**

**mask the harsh taste of tobacco**

**help users establish habits that can lead to long-term addiction**



# Flavored Tobacco Products are Cheaper and Sold in Smaller Packages than Cigarettes

“

*The tobacco industry has promoted little cigars, which are comparable to cigarettes with regard to shape, size, and packaging, as a lower cost alternative to cigarettes [34].*

”

While cigarettes must be sold in packs of 20, other tobacco products, like little cigars, can be purchased in quantities of one or two at a time, often for less than a dollar [32].

Price discounts disproportionately affect vulnerable populations including young people, racial/ethnic minorities, and persons with low incomes, as these groups are more likely to purchase tobacco products through a discount [36, 6].

Price discounting has become the tobacco industry's leading method of attracting users and accounts for the largest percentage of marketing expenditures [35].



Little Cigar



Cigarette

# Many Young Adults Falsely Believe that Flavored Tobacco Products are Safer than Non-Flavored Tobacco Products

*“Flavored tobacco products are not only just as harmful as combustible or smokeless tobacco products, but they are also just as addictive [3].”*

A recent study found that people younger than 25 years of age were more likely to say that hookahs and e-cigarettes were safer than cigarettes [37].

Many studies indicate that cigar smokers misperceive cigars as being less addictive, more “natural,” and less harmful than cigarettes [38]. The misperception among young people that other tobacco products are less harmful than cigarettes, as well as the fact that these products are less harsh to smoke and taste good, may contribute to the increase in the use of other tobacco products by youth.

A 2015 study found that only 19 percent of 8th graders believe that there is a great risk of people harming themselves with regular e-cigarette use, compared to 63 percent of 8th graders who think that there is a great risk of people harming themselves by smoking one or more packs of cigarettes a day [27].

Other tobacco products than cigarettes (OTP’s) such as little cigars, cigarillos, and hookah, like all tobacco products, contain the addictive chemical nicotine which makes them very hard to quit [39] and increases the risk of developing serious health problems including lung cancer, heart disease, and emphysema [40].

## Flavoring Chemicals in E-Cigarettes Have Been Linked to Severe Respiratory Disease

Certain chemicals used to flavor liquid nicotine, such as diacetyl, 2,3-pentanedione, and acetoin, are present in many e-liquids at levels which are unsafe for inhalation [41].

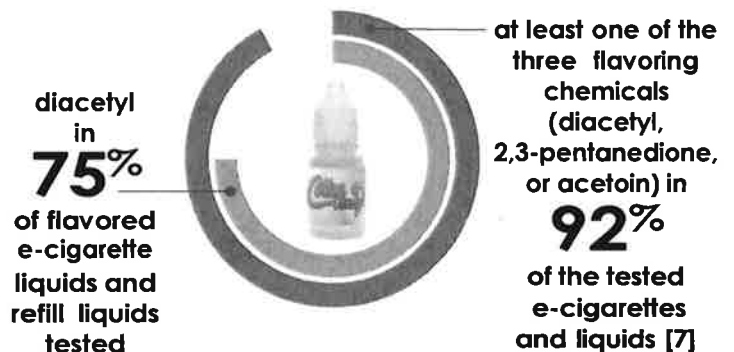
Diacetyl, 2,3-pentanedione, and acetoin are used in the manufacture of food and e-liquid flavors such as butter, caramel, butterscotch, piña colada, and strawberry [7].

Diacetyl, when inhaled, is associated with the development of the severe lung condition bronchiolitis obliterans, also known as “popcorn lung,” which causes an irreversible loss of pulmonary function and damage to cell lining and airways [42].



2,3-pentanedione, a chemically similar substitute to diacetyl, caused proliferation of fibrosis connective lung tissue and airway fibrosis in an inhalation study performed on rats [43].

**A 2015 study by the Harvard School of Public Health detected**



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# ATTACHMENT - C

- [Funding Healthy Changes \(/funding-healthy-changes\)](#)
- [Healthy Planning \(/healthy-planning\)](#)
- [Tobacco Control \(/tobacco-control\)](#)
- [Childhood Obesity \(/childhood-obesity\)](#)
- [Healthy Housing \(/healthy-housing\)](#)
- [Recent Achievements \(/slideshow/recent-achievements\)](#)

[ABOUT TOBACCO CONTROL \(/TOBACCO-CONTROL/ABOUT\)](#) [SERVICES \(/OUR-SERVICES\)](#)  
[TOOLS \(/TOOLS-TOBACCO-CONTROL\)](#) [CONTACT US \(/CHANGELAB-SOLUTIONS-CONTACT-US\)](#)  
[Home \(/\) / Tools \(tools-tobacco-control\) / Tobacco Licensing Fee Calculator](#)

## Tobacco Retailer Licensing Fee Calculator



(<http://changelabsolutions.org/publications/trl-fee-calculator-checklist>) **Have you downloaded our checklist**

(<http://changelabsolutions.org/publications/trl-fee-calculator-checklist>) **yet?**

It has been prepared to be used in conjunction with the fee calculator (though it can also be used separately as a reference without using the calculator). The checklist (<http://changelabsolutions.org/publications/trl-fee-calculator-checklist>) is designed to help jurisdictions think through all the costs associated with a TRL ordinance, including staff and non-staff costs.  
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(<http://changelabsolutions.org/donate>)

<a href="#">Introduction</a>
<a href="#">Instructions</a>

### Review & Download

Congratulations! You can now view the results of all your data entry.

#### How many retailers are in your jurisdiction?

Enter in the number of tobacco retailers in your jurisdiction. The calculator will set a fee per retailer.

#### Your summary

This page displays a summary of your total costs and also separates costs based on:

- Staff costs
- Non-staff costs
- Line item categories
- Department
- Individual Staff

#### Download

At the bottom of the page, you have the option to download both the summary and full budget in comma separated value format (CSV). Depending on your browser settings, these files will either open in Excel or another spreadsheet application, or you will need to save them and then open them from that application.

**Thank you** for using the ChangeLab Solutions Tobacco Retailer Licensing Fee Calculator! If you have questions about the calculator or need more information, please feel free to contact us (<http://changelabsolutions.org/tobacco-control-ask-us>).

#### Did you forget something, or want to make changes?

Just click the **Previous** button at the bottom of the page or use the calculator navigation bar above to return to the appropriate pages to add to or edit your data.

#### How are staff costs calculated?

- **Overtime costs.** Overtime costs are calculated at an increased 50% hourly salary/wage rate. The hourly cost of annual benefits are not applied to overtime hours (they are only applied to regular hours).
- **Staff Cost Calculation.** The Staff Cost for each Line Item is calculated as follows.

$$\begin{aligned} & (\text{Regular Hours}) \times [ (\text{Salary}) / (\text{Hrs Worked/Year}) ] + \\ & (\text{Overtime Hours}) \times (1.5) \times [ (\text{Salary}) / (\text{Hrs Worked/Year}) ] + \\ & (\text{Regular Hours}) \times [ (\text{Annual Benefits}) / (\text{Hrs Worked/Year}) ] + \end{aligned}$$

Staff Cost

### Per Retailer

How many tobacco retailers are within your jurisdiction?

Year 1

Subsequent  
Years

	<b>Year 1</b>	<b>Subsequent Years</b>
<b>Annual TRL Fee Per Retailer</b>	<b>\$ 238.64</b>	<b>\$ 238.64</b>

### Summary

	<b>Year 1</b>	<b>Subsequent Years</b>
Total Staff Costs	\$ 8,829.68	\$ 8,829.68
Total Non-staff Costs	\$ 0.00	\$ 0.00
<b>Grand Total Cost</b>	<b>\$ 8,829.68</b>	<b>\$ 8,829.68</b>

### By Category

<b>Name</b>	<b>Year 1</b>	<b>Subsequent Years</b>
Establish, maintain, and administer TRL system	\$ 2,045.56	\$ 2,045.56
Enforcement: conducting compliance checks	\$ 3,428.34	\$ 3,428.34
Enforcement: after the compliance checks	\$ 2,837.14	\$ 2,837.14
Miscellaneous	\$ 518.81	\$ 518.81

### By Department

	<b>Year 1</b>	<b>Subsequent Years</b>
<b>Business License Department</b>	<b>\$ 2,203.32</b>	<b>\$ 2,203.32</b>
Staff Assistant	\$ 2,203.32	\$ 2,203.32
Non-Staff Costs	\$ 0.00	\$ 0.00
<b>Police Department</b>	<b>\$ 2,303.28</b>	<b>\$ 2,303.28</b>
Detective	\$ 2,303.28	\$ 2,303.28
Non-Staff Costs	\$ 0.00	\$ 0.00
<b>City Attorney's Office</b>	<b>\$ 692.00</b>	<b>\$ 692.00</b>
City Attorney	\$ 692.00	\$ 692.00
Non-Staff Costs	\$ 0.00	\$ 0.00
<b>Municipal Law Enforcement</b>	<b>\$ 2,892.75</b>	<b>\$ 2,892.75</b>
Patrol	\$ 2,892.75	\$ 2,892.75
Non-Staff Costs	\$ 0.00	\$ 0.00
<b>Planning Division</b>	<b>\$ 738.33</b>	<b>\$ 738.33</b>
Associate Planner	\$ 738.33	\$ 738.33
Non-Staff Costs	\$ 0.00	\$ 0.00

[◀ Previous](#)

[↓ Summary Budget](#)

[↓ Full Budget](#)

# ATTACHMENT - D

## Matrix of Strong Local Tobacco Retailer Licensing Ordinances



### JUNE 2017

In order to reduce illegal sales of tobacco products to minors, many cities and counties in California have adopted strong local tobacco retailer licensing ordinances. This document highlights the 133 ordinances that are considered strong, as well as the fee and enforcement provisions. A strong local tobacco licensing law is defined as one that includes the following four components:

- Requirements that all retailers that sell tobacco products must obtain a license and renew it annually.
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

Below is a list of the 133 local ordinances in California that have met the requirements for a strong local tobacco retailer licensing ordinance along with basic information about the community population, license fee and designated

enforcement agencies. The jurisdictions are listed in alphabetical order under each county in order to make it easy to compare fee and enforcement details for similar jurisdictions.

For the table below, the agencies that enforce these ordinances have been categorized in the following way:

- **Law Enforcement:** Includes Police Departments and Sheriff Departments
- **Health Department:** Includes Environmental Health Services, Departments of Public Health, Health Services Department, and Health and Human Services Divisions.
- **City Officials:** Includes City Manager, City Attorney, and any authorized city official
- **Other:** Includes Community Development Services, Department of Finance, code enforcement agencies/ services, Administrative Services, Neighborhood Preservation Division, neighborhood services inspectors, Business License Division, and District Attorneys

Other documents on tobacco retailer licensing, including a fact sheet on the effectiveness of these ordinances, are available at: <http://Center4TobaccoPolicy.org/tobacco-policy/tobacco-retail-environment>

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
<b>Alameda County</b>							
<b>Albany</b>	<b>February 2009</b>	<b>18,988</b>	<b>\$250</b>	X			
<b>Berkeley</b>	<b>December 2002</b>	<b>121,238</b>	<b>\$427*</b>	X	X		
<b>Hayward</b>	<b>July 2014</b>	<b>161,040</b>	<b>\$400</b>				X
<b>Oakland</b>	<b>April 2008</b>	<b>426,074</b>	<b>\$50**</b>	X			
<b>Union City</b>	<b>November 2010</b>	<b>73,452</b>	<b>\$665</b>	X			
<b>Butte County</b>							
<b>Oroville</b>	<b>March 2013</b>	<b>18,037</b>	<b>\$30</b>			X	
<b>Contra Costa County</b>							
<b>Concord</b>	<b>September 2006</b>	<b>128,370</b>	<b>\$160</b>	X			
<b>Contra Costa County</b>	<b>January 2003</b>	<b>173,454</b>	<b>\$287*</b>		X		
<b>El Cerrito</b>	<b>October 2015</b>	<b>24,600</b>	<b>\$485 (initial) \$439 (renew)</b>	X			X
<b>Richmond</b>	<b>June 2009</b>	<b>111,785</b>	<b>\$1,062**</b>	X			
<b>San Pablo</b>	<b>April 2004</b>	<b>31,053</b>	<b>\$170</b>				X
<b>Fresno County</b>							
<b>Firebaugh</b>	<b>August 2009</b>	<b>8,202</b>	<b>\$190</b>	X			
<b>Parlier</b>	<b>April 2012</b>	<b>15,500</b>	<b>\$200</b>	X			
<b>Imperial County</b>							
<b>Calexico</b>	<b>February 2004</b>	<b>40,921</b>		X		X	
<b>Kern County</b>							
<b>Arvin</b>	<b>September 2016</b>	<b>21,157</b>	<b>\$275-\$655</b>		X		
<b>California City</b>	<b>February 2007</b>	<b>14,248</b>	<b>\$275-\$655</b>		X		
<b>Delano</b>	<b>June 2008</b>	<b>53,152</b>	<b>\$275-\$655</b>	X			
<b>Kern County</b>	<b>November 2006</b>	<b>311,015</b>	<b>\$275-\$655</b>		X		
<b>McFarland</b>	<b>May 2007</b>	<b>14,919</b>	<b>\$275-\$655</b>		X		
<b>Shafter</b>	<b>November 2016</b>	<b>18,868</b>	<b>\$275-\$655</b>		X		
<b>Taft</b>	<b>August 2016</b>	<b>9,492</b>	<b>\$275-\$655</b>		X		
<b>Tehachapi</b>	<b>February 2007</b>	<b>12,280</b>	<b>\$275-\$655</b>		X		
<b>Wasco</b>	<b>March 2007</b>	<b>26,980</b>	<b>\$275-\$655</b>		X		



Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Los Angeles County							
Baldwin Park	October 2008	75,537	\$342	X			X
Beverly Hills	August 2010	34,646		X			
Burbank	February 2007	105,033	\$300**	X			
Calabasas	June 2009	24,202	No Fee Planned*				X
Carson	November 2006	93,674	\$500	X			X
Cerritos	January 2008	50,039	\$50*	X			
Compton	July 2007	100,050	\$500	X			X
Culver City	July 2009	40,103	\$235	X			X
Duarte	May 2013	22,033	\$100	X			
El Monte	November 2011	114,268	\$300	X			X
El Segundo	June 2010	16,717	\$250	X			
Gardena	July 2008	60,721	\$120 **	X			X
Glendale	September 2007	201,748	\$255	X			
Hawaiian Gardens	July 2011	14,753	\$246				X
Hawthorne	July 2009	87,662	\$375	X			X
Huntington Park	November 2011	59,383					
Inglewood	October 2007	114,900	\$350	X			X
La Canada Flintridge	June 2009	20,497	\$50*	X		X	
Lancaster	June 2006	157,820	\$261	X			
Lawndale	October 2009	33,365	\$150				X
Lomita	May 2007	20,403	\$150	X			X
Long Beach	February 2008	480,173	\$442	X	X	X	
Los Angeles (City)	September 2005	4,041,707	\$300		X	X	X
Los Angeles County	December 2007	1,053,030	\$235	X	X		
Lynwood	October 2012	71,997	TBD			X	
Malibu	November 2011	12,742	No Fee Planned *				X
Montebello	September 2009	63,917	\$300	X			
Monterey Park	April 2010	61,606	\$40*	X			
Palmdale	January 2010	158,605	\$350			X	
Pasadena	February 2004	143,333	\$225	X	X		
San Fernando	October 2008	24,486	\$250				X
San Gabriel	March 2010	41,020	\$300	X			
Santa Monica	November 2008	93,834	\$135			X	

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Sierra Madre	November 2006	11,010	\$30	X			
South Pasadena	February 2009	25,992	\$150				X
Temple City	December 2012	36,389	\$320 (initial) \$75 (renew)	X			
<b>Marin County</b>							
Marin County	May 2012	69,214	\$25		X		
Mill Valley	September 2012	14,910	\$25	X			
Novato	January 2017	54,522	\$50 or less			X	
San Rafael	August 1991	60,842	\$48 (initial) \$10 (renew)				X
<b>Mendocino County</b>							
Fort Bragg	December 2012	7,772	\$183			X	
Mendocino County	April 2010	59,668	\$290		X		
Ukiah	December 2012	16,314	\$35	X		X	
Willits	October 2003	4,928	\$75		X		
<b>Modoc County</b>							
Alturas	February 2017	2,660	\$100			X	
<b>Monterey County</b>							
Carmel-By-The-Sea	June 2013	3,842	\$286	X	X		
Monterey	November 2014	28,828	\$286	X	X		
Monterey County	May 2012	107,009	\$286	X	X		
Salinas	January 2015	162,470	\$286	X	X		
<b>Nevada County</b>							
Grass Valley	November 2009	12,859	\$100	X			
Nevada City	November 2006	3,208	\$100	X			
<b>Orange County</b>							
Santa Ana	October 2006	341,341	\$635	X	X		
<b>Riverside County</b>							
Banning	August 2006	31,068	\$350		X		
Beaumont	December 2006	46,179	\$350		X		
Calimesa	June 2007	8,637	\$350		X		
Canyon Lake	June 2009	10,891	\$350				X
Coachella	July 2007	45,551	\$350		X		
Corona	October 2005	167,759	\$350		X		
Desert Hot Springs	August 2007	29,111	\$350		X		

