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ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING CERTAIN PROVISIONS OF CHAPTER 11.15, TOBACCO RETAILER LICENSING, OF THE CULVER CITY MUNICIPAL TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS, INCLUDING MENTHOL.

WHEREAS, tobacco use remains a significant public health problem and impediment to health equity in California and the United States. Each year, tobacco-related diseases cause the deaths of approximately 40,000 Californians and nearly half a million individuals in the United States, making tobacco use the nation’s leading cause of preventable death.¹ For decades, governments at the federal, state, and local levels have advanced various policies intended to address this significant public health crisis; and

WHEREAS, in 2009, the Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”) gave the U.S. Food and Drug Administration (FDA) the authority to regulate tobacco products. The legislation also prohibited cigarettes that contain artificial or natural flavors (except tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product (“characterizing flavor”) to minimize the attractiveness of tobacco products to youth; and

WHEREAS, the Tobacco Control Act also established the Tobacco Products Scientific Advisory Committee (TPSAC), which was charged with developing a report assessing the impact of the use of menthol in cigarettes on public health and proposing recommendations to the FDA on whether menthol should be banned or not. The TPSAC report and recommendations were submitted to the FDA on March 18, 2011 and the report

¹ Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014*. 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. 2014. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.

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-youth-tobacco-use/>

⁴ California Department of Public Health. *The Truth About Flavored Tobacco – 2018*. Available at:
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/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**, as recently as October 3, 2019, the CDC reported that as of
17 October 1, 2019, 1,080 lung injury cases associated with using E-Cigarette, or vaping,
18 products have been reported to CDC from 48 states and 1 U.S. territory; 18 deaths have
19 been confirmed in 15 states; and all patients have reported a history of using E-Cigarette,
20 or vaping, products¹¹; and

21
22
23 ⁸ Notes from the Field: *Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School
Students* — United States, 2011–2018 MMWR Weekly/November 16, 2018 / 67(45);1276–1277
https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_e

24 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>

25 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.

26 ¹¹ Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with E-Cigarette Use, or*
27 *Vaping*, posted October 3, 2019, [https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)
28 [disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)

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

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

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

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

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

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

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26 **NOW THEREFORE**, the City Council of the City of Culver City, California,
27 **DOES HEREBY ORDAIN** as follows:
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SECTION 1. Section 11.15.005 of Chapter 11.15 of the Culver City Municipal Code is hereby amended to read as follows (underlined text denotes additions; ~~strikethrough text~~ denotes deletions):

§ 11.15.005 PURPOSE.

In promoting the health, safety, and general welfare of its residents, the City of Culver City has a substantial interest in encouraging compliance with federal, State, and local laws regulating tobacco sales and use; discouraging the purchase and use of tobacco products by youth; increasing compliance with laws prohibiting the sale of tobacco products to youth; and in protecting children from being lured into illegal activity through the misconduct of adults. In enacting this Chapter, it is the intent of the City Council of the City of Culver City 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~~ youth, but not to expand or reduce the degree to which the acts regulated by federal or State law are criminally proscribed or otherwise regulated.

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

§ 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.

CHARACTERIZING FLAVOR. A taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint,

1 wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
2 beverage, herb, or spice; provided, however, that a Tobacco Product shall
3 not be determined to have a Characterizing Flavor solely because of the use
4 of additives or flavorings or the provision of ingredient information.

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

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

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

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

19 **FLAVORED TOBACCO PRODUCT:** Any Tobacco Product that
20 imparts a Characterizing Flavor.

21 **[OPTIONAL: The definitions of hookah, hookah lounge and hookah**
22 **tobacco, below, may be included if the City Council determines to**
23 **include an exemption for hookah bars.]**

24 **HOOKAH:** A device used to smoke Hookah Tobacco or other
25 substances such as Flavored Tobacco Products, which typically has a head,
26 a metal body, a water bowl, and a flexible hose with a mouthpiece that people
27 put into their mouths to inhale tobacco smoke.

1 **HOOKAH LOUNGE:** An establishment holding a valid Tobacco
2 Retailer License that: (i) exclusively occupies an enclosed indoor space and
3 is primarily engaged in the retail sale of Hookah Tobacco for consumption by
4 customers on the premises; (ii) generates more than 70% of its gross
5 revenues annually from the sale of Hookah Tobacco and the rental of on-site
6 Hookahs, not including any sales from vending machines; (iii) does not sell
7 food or beverages for consumption on the premises; and (iv) prohibits entry
8 to a person that does not meet the minimum age requirement under state law
9 to purchase and possess tobacco, Tobacco Product or Tobacco
10 Paraphernalia.

11 **HOOKAH TOBACCO:** A type of combustible tobacco that is smoked
12 with a Hookah, including waterpipe tobacco, maassel, shisha, narghile, and
13 argileh.

