



TO: City Council

FROM: Michael Jenkins, City Attorney

CONTACT: Winnie Cai, Assistant City Attorney

SUBJECT: Ordinance Banning Sales of Flavored Tobacco Products

RECOMMENDATION:

Introduce and conduct the first reading (by title only and waive further reading) of City Council Ordinance No. 21-__ entitled "An Ordinance of the City of Goleta, California, Amending Chapter 5.07 of Title 5 of the Goleta Municipal Code Banning the Sales of Flavored Tobacco Products."

BACKGROUND:

On August 28, 2020, Governor Gavin Newsom signed into law Senate Bill 793, which banned the sale of most flavored e-cigarettes, smokeless tobacco, and cigars in all flavors from fruit to mint to candy products, including menthol cigarettes ("flavored tobacco"). SB 793 was set to go into effect on January 1, 2021. Prior to that, a petition to referendum the law acquired enough signatures to place the item on the ballot in November 2022. The vote in the November 2022 general election will determine whether the state-wide ban on flavored tobacco will be enforceable. However, litigation is likely to ensue even if the voters affirm SB 793. It is likely that litigation surrounding election results could delay enforcement for years.

Local entities have the authority to pass their own flavored tobacco ban. Staff brought an item in January 2020 to the Ordinance Committee to consider whether the City should impose a ban on the sale of flavored tobacco along with other restrictions on the sale of tobacco in the City. These other restrictions included prohibiting the sale of small and inexpensive pack sizes, prohibiting coupons that allow a consumer to purchase a tobacco product for less than the full retail price, prohibiting the sale of any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price. A number of questions arose about how these restrictions would affect the City's tobacco retailers.

This item was again considered by the Ordinance Committee at its meeting on August 9, 2021. The decision was split on whether to recommend the item to the whole City Council for consideration. As such, there was no recommendation from the Ordinance Committee.

Currently, there is neither a state nor City-wide ban on the sales of flavored tobacco. The issue is whether the City should impose a flavored tobacco ban. A number of local jurisdictions have banned flavored tobacco, including the County of Santa Barbara, and the cities of Carpinteria, Santa Maria and Guadalupe.

DISCUSSION:

Public Policy Reasons to Ban Flavored Tobacco

Flavored tobacco products lure millions of youths and other people into a lifetime of addiction, disease and death. According to the American Medical Association, there has been a recent upward trend in youth smoking. With 90 percent of adult smokers beginning smoking in their teens, the tobacco industry has for years relied on flavored products to successfully market to young people.

E-cigarette flavors have led to the doubling of e-cigarette use. In 2019, 27.5 percent of high school students reported using e-cigarettes, up from 11.7 percent in 2017. Data and research from the Food and Drug Administrative, National Institutes of Health and others have found that:

- Nearly 80 percent of 12- to 17-year olds who had ever used tobacco products first used a flavored product.
- For each tobacco product, at least two-thirds of youth reported using these products “because they come in flavors I like.”
- 97 percent of current youth e-cigarette users had used a flavored tobacco in the past month.

Flavored tobacco products have produced health disparities in minority communities. Since the 1950s, tobacco companies have marketed menthol tobacco products to Black people by putting more advertisements at stores with higher proportions of Black residents. The result has been that 85 percent of Black smokers use menthol cigarettes, compared to 29 percent of white smokers. (American Medical Association, *Why a federal court upheld ban on flavored tobacco products*, published May 6, 2021 (last visited on September 8, 2021) <https://www.ama-assn.org/delivering-care/public-health/why-federal-court-upheld-ban-flavored-tobacco-products>)

The dangers of flavored tobacco and E-Cigarettes include:

- Flavored and mentholated tobacco products are “starter” products that help new users establish daily habits and promote addiction to tobacco products, making it harder to quit, and may result in the concurrent use of multiple tobacco products (i.e., e-cigarettes and combustible cigarettes) (California Medical Association, 2016).
- Four out of five (81%) youth who have ever used tobacco started with a flavored product (American Journal of Preventative Medicine, 2017).
- Some flavor products are created and marketed for kids and share the same names, packaging, and logos as popular candy brands like Jolly Rancher, Kool-Aid, and Life Savers and gaming systems like Wii and Gameboy. Many of the flavoring chemicals used are “cherry,” “grape,” “apple,” and “berry” tobacco

products are the same ones used to flavor Jolly Rancher candies, Life Savers, Zotz candy, and Kool-Aid drink mix.

- Many e-cigarettes now contain nicotine salts instead of the traditional free-base nicotine. Like the added flavors, these salts allow users to inhale particularly high levels of nicotine with more ease and less irritation than ever before.
- The liquid nicotine used in e-cigarettes frequently contains propylene glycol, glycerin, diacetyl, 2,3-pentanedione, and acetoin present in levels that are unsafe for inhalation (Tobacco Control, 2016).
- Research has found chemicals and toxins contained in the aerosol created by e-cigarette and vaping products such as nicotine, formaldehyde, lead, nickel, and acetaldehyde, all of which are found on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm (California Department of Public Health, 2015).
- Hazardous ultrafine particles found in e-cigarette aerosol can perforate deep into lung tissue of the user as well as nonusers in the presence of aerosol (secondhand smoke) (Indoor Air, 2013).
- The e-cigarette cartomizer fluid and aerosol have also been found to contain metal and silicate particles and nanoparticles resulting from the heating of liquid using the coil and wick (PLoS One, 2013).

The negative health effects of nicotine include:

- Nicotine is one of the most toxic of all poisons and is classified by the U.S. Environmental Protection Agency as an acute hazardous waste (World Health Organization, 1991)²⁰ and (U.S. Environmental Protection Agency).
- Nicotine exposure during fetal development, a critical window for brain development, has lasting adverse consequences for brain development. Nicotine adversely affects maternal and fetal health during pregnancy, contributing to multiple adverse outcomes such as preterm delivery and stillbirth (U.S. Department of Health and Human Services, 2014).
- Nicotine is a neurotoxin that can have devastating consequences on the developing brains of adolescents and young people. Nicotine affects attention, learning, and memory. It can worsen stressors already challenging in adolescence such as learning difficulties, irritability, and anxiety (Cold Spring Harbor Perspectives in Medicine, 2012) & (Biochemical Pharmacology, 2016) & (Brain Research, 2003).
- Nicotine has been linked to cancer and cardiovascular disease.