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Eastvale	October 2010	64,613	\$350		X		
Hemet	March 2008	81,868	\$350		X		
Jurupa Valley	September 2011	101,315	\$350		X		
Lake Elsinore	August 2007	62,092	\$350		X		
Menifee	December 2009	90,660	\$350		X		
Moreno Valley	September 2007	206,750	\$350		X		
Murrieta	May 2006	114,914	\$350		X		
Norco	March 2006	26,882	\$350		X		
Perris	August 2008	75,739	\$350		X		
Riverside (City)	May 2006	326,792	\$350		X		
Riverside County	January 2010	373,755	\$350		X		
San Jacinto	June 2006	47,925	\$350		X		
Temecula	June 2006	111,024	No Fee Planned*	X			
Wildomar	July 2008	35,782	\$350		X		
<b>Sacramento County</b>							
Elk Grove	September 2004	171,059	\$270	X			
Rancho Cordova	February 2005	73,872	\$287	X			
Sacramento (City)	March 2004	493,025	\$300	X			X
Sacramento County	May 2004	584,729	\$324	X	X		
<b>San Benito County</b>							
Hollister	May 2006	36,677	\$269	X			X
<b>San Diego County</b>							
El Cajon	June 2004	102,803	\$675				X
San Marcos	July 2016	94,042	\$190	X			
Solana Beach	July 2009	13,527	\$110 **				X
Vista	May 2005	101,797	\$250	X			
<b>San Francisco County</b>							
San Francisco	November 2003	874,228	\$175 **	X	X		
<b>San Luis Obispo County</b>							
Arroyo Grande	February 2005	17,736	\$208	X			
Grover Beach	September 2005	13,438	\$224	X			
San Luis Obispo (City)	August 2003	46,724	\$278	X			
San Luis Obispo County	October 2008	120,549	\$342	X			

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
<b>San Mateo County</b>							
<b>Pacifica</b>	<b>February 2008</b>	<b>38,124</b>	<b>\$300</b>	<b>X</b>			<b>X</b>
<b>Santa Barbara County</b>							
<b>Carpinteria</b>	<b>April 2013</b>	<b>13,943</b>	<b>\$379</b>	<b>X</b>	<b>X</b>		
<b>Goleta</b>	<b>May 2014</b>	<b>31,760</b>	<b>\$534</b>	<b>X</b>	<b>X</b>		
<b>Santa Barbara County</b>	<b>November 2010</b>	<b>143,439</b>	<b>\$409*</b>	<b>X</b>	<b>X</b>		
<b>Santa Clara County</b>							
<b>Campbell</b>	<b>December 2012</b>	<b>42,726</b>	<b>\$51</b>	<b>X</b>			
<b>Gilroy</b>	<b>November 2014</b>	<b>55,936</b>	<b>\$100</b>	<b>X</b>			
<b>Los Gatos</b>	<b>May 2017</b>	<b>31,314</b>	<b>TBD</b>			<b>X</b>	
<b>Morgan Hill</b>	<b>April 2014</b>	<b>44,145</b>	<b>\$125</b>				
<b>Santa Clara County</b>	<b>November 2010</b>	<b>87,764</b>	<b>\$425</b>	<b>X</b>	<b>X</b>		
<b>Saratoga</b>	<b>June 2015</b>	<b>30,569</b>	<b>\$50*</b>	<b>X</b>			<b>X</b>
<b>Santa Cruz County</b>							
<b>Santa Cruz (City)</b>	<b>October 2012</b>	<b>65,070</b>	<b>\$425</b>	<b>X</b>			
<b>Santa Cruz County</b>	<b>April 2011</b>	<b>136,193</b>	<b>\$318</b>	<b>X</b>	<b>X</b>		
<b>Scotts Valley</b>	<b>December 2015</b>	<b>12,163</b>	<b>\$150</b>	<b>X</b>			
<b>Watsonville</b>	<b>October 2012</b>	<b>53,015</b>	<b>\$255-\$382</b>				<b>X</b>
<b>Sonoma County</b>							
<b>Healdsburg</b>	<b>November 2014</b>	<b>11,800</b>	<b>\$445</b>	<b>X</b>			
<b>Sonoma</b>	<b>June 2015</b>	<b>10,989</b>	<b>\$246</b>	<b>X</b>			
<b>Sonoma County</b>	<b>April 2016</b>	<b>151,371</b>	<b>\$350</b>		<b>X</b>		
<b>Stanislaus County</b>							
<b>Riverbank</b>	<b>July 2010</b>	<b>24,610</b>	<b>\$25-\$200</b>	<b>X</b>			<b>X</b>
<b>Ventura County</b>							
<b>Oxnard</b>	<b>February 2012</b>	<b>207,772</b>	<b>\$51*</b>				<b>X</b>
<b>Yolo County</b>							
<b>Davis</b>	<b>August 2007</b>	<b>68,740</b>	<b>\$344</b>		<b>X</b>		<b>X</b>
<b>Winters</b>	<b>January 2016</b>	<b>7,255</b>	<b>\$344</b>		<b>X</b>		<b>X</b>
<b>Woodland</b>	<b>June 2015</b>	<b>59,616</b>	<b>\$360</b>				<b>X</b>
<b>Yolo County</b>	<b>May 2006</b>	<b>30,122</b>	<b>\$344</b>		<b>X</b>		<b>X</b>

\*City or County fee does not fully cover administration and enforcement of the tobacco retailer license. Rather, the fee is supplemented with another stable source of funds, such as Master Settlement Agreement (MSA) funds or general funds.

\*\* Fees may have additional restrictions, charges or may be combined with another fee.

Sources: Population figures are from California Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — Jan. 1, 2016 and 2017.

# ATTACHMENT - E

9/4/17

## California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Intent of Policy	Products Covered by Policy	Minors Excluded	Effective Date	Acquisition	Notes	Enforcement	Compliance
<b>Berkeley</b> Municipal Code Chapter 9.80	Prohibits the sale of flavored tobacco products, including menthol cigarettes, within a 600 foot buffer zone of a school (public and private K-12, with at least 25 students enrolled)	All Flavored tobacco products, including e-cigarettes and menthol cigarettes	Yes	Adopted: September 2015 Effective: January 2017	Only applies to retailers within 600 feet of schools Medical cannabis dispensaries are not required to have a tobacco retail license (TRL) to sell electronic smoking devices (ESDs) or other tobacco paraphernalia if not accompanied by any tobacco product	No new TRLs may be issued to a pharmacy or renewed by a pharmacy No new TRLs may be issued within 600 feet of school	Environmental Health staff is responsible for enforcement Upon a finding by the City of a license violation within any five-year period, the license may be suspended for up to 30 days/1 <sup>st</sup> violation, 90 days/2 <sup>nd</sup> violation, 1 year/3 <sup>rd</sup> violation, and revoked upon 4 <sup>th</sup> violation	No
<b>Contra Costa County</b> Ordinance No. 2017-01	Prohibits the sale of flavored tobacco products, including menthol cigarettes, within 1,000 feet of schools, parks, playgrounds and libraries in the unincorporated areas of the county	All Flavored tobacco products, including e-cigarettes and menthol cigarettes	Yes	Adopted: July 18, 2017 Effective: August 17, 2017	Only applies to retailers within 1,000 feet of schools, parks, playgrounds and libraries	Part of a larger set of restrictions on tobacco sales and retailers in the unincorporated areas of the county, which also includes: <ul style="list-style-type: none"> <li>A prohibition on the sale of all flavored tobacco products, including menthol cigarettes, within 1,000 feet of schools, parks, playgrounds and libraries</li> <li>A prohibition on the sale of tobacco products in pharmacies</li> <li>A minimum pack size of 10 for little cigars and cigarillos, unless the sales price of one cigar is over \$5</li> <li>No new tobacco retail licenses will be granted to businesses located within 1,000 feet of schools, parks playgrounds or libraries, or within 500 feet of another business that sells tobacco</li> <li>A cap on the total number of tobacco retailers</li> <li>A requirement that tobacco retailers comply with storefront signage laws and drug paraphernalia laws under the Tobacco Retailer License</li> </ul>	A tobacco retailer's license may be suspended for any violation of the ordinance A tobacco retailers license may be suspended for up to 30 days for a 1 <sup>st</sup> violation, up to 90 days for a 2 <sup>nd</sup> violation that occurs within five years after the first violation, and for up to one year for a 3 <sup>rd</sup> violation and for each subsequent violation that occurs within five years after the first violation	No

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Type of Policy	Products Covered by Policy	Menthol Included	Effective Date	Notes	Enforcement	Compliance
El Cerrito Ordinance No. 2015-08	Prohibits the sale of all flavored non-cigarette tobacco products, including menthol non-cigarette tobacco products, within the city limits	All flavored non-cigarette tobacco products, including e-cigarettes, including menthol non-cigarette tobacco products (excludes menthol cigarettes)	Yes (only for non-tobacco products)	Adopted: October 2015 Effective: January 1, 2018	Existing retailers have a two-year grace period to comply with the ordinance  No new license may be issued to authorize tobacco retailing within five hundred (500) feet of schools, youth sensitive locations (parks and playgrounds, libraries), residential zones, or other tobacco retailers. Tobacco retailers already in operation are exempt.  Single cigar sales prohibited, package of cigars must have at least 5 cigars (except single cigars over \$5)  Tobacco samples & coupon prohibited (except as allowed in adult-only businesses per state and federal law)  Self-service displays of tobacco products prohibited  Hookah lounges, cigar lounges, vape shops, or similar establishments are prohibited within the city  New tobacco retailers may not operate as a "Significant Tobacco Retail Establishment" (use over 20% of the store display area for or derive over 50% of gross sales receipts from tobacco products or smoking paraphernalia); existing tobacco retailers may seek an exception  *There shall be a presumption that a tobacco retailer in possession of four (4) or more flavored tobacco products, which shall include 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"	Required TRL has a \$485 initial fee and a \$439 annual renewal fee  The annual license fee is intended to cover the actual costs for the City to conduct compliance checks and enforcement operations, issue annual license and administer the program overall. The first violation is a suspension of sales privileges for 10 days  Compliance monitored and enforced by the City's Community Development Department, in conjunction with the El Cerrito Police Department. Compliance checks conducted at least once every 12 months  Community Development Director, Chief of Police has right to enter and inspect tobacco retailers  TRL may be suspended or revoked accordingly for violations within a 5 year period: 10 days for 1 <sup>st</sup> violation, 30 days for 2 <sup>nd</sup> violation; 60 days for 3 <sup>rd</sup> violation; additional penalties for selling tobacco at retail without a valid TRL  Penalty of \$250-\$1,000 fine per violation	Existing establishments within a certain distance of schools, youth sensitive areas and other tobacco retailers are allowed to continue to operate but they must comply with all other TRL requirements. The sale of Flavored Tobacco Products are prohibited citywide though the City's Tobacco Retailer Licensing Ordinance

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Individual	Effective Date	Exemption	Notes	Enforcement	Compliance
<p><b>Hayward</b> Municipal Code, Sec. 16-1.2730  See also Frequently Asked Questions found here</p>	<p>Prohibits the sale of flavored tobacco products within a 500-foot radius of schools for new tobacco retailers (established after the passage of this policy)</p>	<p>All flavored non-cigarette tobacco products, including e-cigarettes and menthol non-cigarette tobacco products (excludes menthol cigarettes)</p>	<p>Yes (only for non-tobacco products)</p>	<p>Adopted: July 1, 2014 Effective: August 1, 2014</p>	<p>Menthol cigarettes are not included in restrictions. Retailers that sold products before provisions took effect are exempt. Restrictions only apply to retailers within 500 feet of school and do not apply to existing retailers</p>	<p>Prohibits sale of single cigars under \$5 or cigar packages containing fewer than 5 cigars No new tobacco retailers or new sales of flavored tobacco within 500 feet of a public or private K-12 school Vapor bars, lounges, smoking device bars and electronic smoking device lounges, and hookah bars and lounges are prohibited in all zoning districts</p>	<p>Regulations are enforced by the City's Planning Director, in conjunction with the City's Code Enforcement Division and the Hayward Police Department  The Code Enforcement Supervisor will conduct a compliance check visit to each Tobacco Retail Sales Establishment at least once per 12 month period  Any Tobacco Retail Sales Establishment that violates regulations in ordinance 3 times within a 3-year period shall be subject to revocation of its Tobacco Retail License and/or its conditional use permit</p>	<p>Yes- Retailers selling flavored tobacco products prior to the ordinance effective date are exempt</p>
<p><b>Los Gatos</b> Ordinance No. 2759</p>	<p>Limits the sale of flavored tobacco products, including menthol tobacco products and cigarettes, to adult-only tobacco stores</p>	<p>All flavored tobacco products, including e-cigarettes and menthol cigarettes</p>	<p>Yes</p>	<p>Adopted: May, 16 2017 Effective: January 1, 2018</p>	<p>Revised ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors, do not sell food or beverages, and post a sign outside saying that minors are prohibited</p>	<p>TRL language is a replica of the Santa Clara County TRL Prohibits the sale or transfer of tobacco products to anyone under the age of 21 (no exemption for military personnel) Prohibits the sale of tobacco products in pharmacies Prohibits new tobacco retailing within 1,000 feet of a school Prohibits any new tobacco retailers within 500 feet of another tobacco retailer</p>	<p>Compliance will be monitored by the Town or its Designee; a peace officer may enforce the provisions in this policy  The Town or Designee will check each retailer at least one per 12-month period  For any violation of the TRL within a 12-month period, fines include: a fine not to exceed \$100 for a first violation; a fine not to exceed \$200 for a second violation; a fine not to exceed \$500 for each additional violation  For any violation of the TRL within a 24-month period, permit suspension include: permit suspension for up to 30 calendar days for a first violation; permit suspension for up to 90 calendar days for a second violation; permit suspension for up to one year for each additional violation</p>	<p>Yes; buffer zone restrictions do not apply to retailers operating as of specific dates (retailers of tobacco products operating prior to January 2011 and retailers of electronic smoking devices operating prior to August 2014 exempted)</p>

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Percent of Policy	Products Covered by Policy	Member Included	Effective Date	Examples	Notes	Enforcement	Compliance
<p><b>Manhattan Beach</b> Ordinance No. 15-00230</p>	<p>Limits the sale of flavored tobacco (with the exception of menthol) to adult-only tobacco stores</p>	<p>All flavored non-cigarette tobacco products, including e-cigarettes (menthol excluded)</p>	<p>No</p>	<p>Adopted: December 2015 Effective: January 1, 2016</p>	<p>Flavored tobacco products may still be sold in adult-only tobacco stores</p>	<p>Self-service displays prohibited, except for ESDs sold by 1) a retailer that primarily sells tobacco products and/or ESDs, 2) generates over 60% of its gross revenues annually from the sale of tobacco products, tobacco paraphernalia, or ESDs, 3) does not allow persons under 18 to enter the premises, 4) does not sell alcoholic beverages or food for consumption on the premises, and 5) posts a sign outside the establishment that informs the public that persons under 18 are prohibited from entering  No tobacco retailer permit may be issued within 500 feet of a school or an existing retailer</p>	<p>The City will check each retailer at least once per 12-month period  The retail permit may be revoked or suspended for two or more violations within a 36-month period  The City will not issue or renew a retailer permit until all fees for license are paid</p>	<p>No</p>
<p><b>Oakland</b> Ordinance No. TBD</p>	<p>Limits the sale of flavored tobacco to adult-only tobacco stores</p>	<p>All flavored non-cigarette tobacco products, including e-cigarettes and menthol flavored tobacco products (including cigarettes)</p>	<p>Yes</p>	<p>Adopted: TBD Effective: July 1, 2018</p>	<p>Flavored tobacco products may still be sold in adult-only tobacco stores</p>	<p>An amendment allows clerks aged 18 and older to sell tobacco  Tobacco retailers may not sell tobacco products at a discount less than full retail price, including honoring or redeeming coupons</p>	<p>The City designates the Department to enforce the provisions of this Ordinance  A. After a first alleged violation of this Chapter at a location within any sixty-month (60) period:  1. an agreement to stop acting as a Tobacco Retailer for at least one (1) day; 2. a settlement payment to the City of at least one thousand dollars (\$1,000); and 3. an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations  B. After a second alleged violation of this Chapter at a location within any sixty-month (60) period:  1. an agreement to stop acting as a Tobacco Retailer for at least ten (10) days; 2. a settlement payment to the City of at least five thousand dollars (\$5,000); and 3. an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.</p>	<p>No</p>