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.

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.~~

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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, snus and Hookah Tobacco; 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.~~

1 Except as otherwise provided herein, Tobacco Product does not include any
2 product specifically approved by the United States Food and Drug
3 Administration for use in treating nicotine or tobacco dependence. For
4 purposes of this Chapter, Tobacco Product includes an Electronic Smoking
5 Device and Electronic Smoking Device Paraphernalia.

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

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

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

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

23 [OPTIONAL: The definition of tobacco store, below, may be included if
24 the City Council determines to include an exemption for tobacco
25 stores.]

26 **TOBACCO STORE.** A retail establishment that holds a valid Tobacco
27 Retailer License and meets all of the following requirements: (i) primarily
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1 sells tobacco products; (ii) generates more than 70% of its gross revenues
2 annually from the sale of Tobacco Products and Tobacco Paraphernalia; (iii)
3 prohibits any person that does not meet the minimum age requirement under
4 state law to purchase and possess tobacco, Tobacco Product or Tobacco
5 Paraphernalia on the premises at any time; and (iv) does not sell food or
6 beverages for consumption on the premises.

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

11
12 **SECTION 3.** Section 11.15.015 of Chapter 11.15 of the Culver City Municipal
13 Code is hereby amended to read as follows (underlined text denotes additions;
14 ~~strikethrough text~~ denotes deletions):

15 **§ 11.15.015 LICENSE REQUIREMENTS AND PROHIBITIONS.**

16 A. License Required. No person shall operate as a Tobacco
17 Retailer or engage in Tobacco Retailing without first obtaining and
18 maintaining a valid Tobacco Retailer License pursuant to this Chapter for
19 each Tobacco Retail Establishment.

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

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

25 D. Sale of Flavored Tobacco Products Prohibited.

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

3 2. There shall be a rebuttable presumption that a Tobacco
4 Retailer in possession of four or more Flavored Tobacco Products,
5 including, but not limited to, individual Flavored Tobacco Products,
6 Packages of Flavored Tobacco Products, or any combination thereof,
7 possesses such Flavored Tobacco Products with intent to Sell or offer
8 for Sale.

9 3. There shall be a rebuttable presumption that a Tobacco
10 Product is a Flavored Tobacco Product if a Tobacco Retailer,
11 Manufacturer, or any employee or agent of a Tobacco Retailer or
12 Manufacturer has:

13 a. made a public statement or claim that the
14 Tobacco Product imparts a Characterizing Flavor;

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

18 c. taken action directed to Consumers that would be
19 reasonably expected to cause Consumers to believe the
20 Tobacco Product imparts a Characterizing Flavor.

21 **[OPTIONAL: Section D.4, below, may be included if the City Council**
22 **determines to include an exemption for adults only establishments.**
23 **Various alternatives are presented depending on whether the exemption**
24 **is broad or narrow. The City Council may choose to include or omit**
25 **these alternatives, or a variation thereof, when introducing the**
26 **Ordinance.]**

25 **[Alternative 1 – Exemption for Hookah Lounges Only]**

26 4. This Section 11.15.015.D shall not apply to a Hookah Lounge,
27 that has a valid Tobacco Retailer License as of October 14, 2019, where the
28 sales of Flavored Tobacco Products are limited to onsite consumption only.
 [Alternative 1.A: Rather than limiting it to existing Hookah Lounges, the

1 **City Council may carve out an exemption for all Hookah Lounges, which**
2 **would permit new hookah lounges to come into the City.]**

3 **[Alternative 2 – Exemption for Hookah Lounges and Tobacco**
4 **Stores]**

5 4. This Section 11.15.015.D shall not apply to a Hookah Lounge or
6 Tobacco Store that meet the following requirements:

7 a. A Hookah Lounge must have a valid Tobacco Retailer
8 License as of October 14, 2019, and the sales of Flavored Tobacco
9 Products must be limited to onsite consumption of Hookah Tobacco.

10 b. A Tobacco Store must have a valid Tobacco Retailer
11 License as of October 14, 2019.

12 **[Alternative 2.A – Amortization Clause in subsection (c),**
13 **below.]**

14 c. The exception for a Tobacco Store provided in Section
15 11.15.015.D.4.b shall expire either on November 27, 2022, or on the
16 expiration date of the Tobacco Store’s lease that is in effect on
17 October 14, 2019, whichever date occurs earlier, after which this
18 exception shall have no further force or effect.

19 **[NOTE: The November 27, 2022 date of expiration, above, is three**
20 **years from the effective date of the Ordinance and may be**
21 **changed by the City Council as deemed appropriate.]**

22 5. Except as otherwise provided, this Section 11.15.015.D shall
23 become effective on January 26, 2020.