Proposed Amendment

The proposed ordinance amends Section 5.07.010 to substantively include:

1. A prohibition against the sale of flavored tobacco products.
2. A definition for "Flavored tobacco product," which is defined as any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

3. Revised definition for “Smoking,” which is defined to mean inhaling, exhaling, burning, or carrying any lighted or heated pipe, cigar, cigarette, weed, plant or other combustible organic or chemical substance, the smoke or vapor emission from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.
4. New definition for “Tobacco paraphernalia” which is defined to mean any item designed for the consumption, use, or preparation of tobacco products.
5. New definition for “Tobacco product,” which is defined as:
 - a. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus.
 - b. Any electronic smoking device, with or without nicotine.
 - c. Any component, part, or accessory of a tobacco product, whether or not sold separately, notwithstanding any provision of this definition to the contrary.

The change to the definition of “Tobacco paraphernalia” is to simplify the former definition which listed a number of ways tobacco can be consumed. The new definition is broader and more comprehensive. Furthermore, the definition of “Tobacco product” was also broadened to add electronic smoking device and a catch-all provision “any component, part, or accessory of a tobacco product,” so that all tobacco delivery devices and accessories are captured. The definition of “Smoking” was updated to include inhaling a heated substance. The previous definitions reflected the latest forms of tobacco delivery that existed in 2014 when the City passed its original tobacco retailer license. These new definitions update the language and do not substantively change the existing prohibitions.

Lastly, on December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended to raise the federal minimum age of sale of tobacco products from 18 to 21 years. The proposed ordinance amends Chapter 5.07 to conform to the legislation.

Educational Campaign

A City ban on the sale of flavored tobacco would have an impact on tobacco retailers who have flavored tobacco products in their inventory. In order to account for this, staff recommends that the City delay the effective date of the ordinance amendment for 60 days, instead of the usual 30 days, after enactment (second reading of ordinance at City Council). In that 60-day period, the City could conduct an educational campaign by sending letters to each tobacco retailer and publicizing the ordinance amendment in its media outlets. In addition, staff from the Tobacco Prevention Program at the Santa Barbara County Public Health Department can make in-person visits to individual shops and educate them about the ban. These efforts in neighboring jurisdictions have proven to be successful.

Council also has the option to set a start date, such as January 1, 2022, for enforcement instead of selection a 60-day enforcement period.

Ordinance Committee

This item was presented to the Ordinance Committee meeting on August 9, 2021. The decision was split on whether to bring the item to the whole City Council for consideration. As a result there was no recommendation from the Ordinance Committee.

Councilmember Aceves requested that the following information be obtained for consideration:

1. What are the local statistics?
 - a. The most recent [California Healthy Kids Survey \(2017-2019\)](#) surveyed 7,500 9th graders and 5,988 11th graders from 25 schools across Santa Barbara County (Dos Pueblos High School was not surveyed). It found that 27% of 11th graders and 18% of 9th graders reported having vaped.
 - b. There are 32 tobacco retailers in Goleta. Studies have consistently shown that children are more likely to smoke when they live in or go to school in neighborhoods with a high density of tobacco retailers ([Tobacco Retailer Density – ChangeLab Solutions](#)).
 - c. Even if retailers only sell to clients 21 and older, these flavored products make their way to the hands of youth. Data from the Truth Initiative shows that among youth who used JUUL flavor pods, 74% purchased products from a physical retail location, 53% from a social source, and 6% from the internet ([Where are Kids Getting JUUL – Truth Initiative](#)).
 - d. In 2020, about 8 in 10 youth who currently use e-cigarettes reported using a flavored product; this is an increase from about 7 in 10 youth who reported this in 2019 (CDC: https://www.cdc.gov/tobacco/data_statistics/evidence/pdfs/Scientific-Evidence-Brief-Flavored-Tobacco-Products-Including-Menthol-508.pdf).
2. Is the City of Santa Barbara banning flavored tobacco? Does a ban in Goleta create an unfair advantage for smokeshops in Santa Barbara in that Goleta residents will just drive to Santa Barbara to buy flavored tobacco?
 - a. The City of Santa Barbara made similar efforts as Goleta before the pandemic to ban flavored tobacco and put the item on hold when the pandemic started. Staff inquired with Santa Barbara staff about when this item may be brought back to the Santa Barbara City Council, and the response was the staff person responsible for this item is on leave and will return in November 2021. At this time, we do not know when or if the flavor ban item will be brought back to the Santa Barbara City Council.
 - b. The passage of a flavored tobacco ban in the City of Santa Barbara is included in the 2022 scope of work of the County Tobacco Prevention Program and will be a priority for County Public Health and CEASE, the county's tobacco prevention coalition.
 - c. The purpose of a flavor ban in the City is to make it more difficult for youth to obtain such products given the public health concern. As noted above, youth are obtaining these in retail stores, from their adult friends, and

online. The City can only control the sale of flavored products in its own jurisdictional boundaries. Physically eliminating their presence in retail stores would have the effect of reducing access and, thereby, reducing youth use of tobacco products and a lifetime of addiction, disease and death. It is impossible for the City to eliminate all youth access to flavored tobacco products, including controlling their sale outside of its jurisdiction, whether that be in another city or online.

3. If we prohibit the sales of flavored tobacco, people can just order them online. Can we limit or ban online sales?
 - a. In December 2020, Congress amended the Prevent All Cigarette Trafficking (PACT) Act to apply to e-cigarettes and all vaping products. The PACT Act, among other things, prohibits the use of the U.S. Postal Service to deliver cigarettes and smokeless tobacco products directly to consumers. This led FedEx, UPS, and DHL to announce that they will stop shipments of these items as well.
 - b. Other requirements of the PACT Act include:
 - i. Vaping companies must register with the U.S. Attorney General.
 - ii. All shipping companies delivering vape products must now require signatures upon delivery and age verification from a legal adult.
 - iii. Sellers must also pay all related state taxes regardless of the sellers' state business address.
 - iv. If sellers deliver to states that tax vaping products, then the sellers must also register with the tobacco tax administrators of each related state as well as the federal government.
 - c. With the new obstacles placed on online sales of tobacco products, prohibition of the USPS from delivering these products and the announcement of the most prevalent common carriers that they will no longer deliver such products, online sales of flavored tobacco products will not likely proliferate as a result of a ban on sales in brick and mortar businesses.
 - d. Ultimately, Goleta can only control sales within its jurisdictional boundaries. It cannot ban the sales occurring online whereby a seller is located outside of Goleta and flavored tobacco products are being delivered into a specific location in Goleta. Even if the City could impose an online sales ban, the City would have no way of enforcing it – we do not have a way to identifying tobacco products in packages being delivered to individual locations.
 - e. See section 2.c. above.
4. Can staff respond to the comment letter received on August 6, 2021 from Goleta Smoke Shop, Smoke4Less, and Hollister Smoke Shop? See Attachment 3. Responses are in blue from County Public Health Tobacco Prevention and Cannabis Education.
 - a. An issue raised in the comment letter and at Ordinance Committee was the fact that as of August 6, 2021, the FDA was considering pre-marketing tobacco product applications from e-cigarette companies. On August 26, 2021, and September 9, 2021, the FDA denied the marketing and sale of over one million flavored tobacco products by over 100 tobacco

companies. The FDA's standard in reviewing these applications to market the products is:

"As required by statute, a key consideration in our review of premarket tobacco product applications submitted for products like e-cigarettes is to determine whether permitting the marketing of the product would be "appropriate for the protection of the public health," taking into account the risks and benefits to the population as a whole. This determination includes consideration of how the products may impact youth use of tobacco products and the potential for the products to completely move adult smokers away from use of combustible cigarettes. Importantly, we know that flavored tobacco products are very appealing to young people. Therefore, assessing the impact of potential or actual youth use is a critical factor in our determination as to whether the statutory standard for marketing is met.