California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Essence of Policy	Products Covered by Policy	Menthol Included	Effective Date	Exemptions	Notes	Enforcement	Compliance
<b>Novato</b> Ordinance No. 1613	Prohibits the sale of all flavored tobacco (with the exception of menthol) products, including marijuana, within the city limits	All flavored tobacco products including e-cigarettes and marijuana (menthol excluded)	No	First adopted: January 31, 2017 Effective: January 1, 2018	The Tobacco product consists of: 1) a package of cigars containing at least 5 cigars 2) a single cigar for which the retail price exceeds five dollars 3) pipe tobacco 4) a package of chewing tobacco or snuff containing at least five units or more	Minimum pack size requirements prohibit the sale of single cigars, a package of cigars containing fewer than five cigars, or any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer  No pharmacies may sell tobacco products	Compliance will be monitored by the Department.  Any peace officer may enforce the penal provisions of the ordinance  The Department may work with Marin County Tobacco Program to inspect each tobacco retailer at least one time per 12 month period  Penalties for a violation within any 60-month period include a 30-day license suspension for a first violation, a 90-day suspension for a second violation, a one-year suspension for a third violation, and the license will be revoked after four or more violations	No
<b>San Francisco</b> Ordinance No. 140-17	Prohibits the sale of all flavored tobacco products, including menthol cigarettes, within the county limits	All flavored tobacco products, including e-cigarettes and menthol cigarettes	Yes	Adopted: June 27, 2017 Effective: April 1, 2018	None	This policy is an amendment of the Health Code, Article 19Q, not connect to a tobacco retail license  A tobacco product is determined to have a Characterizing Flavor if it has the presence of "a distinguishable taste or aroma or both, other than the taste or aroma or tobacco, imparted by the tobacco product or any byproduct produced by the tobacco product"  There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has characterizing flavor.	The Director, or his or her designee, may enforce Sections 19Q.3 and 19Q.4 pursuant to Articles 19 et seq. of the Health Code, including but not limited to Article 19H.  Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19Q.3 (Sale or Distribution of Flavored Tobacco Products Prohibited) or 19Q.4, the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.	No
<b>Santa Clara County</b> Ordinance No. 152-300-383 Revised Ordinance 300 903 effective July 2017	Limits the sale of flavored tobacco products, including menthol tobacco products and cigarettes, to adult-only tobacco shops in the unincorporated areas of the County	All flavored tobacco products, including e-cigarettes and menthol cigarettes	Yes (revised in 2016 to include menthol)	First adopted: June 2015 Effective: January 1, 2016 Revised version effective: July 2017	Revised ordinance exempts adult-only tobacco stores which generate over 60% of gross income from tobacco sales and tobacco paraphernalia, do not allow minors, do not sell food or beverages, and post a sign outside saying that minors are prohibited	No TRULs may be issued to a retailer containing a pharmacy, within 1,000 feet of a school (existing retailers exempt), or located within 500 feet of another retailer (existing retailers exempt)	Department of Environmental Health, the Department or other designated person shall check each retailer at least once per 12 month period  Penalties for violations within a 12-month period not to exceed \$1000/1 <sup>st</sup> violation, \$3000/2 <sup>nd</sup> violation; \$5000/additional violation, license may furthermore be suspended for violations within any 24-month period: 1 <sup>st</sup> /30 days, 2 <sup>nd</sup> /90 day's, additional violations/up to one year	Yes; buffer zone restrictions do not apply to retailers operating as of specific dates (retailers of tobacco products operating prior to January 2011 and retailers of electronic smoking devices operating prior to August 2014 exempted)

California Flavored Tobacco and Menthol Cigarette Policy Matrix

Jurisdiction	Extent of Policy	Products Covered by Policy	Menthol Included	Effective Date	Enactments	Notes	Enforcement	Grandfathering
<b>Sonoma Municipal Code Chapter 7.25</b>	Prohibits the sale of all flavored tobacco (with the exception of menthol) products within the city limits	All flavored non-cigarette tobacco products, including e-cigarettes (menthol excluded)	No	Adopted: April 2015 Effective: September 2015	Products with tobacco and menthol flavors  Pipe tobacco  Cigars, chewing tobacco or snuff in packages containing 5 or more units  Single cigars for which the price exceeds \$5	Sale of single cigars under \$5 and cigars in packages of fewer than 5 cigars prohibited  A list of locations eligible to apply for a tobacco retailer license is provided in the ordinance; only the specific addresses on the list may be issued a license	Decoy enforcement operations conducted annually by Sonoma Police department  Code Enforcement Officer from Planning Department provides spot checks  Citations of violations processed by administrative hearing officer or the County Court system, depending on the type of violation  Penalties range from \$250-\$1000 and suspension/revocation of license if found guilty within a 60-month period (1 <sup>st</sup> violation: 30 day suspension; 2 <sup>nd</sup> : 60 days; 3 <sup>rd</sup> : 1 year; 4 <sup>th</sup> : license revoked)	No
<b>West Hollywood Ordinance No. 16-991</b>	Prohibits the sale of all tobacco products (including flavored tobacco) within 600 feet of a youth-populated area (school, youth center, child-care facility, etc.)	All tobacco products, other than flavored cigarettes, within the buffer zone	Yes	Adopted: October 2016 Effective: November 2016	Tobacco retailers operating prior to May 1, 2016, adult-only facilities, and florets that sell tobacco products as part of incidental sales on the premises	Flavored tobacco products, including menthol, included in the definition of "tobacco products"; buffer zone prohibition not specified for flavored tobacco but for all "tobacco retailers"  No new tobacco retailer licenses may be issued for tobacco retailers within 600 feet of a school  No new licenses may be issued for tobacco product shops within 1000 feet of a youth-populated area  Little cigars must be sold in pack size of at least 20	Any member of the West Hollywood Code Compliance Division, Alcohol Beverage Control Department, and the Los Angeles County Sheriff's Department, or their designees are authorized to monitor and enforce the provision  Enforcement Officials must inspect each tobacco retailer at least twice per 12 month period	Yes, existing retailers operating prior to May 1, 2016 are grandfathered regardless of any change or transfer of ownership of the business
<b>Yolo County Ordinance No. 1474</b>	Prohibits the sale of all flavored tobacco products, including menthol cigarettes, within the unincorporated areas of the County	All Flavored tobacco products, including e-cigarettes and menthol cigarettes	Yes	Adopted: October 2016 Effective: May 1, 2017	None	Only existing tobacco retailers are eligible for a tobacco license	Yolo County District Attorney in charge of litigations for any violations of the TRL (including selling flavored tobacco or menthol products)  For any violation of TRL, penalties for violations within a 3 year period include: 1 <sup>st</sup> violation license revoked for 10 days, 2 <sup>nd</sup> violation license revoked for 90 days, 3 <sup>rd</sup> violation license revoked for 1 year	No



## ATTACHMENT - F

**ChangeLab Solutions**  
Law & policy innovation for the common good.

# Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products

Updated June 2017  
(Originally published January 2014)

Developed by ChangeLab Solutions

This material was made possible by funds received from Grant Number 14-10214 with the California Department of Public Health, California Tobacco Control Program.

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## Introduction and Report

This Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products (Model Ordinance) is one potential policy intervention to reduce the consumption of tobacco products. It is based on ChangeLab Solutions' legal research and analysis, as well as the research and evidence base regarding consumption of tobacco products and the rising popularity of flavored tobacco products. The Model Ordinance should complement other policy and programmatic efforts to reduce tobacco use.

This version of the Model Ordinance (revised in June 2017) includes the following changes from the previous version: (1) It prohibits the sale of flavored cigarettes (including menthol cigarettes), and (2) it provides an optional provision to grandfather certain businesses, which exempts those businesses from complying with the flavored tobacco prohibition for a limited period of time.

The Introduction and Report section summarizes our nonpartisan analysis of the health, equity, and policy issues related to the use and sale of menthol cigarettes and other flavored tobacco products, and it outlines why it is important to restrict the sale of such products. It should be distributed broadly to the public and local groups to help people understand the relevant data and the purpose of developing a policy restricting the sale of menthol cigarettes and other flavored tobacco products.

This Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data. It allows readers to draw their own conclusions about the merits of this Model Ordinance.

The Model Ordinance offers a variety of options. In some instances, blanks (e.g., [ \_\_\_\_ ]) prompt you to customize the language to fit your community's needs. In other cases, the ordinance offers you a choice of options (e.g., [ choice one / choice two ]). Some of the options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community's existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

## Background

In 2009, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) banned the manufacture of flavored cigarettes. However, the law contains an exception for menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco. Moreover, California doesn't have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.



Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth.<sup>1</sup> These products also pose significant barriers to achieving health equity. Thanks to tobacco companies’ marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.

This Model Ordinance restricts the sale of all flavored tobacco products, including the following:

- (1) Flavored cigarettes already prohibited by the Tobacco Control Act;
- (2) Menthol cigarettes;
- (3) Flavored other tobacco products (OTPs), such as cigars, little cigars, cigarillos, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices (ESDs), and the solutions used in ESDs; and
- (4) Flavored components, parts, and accessories, such as flavored rolling papers, filters, and blunt wraps.

## Menthol Cigarettes

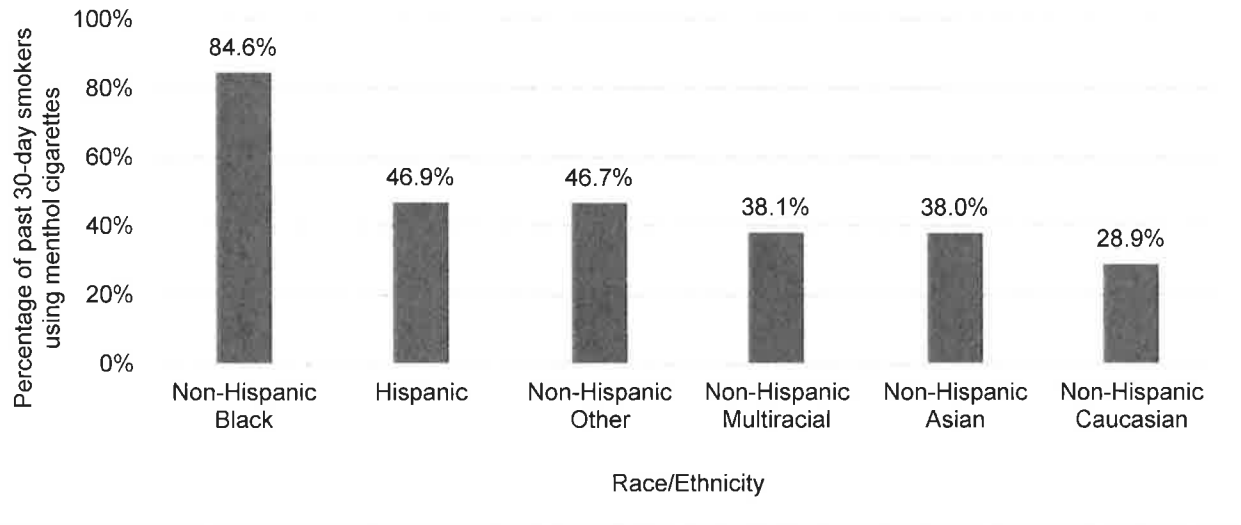
For decades, tobacco companies have added menthol—a crisp, minty flavoring—to their products. By adding menthol to cigarettes, tobacco companies mask the natural harshness and taste of tobacco. The minty flavor makes tobacco products more mild, and therefore easier to use and more appealing to youth and new users.<sup>2,3</sup>

Tobacco companies have manipulated the amount of menthol in cigarettes to encourage many people—particularly youth and populations targeted by the tobacco industry—to start and continue using tobacco.<sup>4,1</sup> Smoking menthol cigarettes is associated with increased use of cigars and smokeless tobacco products,<sup>5</sup> and it reduces the likelihood of successfully quitting smoking.<sup>3,6</sup> Indeed, despite decreases in overall cigarette use in recent years, the proportion of cigarette smokers who use menthol cigarettes continues to rise.<sup>5</sup> In 2014, more youth smokers used menthol cigarettes than non-mentholated cigarettes.<sup>5</sup> Moreover, a 2017 study reported an increase in menthol cigarette use among youth cigarette smokers following the 2009 federal ban on flavored non-menthol cigarettes.<sup>7</sup>

Scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the US Food and Drug Administration (FDA) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire US population, and especially among youth, African Americans,<sup>3</sup> and possibly Hispanic and Latino populations.<sup>6</sup> Indeed, these groups bear the burden of menthol cigarette use: 84.6% of non-Hispanic Black smokers in the US reported smoking menthol cigarettes in the last month, in addition to 46.9% of Hispanic smokers, 38.1% of non-Hispanic multiracial smokers, 38% of non-Hispanic Asian smokers, and 46.7% of other smokers with non-Hispanic, non-Caucasian racial/ethnic backgrounds.<sup>5</sup> Members of LGBTQ communities and young

adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use.<sup>8,9</sup>

**Use of Menthol Cigarettes Among Past 30-Day Smokers in the USA, 2012-2014<sup>5</sup>**



Tobacco companies have helped create and exacerbate these disparities. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to communities of color and youth.<sup>10,11</sup> One analysis of cigarette advertising, promotions, and pack prices at stores 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 menthol cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.”<sup>12</sup> There was no such association found for non-mentholated cigarettes.<sup>12</sup> Similarly, a New York study found that promotions that reduce the price of menthol cigarettes are disproportionately targeted to youth.<sup>13</sup>

## Other Flavored Tobacco Products

In addition to selling menthol cigarettes, tobacco companies have developed flavored OTPs that have the same youth-friendly characteristics as the banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.<sup>14</sup> In fact, cigars follow only ESDs and cigarettes as the third most common form of tobacco used by youth.<sup>15</sup> Smokeless tobacco products, including chewing tobacco, snuff, and snus, come in flavors such as mint, wintergreen, berry, cherry, and apple<sup>16</sup> to mask the harsh taste of tobacco.<sup>14,17</sup> Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.<sup>18</sup> Nicotine solutions, also known as e-liquids and which are consumed via ESDs such as electronic



cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.<sup>19</sup>

Consumption of flavored tobacco products has grown in recent years. From 1995 to 2008, sales of little cigars increased by 316%,<sup>20</sup> and in 2014, “flavored cigars accounted for more than half of all cigar sales (53.3%).”<sup>21</sup> A 2009-2010 survey found that 42.9% of adult cigar smokers used flavored cigars,<sup>2</sup> and a 2014 survey found that 66.4% of people who smoked little cigars or cigarillos used flavored products.<sup>22</sup> In 2014, nearly two-thirds of US middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored ESD within the past 30 days.<sup>23</sup> Moreover, a 2013-2014 survey found higher rates of flavored cigar use among vulnerable populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”<sup>24</sup>

Like menthol, flavorings such as chocolate or apple help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.<sup>2</sup> In fact, a 2013-2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”<sup>25,26</sup> Policy interventions that target youth tobacco use are particularly critical because most individuals start using tobacco as minors or young adults.<sup>27</sup> In California, 64% of smokers start smoking by age 18, and 96% start smoking by age 26.<sup>28</sup> Compared with individuals who start smoking later in life, individuals who start smoking at a young age are at increased risk for severe addiction to nicotine.<sup>14</sup>

OTPs pose a threat to public health for several reasons. One major concern is that many users, especially young people, assume that OTPs do not pose significant health risks. Research shows that cigar smokers have misconceptions about the safety of cigars; for example, they often believe cigars are less harmful and less addictive than cigarettes.<sup>20</sup> Studies have found that young people believe smoking hookah is safer than smoking cigarettes, and incorrectly believe that hookah smoke is less toxic than cigarette smoke.<sup>29,30</sup> Moreover, 58.8% of 12th-grade students report that they *don't* believe regular use of smokeless tobacco presents a great risk of harm.<sup>27</sup> The misperception among many young people that OTPs do not present significant health risks, coupled with the fact that many OTPs are flavored, may contribute to increased use of these products among young people.

Despite these misconceptions, the FDA has stated that “[a]ll tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products.”<sup>31</sup> Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophagus cancers.<sup>32</sup> Hookah use has been associated with lung cancer, respiratory illness, and periodontal disease.<sup>33</sup> Smokeless tobacco contains at least 28 carcinogens, and there is strong evidence that users have an increased risk of developing oral cancers.<sup>14</sup> The Surgeon General has reported that e-cigarettes “contain harmful ingredients that are dangerous to youth” and that e-cigarette aerosol “can contain



harmful and potentially harmful constituents.”<sup>34</sup> Moreover, multiple studies have confirmed that e-cigarette vapor contains toxic substances.<sup>35-37</sup> To reduce the health impacts of menthol cigarette use and OTP use, communities can adopt policy interventions to regulate tobacco industry efforts that encourage youth, low-income populations, and communities of color to use mentholated and flavored products.

## Considerations When Regulating Flavored Tobacco Products

A combination of strategies can protect youth from using tobacco and reduce industry-driven health inequities. Many communities are exploring programmatic and policy approaches to address the chronic health conditions associated with tobacco use. Some viable approaches are requiring local tobacco retailer licenses, limiting tobacco retailer density, setting minimum package sizes, and restricting the distribution of free or low-cost tobacco products. ChangeLab Solutions has developed this Model Ordinance as one tool to help communities reduce tobacco use, particularly among young people and vulnerable populations.

