



City of Culver City

Mike Balkman
Council Chambers
9770 Culver Blvd.
Culver City, CA 90232
(310) 253-5851

Staff Report

File #: 20-196, **Version:** 1

Item #: A-2.

CC - Introduction of an Ordinance Amending Certain Provisions of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code to Prohibit the Sale of Flavored Tobacco Products, Including Menthol

Meeting Date: August 26, 2019

Contact Person/Dept: Heather Baker/City Attorney
Phone Number: 310-253-5660

Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☐ **Action Item:** ☒ **Attachments:** ☐

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council; Notify Me - Culver City News and Events; Stay Informed - Smoking (07/26/19, 08/13/19 and 08/21/19); (Mail) Culver City Tobacco Retailer Licensees (08/01/19); and (Publication) Culver City News (08/08/19)

Department Approval: Carol Schwab (08/21/19)

RECOMMENDATION

Staff recommends the City Council introduce an Ordinance amending certain provisions of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code to prohibit the sale of flavored tobacco products, including menthol.

BACKGROUND

The following is a chronology of the City Council's prior discussion of the regulation of tobacco products:

- **August 10, 2015:** City Council amended Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code (CCMC) to amend the definitions of "tobacco paraphernalia" and "tobacco product" to specifically include electronic smoking devices and electronic smoking device paraphernalia, as it was unclear from the previous definitions as to whether these were subject to a tobacco retailer license. This amendment to CCMC Chapter 11.15 also added new definitions for "electronic smoking device" and "electronic smoking device paraphernalia."

The purpose of the amendment was to make it clear that (1) a retailer engaged in the sale of E-Cigarettes must obtain a tobacco retailer license; and (2) the sale of E-Cigarettes to underaged individuals is unlawful.

- **January 14, 2019:** Vice Mayor (then Council Member) Eriksson requested support to agendize a general discussion of electronic smoking devices (“E-Cigarettes”). Mayor (then Vice Mayor) Sahli-Wells mentioned she had been in discussions with the Los Angeles County Department of Public Health (LADPH) and USC professors regarding a potential ban of flavored E-Cigarettes and requested that a discussion of such a ban be incorporated into the requested agenda item. The City Council supported this request and directed staff to bring this item to a future City Council meeting for discussion.
- **May 28, 2019:** The City Council considered the various policy options with regard to both (1) E-Cigarette usage (identifying areas where it could be prohibited); and (2) regulation of the sale of flavored/menthol tobacco products (including a complete prohibition, an exemption for menthol and an exemption for adults only establishments). After thoroughly discussing these matters, the City Council directed staff to return with (1) a proposed Ordinance prohibiting the sale of flavored/menthol tobacco products within the City; (2) a proposed Ordinance prohibiting the use of E-Cigarettes in all outdoor public places where smoking is prohibited (City parks and recreational areas and outdoor dining areas); and (3) further discussion on whether to prohibit the use of E-cigarettes in multi-unit housing. City Council further directed that these items be considered separately.

For more detailed information, please see the May 28, 2019 staff report (Attachment 1).

This staff report focuses on a proposed Ordinance amending certain provisions of CCMC Chapter 11.15, Tobacco Retailer Licensing, to prohibit the sale of flavored/menthol tobacco products. The proposed Ordinance regarding E-Cigarette usage is tentatively scheduled for the September 23, 2019 City Council meeting.

With regard to the further discussion of an E-Cigarette ban in multi-unit housing, there will be a substantial cost involved in notification to all landlords and tenants of multi-unit housing for this agenda item. Before embarking on this significant outreach process, City staff seeks confirmation of the City Council’s prior direction to return with the item.

DISCUSSION

Current Regulations

Chapter 11.15 of the CCMC (Attachment 2) requires every person engaging in the sale of tobacco, tobacco products and tobacco paraphernalia to obtain a tobacco retailer license. Chapter 11.15 also places other requirements and restrictions on tobacco retailers, including, but not limited to:

- Prohibition of the sale of tobacco products to persons who appear to be under 27 years of age without first examining identification confirming the person is the minimum age under state law to purchase tobacco products;
- Prohibition of the sale of tobacco products via self-service displays, including vending

machines; and

- Requirement to keep tobacco products out of public view.

Ordinance

The proposed Ordinance (Attachment 3) amends certain provisions of Chapter 11.15 to prohibit the sale of flavored tobacco products, including menthol.

A summary of the amendments to Chapter 11.15 include:

- Modification to the purpose and intent of the Chapter (Section 11.15.005);
- New definitions (Section 11.15.010) for the following terms: Characterizing Flavor, Consumer, Flavored Tobacco, Little Cigar, Labeling, Manufacturer, Package or Packaging, Person, Sale or Sell;
- Modification or clarifications to the definitions (Section 11.15.010) for the following terms: Electronic Smoking Device, Tobacco Paraphernalia, Tobacco Product, Tobacco Retailer, Tobacco Retailing; and
- Amendments to licensee requirements and prohibitions (Section 11.15.015), including:
 - Addition of a prohibition on the sale of flavored tobacco products, which includes menthol products (Section 11.15.015.D);
 - Standards of evidence (rebuttable presumption) to show a licensee is in violation of the prohibition of flavored tobacco products (Section 11.15.015.D.2 and D.3);
 - Addition to the on-site sales requirement (Section 11.15.015.H);
 - Additional requirement that a tobacco retailer licensee and the licensee's agents and employees must operate in compliance with all applicable tobacco-related local, state and federal laws. (Section 11.15.015.I); and
 - Other minor revisions for clarity.