Mitch Zeller, Director of the FDA's Center for Tobacco Products stated, "Flavored ENDS [electronic nicotine delivery systems] products are extremely popular among youth, with over 80 percent of e-cigarette users between ages 12 through 17 using one of these products. Companies who want to continue to market their flavored ENDS products must have robust and reliable evidence showing that their products' potential benefit for adult smokers outweighs the significant known risk to youth."

The above quote also addresses an issue raised by public comment at the Ordinance Committee that adults look to using flavored tobacco products, usually through vaping, as a way to stop smoking cigarettes. Vaping is not an FDA-approved tool to reduce or stop the use of cigarettes, and vaping products often include higher levels of nicotine than cigarettes. As the FDA stated, tobacco companies have not provided reliable evidence that flavored tobacco products' potential benefit for adult smokers outweighs the risk to youth.

FISCAL IMPACTS:

There are no fiscal impacts associated with this ordinance amendment.

ALTERNATIVES:

If the City does not adopt the proposed ordinance, flavored tobacco products will continue to be allowed to be sold in the City until and unless the state-wide ban (SB 793) becomes enforceable at some point in the future.

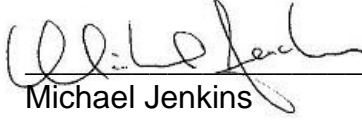
Reviewed By:

Legal Review By:

Approved By:



Kristine Schmidt
Assistant City Manager



Michael Jenkins
City Attorney



Michelle Greene
City Manager

ATTACHMENTS:

1. Ordinance No. 21-__entitled "An Ordinance of the City of Goleta, California, Amending Chapter 5.07 of Title 5 of the Goleta Municipal Code Banning the Sales of Flavored Tobacco."
2. Red-line version of Goleta Municipal Code Chapter 5.07
3. Public Comment Letter from Goleta Smoke Shop, Smoke4Less, and Hollister Smoke Shop and County's Response.

ATTACHMENT 1

Ordinance No. 21-__ entitled “An Ordinance of the City of Goleta, California, Amending Chapter 5.07 of Title 5 of the Goleta Municipal Code Banning the Sales of Flavored Tobacco.”

ORDINANCE NO. 21-__

AN ORDINANCE OF THE CITY OF GOLETA, CALIFORNIA, AMENDING CHAPTER 5.07 OF TITLE 5 OF THE GOLETA MUNICIPAL CODE BANNING THE SALES OF FLAVORED TOBACCO

THE CITY COUNCIL OF THE CITY OF GOLETA ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.07 (Tobacco Retailing License) of Title 5 (Business Licenses and Regulations) of the Goleta Municipal Code is amended to read as follows:

5.07.010 Definitions.

The words, terms, phrases, and their derivations set forth in this chapter have the meanings set forth below.

“Bona fide purchaser for value” means a person who purchases legal title to a tobacco retailing business without actual or constructive notice of any infirmities, claims or equities against the title.

“Delinquency date” means the first business day after the expiration of a tobacco retailing license.

“Flavored tobacco product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

“Licensee” means any proprietor(s) who holds a valid tobacco retailing license issued pursuant to this chapter.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with a minimum of 10% ownership interest in a tobacco retailing business.

“School” means any daycare program licensed by the State Department of Social Services and any public or private preschool, kindergarten, elementary, middle, junior high, or high school.

“Self-service display” means the open display or storage 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 licensee or employee of the licensee and a direct person-to-person transfer between the purchaser and the licensee or employee of the licensee. A vending machine is a form of self-service display.

“Smoking” or to “smoke” means inhaling, exhaling, burning or carrying any lighted or heated pipe, cigar, cigarette, weed, plant or other combustible organic or chemical substance, the smoke or vapor emission from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

“Tobacco paraphernalia” means any item designed for the consumption, use, or preparation of tobacco products.

“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, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and
2. Any electronic smoking device, with or without nicotine.
3. Any component, part, or accessory of a tobacco product, whether or not sold separately, notwithstanding any provision of this definition to the contrary.

“Tobacco retailing” shall mean selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailing business” means a physical location at which tobacco retailing occurs.

“Tobacco retailing license” means the license required pursuant to this chapter.

5.07.020 Requirements and Prohibitions.

- A. No person shall engage in tobacco retailing in the City without first obtaining and maintaining a valid tobacco retailing license for each location at which any tobacco retailing is to occur.
- B. Licenses may be issued only to authorize tobacco retailing at one fixed location at a time.
- C. No person may engage in tobacco retailing on foot or from vehicles, also known as mobile vending.
- D. In the course of tobacco retailing or in the operation of a tobacco retailing business or maintenance of the location in the City for which a license issued, it shall be a violation of this chapter for a licensee, or agents or employees thereof, to violate any local or State tobacco control law.
- E. A licensee shall prominently display the license in a publicly visible location at the licensed location.
- F. No licensee shall sell or transfer 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 product or tobacco paraphernalia.
- G. No person who is younger than 21 years of age shall engage in tobacco retailing.
- H. No licensee shall allow a person who is younger than 21 years of age to engage in tobacco retailing.
- I. No person shall allow a self-service tobacco display at any location for which a tobacco retailing license under this chapter or business license under Chapter 5.01 of this title is required.
- J. A proprietor without a valid tobacco retailing license, including a proprietor whose license has been suspended or revoked, shall:
 - 1. Keep all tobacco products and tobacco paraphernalia out of public view; and
 - 2. Not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the proprietor's tobacco retailing location or that could lead a reasonable consumer to believe that such products can be obtained at that location.
- K. No person may engage in tobacco retailing within 1,000 feet of a school, except if a person has already been tobacco retailing lawfully within 1,000 feet of a school on the effective date of the ordinance codified in this chapter.
 - 1. All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailing business to the nearest point on the parcel boundary of the nearest school.

