

ORDINANCE NO. 18-O-2758

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING ARTICLE 21 OF CHAPTER 4 OF TITLE 5 OF
THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT
THE SALE OF FLAVORED TOBACCO PRODUCTS**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million deaths per year.

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibits cigarettes with characterizing flavors other than tobacco and menthol, largely because these flavored products are marketed to youth and young adults, and younger smokers are more likely than older smokers to try these products. When Congress enacted the FSPTCA, it found that the use of tobacco products by the nation's children is a pediatric disease of "considerable proportions" that results in new generations of tobacco dependent children and adults. Congress further found that virtually all new users of tobacco products are under the minimum legal age to buy the products.

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor California law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices.

WHEREAS, the 2014 California Tobacco Advertising Study found that flavored tobacco products are very common in California tobacco retailers as evidenced by the following:

- 97.4% of stores that sell cigarettes sell menthol cigarettes;
- 94.5% of stores that sell little cigars sell them in flavored varieties;
- 84.2% of stores that sell electronic smoking devices sell flavored varieties; and
- 83.8% of stores that sell chew or snus sell flavored varieties.

WHEREAS, according to a 2010 Surgeon General's report, menthol and flavored products have been shown to be "starter" products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction.

WHEREAS, young people are much more likely than adults to use menthol, candy, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco.

WHEREAS, according to a 2015 report, 70% of middle school and high school students who currently use tobacco report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets.

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

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products.

WHEREAS, between 2004 and 2014 use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26 and older).

WHEREAS, in an undercover operation conducted in 2017, close to half of the tobacco retailers that are operating in Beverly Hills, sold tobacco products to persons under the age of 21 in violation of both State law and Beverly Hills Municipal Code section 4-2-109.

WHEREAS, it is the intent of the City Council of the City of Beverly Hills to provide for the public's health, safety, and welfare by protecting youth from commencing the inherently dangerous activity of smoking.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 4-2-2102 (DEFINITIONS) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add the definitions of "Characterizing Flavor" and "Flavored Tobacco Product" in alphabetical order, and to amend the definition of "Tobacco Product" as follows with all other provisions of Section 4-2-2102 remaining in effect without amendment:

"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, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

"Flavored Tobacco Product": Any Tobacco Product that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacture of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a Characterizing Flavor shall constitute presumptive evidence that the Tobacco Product is a Flavored Tobacco Product.

“Tobacco Product”: Includes (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco; (2) any electronic cigarette; and (3) any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include a drug, device, or combination product authorized for sale by the United States Food and Drug Administration as a tobacco use cessation product.

Section 2. Code Amendment. Section 4-2-2109 (REQUIREMENTS FOR OPERATION) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection “H” to read as follows:

“H. It shall be unlawful for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to sell or offer for sale any Flavored Tobacco Product. This regulation is not intended to impose any requirement which is different from, or in addition to, any requirement under the provisions of the Family Smoking Prevention and Tobacco Control Act relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.”

Section 3. Code Amendment. Section 4-2-2115 (ENFORCEMENT) of Article 21 (TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMITTING REGULATIONS) of Chapter 2 (REGULATORY BUSINESS PERMITS) of Title 4 (REGULATION OF CERTAIN TYPES OF BUSINESSES AND ACTIVITIES) of the Beverly Hills Municipal Code is hereby amended to add a new subsection “G” to read as follows:

“G. The City shall not enforce a violation of Section 4-2-2109 subsection H against any Tobacco Retailer that is lawfully operating in the City until December 21, 2018.”

Section 4. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only prohibits the sale of Flavored Tobacco Products. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

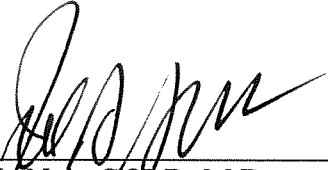
Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the city within fifteen

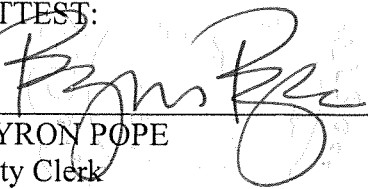
(15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

Section 7. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.


Adopted: August 21, 2018
Effective: September 21, 2018



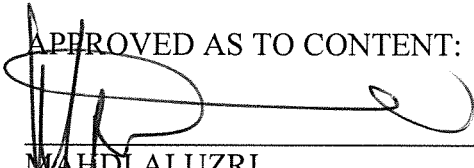
JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills

ATTEST:


BYRON POPE
City Clerk (SEAL)

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:


MAHDI ALUZRI
City Manager