Enforcement

CCMC Section 11.15.040 (Compliance Monitoring and Enforcement), provides the following:

Compliance with the provisions of this Chapter shall be monitored by the Finance Department, Police Department and/or Enforcement Services Division, including any authorized designee of such departments and division, and/or by any other person or persons so designated by the City Manager.

Currently, due to limited resources, enforcement of the tobacco retailer licensees is handled on a complaint basis. If the City receives a complaint that tobacco products are being sold by a retailer that does not have a valid tobacco retailer license, the Finance Department will contact the retailer and require they apply for a Permit. Similarly, if the City receives a complaint that a tobacco retailer is selling to underaged individuals, the Police Department will get involved and issue a citation if warranted. As of this date, the City has not received any complaints of tobacco retailers operating in violation of the City's regulations.

Enforcement of restrictions on the sale of flavored and/or menthol tobacco products would be folded into enforcement of the current regulations pertaining to tobacco retailer licensees. If the City Council introduces, and ultimately adopts, the proposed Ordinance, City staff would work with the Finance

and Police Departments to re-evaluate the tobacco retailer license fee, after the Ordinance has been in effect for a period of time, and return to City Council at a later date if a fee increase is needed.

FISCAL ANALYSIS

There is no fiscal impact involved with the introduction of the proposed Ordinance. Should the City Council introduce, and ultimately adopt, the Ordinance, it is anticipated there will be minimal fiscal impact. Currently, there is a fee established for the issuance and administration of the tobacco retailer license. The added regulations to prohibit the sale of flavored/menthol tobacco products impact the retailer's conduct, but do not add any additional permit requirements. Since enforcement of these new restrictions would be folded into the current level of enforcement pertaining to tobacco retailer licensees, staff does not anticipate a noticeable increase in cost. If, however, enforcement efforts were increased, there would be an associated cost with such efforts, which are difficult to predict at this time.

ATTACHMENTS

1. 2019-08-26_ATT_2019-05-28 Staff Report
2. 2019-08-26_ATT_CCMC Chapter 11.15
3. 2019-08-26_ATT_Proposed Ordinance

MOTION

That the City Council:

1. Introduce an Ordinance amending certain provisions of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code to prohibit the sale of flavored tobacco products, including menthol; and
2. Confirm prior direction to agendize further discussion of E-cigarette usage in multi-unit housing.

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Culver City Municipal Code

CHAPTER 11.15: TOBACCO RETAILER LICENSING

Section

- 11.15.005 Purpose
- 11.15.010 Definitions
- 11.15.015 License requirements and prohibitions
- 11.15.020 Application procedure
- 11.15.025 License fee
- 11.15.030 Issuance of license
- 11.15.035 License renewal and expiration
- 11.15.040 Compliance monitoring and enforcement
- 11.15.045 Violations unlawful; penalties
- 11.15.050 License suspension and revocation; administrative fines

Cross-reference:

Smoking regulations, see Ch. 9.11

§ 11.15.005 PURPOSE.

In enacting this Chapter, it is the intent of the City Council to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco and nicotine product to minors.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.010 DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEPARTMENT. The Finance Department of the City of Culver City.

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

ELECTRONIC SMOKING DEVICE PARAPHERNALIA. Cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

PROPRIETOR. 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.

SELF-SERVICE DISPLAY. The open display 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 tobacco retailer or employee of the tobacco retailer, and a direct person-to-person transfer between the purchaser and the tobacco retailer or employee of the tobacco retailer. A vending machine is a form of self-service display.

TOBACCO PARAPHERNALIA. Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other instrument or paraphernalia designed for the smoking, preparation, storing, ingestion or consumption of tobacco products. For purposes of this Chapter, **TOBACCO PARAPHERNALIA** includes an **ELECTRONIC SMOKING DEVICE** and **ELECTRONIC SMOKING DEVICE PARAPHERNALIA**.

TOBACCO PRODUCT. Any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, 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. Except as otherwise provided herein, **TOBACCO PRODUCT** does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For purposes of this Chapter, **TOBACCO PRODUCT** includes an **ELECTRONIC SMOKING DEVICE** and **ELECTRONIC SMOKING DEVICE PARAPHERNALIA**.

TOBACCO RETAIL ESTABLISHMENT. A fixed location at which tobacco, tobacco products and/or tobacco paraphernalia are sold, offered for sale, exchanged or offered for exchange for any form of consideration.

TOBACCO RETAILER. Any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, in public view, tobacco, tobacco products or tobacco paraphernalia. **TOBACCO RETAILING** shall mean the selling, offering for sale, or exchanging or offering to exchange for any form of consideration, in public view,

tobacco, tobacco products or tobacco paraphernalia. Any person who distributes free or low cost samples of tobacco, tobacco products or tobacco paraphernalia shall be deemed to be a tobacco retailer under this Chapter.