Policies that regulate the sale of flavored tobacco products can raise tensions between the government’s duty to protect individual liberty and its duty to promote and protect public health and well-being. Tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth. However, despite youth access laws, young people continue to buy and use tobacco products. Indeed, overall youth tobacco use didn’t change significantly between 2011 and 2015, with a 2015 survey reporting that nearly one-third (31.4%) of high school students used cigarettes, cigars, smokeless tobacco, or ESDs in the 30 days preceding the survey.<sup>15</sup> In particular, young people are using a variety of OTPs:

- In 2015, 10.3% of high school students reported using cigars, cigarillos, or little cigars.<sup>15</sup>
- Youth hookah use increased more than 75% from 2011 to 2015, and youth ESD use increased more than tenfold during the same period.<sup>38</sup>
- The percentage of high school students using smokeless tobacco products increased from 6.4% in 2012<sup>39</sup> to 7.3% in 2015.<sup>15</sup>
- A significant percentage of youth cigarette smokers concurrently use OTPs, increasing their risk for addiction and other health problems.<sup>14</sup>
- In a 2013-2014 survey, more than two-thirds of youth who used a non-cigarette tobacco product within the past 30 days reported doing so “because they come in flavors I like.”<sup>26</sup>

Due to industry practices, individuals from communities of color, particularly young adults of color, are also more likely to use OTPs, such as little cigars.<sup>40</sup> In addition, a study found that daily menthol cigarette users are significantly more likely than occasional, non-menthol smokers to use flavored little cigars and cigarillos.<sup>41</sup> African Americans and other communities of color are burdened with

disproportionately high rates of menthol cigarette use; this data, coupled with the findings from the study mentioned above, suggest that these populations are also more likely to use flavored little cigars and cigarillos. Many of these disparities are likely the result of tobacco companies' efforts to make these products more available, more heavily advertised, and cheaper in African American communities.<sup>42</sup> Accordingly, interventions such as a flavored tobacco restriction, may be necessary to regulate the marketing and sale of flavored tobacco products, including menthol cigarettes, to youth and in communities of color.

Tobacco industry representatives have asserted that laws restricting the sale of flavored tobacco products overreach because they strip adults of the ability to buy lawful flavored products that they may prefer to non-flavored products. Additionally, retailer associations have asserted that laws restricting flavored tobacco products will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by flavored tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation restricts the ability of adults to purchase these products or results in reduced tobacco sales for local retailers.

Congress grappled with this issue in enacting the Tobacco Control Act. They ultimately determined that the government couldn't meet the Act's goals of reducing the use of, dependence on, and social costs associated with tobacco products by allowing unrestrained access to all tobacco products. For that reason, Congress banned flavored cigarettes except menthol-flavored cigarettes (eg, fruit- and candy-flavored cigarettes), finding that a ban was appropriate given the strong youth appeal of these products.<sup>43</sup>

Similarly, the US Court of Appeals for the Second Circuit found that New York City's flavored tobacco law advanced the Tobacco Control Act's goals of reducing the use of tobacco products and the harms resulting from such use.<sup>44</sup> Restricting the sale of flavored tobacco products is also consistent with the California legislature's decision in 2001 to ban the sale of *bidis*—hand-rolled filterless cigarettes that were sold in a variety of candy flavors. Although tobacco industry groups argued that the California bill overreached by prohibiting bidi sales to adults, state lawmakers decided to ban bidis based on the need to “reduce youth access to a particularly harmful and addictive form of tobacco.”<sup>45</sup>

## Legal Issues

Below we discuss some of the key legal issues associated with this Model Ordinance.

### Federal Preemption

Preemption is a legal doctrine that provides that a higher level of government may limit, or even eliminate, the power of a lower level of government to regulate a certain issue. Under the US Constitution's “Supremacy Clause,” federal law governs over state or local law. So, if a state or local law conflicts with a federal law, the federal law trumps the lower-level law.

Tobacco industry groups and manufacturers have argued that the Tobacco Control Act, which prohibits the manufacture of flavored cigarettes (except menthol), preempts local regulation of flavored tobacco products. However, US cities have implemented ordinances restricting the sale of flavored tobacco products, including menthol cigarettes and/or flavored OTPs, and these ordinances have survived preemption challenges.

In 2009, New York City passed an ordinance restricting the sale of flavored OTPs. A smokeless tobacco manufacturer filed a lawsuit arguing that the Tobacco Control Act preempts localities from passing their own laws regulating flavored tobacco products. An appellate court upheld the ordinance, finding that federal law did not preempt New York City's ordinance because the ordinance regulated *the sale* of tobacco products, not the manufacture of those products.<sup>44</sup>

In January 2012, Providence, RI, passed a similar law restricting the sale of flavored OTPs. Tobacco industry groups and manufacturers filed a lawsuit claiming that the Tobacco Control Act preempted the ordinance. A federal district court upheld the Providence law. The court found that the Tobacco Control Act does not preempt local laws related to the sale of tobacco products, such as Providence's ordinance restricting the sale of flavored OTPs. On September 30, 2013, the US Court of Appeals for the First Circuit affirmed the district court's decision.<sup>46</sup>

In December 2013, Chicago passed a law prohibiting the sale of all flavored tobacco products, including menthol cigarettes, within 500 feet of any school. A trade group sued Chicago over the law, claiming that the Tobacco Control Act preempted the ordinance. On June 29, 2015, a US District Court in Illinois upheld the law, finding that the Tobacco Control Act does not preempt local laws that restrict the sale of menthol cigarettes and flavored OTPs.<sup>47</sup>

Taken together, the decisions from Chicago, New York City, and Providence reaffirm the authority of state and local governments to enact laws regulating the sale of tobacco products and to adopt restrictions that are more stringent than federal law.

## First Amendment

The First Amendment of the US Constitution protects the right to freedom of speech. Courts have determined that advertising and marketing are forms of expressive conduct—they communicate information about products to consumers. Thus, advertising, or commercial speech, is considered a type of speech under the First Amendment. For this reason, advertising has some degree of protection against government regulation; laws that attempt to restrict marketing, promotional content, or similar types of communication may not be permissible.

Under this Model Ordinance, a tobacco product is presumed to be flavored and cannot be sold if the text or images on its labeling or packaging indicate that the product imparts a flavor, taste, or aroma other

than that of tobacco. In Providence, tobacco industry groups argued that a similar provision in the city's ordinance was a marketing restriction that implicated the First Amendment. The Providence ordinance provides that a public statement made by a manufacturer that a tobacco product has a characterizing flavor constitutes presumptive evidence that the product is a flavored tobacco product. A federal court rejected the industry's First Amendment argument, finding that the use of a public statement made by a manufacturer to determine whether a product is flavored does not amount to a prohibition against speech.

The court noted that the sale of a flavored tobacco product in Providence is illegal, regardless of whether the product is specifically described as a flavored tobacco product. In other words, the court found that manufacturers are still free to describe their products as having a characterizing flavor, even though their flavored tobacco products cannot be sold in Providence. Thus, challenges to flavored tobacco regulations on First Amendment grounds have not been successful thus far.

## Conclusion

Research has shown that cigarette and OTP use have serious health consequences. Young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes and OTPs. These products are considered “starter” products that help establish long-term tobacco use. Moreover, flavored tobacco products, particularly menthol cigarettes, pose significant barriers to achieving health equity. Thanks to tobacco companies' marketing efforts, communities of color, low-income populations, and LGBTQ communities are significantly more likely to use menthol cigarettes and disproportionately bear the burden of tobacco-related harm. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

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# AN ORDINANCE OF THE [ CITY / COUNTY ] OF [ \_\_\_\_ ] RESTRICTING THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AND AMENDING THE [ \_\_\_\_ ] MUNICIPAL CODE

The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_ ] does ordain as follows:

**COMMENT:** This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

## SECTION I. [ See **Appendix A: Findings** ]

**COMMENT:** A draft ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this legislation. The findings section is part of the ordinance and legislative record, and it contains information explaining the health and equity issues that the law would help address. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 22. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

**SECTION II.** [ Article / Section ] of the [ \_\_\_\_ ] Municipal Code is hereby amended to read as follows:

**Sec. [ \_\_\_\_ (\*1) ]. DEFINITIONS.** The following words and phrases, whenever used in this [ article / chapter ], shall have the meanings defined in this section unless the context clearly requires otherwise:

**COMMENT:** Some terms defined in this Model Ordinance may already be defined in the jurisdiction’s municipal code. Include only the definitions that are necessary, and review all definitions for consistency. For example, the definition of Tobacco Product below covers a broad range of tobacco products (including electronic smoking devices), and may be more expansive than an existing definition in the municipal code. In restricting the sale of flavored tobacco products, jurisdictions with an existing definition of Tobacco Product need to decide whether to use this Model Ordinance’s definition or rely on their current definition. A jurisdiction is allowed to use different definitions of Tobacco Product in separate sections of its municipal code. However, to avoid confusion, the jurisdiction should make clear which sections of the municipal code are governed by a particular definition.



- (a) “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.
- (b) “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

**COMMENT:** This definition of Flavored Tobacco Product includes cigarettes. Federal law already prohibits the manufacture of flavored cigarettes, but it excludes menthol cigarettes from its prohibition. This Model Ordinance is more restrictive than federal law because it prohibits both the sale of menthol cigarettes and the sale of other flavored tobacco products. Below are some examples of the types of products prohibited by this Model Ordinance.

- Menthol cigarettes, roll-your-own tobacco, and components (eg, menthol flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- All other flavored cigarettes, roll-your-own tobacco, and components (eg, flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- Flavored cigars and little cigars
- Flavored smokeless tobacco
- Flavored electronic smoking devices
- Flavored non-cigarette components, parts, and accessories (eg, flavored blunt wraps and flavored additives for e-liquids)

- (c) “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (d) “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.
- (e) “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.





- (f) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (g) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (h) “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;
  - (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
  - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

**COMMENT:** This definition of Tobacco Product is designed to cover a wide variety of tobacco products, including cigarettes, cigars, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices, and the solutions and component parts that are used in these devices. The definition includes electronic smoking devices with or without nicotine. The definition also includes any component, part, or accessory normally used with a Tobacco Product.

- (i) “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.

**Sec. [ \_\_\_\_ (\*2) ]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED**

- (a) It shall be a violation of this [ article / 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.

**COMMENT:** Some communities have created "buffer zones" by prohibiting the sale of flavored tobacco products within a specific distance of youth-populated areas, such as schools. For example, Berkeley, CA, and Chicago, IL prohibit the sale of flavored tobacco products, including menthol cigarettes, within 600 feet of any school and within 500 feet of any high school, respectively. Although these buffer zones are an important intervention, they're not comprehensive prohibitions on flavored tobacco product sales.

Communities can consider similar policies, but they should weigh the benefits and drawbacks of implementing a non-comprehensive flavored tobacco prohibition. A buffer zone approach may not provide the same public health benefits as a comprehensive, communitywide flavored tobacco restriction. Moreover, local jurisdictions that create buffer zones will likely face increased costs for implementation and potential enforcement challenges. For example, before a community can implement a buffer zone, it must conduct mapping surveys to determine the location of schools and tobacco retailers and measure the distances between them. Communities must routinely update the maps to reflect changes that affect where flavored tobacco products may be sold (eg, if a school opens, closes, or relocates). Developing and updating these maps may require significant resources.

Local jurisdictions must also educate tobacco retailers and the general public on how to determine whether a store is located within a buffer zone that prohibits the sale of flavored tobacco. This may include developing appropriate tools and resources for tobacco retailers to determine whether their store is within a buffer zone.

Despite these considerations, buffer zones remain a viable policy option for communities. If your community is interested in adopting a flavored tobacco product buffer zone, contact ChangeLab Solutions for assistance. This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

- (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.

-----OPTIONAL PROVISION-----

{ (d) A Tobacco Retailer lawfully operating as of the date this ordinance is adopted is exempt from subsection (a) for a period of up to [ 6 months ] from the effective date of this ordinance, provided that all of the following requirements are met:

- (1) Within [ thirty (30) days ] of the effective date of this ordinance, the Tobacco Retailer submits to the [ City Manager / County Manager ] written notice that it seeks temporary exemption from subsection (a) and documentation that demonstrates: (i) the Tobacco Retailer was lawfully operating as of the date this ordinance was adopted; (ii) [ seventy percent (70%) ] or more of gross sales receipts are derived from Tobacco Products, Tobacco Paraphernalia, or both, or [ fifty percent (50%) ] or more of completed sales transactions include Tobacco Products, Tobacco Paraphernalia, or both; and (iii) the amortization period afforded by the [ 6-month ] period for the effectiveness of the ordinance adopting this section is insufficient to allow the Tobacco Retailer to sell, return to the distributor or wholesaler, or otherwise obtain the benefit of, property which has no lawful use by virtue of the ordinance adopting this section. The submission shall include all information and documentation the [ City Manager / County Manager ] may request to determine the Tobacco Retailer's qualifications for this exemption.
- (2) The [ City Manager / County Manager ] determines the Tobacco Retailer meets the qualifications set forth in [ subsection (d)(1) ].
- (3) The Tobacco Retailer submits all information and documentation requested by the [ City Manager / County Manager ] to determine continued qualification for this exemption. This exemption to subsection (a) shall not apply if the [ City Manager / County Manager ] determines that the Tobacco Retailer no longer meets the qualifications set forth in [ subsection (d)(1) ].
- (4) The [ City Manager / County Manager ] shall offer the Tobacco Retailer an opportunity for an oral or paper hearing and render a written decision on the record of that hearing.



That decision shall be final as to the [ City / County ] and subject to judicial review pursuant to Code of Civil Procedure section 1094.5. ]

**COMMENT:** This Model Ordinance provides a 6-month delay between when a jurisdiction adopts the ordinance and when the flavored tobacco prohibition goes into effect (see "SECTION IV. Effective Date" on page 21). This delay provides all tobacco retailers with a 6-month period to sell their remaining inventory of flavored tobacco products. The delay also provides the local government with time to plan for implementation and enforcement.

The optional provision above (subsection (d)) temporarily grandfathers certain tobacco retailers, which exempts them from having to comply with the flavored tobacco prohibition in subsection (a) for an additional limited period of up to 6 months. Thus, a local jurisdiction that includes the optional subsection (d) above is granting certain tobacco retailers a period of 12 months in which to comply with the prohibition following the adoption of the ordinance (6 months is allowed for all tobacco retailers pursuant to SECTION IV on page 21, and an additional 6 months is allowed for certain tobacco retailers pursuant to subsection (d) above). The exemption in subsection (d) applies only to tobacco retailers that primarily sell tobacco products and/or tobacco paraphernalia, as specified above (we refer to these businesses informally as "significant tobacco retailers"). To qualify for the exemption in subsection (d), a retailer must meet the following requirements.

**Requirements to Qualify for the Exemption:**

- (1) The Tobacco Retailer submits a written notice indicating a request for temporary exemption and documentation that demonstrates the following:
  - (a) The Tobacco Retailer was lawfully operating on the date the ordinance was adopted;
  - (b) 70% or more of gross sales receipts are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both, or 50% or more of completed sales transactions are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both; and
  - (c) The amortization period (see explanation below) provided between the date of adoption and the effective date is insufficient to allow the Tobacco Retailer to sell or return its inventory of prohibited Flavored Tobacco Products.
- (2) The government determines the Tobacco Retailer meets these qualifications and grants it an additional 6 months to comply with the prohibition.

Importantly, this exemption lapses if at any time the government determines the tobacco retailer no longer meets these qualifications. The government's decision is not subject to an internal appeal, but it can be reviewed in court under the administrative mandamus statute.

Jurisdictions seeking the maximum public health impact from this Model Ordinance should not insert this optional provision. Many public health laws take effect immediately and apply to all existing businesses without exception. The findings in this Model Ordinance (page 22) explain how a flavored tobacco prohibition protects public health, and in particular, how it protects youth from the significant harms of tobacco use. Exempting businesses, even temporarily, can slow progress and undermine the benefits of this Model Ordinance.



### Takings

Sometimes government staff ask whether applying a prohibition on flavored tobacco sales to existing businesses is a taking. A taking is a restriction on private property—which, in this case, is flavored tobacco products—that is so burdensome that a court determines that the government must pay just compensation for the property (because the government has effectively “taken” the property). Whether a law amounts to a taking is case-specific—it depends on the business—and the burden of proof falls on the business. In most settings, allowing the regulated business a reasonable time (typically a few months) to amortize the value of any investment in property—selling any remaining flavored tobacco products, for instance—that cannot be used after the prohibition takes effect prevents a taking.

An amortization period gives certain existing businesses a period of time to do business as usual before they must make changes to comply with a new law. Amortization periods are constitutional ways for local governments to balance the public interest and any financial impact on a private business. These periods are often short, measured in months, not years. It is important to note that the financial impact is less severe for a business that sells many other products in addition to tobacco products (eg, convenience stores and grocery stores), and that inventory can be returned to the wholesaler or resold for retail sale outside the city or county adopting the prohibition. Moreover, the time between adoption of an ordinance and its effective date is sufficient to amortize minor investments in inventory and signage. For these reasons, the optional temporary grandfathering provision applies only to tobacco retailers that sell a significant amount of tobacco products and/or tobacco paraphernalia; these businesses may be most affected by a flavored tobacco prohibition. Nevertheless, a flavored tobacco prohibition does not require businesses to close, or even to stop selling all tobacco products. It is a reasonable restriction on a type of tobacco product that is particularly harmful, especially to youth. Examples of reasonable amortization periods in different contexts include the following.