- L. A tobacco retailing license may not be transferred from one proprietor to another or from one location to another. A new tobacco retailing license is required whenever there is a change in proprietors to a tobacco retailing license or a change in the location of a tobacco retailing business. When a transfer of a license is purely from one tobacco retailing business location to another, the licensee must pay two dollars to the Finance Department to effectuate such transfer.
- M. With regard to the imposition of conditions, Sections 5.01.220, 5.01.230, 5.01.240, and 5.01.250 of Chapter 5.01 of this title are incorporated.
- N. *Prohibition of the Sale of Flavored Tobacco Products.* No tobacco retailer shall sell any flavored tobacco product. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has a taste or smell other than tobacco flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product is a flavored tobacco product.

5.07.030 Application and Procedure.

- A. Application for a tobacco retailing license shall be submitted in the name of each proprietor of a tobacco retailing business and shall be signed by each proprietor or authorized agent thereof.
- B. All applications shall be submitted on a form supplied by the City and shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor of the tobacco retailing business seeking a license.
 - a. If the applicant is a corporation, the name shall be exactly as set forth in its articles of incorporation, state of incorporation, and the name and address of an officer who is duly authorized to accept service of legal process shall be provided.
 - b. If the applicant is a partnership, the name and address of each general partner shall be stated.
 - 2. The name, address, and telephone number of the tobacco retailing business.
 - 3. A single name, address, and telephone number 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 tobacco retailing business.

4. Proof that the proprietor seeking a license under this chapter has been issued a valid State tobacco retailing license by the California Board of Equalization.
 5. Whether or not any proprietor, or agent or employee thereof, has admitted to violating this chapter or has been found after a hearing to have violated this chapter and, if so, the dates and locations of all such violations within the previous five years.
 6. Such other information as the City deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- C. A licensee shall inform the City in writing of any change in the information submitted on an application for a tobacco retailing license within 10 business days of a change.

5.07.040 License Term and Renewal.

- A. The term of each tobacco retailing license shall be one year.
- B. A licensee may renew a license by submitting a renewal application and paying the renewal fee.

5.07.050 Initial and Renewal Fees—Late Penalty After Expiration.

- A. The fee to issue or to renew a tobacco retailing license shall be established from time to time by resolution of the City Council.
- B. Renewal fees are due on the delinquency date of a tobacco retailing license.
- C. If a proprietor does not renew a tobacco retailing license and pay the renewal fee by the delinquency date, a late penalty of 50% of the renewal fee shall be imposed. The penalty shall not attach until 30 days after the delinquency date.
- D. With regard to the collection and disposition of fees, Sections 5.01.020, 5.01.030, 5.01.380, 5.01.390, 5.01.400 and 5.01.410 of Chapter 5.01 of this title are incorporated.

5.07.060 When License Commences.

If the date specified in either subsection A or B of this section is the first of a calendar month, the period of the license shall begin on such date. Otherwise, the period of the license shall begin on the first of the calendar month which first follows the date specified in subsection A or B. The dates are:

- A. In the case of a new license:
 1. If the applicant is already engaging in the activity for which the license is required, the date on which he or she began such activity or the date on which such activity became subject to the license, whichever is later.
 2. If the application has not begun such activity, the date requested in the application. If no date is requested, the date on which the application for the license is filed.

- B. In the case of a renewal, the expiration date of the license renewed.

5.07.070 Grounds for Denial, Suspension and Revocation.

A. Denial.

1. An application may be denied upon any of the following:
 - a. The information presented in the application is inaccurate or false.
 - b. The required fee has not been paid.
 - c. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending), Code (e.g. zoning regulations), or any other law.
 - d. The application seeks authorization for tobacco retailing at a tobacco retailing business for which a license has been revoked unless the applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the tobacco retailing business as a bona fide purchaser of value.
 - e. The application seeks authorization for a license that has been suspended and the suspension period has not ended yet unless the applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the tobacco retailing business as a bona fide purchaser of value.

B. Suspension.

1. A tobacco retailing license may be suspended if the City finds that the licensee, or an agent or employee thereof, has violated:
 - a. Any provision of this chapter; or
 - b. Any State law governing the sale, distribution, advertisement or display of tobacco, tobacco products or tobacco paraphernalia, including, but not limited to, Penal Code Section 308(a), Business and Professions Code Section 22950 et seq. (Stop Tobacco Access to Kids Enforcement Act (STAKE Act)), and Business and Professions Code Section 25612.5(c)(7).
2. Suspension Periods.
 - a. Upon a first finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 30 days.
 - b. Upon the second finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 90 days.

- c. Upon the third finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 12 months.

C. Revocation.

- 1. A tobacco retailing license may be revoked if the City finds that one or more of the bases for denial exists. The revocation shall be without prejudice to the filing of a new application for a license following correction of the conditions that required revocation of the license.
- 2. On revocation of a license, no part of the money paid to the City as a fee shall be returned.

5.07.080 Notice of Denial, Suspension or Revocation—Appeal.

- A. The City may give notice of intention to deny, suspend or revoke to a licensee or applicant in writing. Within five days thereafter, the licensee or applicant may request in writing a hearing before the City Manager, or designee.
- B. The City Manager, or designee, shall hold a hearing in accordance to Chapter 5.01 of this title.
- C. After a hearing, the City Manager, or designee, shall affirm or reverse the denial, suspension or revocation in writing. If the licensee does not timely request a hearing, the notice of intention to deny, suspend or revoke shall be final.

SECTION 2. Certification of City Clerk.

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 3. Effective Date.

This ordinance shall take effect on the 60th day following adoption by the City Council.

INTRODUCED ON the ____ day of _____, 2021.

PASSED, APPROVED, AND ADOPTED this _____day of _____ 2021.

PAULA PEROTTE, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

MICHAEL JENKINS
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, Deborah S. Lopez, City Clerk of the City of Goleta, California, do hereby certify that the foregoing Ordinance No. 21-__ was introduced on _____, and adopted at a regular meeting of the City Council of the City of Goleta, California, held on the _____, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

(SEAL)

DEBORAH S. LOPEZ
CITY CLERK

ATTACHMENT 2

Red-line version of Goleta Municipal Code Chapter 5.07

5.07.010 Definitions.

The words, terms, phrases, and their derivations set forth in this chapter have the meanings set forth below.

“Bona fide purchaser for value” means a person who purchases legal title to a tobacco retailing business without actual or constructive notice of any infirmities, claims or equities against the title.

“Delinquency date” means the first business day after the expiration of a tobacco retailing license.

“Flavored tobacco product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

“Licensee” means any proprietor(s) who holds a valid tobacco retailing license issued pursuant to this chapter.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with a minimum of 10% ownership interest in a tobacco retailing business.

“School” means any daycare program licensed by the State Department of Social Services and any public or private preschool, kindergarten, elementary, middle, junior high, or high school.