TOBACCO RETAILER LICENSE. A license issued by the Department authorizing a proprietor to engage in tobacco retailing.

VENDING MACHINE. A machine, appliance or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment, that is designed or used for vending purposes, including but not limited to, machines or devices that use remote control locking mechanisms.

(Ord. No. 2009-006 § 1 (part); Ord. No. 2015-004 §§ 1, 2)

§ 11.15.015 LICENSE REQUIREMENTS AND PROHIBITIONS.

A. No person shall operate as a tobacco retailer or engage in tobacco retailing without first obtaining and maintaining a valid tobacco retailer license, pursuant to this Chapter, for each tobacco retail establishment.

B. Each tobacco retailer license shall be conspicuously displayed at all times in a publicly visible location within the licensed tobacco retail establishment.

C. Tobacco retailing by means of a self-service display is prohibited.

D. No tobacco retailer shall sell or transfer tobacco, a tobacco product or tobacco paraphernalia, to another person who appears to be under the age of 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, tobacco product or tobacco paraphernalia.

E. No tobacco retailer shall permit any person who is younger than the minimum age established by state law for the purchase or possession of tobacco, tobacco products or tobacco paraphernalia, to participate in the sale of tobacco, tobacco products or tobacco paraphernalia.

F. A tobacco retailer without a valid tobacco retail license:

1. Shall keep all tobacco, tobacco products and tobacco paraphernalia out of public view. The public display of tobacco, tobacco products and tobacco paraphernalia in violation of this section shall constitute tobacco retailing without a tobacco retail license and a violation of § 11.15.015A. of this Chapter.

2. Shall not display any advertisement relating to tobacco, tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retail establishment, or that could lead a reasonable consumer to believe such products can be obtained at the tobacco retail establishment, without the tobacco retailer first obtaining and maintaining a valid tobacco retailer license, pursuant to this Chapter, for each tobacco retail establishment at which the advertisement is displayed.

G. The sale of tobacco, tobacco products or tobacco paraphernalia from other than a fixed location, including but not limited to, tobacco retailing by persons on foot or from

vehicles, is prohibited, and no tobacco retailer license shall be issued under this Chapter for any such activity.

H. Nothing in this Chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer license any status or right other than the right to act as a tobacco retailer at the licensed tobacco retail establishment in the City. Nothing in this Chapter is intended to be construed to render inapplicable, supersede, or affect any other provision of applicable state or federal law.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.020 APPLICATION PROCEDURE.

A. All applications shall be completed on a form prepared and supplied by the Department. The application shall be signed under penalty of perjury. The following information shall be included, without limitation, on the application:

1. The name, address and telephone number of the proprietor, including, for non-corporate proprietors, the names of all principals. Corporate proprietors shall include the name of the designated agent for service of process.

2. 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 on the application.

3. The business name, address and telephone number of the tobacco retail establishment for which the application is submitted.

4. Proof that the tobacco retail establishment for which the application is submitted has been issued a valid state tobacco retailer license by the California Board of Equalization.

5. Whether any other licenses have been issued to the proprietor for tobacco retail sales within the city, and, if so, the name and address of each of the tobacco retail establishments for which these licenses have been issued.

6. Whether or not any proprietor or any agent or employee 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 (5) years.

7. A statement by the proprietor, under penalty of perjury, that the contents of the application are true and correct.

8. 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. For proprietors with multiple tobacco retail establishments within the City, a separate application is required for each proposed tobacco retail establishment.

C. Any change to the information required to be submitted in order to apply for a tobacco retailer license shall be provided to the Department within ten (10) business days of such change in information.

D. The proprietor shall be required to disclose any violations of the state tobacco licensing laws at any tobacco retail establishment within the five (5) years prior to the application for which the proprietor's state tobacco retailer's license was either suspended or revoked.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.025 LICENSE FEE.

The annual fee for a Tobacco Retailer License and the procedures for the processing and collection of such fee shall be established by resolution of the City Council.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.030 ISSUANCE OF LICENSE.

A. Except as otherwise provided herein, and except where a tobacco retailer establishment would not otherwise be permitted under local, state or federal laws, a license shall be issued upon receipt of a complete application in conformity with all requirements set forth in § 11.15.020, and the payment of the required license fee.

B. A tobacco retailer license shall not be issued where:

1. Suspension or revocation proceedings are pending before any local, state or federal agency for violations of local, state or federal tobacco control laws.

2. The proprietor or any person employed by the proprietor has been convicted of any violation of any local, state or federal tobacco control law within six (6) months prior to the date of application.

3. The proprietor's tobacco retailer license was revoked for the same tobacco retail establishment within the five (5) years preceding the date of the application.

4. The proprietor has not obtained a valid state tobacco retailer license from the California Board of Equalization.

5. The proprietor does not have a valid City business tax certificate or is delinquent on the payment of business tax, late payment penalties or other associated fees.

6. The information presented on the application is incomplete, inaccurate or false.

7. The application seeks a tobacco retailer license for a proprietor to whom this Chapter prohibits a license to be issued.