- An amortization period of 1 to 4 years is sufficient for a billboard removal ordinance. *Metromedia, Inc. v. City of San Diego*, 28 Cal.3d 848, 882 (1980), reversed on other grounds, 453 U.S. 490 (1981).
- An amortization period of 32 months is sufficient to amortize a billboard. *People ex. rel. Department of Pub. Wks. v. Adco Advertisers*, 35 Cal.App.3d 507 (1979). (Note: Amortization is often litigated in the context of billboards.)
- An amortization period of 18 months is sufficient to terminate operation of an automobile wrecking yard. *People v. Gates*, 41 Cal. App. 3d 590 (1974).
- An amortization period of 20 months is sufficient to change or relocate an adult entertainment business. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004).
- An amortization period of 24 months is sufficient to terminate operation of a cement batching plant that invested \$98,000 (1950 dollars) in the business. *Livingston Rock & Gravel Co. v. Los Angeles County*, 43 Cal. 2d 121 (1954).

Notably, a federal district court upheld a San Francisco law prohibiting the sale of all tobacco products in pharmacies and requiring that pharmacies comply by the effective date of the ordinance. In other words, the law didn’t grant an amortization period. The court explained that



the ordinance “merely regulates the sale of tobacco products; it does not force Plaintiff to engage in a certain type of business.” The court further concluded that “although Plaintiff has alleged it has a vested property right in its [tobacco retailer] permits, it cannot overcome the fact that the enactment of the amended ordinance was a reasonable and permissible use of Defendants’ police power.” *Safeway Inc. v. City & Cty. of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).

-----END OPTIONAL PROVISION-----

**Sec. [ \_\_\_\_ (\*3) ]. ENFORCEMENT.**

- (a) The remedies provided by this [ article / chapter ] are cumulative and in addition to any other remedies available at law or in equity.

**COMMENT:** The subsections below offer a variety of enforcement options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency has the discretion to choose which enforcement tools to use in each case. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

The enforcement options included in this Model Ordinance penalize Tobacco Retailers who sell or offer to sell Flavored Tobacco Products. In other words, this Model Ordinance does *not* penalize individuals for purchasing, attempting to purchase, possessing, or using Flavored Tobacco Products. Well-enforced laws targeting retailers are more effective and provide greater public health benefits than laws penalizing users. Moreover, laws penalizing purchasers and users raise significant equity concerns because their enforcement often disproportionately affects communities of color.

Some communities face challenges in enforcing their Flavored Tobacco Product ordinances. For example, enforcement officials may have trouble determining when a Tobacco Product qualifies as a Flavored Tobacco Product, particularly when the packaging and marketing materials do not explicitly identify a Characterizing Flavor (eg, Tobacco Products using “concept flavors” like “Arctic” and “Lightning”). Communities should consider potential challenges and develop guidelines for staff enforcement. If your community is concerned about enforcement, please contact ChangeLab Solutions for assistance.

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

**COMMENT:** This provision outlines the civil fines for violations of the ordinance. It requires the



city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. Government Code section 36901.

(c) Violations of this [ article / chapter ] may, at the discretion of the [ City Prosecutor / District Attorney ], be prosecuted as infractions or misdemeanors when the interests of justice so require.

**COMMENT:** Sometimes called a “wobbler,” this provision affords the prosecuting attorney discretion to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or 6 months in a county jail). Alternatively, violations can be set as either an infraction or a misdemeanor in all circumstances. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.

**SECTION III. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The [ City Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_\_ ] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**COMMENT:** This is standard language. Often this “boilerplate” is found at the end of an ordinance, but its location is irrelevant.

**SECTION IV. EFFECTIVE DATE.** This Ordinance shall take effect and be in force from and after [ 6 months after date of enactment ].

**COMMENT:** This section specifies the effective date of the ordinance, and it should be tailored to give the enforcing agency adequate time to educate tobacco retailers and the general public. The agency should also use this time to determine enforcement protocols for flavored tobacco products. General law cities and counties in California must provide a minimum of 30 days between an ordinance's adoption and its effective date.

## Appendix A: Findings.

The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_\_ ] hereby finds and declares as follows:

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,<sup>1</sup> largely because these flavored products were marketed to youth and young adults,<sup>2</sup> and younger smokers were more likely than older smokers to have tried these products;<sup>3</sup> and

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law,<sup>4</sup> neither federal law nor California law restricts 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; and

WHEREAS, flavored tobacco products are very common in California tobacco retailers as evidenced by the following:

- 97.4% of stores that sell cigarettes sell menthol cigarettes;<sup>5</sup>
- 94.5% of stores that sell little cigars sell them in flavored varieties;<sup>6</sup>
- 84.2% of stores that sell electronic smoking devices sell flavored varieties;<sup>7</sup> and
- 83.8% of stores that sell chew or snus sell flavored varieties;<sup>8</sup> and

WHEREAS, more than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes);<sup>9</sup> and

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco<sup>10</sup> and that these products help establish tobacco habits that can lead to long-term addiction;<sup>11</sup> and

WHEREAS, at least one study has found that the majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product;<sup>12</sup> and



WHEREAS, young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco;<sup>13</sup> and

WHEREAS, 70% of middle school and high school students who currently use tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets;<sup>14</sup> and

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of US middle school and high school smokers report using flavored little cigars or flavored cigarettes;<sup>15</sup> and

WHEREAS, much of the growing popularity of small cigars and smokeless tobacco is among young adults and appears to be linked to use of flavored products;<sup>16</sup> and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015;<sup>17</sup>

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;<sup>18</sup> and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;<sup>19</sup> and

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+);<sup>20</sup> and

WHEREAS, people ages 12 and older from communities of color are more likely to smoke mentholated cigarettes, as evidenced by the following percentages of people who smoke cigarettes reported smoking mentholated cigarettes in the last month:<sup>21</sup>

- 82.6% of Black or African American individuals;
- 53.2% of Native Hawaiians or Other Pacific Islanders;
- 36.9% of individuals with multiracial backgrounds;
- 32.3% of Hispanic or Latino individuals;
- 31.2% of Asian individuals;
- 24.8% of American Indians or Alaska Natives; and
- 23.8% of White or Caucasian individuals; and

WHEREAS, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos, and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these

products easier to use and increasing their appeal among youth;<sup>22</sup> and

WHEREAS, the tobacco industry has been manipulating the dose of menthol in cigarettes to ensure the uptake and continued use of tobacco, especially by young people and vulnerable populations for many years;<sup>23</sup> and

WHEREAS, smoking mentholated cigarettes reduces the likelihood of successfully quitting smoking;<sup>24</sup> and

WHEREAS, the tobacco industry has a well-documented history of developing and marketing mentholated brands to communities of color and youth;<sup>25</sup> and

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;<sup>26</sup> and

WHEREAS, a New York study found that price reduction promotions for menthol cigarettes are disproportionately targeted to youth markets;<sup>27</sup> and

WHEREAS, scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, and especially among youth, African Americans,<sup>28</sup> and possibly Hispanic and Latino individuals;<sup>29</sup>

WHEREAS, scientific studies on the impact of a national ban on menthol in cigarettes found 36.5% of menthol cigarette users would try to quit smoking if menthol was banned<sup>30</sup> and between 300,000 and 600,000 lives would be saved by 2050;<sup>31</sup> and

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.<sup>32</sup>

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7. *Id.*
8. *Id.*
9. California Department of Public Health California Tobacco Control Program. *Healthy Stores for a Healthy Community: Alameda County.* 2014. [www.healthystoreshealthycommunity.com/documents/counties/Alameda County Data \(English\).pdf](http://www.healthystoreshealthycommunity.com/documents/counties/Alameda%20County%20Data%20(English).pdf).
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# ATTACHMENT - G

## CITY OF OROVILLE ORDINANCE NO. 1794

### AN ORDINANCE OF THE OROVILLE CITY COUNCIL ADDING CHAPTER 12A TO THE CODE OF THE CITY OF OROVILLE AND AMENDING CHAPTER 26 AND 14 OF THE CODE OF THE CITY OF OROVILLE RELATING TO THE USE, SALE AND DISTRIBUTION OF TOBACCO AND OTHER NICOTINE RELATED SUBSTANCES AND PRODUCTS AND THE ESTABLISHMENT AND LOCATION OF SMOKE SHOPS WITHIN THE CITY LIMITS

**WHEREAS**, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City of Oroville; 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 of Oroville, to protect the health, safety, and welfare of our residents; and

**WHEREAS**, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950);
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308);
- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952);
- State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962);
- State law prohibits the sale of "bidis" (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1); and
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and

**WHEREAS**, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code § 22970.1, 22972); and

**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); and

**WHEREAS**, California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the City to regulate business activity in order to discourage violations of law; and

**WHEREAS**, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

**WHEREAS**, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

**WHEREAS**, pursuant to Article V of the Oroville City Charter, amendments to the City's Municipal Code may be initiated by the Oroville City Council; and

**WHEREAS**, on April 3, 2012, the City of Oroville City Council directed City staff to research and prepare a tobacco shop ordinance and development standards; and

**WHEREAS**, on October 2, 2012, the City of Oroville City Council authorized City staff to include electronic cigarettes into the City's regulations regarding tobacco and nicotine products; and

**WHEREAS**, the Oroville City Council held a noticed public hearing regarding a proposal to amend certain sections of the City of Oroville's Municipal Code to provide clarification and direction regarding the use, sell and distribution of tobacco and other nicotine related substances and products and the establishment and location of smoke shops; and

**WHEREAS**, at a noticed public hearing before the Oroville City Council the described Code amendments were considered and no adverse comments were received from the public about the described amendments; and

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OROVILLE DO ORDAIN AS FOLLOWS:**

**SECTION I.** Chapter 12A of the Oroville Municipal Code is hereby adopted to read as follows:

**12A-1. 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) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (c) "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.
- (d) "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.
- (e) "Smoking" (Refer to Chapter 14, Article 1, §14-21(a)(13) for definition)
- (f) "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the Smoking, preparation, storing, or consumption of Tobacco Products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.
- (g) "Tobacco Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this chapter, electronic cigarettes are considered a tobacco product.
- (h) "Tobacco Retailer" means any Person who sells, offers for sale, or exchanges 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, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

## **12A-2. REQUIREMENTS AND PROHIBITIONS**

- (a) **TOBACCO RETAILER LICENSE REQUIRED.** It shall be unlawful for any Person to act as a Tobacco Retailer in the City of Oroville without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.
- (b) **LAWFUL BUSINESS OPERATION.** 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 a licensee, or any of the licensee'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) **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 the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product 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 Tobacco Products shall engage in Tobacco Retailing.
- (f) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.
- (g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license, including, for example, a person whose license has been revoked:
  - (1) 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.

#### **12A-3. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.**

- (a) No license issued may authorize Tobacco Retailing at any location other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.

#### **12A-4. 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 of Oroville 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.

All applications shall be submitted on a form supplied by the City of Oroville 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 tobacco retailer's license by the California Board of Equalization.
  - (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.
- (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, subject to the laws' exemptions.

**12A-5. ISSUANCE OF LICENSE.** Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the City shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.
- (b) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this chapter prohibits a license to be issued.
- (c) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this chapter (e.g., mobile vending), that is unlawful pursuant to this Code (e.g., zoning ordinance, building code, and business license tax ordinance), or that is unlawful pursuant to any other law.

**12A-6. LICENSE RENEWAL AND EXPIRATION.**

- (a) **RENEWAL OF LICENSE.** A Tobacco Retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is one (1) year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than thirty (30) days prior to expiration of the term.
- (b) **EXPIRATION OF LICENSE.** A Tobacco Retailer's license that is not timely renewed

shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

- (1) Submit the license fee and application renewal form; and
- (2) Submit a signed affidavit affirming that the Proprietor:
  - (i) has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed.

#### **12A-7. LICENSES NONTRANSFERABLE.**

- (a) 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).
- (b) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
  - (1) the location has been fully transferred to a new Proprietor or fully transferred to entirely new Proprietors; and
  - (2) the new Proprietor(s) provide the City with clear and convincing evidence that the new Proprietor(s) have acquired or is acquiring the location in an Arm's Length Transaction.

**12A-8. 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.

#### **12A-9. COMPLIANCE MONITORING.**

- (a) Compliance checks shall be conducted so as to allow the City to determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco. When the Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.

#### **12A-10. REVOCATION OF LICENSE.**

- (a) **REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be revoked if any court of competent jurisdiction determines, or the City 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 chapter or has pleaded guilty, "no

contest” or its equivalent, or admitted to a violation of any law.

**(b) NEW LICENSE AFTER REVOCATION.**

- (1) After revocation for a first violation of this chapter, no new license may be issued for the location until ten (10) days have passed from the date of revocation.
- (2) After revocation for a second violation of this chapter, no new license may be issued for the location until sixty (60) days have passed from the date of revocation.
- (3) After revocation for a third violation of this chapter, no new license may be issued for the location until one (1) year has passed from the date of revocation.
- (4) After revocation for a fourth or subsequent violation of this chapter, no new license may be issued for the location until five (5) years have passed from the date of revocation.

**(c) APPEAL OF REVOCATION.** A decision of the City to revoke a license may be appealed as specified in the Chapter 26, §26-56.100 of this Code.

**(d) REVOCATION OF LICENSE WRONGFULLY ISSUED.** A Tobacco Retailer's license shall be revoked if the City 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 Code existed at the time application was made or at any time before the license issued. Such a revocation shall be without prejudice to the filing of a new license application.

**12A-11. TOBACCO RETAILING WITHOUT A LICENSE.**

(a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the 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 Retailing license as follows:

- (1) After a first violation of this section, no new license may be issued 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, no new license may issued 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 a third or subsequent violation of this section at a location, no new license may be issued 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.

**12A-12. ENFORCEMENT.**

(a) Violations of this chapter are punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation (California Government Code Section 36901).

(b) Violations of this chapter are hereby declared to be a public nuisance.

**SECTION II.** Chapter 26 of the Code of the City of Oroville is hereby amended as follows:

(1) The following definitions will be added to §26-04.020 as follows:

**Smoke Shop:** Any establishment whose primary business purpose is to sell, offer for sale, or exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. Such businesses include head shops, hookah shops and lounges, tobacco shops, and other uses of like kind character.

**Tobacco Paraphernalia:** Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.

**Tobacco Product:** Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this chapter, electronic cigarettes are considered a tobacco product.

(2) Table 26-33.010-1 will be amended to include the following:

Land Use	CN	C-1	C-2	CN	CLM	OF	MXD	MXN	MXC	Use-Specific Regulations
<b>Retail</b>										
<u>Smoke Shop</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>26-36.010-1</u>

(3) Table 26-36.010-1 will be amended to include the following:

Land Use	ABP	M-1	M-2	Use-Specific Regulations
<b>Retail</b>				
<u>Smoke Shop</u>	<u>—</u>	<u>UP</u>	<u>UP</u>	<u>26-36.010-1</u>

(4) §26-16.190 will be added as follows:

**A. Purpose.**

These regulations are intended to allow persons to establish smoke shops in the City of Oroville in a manner that protects the City's public health, safety and welfare by limiting the number of smoke shops in the City limits with respect to the City's population size.

**B. Applicability.**

1. A total of one smoke shop is allowed within City limits for every 4,000 City residents.
2. In the event that the number of existing smoke shops per every 4,000 City residents exceeds the above limit, no additional smoke shops will be allowed within City limits until the number of smoke shops fall below the above threshold as a result of:
  - Population growth within the City that would allow for an additional smoke shop to locate within City limits per the threshold above; or
  - The number of smoke shops within City limits decreases to a level that would allow for an additional smoke shop to locate within City limits per the threshold above.

Table 26-16.190-1: Number of Smoke Shops Allowed

<u># of City Residents (Range)</u>	<u># of Smoke Shops Allowed</u>
<u>X</u>	<u>Z</u>
<u>0 to 4,000</u>	<u>1</u>
<u>4,001 to 8,000</u>	<u>2</u>
<u>8,001 to 12,000</u>	<u>3</u>
<u>12,001 to 16,000</u>	<u>4</u>
<u>16,001 to 20,000</u>	<u>5</u>
<u>Etc.</u>	<u>=</u>

\*  $X / 4,000 = Z$ . If Z is not a whole number, round up to the next whole number.

**C. General Regulations.**

Smoke shops will be subject to all provisions within Chapter 12A of the Oroville Municipal Code.

**D. Permit Required**

All smoke shops are required to obtain a use permit that may include conditions necessary to ensure that the use operates in a manner that provides adequate protection of public health, safety and welfare.

**E. Criteria to Be Considered.**

In determining whether to grant a use permit for a smoke shop and what appropriate conditions should, if any, be imposed, the Planning Commission shall consider the following issues, and make appropriate findings, based on substantial evidence, for each issue:

1. The nature of all land uses within 500 feet of the proposed smoke shop, and in particular, the location of similar nearby uses and the location of residences, parks, schools and houses of worship.
2. Appropriate measures to provide proper maintenance of the building exterior, including provisions to keep the premises free of litter and debris.
3. Lighting of exterior areas, including parking lots, to discourage loitering outside of the building.
4. Protection of adjacent properties from illegal activity.
5. Hours of operation.
6. Prevention of adverse effects of the use on the value of adjacent properties.

