



**City of Santa Ana**  
**20 Civic Center Plaza, Santa Ana, CA 92701**  
**Staff Report**  
**December 21, 2021**

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**TOPIC:** Ordinance Prohibiting the Sale of Flavored Tobacco Products

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**AGENDA TITLE:**

Ordinance Prohibiting the Sale of Flavored Tobacco Products

**RECOMMENDED ACTION**

Consider one of the following recommendations:

1. Approve the first reading of an ordinance prohibiting the sale of flavored tobacco products.
2. Adopt an urgency ordinance prohibiting the sale of flavored tobacco products.  
(Requires five affirmative votes)

**DISCUSSION**

Introduction

At the November 16, 2021 meeting, Councilmember Mendoza added the following Councilmember requested item: Discuss and Consider Directing City Manager to Direct Staff to Introduce an Ordinance to Ban the Sale of Flavored Tobacco Products. There was consensus among a majority of the City Council to proceed with this item.

Background

On November 20, 2006, the City Council enacted Ordinance No. NS-2729 ("Tobacco Retail License ordinance"), amending Chapter 18, Article III of the Santa Ana Municipal Code to establish a permitting process for tobacco retail sales and to regulate their issuance. Below are some of the core elements of the Tobacco Retail License ordinance:

- Establishes definitions for terms such as "tobacco paraphernalia", "tobacco product", and "tobacco retailer".
- Declares that a person who acts as a tobacco retailer may only do so in a fixed business location and must obtain and maintain a valid tobacco retailer license by following the application procedure set forth in the ordinance.
- Outlines provisions relating to application, renewal, suspension or revocation, appeal, seizure, and enforcement procedures.

The Tobacco Retail License ordinance does not address the topic of flavored tobacco products.

#### Flavored Tobacco

Flavored tobacco means any tobacco product with added flavorings. This can mean tobacco products that contain a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice. Tobacco products may be flavored to mask the taste or odor of tobacco smoke, enhance tobacco flavor, or decrease the social stigma associated with smoking.

#### Tobacco Products

There is a wide array of tobacco products. In addition to substances that are made or derived of tobacco (such as cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, and bidis), tobacco products may also consist of electronic smoking devices, any substances that may be aerosolized or vaporized by such devices, and any component of substances made of tobacco or electronic smoking devices (such as filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes).

#### Tobacco Retailer Licenses; Enforcement

Santa Ana businesses that sell tobacco must obtain a Tobacco Retailer License, which is issued by the Santa Ana Police Department (SAPD). As such, SAPD is responsible for the administration, oversight, and enforcement of said Tobacco Retailer Licenses. There are 261 active tobacco retailer licenses. Within the permitting process, SAPD personnel verifies with the California Department of Tax and Fee Administration (CDTFA) that each business' retail license is valid and correct on an annual basis. Once the information is verified and payment is received, a permit is issued. To enforce the issuance of Tobacco Retailer Licenses, SAPD conducts weekly enforcement operations that target the illegal use, sales, and distribution of tobacco-related products. In 2021 (YTD), SAPD personnel conducted 25 operations, which netted 91 citations for tobacco-related infractions.

#### U.S. Surgeon General Declares Tobacco Use as a Public Health Priority

According to the U.S. Centers for Disease Control and Prevention (CDC), tobacco use is the leading cause of preventable death in the United States and worldwide. More than 16 million U.S. residents are living with a disease caused by smoking. Worldwide, tobacco use causes more than 7 million deaths per year. A 2016 report by the U.S. Surgeon General entitled [E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General. - PDF](#) finds that while nicotine is a highly addictive drug at any age, youth and young adults are uniquely vulnerable to the long-term consequences of exposing the brain to nicotine. The report also finds that secondhand aerosol exhaled into the air by e-cigarette users can expose others to potentially harmful chemicals. In 2018,

the Surgeon General's Advisory on E-Cigarette Use among Youth noted that e-cigarette use increased 78 percent among high school students during the past year, and one in five high school students and one in 20 middle school students currently use e-cigarettes. To clarify, these substances are tobacco products.

#### U.S. Food and Drug Administration and Flavored Tobacco Products

[On their website](#), the U.S. Food and Drug Administration (FDA) declares that the use of flavorings in tobacco products raises important public health questions. For example, the FDA is aware of scholarly and peer-reviewed research that asserts that flavorings in tobacco products are particularly appealing to youth and young adults. Acknowledging these findings, in 2009, the FDA banned cigarettes with characterizing flavors other than menthol (which have been proven to appeal to youth and young adults). More recently, in April 2021, the FDA announced plans to propose tobacco product standards to ban menthol as a characterizing flavor in cigarettes, as well as to ban all flavors in cigars—including menthol.