C. A tobacco retailer license is valid only for the tobacco retail establishment for which it has been issued and may not be transferred from one (1) person to another, or from one (1) tobacco retail establishment to another.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.035 LICENSE RENEWAL AND EXPIRATION.

A. A tobacco retailer license will be valid through the last day of February of every year, and if not renewed, will expire.

B. If any material information required for issuance of a tobacco retailer license has changed since the original license was issued, the proprietor shall be ineligible for a license renewal, but must apply for a new tobacco retailer license in accordance with the application procedures set forth in § 11.15.020 of this Chapter.

C. A tobacco retailer license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired or to renew a license not timely received pursuant to this Chapter, the proprietor must follow the application procedures set forth in § 11.15.020 of this Chapter.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.040 COMPLIANCE MONITORING AND ENFORCEMENT.

Compliance with the provisions of this Chapter shall be monitored by the Finance Department, Police Department and/or Enforcement Services Division, including any authorized designee of such departments and division, and/or by any other person or persons so designated by the City Manager.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.045 VIOLATIONS UNLAWFUL; PENALTIES.

A. A violation of any provision of this Chapter is unlawful.

B. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

C. A violation of any provision of this Chapter is subject to a civil action brought by the City Attorney, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation.

D. A violation of any provision of this Chapter may, at the discretion of the City Attorney, be prosecuted as an infraction or misdemeanor.

E. The City Council shall, by resolution, establish the penalties for a violation of this Chapter, but in no event shall such penalties exceed the maximum penalties permitted under state law.

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

G. In addition to the criminal penalties attached to violations of this Chapter, any violation of this Chapter is hereby declared a public nuisance.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.050 LICENSE SUSPENSION AND REVOCATION; ADMINISTRATIVE FINES.

A. In addition to any criminal or other penalty authorized by this Code and other applicable law, a tobacco retailer license may be suspended or revoked by the Committee on Permits and Licenses, as set forth herein, based on one or more of the following findings:

1. The tobacco retailer, or his or her agents or employees, has violated any provision of this Chapter, or any other local, state or federal tobacco-related law; or
2. The information contained in the application, including supplemental information, if any, is found to be false or misleading in any material respect; or
3. The tobacco retailer license was issued in error, or on the basis of false or misleading information supplied by the proprietor; or
4. The tobacco retailer license fee is unpaid; or
5. The tobacco retailer license has been transferred in violation of this Chapter.

B. Upon a finding of a first license violation, the tobacco retailer license shall be suspended for thirty (30) days; upon a finding of a second license violation within five (5) years of the first violation, the tobacco retailer license shall be suspended for ninety (90) days; and upon a finding of a third license violation within five (5) years of the first violation, the tobacco retailer license shall be revoked.

C. In addition to any criminal or other penalty authorized by this Code and other applicable law, an administrative fine may be imposed on a tobacco retailer for a violation of any provision of this Chapter, in accordance with the procedures set forth in §§ 11.01.600 et seq. of this Code.

D. The procedure used for appealing a revocation or suspension shall be in accordance with the procedures set forth in §§ 11.01.500, et seq. of this Code.

E. A tobacco retailer, whose license has been revoked, may not apply for a new tobacco retailer license for a period of five (5) years after the effective date of the revocation.

F. During any period of license suspension or revocation, the tobacco retailer must remove from public view all tobacco, tobacco products, tobacco paraphernalia, and tobacco-related advertising.

(Ord. No. 2009-006 § 1 (part))

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1 found that the availability of menthol cigarettes has an adverse impact on public health in
2 the United States and recommended removal of menthol cigarettes from the marketplace;
3 and

4 **WHEREAS**, notwithstanding the TPSAC report, the FDA has not banned
5 menthol products nor flavored non-cigarette tobacco products, such as cigars, cigarillos,
6 smokeless tobacco, hookah tobacco and electronic smoking devices (“E-Cigarettes”) and
7 the nicotine solutions used in these devices. Currently California law also does not restrict
8 the sales of these products; and

9 **WHEREAS**, states and local governments have developed educational
10 programs and media campaigns on the risks of tobacco use, offered resources to help
11 tobacco users quit, increased excise taxes on cigarettes and other tobacco products, and
12 adopted restrictions on the sale and use of tobacco products. Although these policies have
13 reduced the use of tobacco products, recent estimates suggest that 441,000 Californians
14 under 18 today will die from tobacco-related diseases²; and

15 **WHEREAS**, flavored tobacco products are considered “starter” products that
16 help establish long-term tobacco use, and they are particularly appealing to youth and
17 young adults³; and

18 **WHEREAS**, the California Department of Public Health (CDPH) has
19 published informational bulletins *The Truth About Flavored Tobacco*⁴ and *Flavored*
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22 ² Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control*
23 *Programs—2014*. U.S. Department of Health and Human Services, Centers for Disease Control and
24 Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and
25 Health. 2014. Available at:

26 https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.