**SECTION III.** Chapter 14 of the Code of the City of Oroville is hereby amended as follows:

- (1) Chapter 14, Article 1, §14-21(a)(13) will be amended as follows:

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form. For the purposes of this chapter, the use of electronic cigarettes and the inhalation of their nicotine vapor shall also be classified as "smoking."

\*\*\*\*\*

**PASSED AND ADOPTED** by the City Council of the City of Oroville at a regular meeting held this 19<sup>th</sup> day of March, 2013, by the following vote:

AYES: Council Members Andoe, Berry, Bunker, Pittman, Simpson, Vice Mayor Wilcox,  
Mayor Dahlmeier


NOES: None

ABSTAIN: None

ABSENT: None

  
Linda L. Dahlmeier, Mayor

APPROVED AS TO FORM:

  
Scott E. Huber, City Attorney

ATTEST:

  
Peter Cosentini, Interim City Clerk





# ATTACHMENT - H



## City of Oroville

COMMUNITY DEVELOPMENT DEPARTMENT

**Donald Rust**  
DIRECTOR

1735 Montgomery Street  
Oroville, CA 95965-4897  
(530) 538-2430 FAX (530) 538-2426  
[www.cityoforoville.org](http://www.cityoforoville.org)

### NOTICE OF EXEMPTION

**TO:** Butte County Clerk  
25 County Center Drive  
Oroville CA, 95965

**FROM:** City of Oroville  
1735 Montgomery Street  
Oroville, CA, 95965

Project Title: ZC 17-02: Prohibiting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products

Project Location – Specific: Citywide

Project Location – City: City of Oroville

Project Location – County: Butte

Description of Nature, Purpose, and beneficiaries of project: The City is proposing to prohibit the sale of menthol cigarettes and other flavored tobacco products and increase the fee of a tobacco retail license to cover the City's cost of administration, implementation, and enforcement.

Name of Public Agency Approving Project: City of Oroville

Name of Person or Agency Carrying Out Project: City of Oroville – Community Development Department

Exempt Status (Check One):

- Ministerial (Sec. 21080(b)(1); 15268)
- Declared Emergency (Sec. 21080(b)(3); 15269(a))
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
- Categorical Exemption: State type & section number:
- Statutory Exemption: State code number:
- Other: General Rule Exemption; Title 14, CCR, §15061(b)(3)

Reasons why project is exempt: This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Title 14, California Code of Regulations, Section 15061(b)(3), commonly known as the "general rule." A project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment. Therefore, the project is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) "General Rule Exemption."

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?  Yes  No

Lead Agency Contact Person: Luis A. Topete

Telephone: (530) 538-2408

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

- Signed by Lead Agency
- Signed by Applicant

# ATTACHMENT - I

## RESOLUTION NO. P2017-18

**A RESOLUTION OF INTENTION OF THE OROVILLE PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL AMEND ORDINANCE NO. 1794 FOR THE PURPOSE OF PROHIBITING THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AND INCREASE THE FEE OF A TABACOO RETAIL LICENSE**

**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, neither federal law nor California law restricts 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; and

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

**WHEREAS**, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos, and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these products easier to use and increasing their appeal among youth; and

**WHEREAS**, 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, 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; and

**WHEREAS**, at a noticed public hearing, the Planning Commission considered the comments and concerns of public agencies, property owners, and members of the public who are potentially affected by the approval of the amendments to the City’s Municipal Code as described herein, and also considered City staff’s report regarding the proposed amendments.

**NOW, THEREFORE, BE IT RESOLVED BY THE OROVILLE PLANNING COMMISSION** as follows:

**SECTION I.** This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Title 14, California Code of Regulations, Section 15061(b)(3) “General Rule Exemption.”

**SECTION II.** Amending the Municipal Code as proposed will protect the public health, safety, and welfare of the residents of the City of Oroville.

**SECTION III.** The Planning Commission hereby forwards a recommendation to the Oroville City Council to increase the fee for a Tobacco Retailer License to \$238.64 and amend the Oroville Municipal Code to read as follows, with all deletions shown in a ~~strikethrough~~ format and all additions shown in an underlined format:

*Section 5.25.010 (Definitions) is hereby amended as follows:*

**“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.

**“Flavored Tobacco Product”** means any Tobacco Product that imparts a Characterizing Flavor.

**“Labeling”** means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.

**“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.

**“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.

**“Tobacco Paraphernalia”** means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption, or use Tobacco Products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.

**“Tobacco Product”** means ~~any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this chapter, electronic cigarettes are considered a tobacco product.~~

**“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;
- (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar,

electronic pipe, or electronic hookah.

- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

*Chapter 5.28 (Tobacco Retailer License) is hereby amended to include the following Section:*

**Sale of Flavored Tobacco Products Prohibited**

- a) 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.

*Section 5.28 (Enforcement) is hereby amended as follows:*

- a) The remedies provided by this Section are cumulative and in addition to any other remedies available at law or in equity.
- b) Violations of this chapter are punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation (California Government Code Section 36904). Violations of this chapter are subject to a civil action, 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 chapter are hereby declared to be a public nuisance. Violations of this chapter may be prosecuted as infractions or misdemeanors when the interests of justice so require.

*Section 17.04.060 (Definitions) is hereby amended as follows:*

**"Tobacco Paraphernalia"** means cigarette papers or wrappers, pipes, holders of smoking

materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption, or use Tobacco Products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.

~~**“Tobacco Product”** means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For the purpose of this chapter, electronic cigarettes are considered a tobacco product.~~

**“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;
- (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

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# ATTACHMENT - J

## CITY COUNCIL MEETING MINUTES NOVEMBER 7, 2017 – 5:30 P.M.

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The agenda for the November 7, 2017, regular meeting of the Oroville City Council was posted on the bulletin board at the front of City Hall and on the City of Oroville's website located at [www.cityoforoville.org](http://www.cityoforoville.org) on Thursday, November 2, 2017, at 10:40 a.m.

The November 7, 2017 regular meeting of the Oroville City Council was called to order by Mayor Dahlmeier at 5:39 p.m.

### **ROLL CALL**

Present: Council Members Berry, Del Rosario, Draper, Hatley, Vice Mayor Goodson, Mayor Dahlmeier  
Absent: None

### **Staff Present:**

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Donald Rust, Assistant City Administrator  
Bill LaGrone, Director of Public Safety  
Karolyn Fairbanks, Treasurer  
Dawn Nevers, Assistant Planner  
Mike Massaro, Contract City Engineer

Ruth Wright, Director of Finance  
David Ritchie, Assistant City Attorney  
Amy Bergstrand, Management Analyst III  
Liz Ehrenstrom, Human Resource Manager

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### **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Amy Jernigan, Recology, and Council Member Linda Draper.

### **RECOGNITION OF INDIVIDUALS WHO WISH TO SPEAK ON AGENDA ITEMS**

Bryan Brown – Item No. 10  
Tim Gibbs – Item No. 16

Celia Hirschman – Item No. 16

### **PROCLAMATION / PRESENTATION**

Council Member Draper presented Maia Illa, Homeless Emergency Action Response Team, with a Proclamation recognizing the month of November 2017 as National Homeless and Runaway Prevention Month.

### **CONSENT CALENDAR**

A motion was made by Vice Mayor Goodson, seconded by Council Member Del Rosario, to approve the following Consent Calendar:

- 1. APPROVAL OF THE OCTOBER 17, 2017 REGULAR MEETING MINUTES OF THE OROVILLE CITY COUNCIL – minutes attached**

### Public Works Department

**2. PAVEMENT REHABILITATION LIST FOR SUBMITTAL TO CALIFORNIA TRANSPORTATION COMMISSION FOR FUNDING – staff report**

The Council considered approving by Resolution the submittal of the City's list of roads and streets prioritized for rehabilitation to the California Transportation Commission (CTC) for compliance with CTC guidelines. *(This list was submitted to the CTC by the required submittal deadline of October 16, 2017, after approval by the City Council at the October 3, 2017 Council meeting, however; the CTC requires a resolution approving the project list even though the list is non-binding and can be amended by City staff and Council. This resolution is necessary for the City to be eligible for additional transportation funding under Senate Bill 1 (SB 1) and Assembly Bill 135 (AB 135)).* **(Mike Massaro, Contract City Engineer)**

Council Action Requested: **Adopt Resolution No. 8663 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AMENDING THE 2017-2018 BUDGET TO INCORPORATE A LIST OF PROJECTS FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT.**

**3. THIS ITEM WAS REMOVED FROM THE CONSENT CALENDAR (SEE BELOW)**

### Finance Department

**4. MONTHLY FINANCIAL REPORT AND REPORT OF INVESTMENTS FOR JULY, AUGUST & SEPTEMBER 2017 – report attached**

The Council received copies of the July, August & September 2017 Monthly Financial Report and Report of Investments. **(Ruth Wright, Director of Finance)**

Council Action Requested: **Acknowledge receipt of the July, August & September 2017 Monthly Financial Reports and Reports of Investments.**

### Community Development Department

**5. RECOLOGY SERVICE RATE INCREASE FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE – staff report**

The Council received an update on the Recology service rate increase for the collection and disposal of solid waste that will become effective January 1, 2018. **(Donald Rust, Director of Community Development)**

Council Action Requested: **None.**

**6. REQUESTED PERMISSION BY STEEPLECHASE FILMS TO PUBLISH A PHOTO FROM CHINESE TEMPLE ARCHIVES – staff report**

The Council considered a request by Steeplechase Films to publish one (1) photo from the Chinese Temple archives in a PBS documentary broadcast of, "The Chinese Exclusion Act".

**(Donald Rust, Director of Community Development and Dawn Nevers, Assistant Planner)**

**Council Action Requested: Acknowledge the approved request by Steeplechase Films to publish one (1) photo from the Chinese Temple archives in a PBS documentary broadcast of, "The Chinese Exclusion Act", with the required acknowledgements, as indicated in the November 7, 2017 staff report.**

**7. OROVILLE ARTS COMMISSION ARTS AWARD RECOGNIZING "YOUR VOICE FOR THE ARTS" – staff report**

The Council considered approving the Oroville Arts Commission Art Award recognizing, "Your Voice for the Arts", an award that recognizes an artist who has positively impacted the community through the arts. **(Donald Rust, Director of Community Development and Dawn Nevers, Assistant Planner)**

**Council Action Requested: Approve the Oroville Arts Commission Arts Award recognizing, "Your Voice for the Arts," an award that recognizes an artist who has positively impacted the community through the arts.**

**8. FINAL DRAFT NOTICE OF FUNDS AVAILABLE FOR ART IN PUBLIC PLACES/OROVILLE BEAUTIFICATION – staff report**

The Council considered approving the updated 2017 final draft of the Notice of Funds Available for the Art in Public Places/Beautification funding under City of Oroville Ordinance No. 1798, Section II, Chapter 26, §17.08.135. **(Donald Rust, Director of Community Development and Dawn Nevers, Assistant Planner)**

**Council Action Requested: Approve the updated 2017 final draft of the Notice of Funds Available for the Art in Public Places/Beautification funding under City of Oroville Ordinance No. 1798, Section II, Chapter 26, §17.08.135.**

**Business Assistance & Housing Development Department**

**9. 2017 ANNUAL LONG-TERM MONITORING REPORTS FOR HOME MULTI-FAMILY RENTAL HOUSING PROJECTS – staff report**

The Council considered a Professional Services Agreement with R.L. Hastings & Associates, LLC, in the amount of \$7,500, for the preparation of HOME Investment Partnerships Program annual monitoring documentation reports for three (3) multi-family rental housing projects. **(Amy Bergstrand, Management Analyst III)**

**Council Action Requested: Adopt Resolution No. 8665 - A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH R. L. HASTINGS & ASSOCIATES, LLC, IN THE AMOUNT OF \$7,500, TO PREPARE THE ANNUAL LONG-TERM MONITORING REPORT FOR HOME MULTI-FAMILY RENTAL HOUSING PROJECTS - (Agreement No. 3237).**

**10. THIS ITEM WAS REMOVED FROM THE CONSENT CALENDAR (SEE BELOW)**

**Administration Department**

**11. REAPPOINTMENT TO THE BUTTE COUNTY MOSQUITO & VECTOR CONTROL BOARD OF TRUSTEES – staff report**

The Council considered reappointing Gordon Andoe to continue serving on the Butte County Mosquito and Vector Control Board of Trustees for an additional term, ending December 31, 2021. (**Jamie Hayes, Assistant City Clerk and Donald Rust, Acting City Administrator**)

Council Action Requested: **Reappoint Gordon Andoe to serve on the Butte County Mosquito and Vector Control District for an additional term, ending December 31, 2021.**

**12. AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AGREEMENT REGARDING EMPLOYEES SHARING ADDITIONAL COST – staff report**

The Council considered an Ordinance to amend the California Public Employees Retirement System Agreement for employees sharing additional cost. (**Liz Ehrenstrom, Human Resource Manager**)

Council Action Requested: **Waive the second reading, and adopt by title only, Ordinance No. 1825 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA, AUTHORIZING AN AMENDMENT TO THE AGREEMENT BETWEEN THE OROVILLE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA, AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.**

**13. AMENDMENT TO THE OROVILLE MID-MANAGER AND CONFIDENTIAL ASSOCIATION'S MEMORANDUM OF UNDERSTANDING – staff report (*Continued from October 17, 2017*)**

The Council considered an Amendment to the Oroville Mid-Manager and Confidential Association's Memorandum of Understanding. (**Donald Rust, Acting City Administrator**)

Council Action Requested: **Adopt Resolution No. 8660 - A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OROVILLE AND THE OROVILLE MID-MANAGER AND CONFIDENTIAL ASSOCIATION - (Agreement No. 3083-4).**

The motion to approve the Consent Calendar was passed by the following vote:

Ayes: Council Members Berry, Del Rosario, Draper, Hatley, Thomson, Vice Mayor Goodson, Mayor Dahlmeier  
Noes: None  
Abstain: None  
Absent: None

**ITEMS REMOVED FROM THE CONSENT CALENDAR**

**Public Safety Department**

3. **AMENDMENT OF ORIGINAL AGREEMENT TO EXTEND THE TERM OF THE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION – staff report**

The Council considered an Amendment to the Agreement with the California Department of Parks and Recreation, for extra patrols in the State Parks Recreation area in and around Oroville, extending the terms through December 31, 2018. *(Funding for these patrols is supplied through this agreement, in an amount not to exceed \$180,000).* **(Bill LaGrone, Director of Public Safety)**

This item was removed from the Consent Calendar at the request of Vice Mayor Goodson.

Chief Bill LaGrone answered questions for the Council.

Following discussion, a motion was made by Council Member Thomson, seconded by Council Member Del Rosario, to:

**Adopt Resolution No. 8664 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH THE STATE DEPARTMENT OF PARKS AND RECREATION, EXTENDING THE TERM THROUGH DECEMBER 31, 2018.**

The motion was passed by the following vote:

Ayes:	Council Members Berry, Del Rosario, Draper, Hatley, Thomson, Vice Mayor Goodson, Mayor Dahlmeier
Noes:	None
Abstain:	None
Absent:	None

**Business Assistance & Housing Development Department**

10. **ACCEPTANCE OF 2016 HOUSING RELATED PARKS PROGRAM GRANT AND ESTABLISHMENT OF BUDGET – staff report**

The Council may consider accepting the 2016 Housing Related Parks Program Grant No. 16-HRPP-11489 and establishing the budget, in the Amount of \$117,458, for improvements to the Oroville Municipal Auditorium. **(Amy Bergstrand, Management Analyst III)**

This item was removed from the consent calendar at the request of a public speaker from for comments.

Bryan Brown made comments supporting the parks and the community.

Amy Bergstrand, Management Analyst III, answered question regarding the program for the City council.

Following discussion, a motion was made by Council Member Del Rosario, seconded by Council Member Draper, to:

**Accept the 2016 Housing Related Parks Program Grant No. 16-HRPP-11489 and establishing the budget, in the amount of \$117,458, for improvements to the Oroville Municipal Auditorium.**

The motion was passed by the following vote:

Ayes: Council Members Berry, Del Rosario, Draper, Hatley, Thomson, Vice Mayor Goodson, Mayor Dahlmeier  
Noes: None  
Abstain: None  
Absent: None

## **PUBLIC HEARINGS**

### **Business Assistance & Housing Development Department**

**14. 2017 COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION – staff report**

The Council conducted a public hearing and may consider the submittal of an application to the State Department of Housing and Community Development for the 2017 Community Development Block Grant Program funding. **(Amy Bergstrand, Management Analyst III)**

Mayor Dahlmeier opened the hearing for public comment, seeing none, the Public Hearing was closed.