Currently, no flavors are banned from other tobacco products (those other than cigarettes with characterizing flavors other than menthol), although scholarly and peer-reviewed research suggests that flavors may make these products more enticing to youth and young adults. The FDA asserts that flavored tobacco products are disproportionately popular among youth—and that removing flavors from tobacco products will help protect people from becoming addicted to them.

#### Ordinance Prohibiting the Sale of Flavored Tobacco Products

The proposed ordinance (Exhibits 1 and 2) amends Sec. 18-92 of Chapter 18, Article III the Santa Ana Municipal Code to declare that it shall be unlawful for any tobacco retailer in Santa Ana to sell any flavored tobacco product.

To enforce such an ordinance, SAPD would need to expand its current enforcement operations as follows:

- Weekly business compliance checks to ensure no flavored tobacco products are sold on premises
- Increased use of undercover decoy programs to identify businesses selling prohibited tobacco products
- Additional infraction citations issued when illicit products are located
- Increased permit staff time to revoke tobacco retailer licenses for habitual business offenders

If the compliance procedure is to merely conduct routine compliance checks on businesses that sell tobacco products, then the current funding associated with the Tobacco Retailer License program has the capacity to absorb the added responsibility to ensure compliance with the proposed prohibition on the sale of flavored tobacco.

For consideration by the City Council, attached are two versions of the ordinance: a regular ordinance (Exhibit 1) and an urgency ordinance (Exhibit 2).

**ENVIRONMENTAL IMPACT**

There is no environmental impact associated with this action.

**FISCAL IMPACT**

There is no fiscal impact associated with this action.

**EXHIBIT(S)**

1. Ordinance
2. Urgency Ordinance

Submitted By: Kristine Ridge, City Manager

Approved By: Kristine Ridge, City Manager



ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SANTA ANA AMENDING ARTICLE III ENTITLED  
“TOBACCO RETAIL LICENSE” OF CHAPTER 18 OF THE  
SANTA ANA MUNICIPAL CODE PROHIBITING THE SALE  
OF FLAVORED TOBACCO PRODUCTS

WHEREAS, pursuant to the City’s police power, as granted broadly under Article XI, Section 7 of the California Constitution, and Santa Ana Charter Section 200, the Santa Ana City Council has the authority to enact and enforce ordinances and regulations for the public peace, health, and welfare of the City and its residents.

WHEREAS, the City Council finds and determines that the recent increase in use of e-cigarettes by middle and high school students is a grave public health concern.

WHEREAS, according to the American Lung Association, smoking is the number one preventable cause of death in the United States killing over 480,000 people per year<sup>1</sup>.

WHEREAS, the U.S. Center for Disease Control and Prevention (“CDC”) has definitively linked smoking to more severe illness from COVID-19<sup>2</sup>.

WHEREAS, a recent CDC study found that 99% of e-cigarettes sold in assessed venues in the United States contain nicotine.

WHEREAS, use of nicotine can harm the developing brain and the brain continues developing until age 25.

WHEREAS, use of nicotine in adolescence can lead to lower impulse control and mood disorders<sup>3</sup>.

WHEREAS, there is evidence that youth may be sensitive to nicotine and that teens can feel dependent on nicotine sooner than adults.

WHEREAS, as of 2017, more than two (2) million teens were currently using e-cigarettes.<sup>4</sup>

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<sup>1</sup> <https://www.lung.org/research/sotc/facts>

<sup>2</sup> <https://www.lung.org/research/sotc/facts>

<sup>3</sup> E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General. 2016.

<sup>4</sup> Wang, TW, Centzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A, Tobacco Product Use Among Middle and High School Students- United States, 2011-2017. MMWR Morb Mortal Wkly Rep 2018; 67:629-633

WHEREAS, according to the 2020 National Youth Tobacco Survey, more than 23.6% of high school students in the United States use at least one tobacco product, including e-cigarettes, as well as 6.7% of middle school students.

WHEREAS, in 2021, 84.7% of youth who reported using e-cigarettes reported using flavored tobacco. The most commonly used flavors were fruit (71.6%), candy, desserts or other sweets (34.1%), mint (30.2%) and menthol (28.8%).<sup>5</sup>

WHEREAS, flavorings in tobacco products can make the products more appealing to youth<sup>6</sup>.