27 ³U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults:*
28 *A Report of the Surgeon General*. Atlanta, GA: U.S. 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. Available at: [https://www.surgeongeneral.gov/library/reports/preventing-](https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/)
[youth-tobacco-use/](https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/)

⁴ California Department of Public Health. *The Truth About Flavored Tobacco* – 2018. Available at:
<https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/Policy/FlavoredTobaccoAndMenthol/FinalFlavoredTobaccoInfographic.pdf>

1 *Tobacco Products Fact Sheet*⁵, which discuss many of the issues relating to the use of
2 flavors in E-Cigarettes, including: sweet flavors (e.g. watermelon, cherry, chocolate, mint
3 and gummy bear) appeal to kids and teens; flavorings mask the harsh taste of tobacco,
4 making it easier for youth to initiate tobacco use; current marketing of flavored tobacco
5 products is targeted at youth (i.e. marketing products similar to popular candy brands, such
6 as Jolly Rancher, Kool-Aid and Life Savers; and colorful packaging and smaller, low costs
7 packages available for purchase); serious health risks from nicotine and flavored e-liquids;
8 and flavoring chemicals in E-Cigarettes have been linked to severe respiratory disease;
9 and

10 **WHEREAS**, as with other flavors, menthol appeals to young and beginning
11 smokers and makes it harder to quit smoking, according to the CDPH's information bulletin
12 *The Truth About Menthol Cigarettes*.⁶ CDPH has also found menthol is easier to inhale
13 and allows smokers to inhale more deeply, which causes harmful particles to settle deeper
14 inside the lungs. According to CDPH and the scientific community, in addition to the
15 impacts of menthol products on the youth population, there appears to be a
16 disproportionate marketing of menthol flavors to, and use by, minority groups, including
17 African Americans and LGB communities, as evidenced by the following:⁷ among adult
18 smokers in California, 18% of white cigarette smokers smoke menthol cigarettes, whereas
19 70% of African American cigarette smokers use menthol; almost 50% of LGB smokers use
20 menthol cigarettes compared to 28% of straight smokers; among Hispanic/Latino current
21 adult smokers in the US, 46% smoke menthol cigarettes; among Hispanic/Latino young
22 adult current smokers (aged 18-25) in the US from 2008 to 2010, 47.3% smoked menthol
23 cigarettes; between 2008-2010 and 2012-2014, the largest increase in menthol cigarette
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25 ⁵ California Department of Public Health. *Flavored Tobacco Products Fact Sheet* - 2016. Available at:
26 [https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEv
26 aluation/FactsandFigures/FinalFlavoredTobaccoFactSheet.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/FinalFlavoredTobaccoFactSheet.pdf)

27 ⁶ California Department of Public Health. *The Truth About Menthol Cigarettes* - 2018. Available at:
28 [https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/FlavoredT
28 obaccoAndMenthol/FinalMentholInfographic.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/FlavoredTobaccoAndMenthol/FinalMentholInfographic.pdf)

⁷ Keck School of Medicine of USC, *Flavor and Menthol Tobacco Products and E-cigarettes*, May 22, 2019.

1 use among race/ethnic groups was in found in Hispanic smokers (rising 9.8%); and studies
2 have shown negative associations among menthol cigarette use and successful cessation
3 in Hispanic communities; and

4 **WHEREAS**, according to data from the Centers for Disease Control and
5 Prevention (CDC): in 2011 less than 2% of high school students (220,000) reported using
6 E-Cigarettes; in 2018, three million (3,000,000) high school students reported being current
7 users, a rise of 78% from the previous year; also in 2018, about 5% of middle school
8 students (570,000) reported using E-Cigarettes, a rise of 48% from the prior year⁸; and
9 80% of young people who have ever used tobacco started with a flavored product⁹; and

10 **WHEREAS**, data from the California Healthy Kids survey found that 14% of
11 11th graders at Culver City High School reported current E-Cigarette use. Reports from
12 teachers at the middle school cite a growing number of middle schoolers using E-
13 Cigarettes. Data from the survey of Culver City students found that almost 70% of 9th and
14 11th graders thought that E-Cigarettes were easy to obtain, and approximately 1 out of 4
15 thought that E-Cigarettes posed little health risk;¹⁰ and

16 **WHEREAS**, the City Council of the City of Culver City recognizes that
17 young people are particularly susceptible to the addictive properties of tobacco products,
18 and are particularly likely to become lifelong users; and

19 **WHEREAS**, it is the intent of the City Council of the City of Culver City to
20 provide for the public's health, safety, and welfare in part by protecting youth from
21 commencing the inherently dangerous activity of smoking, and protecting the public health
22 and safety of the general public; and

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24
25 ⁸ Notes from the Field: *Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School*
26 *Students* — United States, 2011–2018 MMWR Weekly/November 16, 2018 / 67(45);1276–1277

27 https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_e

28 ⁹ Truth Initiative, 3/16/17. *Widespread use of flavored products in young tobacco users*. Available:
<https://truthinitiative.org/research/widespread-use-flavored-products-young-tobacco-users>

¹⁰ City Unified School District. California Healthy Kids Survey, 2018-19: Main Report. San Francisco: WestEd
Health and Justice Program for the California Department of Education.