Following discussion, a motion was made by Vice Mayor Goodson, seconded by Council Member Thomson, to:

**Adopt Resolution No. 8666 - A RESOLUTION OF THE OROVILLE CITY COUNCIL APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2017 FUNDING YEAR OF THE STATE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.**

The motion was passed by the following vote:

Ayes: Council Members Berry, Del Rosario, Draper, Hatley, Thomson, Vice Mayor Goodson, Mayor Dahlmeier  
Noes: None  
Abstain: None  
Absent: None

## **REGULAR BUSINESS**

### **Public Works Department**

**15. CONTRACT WITH FRANKLIN CONSRUCTION RELATING TO THE REGIONAL SURFACE TRANSPORTATION PROGRAM STREET REPLACEMENT PROJECT BID AWARD – staff report**

The Council considered awarding a Contract with the lowest responsive bidder, Franklin Construction, in the amount of \$644,813, and an additional 10% contingency, relating to the Regional Surface Transportation Program (RSTP) Street Replacement Project. **(Mike Massaro, Contract City Engineer)**

Contract City Engineer, Mike Massaro, answered questions for the Council.

Following discussion, a motion was made by Vice Mayor Goodson, seconded by Council Member Draper, to:

**Adopt Resolution No. 8667 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A CONTRACT WITH FRANKLIN CONSTRUCTION, THE LOWEST RESPONSIVE BIDDER, IN THE AMOUNT OF \$644,813, AND AN ADDITIONAL 10% CONTINGENCY, RELATING TO THE REGIONAL SURFACE TRANSPORTATION PROGRAM STREET REPLACEMENT PROJECT – (Agreement No. 3238).**

The motion was passed by the following vote:

Ayes:	Council Members Berry, Del Rosario, Draper, Hatley, Thomson, Vice Mayor Goodson, Mayor Dahlmeier
Noes:	None
Abstain:	None
Absent:	None

#### **Community Development Department**

16. **REQUEST TO AMEND ORDINANCE NO. 1794 TO RESTRICT THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS WITHIN CITY LIMITS – staff report**

The Council considered a request from the California Health Collaborative for an amendment to Ordinance No. 1794 restricting the sale of menthol cigarettes and other flavored tobacco products within City limits. **(Dawn Nevers, Assistant Planner and Donald Rust, Director of Community Development)**

Deanne Blankenship, California Health Collaborative, gave a presentation regarding their educational campaign on the dangers of flavored tobacco products.

Celia Hirschman spoke in support of the requested ordinance amendment.

Tim Gibbs, The American Cancer Society, spoke in support of the requested ordinance amendment.

Following discussion, the Council directed staff to return with more details regarding appropriate licensing fees to cover the cost to adequately enforce the proposed amendment.

17. **REQUEST FOR PROPOSALS FOR CONTRACT PLANNING SERVICES TO PROCESS THE RIO D' ORO SPECIFIC PLAN ANNEXATION PETITION – staff report**

The Council considered providing staff with direction to send a Request for Proposals for

contract planning services to process the Rio d' Oro Specific Plan Annexation Petition. **(Donald Rust, Director of Community Development)**

Council Member Hatley stated, for the record, that he is opposed to the project.

Following discussion, council directed staff to move forward with the Request for Proposal for a contract planer.

**18. GROUND LEASE AGREEMENT WITH MODERN BUILDING, INC. FOR THE EXPANSION OF GRAPHIC PACKAGING INTERNATIONAL – staff report**

The Council considered approving a Ground Lease Agreement with Modern Building, Inc. for the phased construction of 350,000 square feet of new building space for the expansion of Graphic Packaging International which will require 13.6 acres of airport property to be leased for a non-aeronautical use. **(Donald Rust, Director of Community Development)**

Following discussion, a motion was made by Council Member Draper, seconded by Vice Mayor Goodson, to:

**Adopt Resolution No. 8668 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A GROUND LEASE AGREEMENT WITH MODERN BUILDING, INC. FOR USE OF AIRPORT PROPERTY FOR A NON-AERONAUTICAL USE RELATED TO THE EXPANSION OF GRAPHIC PACKAGING INTERNATIONAL – (Agreement No. 3239).**

The motion was passed by the following vote:

Ayes:	Council Members Del Rosario, Draper, Thomson, Vice Mayor Goodson, Mayor Dahlmeier
Noes:	Council Members Berry
Abstain:	Council Members Hatley
Absent:	None

**Public Safety Department**

**19. AUTHORIZATION FOR REPAIR OF PATROL VEHICLE AND ADMINISTRATION VEHICLE – staff report**

The Council considered authorizing the repair of two (2) Police vehicles. **(Bill LaGrone, Director of Public Safety)**

Following discussion, a motion was made by Vice Mayor Goodson, seconded by Council Member Del Rosario, to:

**Authorize the repair of both vehicles by Pioneer Collision Center, in an amount not to exceed \$19,172.23.**

The motion was passed by the following vote:



Ayes: Council Members Berry, Del Rosario, Draper, Hatley, Thomson, Vice Mayor Goodson, Mayor Dahlmeier  
Noes: None  
Abstain: None  
Absent: None

### **COUNCIL ANNOUNCEMENTS/COMMITTEE REPORTS**

Council Member Draper reported on the following:

- Attendance to the Butte Local Agency Formation Commission meeting regarding the Regional Water Study.
- Tour of the Oroville Dam, also attended by Vice Mayor Goodson and Council Member Del Rosario.

Council Member Thomson reported on the following:

- Attendance to the Butte County Association of Governments meeting with discussions relating to the Oroville Hospital expansion.
- Shared thoughts on the current progress and upcoming years scheduled work with a potential economic surge in growth for the community.

Council Member Del Rosario reported on the following:

- Attendance to the Carl's Jr. Grand Opening, also attended by Mayor Dahlmeier.
- Acknowledged the loss of John Lowe.
- Attendance to the Air Quality Control Board meeting.
- Department of Water Resources has received the Golden Fleece Award.

Vice Mayor Goodson reported on the following:

- Appointed to the Juvenile Justice and Detention Board.
- The Sewer Commission-Oroville Region meeting

Mayor Dahlmeier reported on the following:

- Followed up on Vice Mayor Goodson's report regarding the Sewer Commission-Oroville Region meeting.
- Attendance to the California Public Utilities Commission meeting in Sacramento regarding potential progress relating to broadband issues.
- Attendance of the memorial service for Dean Hill Sr., also attended by Council Member Hatley.
- Spoke at the Caring for Women event.
- Spoke at Mug Shots event.

### **CITY ADMINISTRATOR/ ADMINISTRATION REPORTS**

- American Planning Association California Conference: Capitalizing on Diversity - memo

Chief LaGrone reported on the following:

- Attendance to the retirement party for Poncho Zarate.
- Wrote (2) letters in support of the HYW 70 widening.
- November 18<sup>th</sup>, 2017 is the Axiom event at the Gray Nurse.

Don Rust reported on the following:

- Presented a request for the displaced fire victims to rent the vacant City homes.
- 1355 Washington Avenue purchased and a drive-thru restaurant has been proposed.
- The Jamboree Housing project will not move forward this funding round due to new restriction in the application process. Staff is working with the Housing Authority to complete steps to be prepared for the next funding round.

Finance Director Wright reported on the following:

- Attendance to the CalPERS Educational Forum; followed by a recommendation from Council Member Hatley for the Council to direct reimbursement of Ms. Rights personal out-of-pocket costs for the attendance to the Forum, with additional recommendation for attendance to the upcoming scheduled meetings to take place at the CalPERS headquarters in Sacramento.

### **CORRESPONDENCE**

- Butte County Public Health Administration

### **HEARING OF INDIVIDUALS ON NON-AGENDA ITEMS**

Annie Terry discussed the AB109 Funds for the eradication of blight and discussed programs at the Rescue Mission.

Tasha Levinson discussed two potential cost savings options.

Bill Speer delivered a prayer for the City of Oroville and the community.

### **CLOSED SESSION**

The Council held a Closed Session on the following:

1. Pursuant to Government Code section 54957(b), the Council met with Acting City Administrator, Personnel Officer, and City Attorney to consider the evaluation of performance and employment related to the following positions: Director of Finance, Assistant City Administrator and Director of Public Safety.
2. Pursuant to Government Code section 54956.9(d)(4), the Council met with the Acting City Administrator and City Attorney regarding potential initiation of litigation – one case (related to the Spillway Incident).
3. Pursuant to Government Code section 54956.9(d)(2), the Council met with the Acting City Administrator and City Attorney regarding potential exposure to litigation – two cases.
4. Pursuant to Government Code section 54957.6, the Council met with Labor Negotiators and City Attorney to discuss labor negotiations for the following represented groups: Oroville Firefighters' Association and Oroville Management and Confidential Association.

Following Closed Session, Mayor Dahlmeier reported that direction had been given and no action had been taken.

**ADJOURNMENT**

The meeting was adjourned at 9:11 p.m. A regular meeting of the Oroville City Council will be held on Tuesday, November 21, 2017, at 5:30 p.m.



Donald Rust, Acting City Clerk



Linda L. Dahlmeier, Mayor



# ATTACHMENT - K

## Smoke Free North State Implementation Plan

January 2018 – June 2020



1. Create and update annually a GIS map depicting all licensed tobacco retailers.
2. Coordinate and sponsor a law enforcement roundtable to identify best practices, challenges and potential solutions to enforcing tobacco policies.
3. Develop and distribute article on new policy and free smoking cessation services to community organizations for inclusion in their newsletters.
4. Develop and distribute annual news release regarding the policy and promote free cessation services.
5. Promote the policy and free cessation services through the Smoke Free North State social media venues.
6. Create and distribute policy compliance packet to all licensed tobacco retailers to include copy of policy, STAKE Act materials, and CA Smokers' Helpline information.
7. Conduct annual observational survey of all licensed tobacco retailers to check on compliance with retail tobacco policies.
8. Create and distribute annual compliance letters as a result of the annual observational survey to all licensed tobacco retailers. Copy City staff and law enforcement.
9. Staff 2 – 3 community events to educate the community on the policy and promote free smoking cessation services.
10. Purchase 2 – 3 annual billboards to educate the community on policy and promote free smoking cessation services.
11. Present annual compliance updates to City Council.

Contact: DeAnne Blankenship, (530) 345-2483 x213; [dblankenship@healthcollaborative.org](mailto:dblankenship@healthcollaborative.org)



# ATTACHMENT - L

Oroville Planning Commission  
Oroville City Hall  
1735 Montgomery Street  
Oroville, CA 95965

12/12/2017

Bruce Baldwin

3834 Adell lane

Oroville CA, 95965

Dear Planning Commission Members,

I write you today in support of the proposed Tobacco Retail License ordinance, which would ban the sale of flavored tobacco products in the City of Oroville. As a former smoker myself I strongly support any and all actions that protect young people from tobacco and nicotine addiction, and I believe this ordinance would be highly successful in providing that protection.

Purveyors of addictive e-cigs and e-juices often portray them as a healthful alternative to tobacco use and as way for people to quit smoking. While a small percentage of the flavored products sold may be used in that way, there is absolutely no evidence that vaping helps people quit smoking. In fact, quite the opposite is true. In a recent study published in the journal *Pediatrics* (Bold, K.W.; Kong, G.; Camenga, D.R.; Simon, P.; Cavallo, D.A.; Morean, M.E.; Krishnan-Sarin, S. 4 December 2017) the authors found just the opposite, that e-cig use leads to increased cigarette use by young people. In fact they concluded; *"Results found that past-month e-cigarette use predicted future cigarette use. Students who recently used e-cigarettes were more than 7 times as likely as non-users to smoke cigarettes in the second year."*

Flavored e-juices and e-cigs are clearly designed to appeal to youth, any adult trying to quit would want their e-cig to taste like tobacco, not cotton candy! Removing these products from the shelves of Oroville stores will not only protect our youth, this well thought out and forward thinking ordinance will set a trend for the county and the region. Let's show our kids we care, please move this ordinance forward.

Sincerely,

Bruce Baldwin





December 7, 2017

Oroville Planning Commission Members

I am writing this letter of support, calling upon Oroville decision makers to move forward with the flavor/menthol ban and fee increase proposal on the newly passed Tobacco Retail Licensing policy. My experience in working with high school youth on tobacco prevention advocacy activities for over 20 years has proven that youth are angry about being the targets of multibillion dollar marketing campaigns, designed by tobacco companies to lure young people into using their products. The awareness about youth being manipulated through marketing to use drugs drives our young people, and all those in our communities, to do something about it.

A solid, comprehensive and enforceable Tobacco Retail Licensing policy would significantly reduce youth exposure to these seductive products and schemes. Chico Kids Leading Everyone Against Nicotine (KLEAN) students have been advocating for a TRL policy over the past several years, and have looked to Oroville 's progressive and caring actions for inspiration and guidance.

Oroville's TRL move towards protecting young people in their community from deadly tobacco products provides our youth and community members with evidence of the extent to which the key decision makers in Butte County understand, and act upon those serious health issues affecting our youth.

Tobacco retailers may not like being asked to reduce or eliminate the number of drugs being marketed to youth in their stores. But we all know that this is the most ethical position to take when the health of our youth is being jeopardized. Tobacco retailers certainly may not like having to pay a fee that would help them operate a business in compliance with existing tobacco laws. But we all know that this is the most ethical position to take.

Listen to the experts on these issues. Read the research. Think of the children in your own families eyeing the candy-like products infused with nicotine. Then the choice of how to vote will be an easy one.

Thank you,

Ann E Brodsky

Coordinator, Tobacco Use Prevention Education

Chico Unified School District

[abrodsky@chicousd.org](mailto:abrodsky@chicousd.org)



**SASC | Students Advocates for Sutter County**  
**Established 2014**

**Contact: [sasc\\_youth@gmail.com](mailto:sasc_youth@gmail.com)**

December 13, 2017

City of Oroville City Council members



**RE: Menthol and Flavored Tobacco Policy**

The *Students Advocates for Sutter County* (SASC) is a coalition made up of youth in grades 9-12 who work together to promote healthy lifestyles through community health education and youth advocacy activities. In the past year we have advocated for smoke free parks, educated CA Legislators at the State Capitol, shared our youth voice at City Council meetings and conducted surveys and healthy retail assessments at all the tobacco stores in Sutter County. Partnering with local agencies that can make an impact on people's health is important to us.

We want to congratulate the City of Oroville for their decision to pursue an ordinance eliminating the sale of menthol and other flavored tobacco in their communities, to protect their youth from the harms of tobacco use. The U.S. Surgeon General has warned that flavored tobacco products help new users establish habits that can lead to long-term addiction. [1]

Sweet flavors like watermelon, cherry, chocolate, mint and gummy bear appeal to kids and teens. [2] We know that flavored tobacco products often use the same flavoring chemicals as popular brands like Jolly Rancher, Kool-Aid, and Life Savers. [3] A majority of youth report flavoring as a leading reason for using tobacco products. In fact 80% of young people who have ever used tobacco started with a flavored tobacco product [4] and 7 out of 10 teens who use tobacco have used a flavored product in the past 30 days. [5]

The SASC youth coalition would like to offer you our support as you take this critical step to preventing another generation of young people from living with a lifetime of addiction by prohibiting the sale of all flavored tobacco products. Together, we can help our communities "Breathe Easy!"

Sincerely,

*Catherine*  
President

*Natalie*  
Vice President

*Raeleigh*  
Secretary

***Students Advocates of Sutter County***

Citations:

1. U.S. Department of Health and Human Services, Preventing tobacco use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012. 3.
2. King, B.A., S.R. Dube, and M.A. Tynan, Flavored cigar smoking among US adults: findings from the 2009-2010 National Adult Tobacco Survey. *Nicotine & Tobacco Research*, 2013. 15(2): p.608-614.
3. Brown, J.E., et al., Candy flavorings in tobacco. *New England Journal of Medicine*, 2014. 370(23): p. 2250-2252.
4. Ambrose, B.K., et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*. *JAMA*, 2015: p. 1-3
5. Corey, C.G., et al., *Flavored tobacco product use among middle and high school students – United States, 2014*. *MMWR Morbidity and Mortality Weekly Report*, 2015. 64(38): p. 1066-1070.

January 10, 2018

City of Oroville Planning Commission  
Attention: Damon Robison  
1735 Montgomery Street  
Oroville, CA 95965

Dear Mr. Robison and Planning Commission Members:

Youth tobacco use in Oroville is one of the highest in the state! A city ordinance that prohibits the sale of menthol and other flavored tobacco products citywide, as well as approving a fee increase for a retail tobacco license will show the city that you care about the children of Oroville.

The tobacco industry is targeting our youth with products that mimic fruit and candy flavors in small cigars, chewing tobacco, hookahs, electronic cigarettes and e-liquids, which all lead to nicotine addiction. I am writing to show my support for a city ordinance that prohibits the sale of menthol and other flavored tobacco products in the City of Oroville, as well as approving a fee increase for a tobacco retail license.

Sincerely,



Peggy Bartley  
489 Silver Leaf Drive  
Oroville, CA 95966



January 10, 2018

City of Oroville Planning Commission  
Attention: Damon Robison  
1735 Montgomery Street  
Oroville, CA 95965

Dear Mr. Robison and Planning Commission Members:

As a concerned citizen of Oroville, I am writing to show my support for a city ordinance that prohibits the sale of menthol and other flavored tobacco products in the City of Oroville, as well as approving a fee increase for a tobacco retail license.