WHEREAS, according to the CDC, each day about 1,600 youth try their first cigarette<sup>7</sup>.

WHEREAS, according to the CDC, widespread marketing of e-cigarettes and the lower cost (when compared to traditional tobacco products) have contributed to the use of e-cigarettes among youth. .

WHEREAS, if cigarette smoking continues at the current rate among youth in the United States, 5.6 million people currently under the age of 18, will die early from a smoking-related illness.<sup>8</sup>

WHEREAS, many cities throughout California have banned the sale of flavored tobacco including but not limited to, Buena Park, San Jose, La Verne, Los Angeles, Pasadena, El Monte, Glendale, Burbank and Laguna Niguel.

WHEREAS, the State of California passed SB 793 banning the sale of flavored tobacco in 2020 but the statute is stayed pending the outcome of a referendum on the statewide ballot for November 2022.

WHEREAS, the staff report for this ordinance dated December 21, 2021, shall be incorporated herein by this reference, and together with this ordinance, any amendments or supplements, and oral testimony, shall constitute the necessary findings for this ordinance.

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<sup>5</sup> Park-Lee E, Ren C. Sawdey M, et al. Notes from the Field: E-Cigarette Use Amount Middle and High School Students- National Youth Tobacco Survey, United States, 2021. Morbidity and Mortality Weekly Report, 2021. 70:1387-9.

<sup>6</sup> Centers for Disease Control and Prevention. Flavored Tobacco Product Use Among Middle and High School Students—United States, 2014. Morbidity and Mortality Weekly Report, 2015;64(38):1066–70.

<sup>7</sup> [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/index.htm?s\\_cid=osh-stu-home-spotlight-001](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/index.htm?s_cid=osh-stu-home-spotlight-001)

<sup>8</sup> [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/youth\\_data/tobacco\\_use/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm)

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

Section 1. The recitals and statements of fact set forth in the Recitals to this ordinance are true and correct, constitute a substantive part of this ordinance, and are incorporated herein by this reference and adopted by the City Council.

Section 2. Sections 18-90, 18-91, 18-92 and 18-103 of Article III entitled "Tobacco Retail License" of Chapter 18 of the Santa Ana Municipal Code are hereby amended to read in their entirety as follows (new language is underlined and deleted language is stricken):

Sec. 18-90. Definitions.

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Department" means the Santa Ana Police Department.

(b) "Characterizing flavor" means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, this is distinguishable by an ordinary consumer either prior to, or during consumption of, a tobacco product, including but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, 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 characterizing flavor.

~~(b)~~(c) "Chief" means the Chief of Police or designee.

(d) "Flavored tobacco product" means any tobacco product that imparts a characterizing flavor. There is 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 (i) made a public statement or claim that the tobacco product imparts a characterizing flavor; (ii) 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 (iii) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

~~(e)~~(e) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, and includes the definition of "person" found in Section 1-2 of the Code.

~~(d)~~(f) "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.

~~(e)~~ "Tobacco paraphernalia" means ~~cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.~~

~~(f)~~(g) "Tobacco product" means: (1) any product or substance containing, made of, or derived from tobacco or nicotine that is intended for human consumption leaf, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; or (2) an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, pipe or hookah; or (3) any component, part, accessory of subsections (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps; any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the exception that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

~~(g)~~(h) "Tobacco retailer" means any person or business who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, or who distributes free or low cost samples of tobacco products or tobacco paraphernalia. "Tobacco 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.

#### Sec. 18-91. Tobacco retailer license.

(a) It shall be unlawful for any person to act as a tobacco retailer, or to display or advertise the sale of tobacco products ~~or tobacco paraphernalia~~, without obtaining and maintaining a valid tobacco retailer's license pursuant to this article for each location at which that activity is to occur.

(b) It shall be a unlawful for a licensed tobacco retailer, or an agent or employee thereof to violate any local, state, or federal tobacco-related law.



(c) Each day on which a prohibited act occurs shall constitute a separate violation.

(d) It shall be unlawful for a licensed tobacco retailer or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to sale, display or advertising of tobacco products, ~~tobacco paraphernalia~~, or tobacco retailing.

(e) Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

Sec. 18-92. - Limits on tobacco retail license.

(a) No license shall be issued to authorize tobacco retailing at other than a fixed business place. Tobacco retailing by persons on foot or from vehicles is prohibited.