“Self-service display” means the open display or storage 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 licensee or employee of the licensee and a direct person-to-person transfer between the purchaser and the licensee or employee of the licensee. A vending machine is a form of self-service display.

“Smoking” or to “smoke” means inhaling, exhaling, burning or carrying any lighted or heated pipe, cigar, cigarette, weed, plant or other combustible organic or chemical substance, the smoke or vapor emission from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

“Tobacco paraphernalia” means any item designed for the consumption, use, or preparation of tobacco products.

“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, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and
2. Any electronic smoking device, with or without nicotine.
3. Any component, part, or accessory of a tobacco product, whether or not sold separately, notwithstanding any provision of this definition to the contrary.

“Tobacco retailing” shall mean selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailing business” means a physical location at which tobacco retailing occurs.

“Tobacco retailing license” means the license required pursuant to this chapter. (Ord. 14-05 § 1)

5.07.020 Requirements and Prohibitions.

A. No person shall engage in tobacco retailing in the City without first obtaining and maintaining a valid tobacco retailing license for each location at which any tobacco retailing is to occur.

B. Licenses may be issued only to authorize tobacco retailing at one fixed location at a time.

C. No person may engage in tobacco retailing on foot or from vehicles, also known as mobile vending.

D. In the course of tobacco retailing or in the operation of a tobacco retailing business or maintenance of the location in the City for which a license issued, it shall be a violation of this chapter for a licensee, or agents or employees thereof, to violate any local or State tobacco control law.

E. A licensee shall prominently display the license in a publicly visible location at the licensed location.

F. No licensee shall sell or transfer 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 product or tobacco paraphernalia.

G. No person who is younger than 21 years of age shall engage in tobacco retailing.

H. No licensee shall allow a person who is younger than 21 years of age to engage in tobacco retailing.

I. No person shall allow a self-service tobacco display at any location for which a tobacco retailing license under this chapter or business license under Chapter [5.01](#) of this title is required.

J. A proprietor without a valid tobacco retailing license, including a proprietor whose license has been suspended or revoked, shall:

1. Keep all tobacco products and tobacco paraphernalia out of public view; and
2. Not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the proprietor's tobacco retailing location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

K. No person may engage in tobacco retailing within 1,000 feet of a school, except if a person has already been tobacco retailing lawfully within 1,000 feet of a school on the effective date of the ordinance codified in this chapter.

1. All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailing business to the nearest point on the parcel boundary of the nearest school.

L. A tobacco retailing license may not be transferred from one proprietor to another or from one location to another. A new tobacco retailing license is required whenever there is a change in proprietors to a tobacco retailing license or a change in the location of a tobacco retailing business. When a transfer of a license is purely from one tobacco retailing business location to another, the licensee must pay two dollars to the Finance Department to effectuate such transfer.

M. With regard to the imposition of conditions, Sections [5.01.220](#), [5.01.230](#), [5.01.240](#), and [5.01.250](#) of Chapter [5.01](#) of this title are incorporated.

N. Prohibition of the Sale of Flavored Tobacco Products. No tobacco retailer shall sell any flavored tobacco product. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has a taste or smell other than tobacco including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product is a flavored tobacco product.

5.07.030 Application and Procedure.

A. Application for a tobacco retailing license shall be submitted in the name of each proprietor of a tobacco retailing business and shall be signed by each proprietor or authorized agent thereof.

B. All applications shall be submitted on a form supplied by the City and shall contain the following information:

1. The name, address, and telephone number of each proprietor of the tobacco retailing business seeking a license.

a. If the applicant is a corporation, the name shall be exactly as set forth in its articles of incorporation, state of incorporation, and the name and address of an officer who is duly authorized to accept service of legal process shall be provided.

b. If the applicant is a partnership, the name and address of each general partner shall be stated.

2. The name, address, and telephone number of the tobacco retailing business.

3. A single name, address, and telephone number 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 tobacco retailing business.

4. Proof that the proprietor seeking a license under this chapter has been issued a valid State tobacco retailing license by the California Board of Equalization.

5. Whether or not any proprietor, or agent or employee thereof, has admitted to violating this chapter or has been found after a hearing to have violated this chapter and, if so, the dates and locations of all such violations within the previous five years.

6. Such other information as the City deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

C. A licensee shall inform the City in writing of any change in the information submitted on an application for a tobacco retailing license within 10 business days of a change. (Ord. 14-05 § 1)

5.07.040 License Term and Renewal.

A. The term of each tobacco retailing license shall be one year.

B. A licensee may renew a license by submitting a renewal application and paying the renewal fee. (Ord. 14-05 § 1)

5.07.050 Initial and Renewal Fees—Late Penalty After Expiration.

A. The fee to issue or to renew a tobacco retailing license shall be established from time to time by resolution of the City Council.

B. Renewal fees are due on the delinquency date of a tobacco retailing license.

C. If a proprietor does not renew a tobacco retailing license and pay the renewal fee by the delinquency date, a late penalty of 50% of the renewal fee shall be imposed. The penalty shall not attach until 30 days after the delinquency date.

D. With regard to the collection and disposition of fees, Sections [5.01.020](#), [5.01.030](#), [5.01.380](#), [5.01.390](#), [5.01.400](#) and [5.01.410](#) of Chapter [5.01](#) of this title are incorporated. (Ord. 14-05 § 1)

5.07.060 When License Commences.

If the date specified in either subsection A or B of this section is the first of a calendar month, the period of the license shall begin on such date. Otherwise, the period of the license shall begin on the first of the calendar month which first follows the date specified in subsection A or B. The dates are:

A. In the case of a new license:

1. If the applicant is already engaging in the activity for which the license is required, the date on which he or she began such activity or the date on which such activity became subject to the license, whichever is later.
 2. If the application has not begun such activity, the date requested in the application. If no date is requested, the date on which the application for the license is filed.
- B. In the case of a renewal, the expiration date of the license renewed. (Ord. 14-05 § 1)

5.07.070 Grounds for Denial, Suspension and Revocation.

- A. Denial.
1. An application may be denied upon any of the following:
 - a. The information presented in the application is inaccurate or false.
 - b. The required fee has not been paid.
 - c. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending), Code (e.g. zoning regulations), or any other law.
 - d. The application seeks authorization for tobacco retailing at a tobacco retailing business for which a license has been revoked unless the applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the tobacco retailing business as a bona fide purchaser of value.
 - e. The application seeks authorization for a license that has been suspended and the suspension period has not ended yet unless the applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the tobacco retailing business as a bona fide purchaser of value.
- B. Suspension.
1. A tobacco retailing license may be suspended if the City finds that the licensee, or an agent or employee thereof, has violated:
 - a. Any provision of this chapter; or
 - b. Any State law governing the sale, distribution, advertisement or display of tobacco, tobacco products or tobacco paraphernalia, including, but not limited to, [Penal Code](#) Section 308(a), [Business and Professions Code](#) Section 22950 et seq. (Stop Tobacco Access to Kids Enforcement Act (STAKE Act)), and [Business and Professions Code](#) Section 25612.5(c)(7).
 2. Suspension Periods.
 - a. Upon a first finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 30 days.
 - b. Upon the second finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 90 days.
 - c. Upon the third finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 12 months.
- C. Revocation.