1 **WHEREAS**, the City Council of the City of Culver City finds the failure of
2 tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the
3 sale of tobacco products to persons under 21 years of age, presents a threat to the
4 community's public health, safety and welfare; and

5 **WHEREAS**, the City Council desires to encourage responsible tobacco
6 retailing and to discourage violations of tobacco-related laws, especially those which
7 prohibit or discourage the sale or distribution of tobacco products to persons under 21
8 years of age; and

9 **WHEREAS**, the City Council desires to amend certain provisions of its
10 existing tobacco retailer licensing regulations to prohibit the sale of flavored tobacco
11 products, including menthol, to further protect the community's public health, safety and
12 welfare; and

13 **WHEREAS**, the City Council hereby declares that the intent and purpose of
14 the proposed amendment to Chapter 11.15 of the Culver City Municipal Code, to prohibit
15 the sale of flavored tobacco products, including menthol, is to further protect the public
16 health, safety, and welfare and, in particular to protect children from being lured into illegal
17 activity through the misconduct of adults.

18
19 **NOW THEREFORE**, the City Council of the City of Culver City, California,
20 **DOES HEREBY ORDAIN** as follows:

21
22 **SECTION 1.** Section 11.15.005 of Chapter 11.15 of the Culver City Municipal
23 Code is hereby amended to read as follows (underlined text denotes additions;
24 ~~strikethrough text~~ denotes deletions):

25 **§ 11.15.005 PURPOSE.**

26 In promoting the health, safety, and general welfare of its residents, the City
27 of Culver City has a substantial interest in encouraging compliance with federal,
28

1 State, and local laws regulating tobacco sales and use; discouraging the purchase
2 and use of tobacco products by youth; increasing compliance with laws prohibiting
3 the sale of tobacco products to youth; and in protecting children from being lured
4 into illegal activity through the misconduct of adults. In enacting this Chapter, it is
5 the intent of the City Council of the City of Culver City to encourage responsible
6 tobacco retailing and to discourage violations of tobacco-related laws, especially
7 those that prohibit or discourage the sale or distribution of tobacco and nicotine
8 product to ~~minors~~ youth, but not to expand or reduce the degree to which the acts
9 regulated by federal or State law are criminally proscribed or otherwise regulated.
10

11 **SECTION 2.** Section 11.15.010 of Chapter 11.15 of the Culver City Municipal
12 Code is hereby amended to read as follows (underlined text denotes additions;
13 ~~strikethrough-text~~ denotes deletions):

14 **§ 11.15.010 DEFINITIONS.**

15 For the purposes of this Chapter, the following definitions shall
16 apply unless the context clearly indicates or requires a different meaning.

17 **CHARACTERIZING FLAVOR.** A taste or aroma, other than the taste
18 or aroma of tobacco, imparted either prior to or during consumption of a
19 Tobacco Product or any byproduct produced by the Tobacco Product,
20 including, but not limited to, tastes or aromas relating to menthol, mint,
21 wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
22 beverage, herb, or spice; provided, however, that a Tobacco Product shall
23 not be determined to have a Characterizing Flavor solely because of the use
24 of additives or flavorings or the provision of ingredient information.

25 **CONSUMER.** A Person who purchases a Tobacco Product for
26 consumption and not for Sale to another.

27 **DEPARTMENT.** The Finance Department of the City of Culver City.
28

1 ***ELECTRONIC SMOKING DEVICE.*** An electronic device that can be
2 used to deliver an inhaled dose of nicotine, or other substances, including
3 any component, part, or accessory of such a device, whether or not sold
4 separately. Electronic Smoking Device includes any such device, whether
5 manufactured, distributed, marketed, or sold as an electronic cigarette, an
6 electronic cigar, an electronic cigarillo, an electronic pipe, an electronic
7 hookah, or any other product name or descriptor.

8 ***ELECTRONIC SMOKING DEVICE PARAPHERNALIA.*** Cartridges,
9 cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device
10 batteries, Electronic Smoking Device chargers, and any other item specifically
11 designed for the preparation, charging, or use of Electronic Smoking Devices.

12 **FLAVORED TOBACCO PRODUCT:** Any Tobacco Product that
13 imparts a Characterizing Flavor.

14 **LABELING.** Written, printed, or graphic matter upon any Tobacco
15 Product or any of its Packaging, or accompanying such Tobacco Product.

16 **LITTLE CIGAR.** Any roll of tobacco other than a Cigarette wrapped
17 entirely or in part in tobacco or any substance containing tobacco and
18 weighing no more than three pounds per thousand. "Little Cigar" includes, but
19 is not limited to, Tobacco Products known or labeled as small cigar, little
20 cigar, or cigarillo.

21 **MANUFACTURER.** Any Person, including any repacker or relabeler,
22 who manufactures, fabricates, assembles, processes, or labels a Tobacco
23 Product; or imports a finished Tobacco Product for sale or distribution into the
24 United States.

25 **PACKAGE or PACKAGING.** A pack, box, carton, or container of any
26 kind or, if no other container, any wrapping (including cellophane) in which a
27 Tobacco Product is Sold or offered for Sale to a Consumer.
28

1 **PERSON.** Any natural person, partnership, cooperative association,
2 corporation, personal representative, receiver, trustee, assignee, or any other
3 legal entity.