24 **[NOTE: The effective, above, is 90 days from the adoption of the**
25 **Ordinance. City Council may change this date as deemed**
26 **appropriate.]**

27 DE. *Positive Identification Required.* No Tobacco Retailer shall sell
28 Sell or transfer tobacco, a Tobacco Product or Tobacco Paraphernalia, to
another ~~person~~ 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.

1 EF. Restrictions on Persons Selling. No Tobacco Retailer shall
2 permit any person who is younger than the minimum age established by state
3 law for the purchase or possession of tobacco, Tobacco Products or Tobacco
4 Paraphernalia, to participate in the sale of tobacco, Tobacco Products or
5 Tobacco Paraphernalia.

6 FG. False and Misleading Advertising Prohibited. A Tobacco
7 Retailer without a valid Tobacco Retail License or a Proprietor without a valid
8 Tobacco Retailer License, including, for example, a Person whose license
9 has been suspended or revoked:

10 1. Shall keep all tobacco, Tobacco Products and Tobacco
11 Paraphernalia out of public view. The public display of tobacco,
12 Tobacco Products and Tobacco Paraphernalia in violation of this
13 section Section 11.15.015.F.1 shall constitute Tobacco Retailing
14 without a Tobacco Retail License and a violation of Section
15 11.15.015.A of this Chapter.

16 2. Shall not display any advertisement relating to tobacco,
17 Tobacco Products or Tobacco Paraphernalia that promotes the sale or
18 distribution of such products from the Tobacco Retail Establishment or
19 that could lead a reasonable consumer Consumer to believe such
20 products can be obtained at the Tobacco Retail Establishment without
21 the Tobacco Retailer first obtaining and maintaining a valid Tobacco
22 Retailer License pursuant to this Chapter for each Tobacco Retail
23 Establishment at which the advertisement is displayed.

24 GH. On-Site Sales. The ~~sale~~ Sale of tobacco, Tobacco Products or
25 Tobacco Paraphernalia from other than a ~~fixed location~~ Tobacco Retail
26 Establishment, including but not limited to Tobacco Retailing by persons on
27 foot or from vehicles is prohibited and no Tobacco Retailer License shall be
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1 issued under this Chapter to any such activity. All Sales of Tobacco Products
2 and Tobacco Paraphernalia to Consumers shall be conducted in-person at a
3 Tobacco Retail Establishment. It shall be a violation of this Section
4 11.15.015.H for any Tobacco Retailer or any of the Tobacco Retailer's agents
5 or employees to Deliver Tobacco Products or Tobacco Paraphernalia or to
6 knowingly or recklessly Sell Tobacco Products or Tobacco Paraphernalia to
7 any Person that intends to Deliver the Tobacco Product or Tobacco
8 Paraphernalia to a Consumer in the City. For purposes of this subsection,
9 "Deliver" means the commercial transfer of Tobacco Products or Tobacco
10 Paraphernalia to a Consumer at a location not licensed pursuant to this
11 Chapter.

12 I. Lawful Business Operation. In the course of Tobacco Retailing
13 or in the operation and maintenance of the Tobacco Retail Establishment, it
14 shall be a violation of this Chapter for a Tobacco Retailer Licensee, or any of
15 the licensee's agents or employees, to violate any local, state, or federal law
16 applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco
17 Retailing.

18 HJ. Application of State and Federal Law. Nothing in this Chapter
19 shall be construed to grant any person obtaining and maintaining a Tobacco
20 Retailer License any status or right other than the right to act as a Tobacco
21 Retailer at the licensed Tobacco Retail Establishment in the City of Culver
22 City. Nothing in this Chapter is intended to be construed to render
23 inapplicable, supersede, or affect any other provision of applicable state or
24 federal law.

25
26 **SECTION 4.** Pursuant to Section 619 of the City Charter, this Ordinance
27 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
28

1 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
2 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
3 Culver City News and shall post this Ordinance or a summary thereof in at least three
4 places within the City.

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

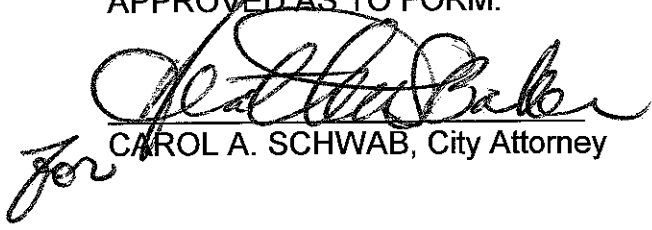
12
13 **APPROVED AND ADOPTED** this ____ day of _____, 2019.

14
15 _____
16 MEGHAN SAHLI-WELLS, Mayor
17 City of Culver City, California

18 ATTEST:

APPROVED AS TO FORM:

19
20 _____
21 JEREMY GREEN, City Clerk


CAROL A. SCHWAB, City Attorney

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A19-00628