1. A tobacco retailing license may be revoked if the City finds that one or more of the bases for denial exists. The revocation shall be without prejudice to the filing of a new application for a license following correction of the conditions that required revocation of the license.

2. On revocation of a license, no part of the money paid to the City as a fee shall be returned. (Ord. 14-05 § 1)

5.07.080 Notice of Denial, Suspension or Revocation—Appeal.

A. The City may give notice of intention to deny, suspend or revoke to a licensee or applicant in writing. Within five days thereafter, the licensee or applicant may request in writing a hearing before the City Manager, or designee.

B. The City Manager, or designee, shall hold a hearing in accordance to Chapter 5.01 of this title.

C. After a hearing, the City Manager, or designee, shall affirm or reverse the denial, suspension or revocation in writing. If the licensee does not timely request a hearing, the notice of intention to deny, suspend or revoke shall be final. (Ord. 14-05 § 1)

ATTACHMENT 3

August 6, 2021 Comment Letter from Smoke Shops and County Responses

August 5th 2021

Letter to the City of Goleta Ordinance Review Standing Committee
RE: Ordinance Amendment Banning Sales of Flavored Tobacco

From/on behalf of:

Goleta Smoke Shop
Smoke4Less
Hollister Smoke Shop

All above-mentioned are “Adults Only 21+” Tobacco Retailers in Goleta, CA.

Dear Standing Committee, Councilmembers, City Attorney and City Manager,

We “Adults Only 21+” Tobacco Retailers of Goleta want to make our voices heard concerning the proposed ordinance amendment banning the sales of flavored tobacco in the city of Goleta, and we appreciate you taking the time to read our letter.

We would like to keep this letter as short and quick to the point as possible and in plain language. Citations for statistics and numbers have been provided in the past, but we would be happy to provide them again and answer any questions upon request.

First and foremost, we absolutely agree that the youth in our city should have no access whatsoever to any tobacco products. We want to make that very clear to the committee and all concerned members of our community.

Sales to Minors Violations

The recent increase in the use of flavored tobacco products by minors, especially flavored E-cigs like Juul, has been a major source of concern to parents and to those of us in the tobacco retail business alike. Our industry has come under great scrutiny and has been accused of “peddling tobacco to children.” However in reality, our business model relies entirely on our tobacco licenses being in “good-standing” where a suspension for any amount of time would mean shutting down business entirely and possibly permanently. Statistics on tobacco violations (sales of tobacco products to minors) from the city of Goleta and the Santa Barbara area were provided to members of the Council, city attorney and the Department of Public Health 18 months ago during a meeting that was held with local tobacco retailers. Those statistics showed that 100% of violations were committed by “convenience/liquor stores” or “gas stations.”

To those of us in the tobacco retail industry these numbers were not surprising. Convenience stores, liquor stores and gas stations make the vast

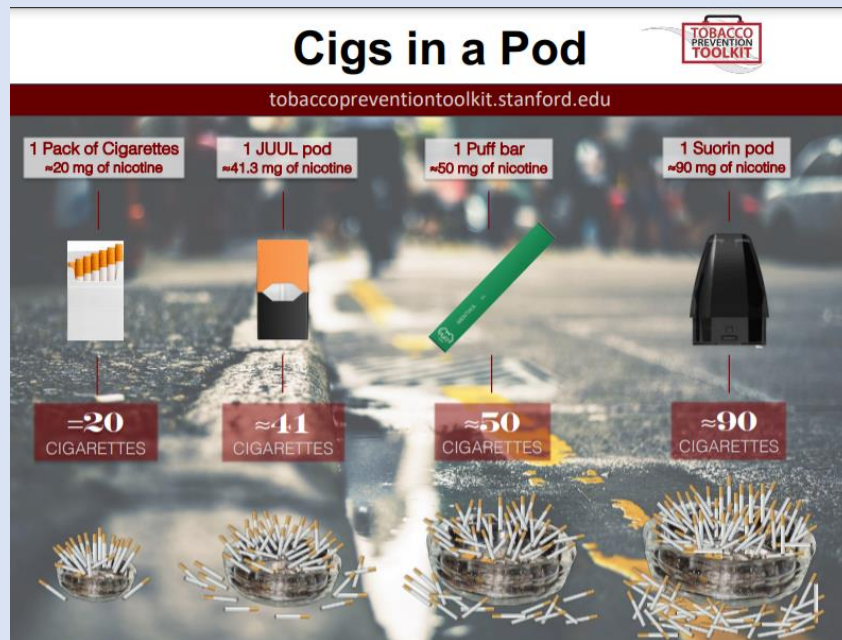
majority of their profits through the sales of products other than tobacco, and they also happen to be responsible for the vast majority of tobacco violations in the state of California and across the country [citation provided in 2020 presentation]. When liquor stores or a gas stations receive citations for violating tobacco laws, and even in the event of their tobacco license being suspended, they can (and do) continue doing business as usual since the vast majority of their profits come from the sales of liquor and gas respectively. Consequently for those businesses, making a tobacco sale to a minor (intentionally or unintentionally) does not carry the same risk as it does for tobacco retailers.

- Even with 100% retail compliance on checking ID for tobacco purchase, there is no way to ensure that products stay out of the hands of minors. Youth can access flavored tobacco from individuals who purchase products legally. A national survey of youth 12-17 years old revealed that over half of youth (52%) obtained JUUL products through “social sources” – acquaintances or relatives.¹ Eliminating the sale of flavored products is the only way to protect youth. In addition, while cigarette use among youth has gone down, use of e-cigarette use among high school students have increased dramatically. See 2019 National Youth Tobacco Survey issued by the FDA, attached to the end of this letter.