4 **PROPRIETOR.** A person with an ownership or managerial interest in
5 a business. An ownership interest shall be deemed to exist when a person
6 has a ten percent (10%) or greater interest in the stock, assets, or income of
7 a business other than the sole interest of security for debt. A managerial
8 interest shall be deemed to exist when a person can or does have or share
9 ultimate control over the day-to-day operations of a business.

10 **SALE or SELL.** Any transfer, exchange, barter, gift, offer for sale, or
11 distribution for a commercial purpose, in any manner or by any means
12 whatsoever.

13 **SELF-SERVICE DISPLAY.** The open display of Tobacco Products or
14 Tobacco Paraphernalia in a manner that is physically accessible in any way
15 to the general public without the assistance of the Tobacco Retailer or
16 employee of the Tobacco Retailer and a direct person-to-person transfer
17 between the purchaser and the Tobacco Retailer or employee of the Tobacco
18 Retailer. A Vending Machine is a form of Self-Service Display.

19 **TOBACCO PARAPHERNALIA.** Any item designed or marketed for
20 the consumption, use, or preparation of Tobacco Products. "Tobacco
21 Paraphernalia" includes Electronic Smoking Device Paraphernalia. Cigarette
22 papers or wrappers, pipes, holders of smoking materials of all types, cigarette
23 rolling machines, and any other instrument or paraphernalia designed for the
24 smoking, preparation, storing, ingestion or consumption of Tobacco Products.
25 For purposes of this Chapter, Tobacco Paraphernalia includes an Electronic
26 Smoking Device and Electronic Smoking Device Paraphernalia.

TOBACCO PRODUCT.

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 a cigarette, cigar, little cigar, chewing tobacco, pipe tobacco, snuff, or snus; and
2. Any Electronic Smoking Device, as defined in this Section 11.15.010, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine.
3. Notwithstanding the definitions set forth in subsections 1 and 2 to the contrary, "Tobacco Product" includes any component, part, or accessory of subsections 1 and 2, whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.
4. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

~~Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, 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. Except as otherwise provided herein, Tobacco Product does not include any~~

1 product specifically approved by the United States Food and Drug
2 Administration for use in treating nicotine or tobacco dependence. For
3 purposes of this Chapter, Tobacco Product includes an Electronic Smoking
4 Device and Electronic Smoking Device Paraphernalia.

5 **TOBACCO RETAILER.** Any Person person who Sells sells, offers for
6 Sale sale, or exchanges or does or offers to exchange for any form of
7 consideration, in public view, tobacco, Tobacco Products or Tobacco
8 Paraphernalia.

9 **TOBACCO RETAIL ESTABLISHMENT.** A fixed location at which
10 tobacco, Tobacco Products and/or Tobacco Paraphernalia is sold, offered for
11 sale, exchanged or offered for exchange for any form of consideration.

12 **TOBACCO RETAILING** The Selling selling, offering for Sale sale, or
13 exchanging or offering to exchange for any form of consideration, in public
14 view, tobacco, Tobacco Products or Tobacco Paraphernalia. Any person
15 who distributes free or low cost samples of tobacco, Tobacco Products or
16 Tobacco Paraphernalia shall be deemed to be a Tobacco Retailer under this
17 Chapter. This definition is without regard to the quantity of Tobacco Products
18 or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for
19 exchange.

20 **TOBACCO RETAILER LICENSE.** A license issued by the
21 Department authorizing a Proprietor to engage in Tobacco Retailing.

22 **VENDING MACHINE.** A machine, appliance, or other mechanical
23 device operated by currency, token, debit card, credit card, or any other form
24 of payment that is designed or used for vending purposes, including, but not
25 limited to, machines or devices that use remote control locking mechanisms.
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27
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1 **SECTION 3.** Section 11.15.015 of Chapter 11.15 of the Culver City Municipal
2 Code is hereby amended to read as follows (underlined text denotes additions;
3 ~~strikethrough text~~ denotes deletions):

4 **§ 11.15.015 LICENSE REQUIREMENTS AND PROHIBITIONS.**

5 A. License Required. No person shall operate as a Tobacco
6 Retailer or engage in Tobacco Retailing without first obtaining and
7 maintaining a valid Tobacco Retailer License pursuant to this Chapter for
8 each Tobacco Retail Establishment.

9 B. Display of License. Each Tobacco Retailer license shall be
10 conspicuously displayed at all times in a publicly visible location within the
11 licensed Tobacco Retail Establishment.

12 C. Self-Service Displays Prohibited. Tobacco Retailing by means
13 of a Self-Service Display is prohibited.

14 D. Sale of Flavored Tobacco Products Prohibited.

15 1. It shall be a violation of this Chapter for any Tobacco
16 Retailer or any of the Tobacco Retailer's agents or employees to Sell
17 or offer for Sale, or to possess with intent to Sell or offer for Sale, any
18 Flavored Tobacco Product.

19 2. There shall be a rebuttable presumption that a Tobacco
20 Retailer in possession of four or more Flavored Tobacco Products,
21 including, but not limited to, individual Flavored Tobacco Products,
22 Packages of Flavored Tobacco Products, or any combination thereof,
23 possesses such Flavored Tobacco Products with intent to Sell or offer
24 for Sale.