(b) No license shall be issued to authorize tobacco retailing at any location for which a tobacco retailer license suspension is in effect or during a period of ineligibility following a revocation.

(c) It shall be unlawful for a tobacco retailer, or any of the tobacco retailer's agents or employees, to sell, offer for sale, possess with intent to sell or offer for sale, a flavored tobacco product.

\* \* \*

Sec. 18-103. Tobacco retailing without a license—Seizure.

(a) Tobacco products, including flavored tobacco products, and ~~tobacco paraphernalia~~ offered for sale or exchange in violation of this article are subject to seizure by the chief or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products ~~and tobacco paraphernalia~~ seized is given reasonable notice and an opportunity to demonstrate that the tobacco products ~~and tobacco paraphernalia~~ were not offered for sale or exchange in violation of this article.

(b) Forfeited tobacco products ~~and tobacco paraphernalia~~ shall be maintained and destroyed pursuant to the chief's policy for seized evidence.

Section 3. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2), 15060(c)(3) and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility it will have a significant effect on the environment, and it is not a "project," as defined in section 15378 of the State CEQA Guidelines.

Section 4. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared invalid or unconstitutional.

Section 5. The Clerk of the Council shall certify to the adoption of this ordinance and cause the same to be published in the manner prescribed by law.


Section 6. This ordinance shall go into effect thirty (30) days after its adoption.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Vicente Sarmiento  
Mayor

APPROVED AS TO FORM:

Sonia R. Carvalho, City Attorney

  
\_\_\_\_\_  
Laura A. Rossini  
Chief Assistant City Attorney

AYES: Councilmembers: \_\_\_\_\_

NOES: Councilmembers: \_\_\_\_\_

ABSTAIN: Councilmembers: \_\_\_\_\_

NOT PRESENT: Councilmembers: \_\_\_\_\_

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_.

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

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana

ORDINANCE NO. NS-XXXX

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF SANTA ANA AMENDING ARTICLE III  
ENTITLED TOBACCO RETAIL LICENSE OF CHAPTER 18  
OF THE SANTA ANA MUNICIPAL CODE PROHIBITING  
THE SALE OF FLAVORED TOBACCO PRODUCTS

WHEREAS, pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution, and Santa Ana Charter Section 200, the Santa Ana City Council has the authority to enact and enforce ordinances and regulations for the public peace, health, and welfare of the City and its residents.

WHEREAS, pursuant to Santa Ana City Charter Sections 415 and 417, this ordinance is declared by the City Council to be necessary as an emergency measure to protect and preserve the health, safety and welfare of the residents of the City of Santa Ana and will become effective immediately if passed by the affirmative votes of at least two-thirds (2/3) of the members of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to address the current and immediate threats set forth in these Recitals.

WHEREAS, the City Council finds and determines that the recent increase in use of e-cigarettes by middle and high school students is a grave public health concern.

WHEREAS, according to the American Lung Association, smoking is the number one preventable cause of death in the United States killing over 480,000 people per year<sup>1</sup>.

WHEREAS, the U.S. Center for Disease Control and Prevention ("CDC") has definitively linked smoking to more severe illness from COVID-19<sup>2</sup>.

WHEREAS, a recent CDC study found that 99% of e-cigarettes sold in assessed venues in the United States contain nicotine.

WHEREAS, use of nicotine can harm the developing brain and the brain continues developing until age 25.

WHEREAS, use of nicotine in adolescence can lead to lower impulse control and mood disorders<sup>3</sup>.

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<sup>3</sup> E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General. 2016.



WHEREAS, there is evidence that youth may be sensitive to nicotine and that teens can feel dependent on nicotine sooner than adults.

WHEREAS, as of 2017, more than two (2) million teens were currently using e-cigarettes.<sup>4</sup>

WHEREAS, according to the 2020 National Youth Tobacco Survey, more than 23.6% of high school students in the United States use at least one tobacco product, including e-cigarettes, as well as 6.7% of middle school students.

WHEREAS, in 2021, 84.7% of youth who reported using e-cigarettes reported using flavored tobacco. The most commonly used flavors were fruit (71.6%), candy, desserts or other sweets (34.1%), mint (30.2%) and menthol (28.8%).<sup>5</sup>

WHEREAS, flavorings in tobacco products can make the products more appealing to youth<sup>6</sup>.

WHEREAS, according to the CDC, each day about 1,600 youth try their first cigarette<sup>7</sup>.

WHEREAS, according to the CDC, widespread marketing of e-cigarettes and the lower cost (when compared to traditional tobacco products) have contributed to the use of e-cigarettes among youth.