Adult Ex-smokers at Risk in Goleta

The media and political coverage concerning flavored tobacco has always focused on the negative effects of tobacco on the youth. What is seldom mentioned however, is that for every case of a youth acquiring flavored tobacco illegally, tens of adults who are over the age of 21 (the vast majority being ex-smokers) are legally purchasing and relying on flavored E-cigs in order to stay away from cigarettes and combustible tobacco. The overwhelming majority of our client base fit that criterion. Being face to face with hundreds of ex-smokers on a daily basis, we get to hear about their success stories and their growing concerns of where and how they would go about purchasing the products that they need, or worse, being tempted to go back to cigarettes if flavored E-cigs were banned. As shown in the presentation to city councilmembers in 2020, the vast majority of those who use E-cigs “strongly dislike” the flavor of so-called “tobacco” flavors as they are synthesized and if they must consume something so terrible tasting to them, they would rather go back to regular cigarettes at that point. This predicament disproportionately affects our poor and marginalized clients, many of whom have no credit cards or shipping addresses to order less harmful alternatives to cigarettes online. While more affluent clients have the option of stocking up when out of town or purchasing online, which means the money of the residents of the city is being spent elsewhere while they deal with additional cost (e.g. gas & shipping) and many inconveniences, including the inability to ask for information and directions from knowledgeable local retailers.

- For the adult “ex-smokers” who look to using flavors to stop smoking cigarettes, switching from combustible tobacco to vaping is not quitting using nicotine
- Vaping is not an FDA-approved cessation tool, nor has it been verified as a harm reduction tool. In fact, on 8/26/21, the FDA denied marketing approval for 55,000 flavored tobacco products, stating the applicants failed to demonstrate that the “potential benefit for adult smokers outweighs the significant known risk to youth.”² Further marketing denial orders have been issued since then, totaling 132 manufacturers and prohibiting 946,000 flavors.
- In fact, it is important to understand the levels of nicotine that are being put into these vape juices:



- These products contain dangerous amounts of the neurotoxic chemical, nicotine, that is responsible for the addictive nature of smoking and vaping.
- The tobacco industry has long targeted our low-income communities and communities of color through the sale of flavored tobacco. Big tobacco would offer discounts, increase advertising, and even pass out free cigarette packs in predominantly black communities as a way to get their products to become a part of the community’s culture. In fact, industry pressure is exactly what excluded menthol cigarettes from the 2009 ban of all flavored cigarettes. To read more about how Big Tobacco has taken advantage of our marginalized communities, please visit [The Story of Inequity](#) and [We are Not Profit](#).
- Regarding online delivery, restrictions are increasing. As of **December 2020**, federal law (Preventing Online Sales of E-Cigarettes to Children Act), amends the 2009 Preventing All Cigarette Trafficking (PACT) Act to **prohibit USPS from delivering tobacco and nicotine products**. Private carriers such as FedEx UPS, and DHL all followed suit and now do not allow for delivery and shipping of these products either.

When the California legislature decided to ban flavored tobacco (SB793) in late 2020, many of our clients were in disbelief and some were confused as to why the government would want to take away what our clients saw as helpful tools in order to stay away from cigarettes and eventually be able to quit. While everyone agreed that youth use of flavored tobacco is a problem

that must be addressed, the ban created a larger problem for the adults who would now be at risk of going back to smoking cigarettes. The outrage and disappointment across the state were sufficient to gather enough signatures (over 750,000) in a very short period to suspend the bill and to allow California voters to decide for themselves in 2022. Thousands of those signatures were collected by “Adults Only 21+” tobacco retailers in Goleta and the Santa Barbara area from clients who will do whatever it takes to retain their right to a less harmful alternative to combustible tobacco in the flavors of the their choice.

- The FDA has not established vaping, and vaping flavors at that, as a cessation tool.
- Even though some individuals may see this as helpful, vaping is simply an electronic nicotine delivery system, and the presence of flavors in vape juices has only been considered more addictive than regular products
- Flavored and mentholated tobacco products are “starter” products that help new users establish daily habits and promote addiction to tobacco products, make it harder to quit, and may result in the concurrent use of multiple tobacco products (i.e. e-cigarettes and combustible cigarettes) (California Medical Association, 2016) ³
- The SB 793 veto referendum, led by the California Coalition for Fairness, was backed by four of the largest tobacco companies in the United States, each funding large portions of the veto effort ⁴. These donors and their funding amounts include:
 - R.J. Reynolds Tobacco Company – \$10.3 million
 - Philip Morris USA - \$9.8 million
 - IGT Brands LLC - \$500,000
 - Swedish Match North America, LLC - \$500,000

An interesting fact that many of us in the industry know, but perhaps has not garnered enough attention in the public sphere, is that sales of cigarettes have been in a steady decline. Our stocks of cigarettes (both quantities and varieties) have been reduced to less than half of what they were around 5 years ago. And many chains have completely stopped carrying cigarettes altogether. This is largely due to the displacement of cigarettes by E-cigs as a less harmful substitute to countless ex-smokers, many of whom were able to eventually quit entirely with the help of flavored E-cigs. This fact should give policymakers an insight as to what is really going on in the industry and the effects flavored E-cigs are having in helping smokers to quit.

Controlling Flavored Tobacco Outlets

To those of us who have experience in the tobacco industry (some of us being ex-smokers as well) it is clear that an outright ban on flavored tobacco

would be an unbalanced policy that will almost certainly do more harm than good. The U.S. Food and Drug Administration (FDA) has realized the importance of the opportunity that flavored E-cigs present in providing a less harmful alternative to smoking and are working on the approval of many of those products. Many cities in California (Oakland, Hayward and Palo Alto to name a few) and across the nation (Boulder, Chicago, Boston and many others) have put a lot of thought into creating policies that allow them much more focused control over the outlets at which flavored tobacco is sold. Instead of an outright ban, those cities chose to only allow “Adults only 21+” tobacco retailers to sell flavored tobacco, thus balancing the rights of adults (over 21) to a less harmful alternative to combustible tobacco, while youth access is greatly reduced.

- The **FDA has NOT approved any flavored e-cigarette products** as cessation devices and in fact, between August 26th and September 9th, 2021, issued **132 Marketing Denial Orders, prohibiting the sale of 946,000 existing and proposed flavored tobacco products.** Existing products must be taken off the market immediately.
 - “Flavored ENDS products are extremely popular among youth, with over 80 percent of e-cigarette users between ages 12 through 17 using one of these products. Companies who want to continue to market their flavored ENDS products must have robust and reliable evidence showing that their products’ potential benefit for adult smokers outweighs the significant known risk to youth,” said Mitch Zeller, J.D., director of the FDA’s Center for Tobacco Products.²
- **Exempting 21+ tobacco-only stores from flavored tobacco bans leaves a significant loophole.** Regular tobacco retailers (i.e. not 21+ tobacco only stores) may open small mini-stores inside their existing location and deem them 21+ only sections.
- In Oakland, a 2017 local flavored tobacco ban policy exempted 21+ stores without including language to prohibit new 21+ stores from opening. Before the ordinance passed there were only five 21+ stores, but by 2019 there were fifty-five 21+ stores. These new 21+ stores were created by dividing the existing store into multiple sections.⁵ When the unintended and negative consequence of the exemption became clear, the community mobilized to resolve the issue, and in **May 2020 the Oakland City Council voted unanimously to remove the exemption.**

We “Adults Only 21+” tobacco retailers of Goleta urge the city standing committee and councilmembers to adopt a similar approach to the cities mentioned above, where flavored tobacco can only be sold by proper “Adults Only 21+” tobacco retailers in the city. Further, we would like to urge the city to require the adoption of age-verification technology such as ID-scanners for those retailers. This approach would have numerous benefits, the most important of which are:

1. Focus the city’s ability to enforce local and state tobacco laws where flavored tobacco is being sold. Enforcing the law at a total of three (3) retail location is exponentially easier and more efficient than enforcing it across hundreds of locations (i.e. convenience/liquor, gas

stations). Thus greatly limiting youth access to flavored tobacco.