"Big Tobacco" is targeting our youth with products that mimic fruit and candy flavors in small cigars, chewing tobacco, hookahs, electronic cigarettes and e-liquids, which all lead to nicotine addiction.

Youth tobacco use in Oroville is one of the highest in the state! A city ordinance that prohibits the sale of menthol and other flavored tobacco products citywide, as well as approving a fee increase for a retail tobacco license will show the city that you care about our residents and uphold the mission statement of Oroville "...dedicated to serving the public, ensuring the safety and vitality of the community and promoting prosperity for all."

Sincerely,

A handwritten signature in black ink, appearing to read "John Carreras", written over a horizontal line.

John Carreras  
489 Silver Leaf Drive  
Oroville, CA 95966





December 6, 2017

Oroville City Hall  
City of Oroville  
1735 Montgomery Street  
Oroville, CA 95965

Dear City of Oroville Planning Commission:

On behalf of the American Lung Association in California, the leading public health organization fighting to reduce and prevent lung disease, I am writing to express strong support for the ordinance prohibiting the sale of all flavored tobacco products, including menthol.

Each year in California, nearly 40,000 adults die from smoking-related causes and over 11,000 kids become new daily smokers. According to a 2012 Report of the U.S. Surgeon General, tobacco companies have a long history of using flavored products to entice new, younger customers. Eight out of ten youth smokers report that they initiated tobacco use with a flavored tobacco product, and the younger a person is the more likely they will be to use a flavored tobacco product.

Despite the FDA's 2009 ban on the sale of flavored cigarettes, the market for other types of flavored tobacco products such as cigars and e-cigarettes is growing rapidly. Additionally, menthol flavors were excluded from the FDA ban despite the evidence that menthol is also a driving factor in tobacco initiation.

The American Lung Association stands in strong support of ordinances that prohibit the sale of flavored tobacco, including menthol products. These products present a unique set of challenges, both in their health risks and in the populations they affect. Menthol tobacco is disproportionately used by certain populations, with over 80% of African American smokers and over 70% of LGBT smokers choosing these products. Furthermore, we know that menthol users tend to be more addicted and less able to quit smoking than non-menthol users.

By eliminating the flavored products that attract young tobacco users, and increasing the fee to obtain a tobacco retailer license, thereby providing critical policy enforcement and implementation, this ordinance will take an important step toward reducing youth and young adult tobacco use and work to eliminate illegal sales of tobacco products.

Thank you for your leadership and we hope that Oroville will adopt this ordinance and set a healthy example for our neighboring communities.

Sincerely,



Vanessa Marvin  
VP Public Policy and Advocacy





# City of Oroville

**Donald Rust**  
DIRECTOR

## COMMUNITY DEVELOPMENT DEPARTMENT

1735 Montgomery Street  
Oroville, CA 95965-4897  
(530) 538-2430 FAX (530) 538-2426  
[www.cityoforoville.org](http://www.cityoforoville.org)

### PLANNING COMMISSION STAFF REPORT

January 18, 2018

**Prioritization of the Transportation Capital Improvement Program (TCIP) Projects List - The Oroville Planning Commission will review and prioritize the City's TCIP projects list to forward its recommendations to the City Council.**

**APPLICANT:** Oroville Planning Commission  
1735 Montgomery Street  
Oroville, CA 95965

**LOCATION:** Citywide

**GENERAL PLAN:** N/A

**ZONING:** N/A

**FLOOD ZONE:** N/A

**REPORT PREPARED BY:**

Luis A. Topete, Associate Planner  
Community Development Department

**REVIEWED BY:**

Donald Rust, Director  
Community Development Department

### RECOMMENDED ACTIONS:

Staff recommends the Planning Commission forward a prioritized list of TCIP projects to the City Council for their review and consideration.

### BACKGROUND

At the May 18, 2017 Planning Commission meeting, the Commission directed staff to draft a letter to the Council recommending that the Planning Commission be granted the authority to provide review and prioritization recommendations to the City Council regarding certain "roadway" improvement projects (e.g. intersection improvements, curb, gutter and sidewalk installations, etc.). The review would take the form of the Planning Commission's analysis of the "roadway" specific projects in the City's Capital Improvement projects list

and forwarding a prioritization of the projects list to the City Council for recommendations of where monies should be first allocated when available. Review and comments would not occur for storm drains, sewer, and other utilities. The City Council approved this request at their July 18, 2017 regular Council meeting.

## **DISCUSSION**

The TCIP has identified 28 intersection improvements, 22 roadway improvements, and 8 bicycle facility improvements as part of the 2012 TCIP and Impact Fee Update Report. This report was prepared prior to the South Oroville Annexation. Transportation needs were based off the build out and growth projections of the City's 2030 General Plan, and the Butte County Association of Governments (BCAG) travel demand model would be used to determine buildout improvement needs for this TCIP update. The proposed improvements would ensure that the minimum acceptable Level of Service (LOS) that has been assigned to each roadway/intersection will be maintained at full General Plan buildout. The existing lists are not in order of priority.

Staff recommends the Planning Commission forward a prioritized list of TCIP projects to the City Council for their review and consideration.

## **FISCAL IMPACT**

Varies by project and when construction occurs.

## **ATTACHMENTS**

- A – TCIP Intersection Improvements
- B – TCIP Roadway Improvements
- C – TCIP Bicycle Facility Improvements

# ATTACHMENT - A

TABLE 22:  
TCIP INTERSECTION IMPROVEMENTS

ID	Intersection Name (1)	Improvement Description	Developer Cost	Non-TCIP Cost	Fee Cost	Total Cost
I3	Nelson Avenue / SR 70 SB Ramps	Install Roundabout or Install Signal & Add Left Turn Pockets in All Directions	\$0	\$1,300,000	\$0	\$1,300,000
I4	Nelson Avenue / SR 70 NB Ramps	Install Roundabout or Install Signal	\$0	\$1,300,000	\$0	\$1,300,000
I5	Nelson Avenue / Country Center Drive	Install Roundabout or Install Signal	\$0	\$0	\$660,000	\$660,000
I6	Nelson Avenue / Table Mountain Blvd / Cherokee Rd. (2)	Install Roundabout or Install Signal & Add Eastbound & Westbound Left Turn Pockets	\$0	\$1,300,000	\$0	\$1,300,000
I7	Grand Avenue / SR 70 SB Ramps	Install Roundabout or Install Signal	\$0	\$1,300,000	\$0	\$1,300,000
I8	Grand Avenue / SR 70 NB Ramps	Install Roundabout or Install Signal & Add Left Turn Pockets & a Northbound Right Turn Pocket	\$0	\$1,300,000	\$0	\$1,300,000
I10	Montgomery Street / SR 70 SB Ramps	Install All-Way Stop Sign	\$0	\$60,000	\$0	\$60,000
I11	Oroville Dam Boulevard / 10th Street	Install Roundabout or Install Signal	\$0	\$660,000	\$0	\$660,000
I17	Oroville Dam Boulevard / Feather River Boulevard	Add Eastbound Right Turn Pocket, Second Northbound Left Turn Pocket, Southbound Right Turn Pocket, and Restripe Southbound Left-Right as a Left- Through. Modify Signal to Accommodate Reconfiguration & Restripe Intersection.	\$0	\$1,100,000	\$0	\$1,100,000
I18	Oroville Dam Boulevard / 5th Avenue	Add Dual Northbound Right Turn Pockets and Dedicated Southbound Right Turn Pocket. Modify Signal to Accommodate Reconfiguration & Restripe Intersection.	\$0	\$1,040,000	\$0	\$1,040,000
I20	Lincoln Boulevard / Oro Dam Boulevard	Add Second Northbound Through Lane and Second Southbound Left Turn Pocket. Modify Signal to Accommodate Reconfiguration & Restripe Intersection	\$0	\$1,040,000	\$0	\$1,040,000
I22	Oroville Dam Boulevard / Spencer	Add Dedicated Northbound and Southbound Right Turn Pockets. Modify Signal to Accommodate Reconfiguration & Restripe Intersection.	\$0	\$970,000	\$0	\$970,000
I24	Oroville Dam Boulevard / Olive Highway	Add Second Eastbound Right Turn Pocket and Second Southbound Through Lane. Modify Signal to Accommodate Reconfiguration & Restripe Intersection.	\$0	\$1,040,000	\$0	\$1,040,000
I25	Olive Highway / Hospital Access	Modify Traffic Signal to Accommodate Roadway Widening on Olive Highway	\$0	\$200,000	\$0	\$200,000
I26	Lower Wyandotte Road / Olive Highway	Modify Traffic Signal to Accommodate Roadway Widening on Olive Highway	\$0	\$200,000	\$0	\$200,000
I27	Foothill Boulevard / Olive Highway	Modify Traffic Signal to Accommodate Roadway Widening on Olive Highway	\$0	\$200,000	\$0	\$200,000
I30	Ophir Road / Feather River Boulevard	Install Roundabout or Install Signal & Add Left Turn Pockets in All Directions	\$0	\$0	\$1,300,000	\$1,300,000
I31	Feather River Boulevard / Georgia Pacific Way	Install Roundabout or Install Signal & Left Turn Pockets in All Directions and a Westbound Right Turn Pocket	\$0	\$0	\$1,300,000	\$1,300,000
I33	Feather River Boulevard / Cal Oak Road	Install Roundabout or Install Signal & Northbound & Westbound Right Turn Pockets	\$0	\$660,000	\$0	\$660,000
I34	7th Avenue / Cal Oak Road	Install All-Way Stop Sign & Add Eastbound & Westbound Left Turn Pockets	\$0	\$0	\$200,000	\$200,000
I35	5th Avenue / Cal Oak Road	Install Roundabout or Install Signal & Add Left Turn Pockets in All Directions	\$0	\$0	\$660,000	\$660,000
I38	Ophir Road / Bangsitt Palermo Road	Install Roundabout or Install Signal	\$0	\$0	\$1,300,000	\$1,300,000
I39	Ophir Road / Kusel Road	Install Roundabout or Install Signal	\$0	\$0	\$1,300,000	\$1,300,000
I42	Lincoln Boulevard / Monte Vista Avenue	Install Roundabout or Install Signal	\$0	\$0	\$660,000	\$660,000
I43	Lincoln Boulevard / Walmer Road	Install Roundabout or Install Signal	\$0	\$0	\$660,000	\$660,000
I45	Lincoln Boulevard / Greenville	Install Roundabout or Install Signal	\$0	\$0	\$660,000	\$660,000
I46	Lincoln Boulevard / Wyandotte Avenue	Install Roundabout or Install Signal	\$0	\$0	\$660,000	\$660,000
I52	Lower Wyandotte Road / Monte Vista Avenue	Install Roundabout or Install Signal	\$0	\$0	\$660,000	\$660,000
<b>TOTAL:</b>			<b>\$0</b>	<b>\$13,670,000</b>	<b>\$10,020,000</b>	<b>\$23,690,000</b>

Notes: (1) Improvements to intersections 28 and 29 have not been identified in this report and are not included in the updated TCIP or fee program. These locations are at-grade intersections with State Route 70. Long-term planning of the SR 70 corridor at this stage is subject to Caltrans planning and may include grade separated interchanges one or both of these locations. (2) Improvements to intersection 6 will also not be included in the TCIP as it will be constructed with outside funding sources. (3) Improvements to intersection 33 will be constructed as mitigations to the approved Walmart project and will not be included in the fee program.



# ATTACHMENT - B

TABLE 23:  
TCIP ROADWAY IMPROVEMENTS

ID	Roadway Name	From	To	Improvement Description	Developer Cost	Non-TCIP Cost	Fee Cost	Total Cost
R2	Oroville Dam Boulevard	Wilbur Road/Larkin Avenue	Feather Avenue/Larkin Road	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$0	\$12,310,000	\$0	\$12,310,000
R6	Oroville Dam Boulevard	Orange Avenue/Acacia Avenue	Canyon Drive	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$17,389,167	\$0	\$12,420,833	\$29,810,000
R15	Table Mountain Boulevard	Garden Drive	Nelson Avenue/Cherokee Road	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$3,816,296	\$0	\$3,543,704	\$7,360,000
R16	Table Mountain Boulevard	Nelson Avenue/Cherokee Road	Montgomery Street	Widen to 4-Lane Arterial Standard by Adding Additional Travel Lanes, Bike Lanes, Sidewalk & Landscaping	\$0	\$0	\$4,440,000	\$4,440,000
R21	Montgomery Street	Park Entrance	Orange Avenue	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$0	\$0	\$5,320,000	\$5,320,000
R22	Feather River Boulevard	Montgomery Street	Oroville Dam Boulevard	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$0	\$0	\$1,580,000	\$1,580,000
R23	Feather River Boulevard	Oroville Dam Boulevard	Georgia Pacific Way	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$4,625,185	\$0	\$4,294,815	\$8,920,000
R27	5th Avenue	Mitchell Avenue	Georgia Pacific Way	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$5,568,889	\$0	\$5,171,111	\$10,740,000
R29	Georgia Pacific Way	SR 70	Baggett Marysville Road	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$3,142,222	\$0	\$2,917,778	\$6,060,000
R35	Lincoln Boulevard	Monte Vista Avenue	Ophir Road	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$2,538,261	\$0	\$1,631,739	\$4,170,000
R36	Lincoln Boulevard	Ophir Road	Messina Avenue	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$5,533,043	\$0	\$3,556,957	\$9,090,000
R38	Meyers Street	Montgomery Street	Oroville Dam Boulevard	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$0	\$0	\$1,930,000	\$1,930,000
R39	Meyers Street	Oroville Dam Boulevard	Lincoln Boulevard	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$0	\$0	\$3,250,000	\$3,250,000
R40	Washington Avenue	Montgomery Street	Oroville Dam Boulevard	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$0	\$0	\$1,860,000	\$1,860,000
R42	Las Plumas Avenue	Walmer Road	Lower Wyandotte Road	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$3,603,704	\$0	\$3,346,296	\$6,950,000
R43	Monte Vista Avenue	Lincoln Road	Lower Wyandotte Road	Improve to Major 2-Lane Collector Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$3,251,111	\$0	\$3,018,889	\$6,270,000
R45	Ophir Road	SR 70	Baggett Palermo Road	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$5,910,435	\$0	\$3,799,565	\$9,710,000
R46	Ophir Road	Baggett Palermo Road	Lincoln Boulevard	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$10,700,870	\$0	\$6,879,130	\$17,580,000
R65	Olive Highway	Oro Dam Boulevard	Lower Wyandotte Road	Widen to 4-Lane Arterial Standard by Adding Additional Travel Lanes, Bike Lanes, Sidewalk & Landscaping	\$0	\$2,010,000	\$0	\$2,010,000
R66	Olive Highway	Lower Wyandotte Road	Foothill Boulevard	Widen to 4-Lane Arterial Standard by Adding Center Turn Lane, Additional Travel Lanes, Bike Lanes, Sidewalk & Landscaping	\$0	\$3,000,000	\$0	\$3,000,000
R67	Olive Highway	Foothill Boulevard	Oakvale Avenue	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Bike Lanes, Sidewalk & Landscaping	\$0	\$10,740,000	\$0	\$10,740,000
R84	Olive Highway	Oakvale Avenue	Miners Ranch Road	Improve to Major 2-Lane Arterial Standard by Adding Center Turn Lane, Shoulder, Sidewalk & Landscaping	\$0	\$10,970,000	\$0	\$10,970,000
<b>TOTAL:</b>					<b>\$66,079,183</b>	<b>\$39,030,000</b>	<b>\$68,960,817</b>	<b>\$174,070,000</b>





# ATTACHMENT - C

TABLE 24:  
TCIP BICYCLE FACILITY IMPROVEMENTS

ID	Roadway Name	From	To	Improvement Description	Developer Cost	Non-TCIP Cost	Fee Cost	Total Cost
R19	Garden Drive	Park Entrance	Table Mountain Boulevard	Construct Bike Lanes	\$0	\$0	\$630,000	\$630,000
R34	Lincoln Boulevard	Baggett Marysville Road	Monte Vista Avenue	Add Bike Lanes (Striping)	\$0	\$0	\$60,000	\$60,000
R49	Lower Wyandotte Road	Olive Highway	V-7 Road	Add Bike Lanes (Striping)	\$0	\$0	\$60,000	\$60,000
R50	Lower Wyandotte Road	V-7	Ophir Road	Add Bike Lanes (Striping)	\$0	\$0	\$60,000	\$60,000
R47	Ophir Road	Lincoln Boulevard	Lower Wyandotte Road	Add Bike Lanes (Striping)	\$0	\$0	\$60,000	\$60,000
R1	Oroville Dam Boulevard	SR 99	Wilbur Road/Larkin Avenue	Add Bike Lanes (Striping)	\$0	\$60,000	\$0	\$60,000
R3	Oroville Dam Boulevard	Feather Avenue/Larkin Road	SR 70	Add Bike Lanes (Striping)	\$0	\$60,000	\$0	\$60,000
R4	Oroville Dam Boulevard	SR 70	Olive Highway	Add Bike Lanes (Striping)	\$0	\$140,000	\$0	\$140,000
<b>TOTAL:</b>					<b>\$0</b>	<b>\$260,000</b>	<b>\$870,000</b>	<b>\$1,130,000</b>