

ORDINANCE NO. _____

An Ordinance Adding Chapter xx of Division xx of
The Ordinance Code of San Joaquin County
Pertaining To The Sale of Vaping Products and Flavored Tobacco Products

The People of the County of San Joaquin ordain as follows:

Section xx Chapter xx, of Division xx of the Ordinance Code of San Joaquin County is hereby added to read as follows:

X_XXXX PROHIBITION OF THE SALE OF ELECTRONIC SMOKING DEVICES

XXXX FINDINGS

WHEREAS the federal government bans the sale of small, cartridge-based electronic smoking devices, and flavored tobacco such as fruit, candy, mint, and dessert flavors excluding menthol;

WHEREAS, the state of California does not restrict the sale of electronic smoking devices and the solutions used in these devices;

WHEREAS, studies show that restricting access to all flavored products would have a large benefit to overall public health;

WHEREAS, mentholated 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, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens and have resulted in harmful effects including death to users;

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and, in some cases, significantly increased among youth;

WHEREAS, over 130 cities and counties in California have passed local tobacco retailer licensing ordinances in order to stop youth from using tobacco;

WHEREAS, the County has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the County finds that a ban on the sale of electronic smoking devices and products, commonly referred to as vaping products, is in order to protect the health, safety, and welfare of our residents;

NOW THEREFORE, it is the intent of the County, in enacting this ordinance, to protect the health and safety of residents of the County but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

XXXX DEFINITIONS.

For purposes of this Chapter, the following terms have the following meanings:

- (a) "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- (b) "Establishment" shall mean any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products.
- (c) "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

XXXX SALE OR DISTRIBUTION OF ELECTRONIC SMOKING DEVICES

The sale or distribution by an Establishment or Person of any Electronic Smoking Device is prohibited within San Joaquin County.

XXXX ENFORCEMENT

- (a) Violations of this chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.
- (b) Violations of this chapter may be prosecuted as a civil penalty in the amount of not less than \$250 and not exceeding \$2,500 for each violation.

(c) This section shall not be interpreted to limit the applicable civil or administrative remedies available under law.

XXXX PUBLIC NUISANCE

Any violation of this ordinance is hereby declared a public nuisance.

XXXX NO CONFLICT WITH STATE OR FEDERAL LAW

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power or duty that is preempted by federal or state law.

XXXX SEVERABILITY

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The Board of Supervisors hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional.

X-XXXX PROHIBITION OF THE SALE AND DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS IN SAN JOAQUIN COUNTY

XXXX DEFINITIONS

(a) "Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

(b) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(c) "Distinguishable" means perceivable by either the sense of smell or taste.

- (d) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.
- (e) "Labeling" means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.
- (f) "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold, or offered for sale, to a consumer.
- (g) "Flavored Tobacco Product" means any Tobacco Product, other than a Cigarette, that contains a constituent that imparts a Characterizing Flavor.
- (h) "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.
- (i) "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

XXXX SALE OR OFFER FOR SALE OF FLAVORED TOBACCO PRODUCT PROHIBITED

- (a) The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.
- (b) There shall be a rebuttable presumption that a Tobacco Product, other than a Cigarette, 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 or produces a Characterizing 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 has a Characterizing Flavor.

XXXX SALE OR OFFER FOR SALE OF FLAVORED CIGARETTE PROHIBITED

- (a) The sale or distribution by an Establishment of any Flavored Cigarette is prohibited.
- (b) There shall be a rebuttable presumption that a Cigarette is a Flavored Cigarette 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 Cigarette has or produces a Characterizing 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 Cigarette has a Characterizing Flavor.

XXXX ENFORCEMENT

- (a) Violations of this chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.
- (b) Violations of this chapter may be prosecuted as a civil penalty in the amount of not less than \$250 and not exceeding \$2,500 for each violation.
- (c) This section shall not be interpreted to limit the applicable civil or administrative remedies available under law.

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