2. Provide an essential outlet for the purchase of flavored tobacco E-cig products for thousands of ex-smokers in the city, especially residents with limited means.

3. Protecting local small business and the local economy by keeping the money of the residents in the city and allowing local small business to continue employing residents and serving the community with knowledge and experience in the industry.

Running a Small Business in Goleta, CA

It has become common knowledge that the state of California ranks very low in national surveys (49th to 50th) in terms of “business friendliness.” Between the introduction of new state excise taxes on tobacco products, raising of existing excise and sales taxes, increased cost of state and city business licenses, increased workers-comp, unemployment insurance, general liability insurance, product liability insurance, increased rent and bills, COVID restrictions and lockdowns, shortages in the supply chain, shortages of people who want to work and too many other factors to list. Needless to say, it is becoming more difficult by the day to run a business in this state. Government regulations is another very important factor, and at this time, it is in the hands of the city’s standing committee and council members to make a decision that will impact the lives of many of our clients who reside in the city of Goleta as well as our own livelihoods and futures. We hope and pray that the standing committee and councilmembers will pay attention to all the facts and arguments we provided, and we prefer to believe that our local government is not out-of-touch with the residents and small businesses in the city.

Sincerely,

“Adults Only 21+” Tobacco Retailers of Goleta

References:

- 1) *Where are kids getting JUUL?* Truth Initiative. (n.d.). <https://truthinitiative.org/research-resources/emerging-tobacco-products/where-are-kids-getting-juul>.
- 2) Office of the Commissioner. (n.d.). *FDA denies marketing applications for about 55,000 flavored E-cigarette products for failing to provide evidence they appropriately protect public health*. U.S. Food and Drug Administration. <https://www.fda.gov/news-events/press-announcements/fda-denies-marketing-applications-about-55000-flavored-e-cigarette-products-failing-provide-evidence>.
- 3) California Medical Association. *Flavored and Mentholated Tobacco Products: Enticing a New Generation of Users – CMA White Paper*. Sacramento, CA; 2016 May.
- 4) *California flavored tobacco Products Ban Referendum (2022)*. Ballotpedia. (n.d.). [https://ballotpedia.org/California_Flavored_Tobacco_Products_Ban_Referendum_\(2022\)](https://ballotpedia.org/California_Flavored_Tobacco_Products_Ban_Referendum_(2022))
- 5) *Oakland votes to end sale of all flavored tobacco, eliminating loophole tobacco industry exploited*. Campaign for Tobacco-Free Kids. (2020, September 24). https://www.tobaccofreekids.org/press-releases/2020_05_12_oakland.

2019 NATIONAL YOUTH TOBACCO SURVEY

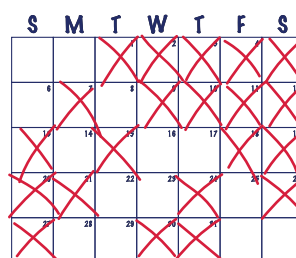
SHOWS

YOUTH **e-cigarette** use at ALARMING LEVELS

OVER 5 Million
youth are currently using e-cigarettes



NEARLY **1 Million**
used the product daily



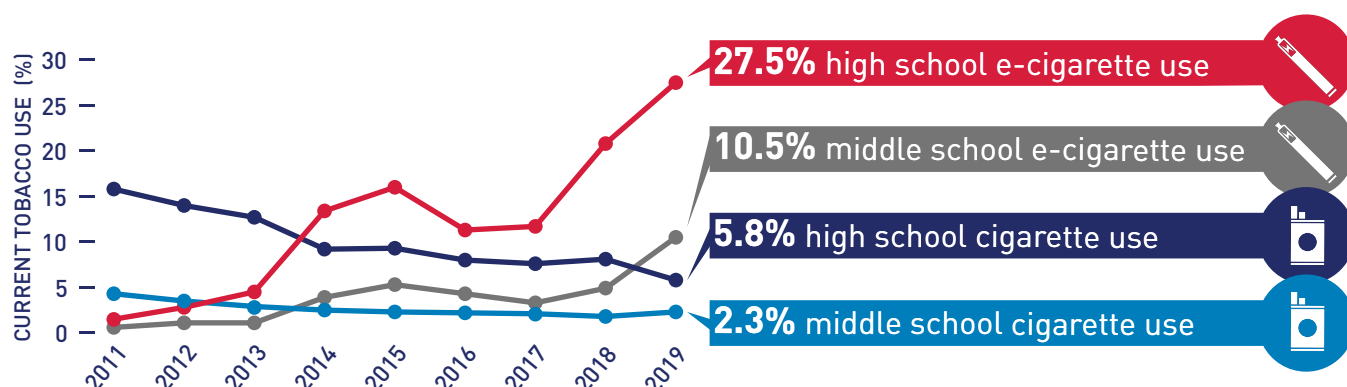
ABOUT
1.6 MILLION
youth used the
product frequently
(on 20 or more
days per month)

MAJORITY of the current
e-cigarette users reported



as their usual brand

Current e-cigarette use has **INCREASED DRAMATICALLY**, while current cigarette use has dropped, **UNDERMINING PROGRESS** toward reducing overall tobacco use



Why is this concerning?

The use of e-cigarettes, particularly those with high levels of nicotine, places youth at risk for developing nicotine addiction. Nicotine exposure during adolescence could harm brain development. Additionally, youth who use e-cigarettes are more likely to start smoking cigarettes. Further, e-cigarette aerosol may expose users to other harmful substances such as heavy metals, volatile organic compounds, and ultrafine particles that could harm the lungs.

CENTER FOR TOBACCO PRODUCTS

Source: 1) Cullen KA, Gentzke AS, Sawdey MD, et al. E-cigarette Use Among Youth in the United States, 2019. JAMA. 2019; 2) Gentzke AS, Creamer M, Cullen KA, et al. Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018. MMWR Morb Mortal Wkly Rep 2019.

Note: All numbers presented here are estimates.

CTP-136

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