25 3. There shall be a rebuttable presumption that a Tobacco
26 Product is a Flavored Tobacco Product if a Tobacco Retailer,
27
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1 Manufacturer, or any employee or agent of a Tobacco Retailer or
2 Manufacturer has:

3 a. made a public statement or claim that the
4 Tobacco Product imparts a Characterizing Flavor;

5 b. used text and/or images on the Tobacco Product's
6 Labeling or Packaging to explicitly or implicitly indicate that the
7 Tobacco Product imparts a Characterizing Flavor; or

8 c. taken action directed to Consumers that would be
9 reasonably expected to cause Consumers to believe the
10 Tobacco Product imparts a Characterizing Flavor.

11 DE. Positive Identification Required. No Tobacco Retailer shall sell
12 Sell or transfer tobacco, a Tobacco Product or Tobacco Paraphernalia, to
13 another person Person who appears to be under the age of 27 years, without
14 first examining the identification of the recipient to confirm that the recipient is
15 at least the minimum age under state law to purchase and possess the
16 tobacco, Tobacco Product or Tobacco Paraphernalia.

17 EF. Restrictions on Persons Selling. No Tobacco Retailer shall
18 permit any person who is younger than the minimum age established by state
19 law for the purchase or possession of tobacco, Tobacco Products or Tobacco
20 Paraphernalia, to participate in the sale of tobacco, Tobacco Products or
21 Tobacco Paraphernalia.

22 FG. False and Misleading Advertising Prohibited. A Tobacco
23 Retailer without a valid Tobacco Retail License or a Proprietor without a valid
24 Tobacco Retailer License, including, for example, a Person whose license
25 has been suspended or revoked:

26 1. Shall keep all tobacco, Tobacco Products and Tobacco
27 Paraphernalia out of public view. The public display of tobacco,
28

1 Tobacco Products and Tobacco Paraphernalia in violation of this
2 ~~section~~ Section 11.15.015.F.1 shall constitute Tobacco Retailing
3 without a Tobacco Retail License and a violation of Section
4 11.15.015.A of this Chapter.

5 2. Shall not display any advertisement relating to tobacco,
6 Tobacco Products or Tobacco Paraphernalia that promotes the sale or
7 distribution of such products from the Tobacco Retail Establishment or
8 that could lead a reasonable ~~consumer~~ Consumer to believe such
9 products can be obtained at the Tobacco Retail Establishment without
10 the Tobacco Retailer first obtaining and maintaining a valid Tobacco
11 Retailer License pursuant to this Chapter for each Tobacco Retail
12 Establishment at which the advertisement is displayed.

13 GH. On-Site Sales. The sale Sale of tobacco, Tobacco Products or
14 Tobacco Paraphernalia from other than a ~~fixed location~~ Tobacco Retail
15 Establishment, including but not limited to Tobacco Retailing by persons on
16 foot or from vehicles is prohibited and no Tobacco Retailer License shall be
17 issued under this Chapter to any such activity. All Sales of Tobacco Products
18 and Tobacco Paraphernalia to Consumers shall be conducted in-person at a
19 Tobacco Retail Establishment. It shall be a violation of this Section
20 11.15.015.H for any Tobacco Retailer or any of the Tobacco Retailer's agents
21 or employees to Deliver Tobacco Products or Tobacco Paraphernalia or to
22 knowingly or recklessly Sell Tobacco Products or Tobacco Paraphernalia to
23 any Person that intends to Deliver the Tobacco Product or Tobacco
24 Paraphernalia to a Consumer in the City. For purposes of this subsection,
25 "Deliver" means the commercial transfer of Tobacco Products or Tobacco
26 Paraphernalia to a Consumer at a location not licensed pursuant to this
27 Chapter.
28

1 I. Lawful Business Operation. In the course of Tobacco Retailing
2 or in the operation and maintenance of the Tobacco Retail Establishment, it
3 shall be a violation of this Chapter for a Tobacco Retailer Licensee, or any of
4 the licensee's agents or employees, to violate any local, state, or federal law
5 applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco
6 Retailing.

7 HJ. Application of State and Federal Law. Nothing in this Chapter
8 shall be construed to grant any person obtaining and maintaining a Tobacco
9 Retailer License any status or right other than the right to act as a Tobacco
10 Retailer at the licensed Tobacco Retail Establishment in the City of Culver
11 City. Nothing in this Chapter is intended to be construed to render
12 inapplicable, supersede, or affect any other provision of applicable state or
13 federal law.

14
15 **SECTION 4.** Pursuant to Section 619 of the City Charter, this Ordinance
16 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
17 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
18 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
19 Culver City News and shall post this Ordinance or a summary thereof in at least three
20 places within the City.

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SECTION 5. The City Council hereby declares that, if any provision, section, subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared invalid or unconstitutional by any final action in a court of competent jurisdiction or by reason of any preemptive legislation, then the City Council would have independently adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases or words of this ordinance and as such they shall remain in full force and effect.

APPROVED AND ADOPTED this _____ day of _____, 2019.

MEGHAN SAHLI-WELLS, Mayor
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

JEREMY GREEN, City Clerk

A19-00628

CAROL A. SCHWAB, City Attorney