

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY ADDING ARTICLE VI TO CHAPTER 15 (SMOKING REGULATIONS) OF THE CITY CODE OF THE CITY OF REDWOOD CITY PROHIBITING THE SALE OF FLAVORED TOBACCO AND ELECTRONIC CIGARETTES AND THE SALE OF TOBACCO PRODUCTS IN PHARMACIES, AND AMENDING ARTICLE III (TOBACCO RETAIL PERMIT) OF CHAPTER 15 (SMOKING REGULATIONS) TO CLARIFY THAT PHARMACIES CANNOT OBTAIN A TOBACCO RETAILER'S PERMIT

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat; and

WHEREAS, flavored tobacco products are commonly sold by California tobacco retailers; and

WHEREAS, about 2,500 children in the United States try their first cigarette each day and 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored; and

WHEREAS, electronic smoking device (or e-cigarette, vape, vape pen, e-hookah, etc.) usage by youth has been rising and the devices are now the most commonly used tobacco products among middle and high school students; and

WHEREAS, the 2018 Monitoring the Future Study found that over 60% of 10th grade students said it was easy to get vaping devices and e-liquids and the 2018 National Youth Tobacco Survey found that middle and high school students can obtain devices and e-liquids from vape shops, gas stations and convenience stores; and

WHEREAS, the United States Surgeon General has stated that the brains of youth and young adults are more vulnerable to the negative consequences of nicotine exposure; and

WHEREAS, by selling tobacco products of any type, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not dangerous to smoke or vape; and

WHEREAS, the Tobacco and Education Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores and pharmacies; and

WHEREAS, there is no Constitutional right to smoke or use electronic smoking devices; and

WHEREAS, local governments have broad latitude to regulate activities that are injurious to the public's health and safety.

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

Section 1. Section 15.21 of Article III (Tobacco Retail Permit) of Chapter 15 (Smoking Regulations) of the City Code of Redwood City is hereby amended by adding the text shown in double underline (underline) and deleting the text shown in ~~strikeout~~ (~~example~~) to read as follows:

Sec. 15.21. - PERMIT REQUIRED:

It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the Environmental Health Division of the San Mateo County Department of Health (the "Environmental Health Division") for each location where such sales are conducted. Permits are valid for one (1) year and shall be renewed annually. Pharmacies, as defined in Section 15.40 of Article VI of this Chapter, may not obtain a tobacco retailer's permit.

Section 2. Article VI is hereby added to Chapter 15 (Smoking Regulations) of the City Code of Redwood City to read as follows:

ARTICLE VI. – PROHIBITING THE SALE OF FLAVORED TOBACCO, ELECTRONIC CIGARETTES, AND THE SALE OF TOBACCO PRODUCTS IN PHARMACIES

Sec. 15.40. – DEFINITIONS.

For the purposes of this Article the following definitions shall govern unless the context clearly requires otherwise:

CHARACTERIZING FLAVOR means a distinguishable taste, aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. 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. Rather, it is the presence of a distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a characterizing flavor.

CONSTITUENT means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

DISTINGUISHABLE means perceivable by either the sense of smell or taste.

DISTRIBUTE or DISTRIBUTION means the transfer by any person other than a common carrier, at any point from the place of manufacture or thereafter, to a person who sells the electronic cigarette or other electronic smoking device.

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

ELECTRONIC SMOKING DEVICE means an electronic device that can be used to deliver an inhaled dose of nicotine, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or any other product name or descriptor.

FLAVORED TOBACCO PRODUCT means any tobacco product that contains a constituent that impacts a characterizing flavor.

HOOKAH means a tobacco pipe with one or more long and flexible tubes, which draws smoke from tobacco products through water contained in a bowl.

LABELING means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.

PACKAGING means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

PERSON has the meaning set forth in Section 1.2.18 of this Code.

PHARMACY means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

SELL, SALE or TO SELL mean any transaction where, for any consideration, ownership is transferred from one person or entity to another including, but not limited to any transfer

of title or possession for consideration, exchange or barter, in any manner or by any means.

TOBACCO PRODUCT means 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, and snuff; and any electronic device that delivers nicotine to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar or electronic pipe. "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.

TOBACCO RETAILER means any store, stand, booth, concession or any other enterprise that engages in the retail sale of tobacco products.

Sec. 15.41. – SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

- A. No person or tobacco retailer shall sell or distribute any flavored tobacco product, except those businesses with a valid tobacco retailer's permit selling flavored tobacco for on-site hookah consumption as of November 22, 2021.
- B. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, 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 a characterizing flavor.

Sec. 15.42 – SALE OR DISTRIBUTION OF ELECTRONIC CIGARETTES AND ELECTRONIC SMOKING DEVICES PROHIBITED.

- A. No person or tobacco retailer shall sell or distribute any electronic cigarette or electronic smoking device.

Sec. 15.43 – SALE OR DISTRIBUTION OF TOBACCO PRODUCTS BY A PHARMACY PROHIBITED.

- A. No pharmacy or pharmacy employee or agent shall sell or offer for sale any tobacco product.

- B. No new tobacco retailer permit may be issued to a pharmacy under Article III of this Chapter.
- C. No existing tobacco retailer permit issued under Article III of this Chapter may be renewed by a pharmacy.

Sec. 15.44 – ENFORCEMENT.

- A. The City Manager, or their designee, may enforce the provisions of this Article. Additionally, the County’s Health System Chief, or their designee, may enforce the provisions of this Article.

Section 3. If any section, paragraph, sentence or word of this ordinance or of the Code hereby adopted should for any reason, be found invalid, it is intended that all other portions of this ordinance independent of any such portion as may be declared invalid shall be valid.

Section 4. This adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b) (3) because it can be seen with certainty that adoption of this ordinance will not have a significant adverse effect on the environment.

Section 5. The City Clerk shall publish this ordinance in accordance with applicable law.

Section 6. This ordinance shall take effect on April 1, 2022.

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