WHEREAS, if cigarette smoking continues at the current rate among youth in the United States, 5.6 million people currently under the age of 18, will die early from a smoking-related illness.<sup>8</sup>

WHEREAS, many cities throughout California have banned the sale of flavored tobacco including but not limited to, Buena Park, San Jose, La Verne, Los Angeles, Pasadena, El Monte, Glendale, Burbank and Laguna Niguel.

WHEREAS, the State of California passed SB 793 banning the sale of flavored tobacco in 2020 but the statute is stayed pending the outcome of a referendum on the statewide ballot for November 2022.

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<sup>7</sup> [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/index.htm?s\\_cid=osh-stu-home-spotlight-001](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/index.htm?s_cid=osh-stu-home-spotlight-001)

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(d) "Flavored tobacco product" means any tobacco product that imparts a characterizing flavor. There is 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 (i) made a public statement or claim that the tobacco product imparts a characterizing flavor; (ii) 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 (iii) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

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~~(d)~~(f) "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.

~~(e)~~—"Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

~~(f)~~(g) "Tobacco product" means: (1) any product or substance containing, made of, or derived from tobacco or nicotine that is intended for human consumption leaf, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; or (2) an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, pipe or hookah; or (3) any component, part, accessory of subsections (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps; any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the exception that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

~~(g)~~(h) "Tobacco retailer" means any person or business who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, or who distributes free or low cost samples of tobacco products or tobacco paraphernalia. "Tobacco 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.

#### Sec. 18-91. Tobacco retailer license.

(a) It shall be unlawful for any person to act as a tobacco retailer, or to display or advertise the sale of tobacco products ~~or tobacco paraphernalia~~, without obtaining and maintaining a valid tobacco retailer's license pursuant to this article for each location at which that activity is to occur.

(b) It shall be unlawful for a licensed tobacco retailer, or an agent or employee thereof to violate any local, state, or federal tobacco-related law.

(c) Each day on which a prohibited act occurs shall constitute a separate violation.

(d) It shall be unlawful for a licensed tobacco retailer or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to sale, display or advertising of tobacco products, ~~tobacco paraphernalia~~, or tobacco retailing.

(e) Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

Sec. 18-92. - Limits on tobacco retail license.

(a) No license shall be issued to authorize tobacco retailing at other than a fixed business place. Tobacco retailing by persons on foot or from vehicles is prohibited.

(b) No license shall be issued to authorize tobacco retailing at any location for which a tobacco retailer license suspension is in effect or during a period of ineligibility following a revocation.

(c) It shall be unlawful for a tobacco retailer, or any of the tobacco retailer's agents or employees, to sell, offer for sale, possess with intent to sell or offer for sale, a flavored tobacco product.

\* \* \*

Sec. 18-103. Tobacco retailing without a license—Seizure.

(a) Tobacco products, including flavored tobacco products, and ~~tobacco paraphernalia~~ offered for sale or exchange in violation of this article are subject to seizure by the chief or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products and ~~tobacco paraphernalia~~ seized is given reasonable notice and an opportunity to demonstrate that the tobacco products and ~~tobacco paraphernalia~~ were not offered for sale or exchange in violation of this article.

(b) Forfeited tobacco products and ~~tobacco paraphernalia~~ shall be maintained and destroyed pursuant to the chief's policy for seized evidence.

Section 3. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2),



15060(c)(3) and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility it will have a significant effect on the environment, and it is not a "project," as defined in section 15378 of the State CEQA Guidelines.

Section 4. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared invalid or unconstitutional.

Section 5. The Clerk of the Council shall certify to the adoption of this ordinance and cause the same to be published in the manner prescribed by law.

Section 6. This ordinance is introduced, passed and adopted at one and the same meeting and is thereafter immediately effective. The City Council finds that this ordinance is necessary to protect the public safety, health and welfare. The reasons for the emergency are set forth in the Recitals and Section 1 of this ordinance.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Vicente Sarmiento  
Mayor

APPROVED AS TO FORM:

Sonia R. Carvalho, City Attorney



Laura A. Rossini  
Chief Assistant City Attorney

AYES: Councilmembers: \_\_\_\_\_

NOES: Councilmembers: \_\_\_\_\_

ABSTAIN: Councilmembers: \_\_\_\_\_

NOT PRESENT: Councilmembers: \_\_\_\_\_

## CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_.

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

Clerk of the Council  
City of Santa Ana