

CITY COUNCIL ORDINANCE NO. 20-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
IRVINE, CALIFORNIA, ADDING TO CHAPTER 6 OF
DIVISION 10 OF TITLE 4 OF THE IRVINE MUNICIPAL
CODE ESTABLISHING REGULATIONS PROHIBITING USE
OF FLAVORED TOBACCO PRODUCTS

WHEREAS, in 2009, the Federal Family Smoking Prevention and Tobacco Control Act banned the manufacture of flavored cigarettes, but preserved an exception for menthol cigarettes and flavored non-cigarette tobacco products, such as smokeless tobacco and liquids used in electronic nicotine delivery systems; and

WHEREAS, flavored tobacco products are commonly sold by California tobacco retailers, including 97.4% of stores that sell cigarettes selling 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 snuff sell flavored varieties; and

WHEREAS, each day, about 2,500 children in the United States try their first cigarette; and another 400 children under 18 years of age become new regular, daily smokers, and 81% of youths who have ever used a tobacco product report that the first tobacco product they used was flavored, flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and increasing the appeal of tobacco products; and

WHEREAS, flavors have been shown to increase first-use of tobacco products, and increase the likelihood that an individual will become a long-term tobacco user, flavored tobacco and flavored products used in electronic nicotine delivery systems present health, welfare, and public safety issues for cities, in particular the youth; and

WHEREAS, flavored tobacco products contain addictive nicotine which increases the risk for future addiction to other drugs especially in children, and potentially expose both the users and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs; and

WHEREAS, it is reasonable to assume that the negative impacts as reported in 1,888 cases of electronic nicotine delivery systems related-lung illnesses and deaths could also be experienced in the City if flavored tobacco/flavored tobacco products—particularly those that have not yet been approved by the FDA—were allowed to continue without proper regulations in place; and

WHEREAS, it is necessary to adopt regulations of the use of flavored tobacco products to protect the public against potential negative health, safety, and welfare impacts.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2. Chapter 6 of Division 10 of Title 4 of the Irvine Municipal Code is hereby amended to read in its entirety as follows:

Chapter 6 of Division 10 of Title 4

FLAVORED TOBACCO SALE, OFFER FOR SALE, AND USE PROHIBITED

Sections:

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| Sec. 4-10-601 | Findings and Purpose. |
| Sec. 4-10-602 | Definitions. |
| Sec. 4-10-603 | Sale, offer for sale, and use of flavored tobacco products prohibited. |
| Sec. 4-10-604 | Enforcement. |
| Sec. 4-10-605 | Public Nuisance |
| Sec. 4-10-606 | Other Applicable Laws |
- Sec. 4-10-601 – Findings and Purpose.**

The City Council of the City hereby finds and declares that, for the reasons set forth in the above Recitals, there is a need to adopt this Ordinance establishing regulations that will prohibit the use of all flavored tobacco products, including without limitation all flavored e-liquids, pods, e-juices, or other flavored products used in electronic nicotine delivery systems, in the City of Irvine. Pursuant to the findings stated herein, the City Council hereby: (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this Ordinance; (2) finds that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (3) declares and imposes regulations for the immediate preservation of the public health, safety and welfare of the City of Irvine.

Sec. 4-10-602 – Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- A. "Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other regulated substances, including any component, part, or accessory of such device, whether or not sold separately. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, hookah pen, vape pen or any other product name or descriptor. An electronic smoking device excludes any product approved by the United States Food and Drug Administration as a nontobacco product used for medicinal purposes and is being marketed and sold solely for that approved purpose. This definition of "electronic smoking device" is consistent and coextensive with the definition provided in Irvine Municipal Code Section 4-10-502.
- B. "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.
- C. "Characterizing flavor" shall mean the definition as used by the U.S. Food and Drug Administration and the California Department of Public Health to refer to 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.
- D. "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.
- E. "Distinguishable" means perceivable by either the sense of smell or taste.

Sec. 4-10-603 – Sale, offer for sale, and use of flavored tobacco products prohibited.

- A. The use of any flavored tobacco product by persons under 21 is prohibited and no person shall use or attempt to use any flavored tobacco product.
- B. 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 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.
- C. Notwithstanding subparts A-C of this Section 4-10-603, the sale or offer for sale of hookah products and the use of flavored tobacco for hookah uses is not prohibited by this Section 4-10-603.

Sec. 4-10-604 – Enforcement.

- A. The provisions of this chapter may be enforced by the Irvine Police Department, any peace officer or code enforcement officer, or other employees designated by the City Manager.
- B. If any person under 21 is in violation of the provisions of this chapter, the Irvine Police Department reserves the right to confiscate any electronic smoking device and/or flavored tobacco products in the possession of such person under 21.
- C. Causing, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- D. Any person who is found to violate any provision of this chapter shall be deemed guilty of an infraction and shall be punishable as provided in Title 4, Division 13 of the Code. Notwithstanding the foregoing, persons who have not previously been found or deemed guilty of an infraction as a result of a violation of this chapter and who also have not previously participated in an educational tobacco diversion program, may elect to participate in a City-approved educational tobacco diversion program. Any action on the infraction shall be dismissed upon completion of the educational tobacco diversion program.

- E. Nothing in this chapter is intended to limit the requirements of California law, which prohibits the giving, selling, or furnishing of any tobacco products, including electronic smoking devices, to persons under 21 years of age.

Sec. 4-10-605 – Public Nuisance.

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

Sec. 4-10-606 – Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.

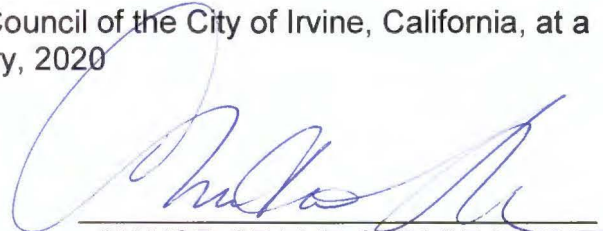
SECTION 3. CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(2) and (b)(3), 15308, and 15378.

SECTION 4. This Ordinance shall become effective thirty (30) days after adoption.

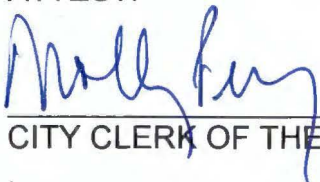
SECTION 5. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. 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. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine, California, at a regular meeting held on the 28th day of January, 2020


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

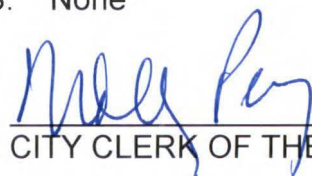
I, MOLLY M. PERRY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing ordinance was introduced for first reading on the 14th day of January, 2020, and duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 28th day of January, 2020.

AYES: 4 COUNCILMEMBERS: Carroll, Khan, Kuo, and Shea

NOES: 0 COUNCILMEMBERS: None

ABSENT: 1 COUNCILMEMBERS: Fox

ABSTAIN: 0 COUNCILMEMBERS: None


CITY CLERK OF THE CITY OF IRVINE