

ORDINANCE 1303

AN ORDINANCE OF THE CITY OF TRACY, AMENDING CHAPTER 10.08 "ZONING REGULATIONS" OF THE TRACY MUNICIPAL CODE TO ADD A NEW SECTION 10.08.3194 "TOBACCO RETAIL USES" TO ESTABLISH LOCATION RESTRICTIONS ON TOBACCO RETAILERS

WHEREAS, More than 480,000 individuals die every year in the United States due to smoking-related causes, which is equivalent to nearly one in five deaths, and

WHEREAS, Cigarette smoking increases the risk for death from all causes in men and women. In California, smoking-related health care costs \$13.29 billion per year and smoking-related losses in productivity totals \$10.35 billion per year, and

WHEREAS, In 2018, 13.7% of all adults (34.2 million people) in the United States reported smoking at least 100 cigarettes during their lifetime and smoking every day or some days when surveyed, and

WHEREAS, According to the American Lung Association, almost 95% of smokers try their first cigarette before age 21, and

WHEREAS, The 2017 National Survey on Drug Use and Health found that each day in the United States, about 2,000 people younger than 18 years smoke their first cigarette and over 300 people younger than 18 years become daily cigarette smokers, and

WHEREAS, The Centers for Disease Control and Prevention (CDC) reports that in 2019, about 12 of every 100 middle school students (12.5%) and about 31 of every 100 high school students (31.2%) reported current use of a tobacco product, and

WHEREAS, The California State Legislature recognizes the negative health consequences and danger posed by tobacco use and has taken various actions to reduce youth access to tobacco products, including but not limited to, prohibiting the sale or furnishing of cigarettes, tobacco products, and tobacco paraphernalia to people under the age of 21 (Penal Code § 308) and prohibiting public school students from smoking or using tobacco products while on school campuses, while attending school-sponsored activities, or while under the supervision or control of school district employees (Education Code §48901(a)), and

WHEREAS, In response to studies and reports indicating that prohibiting the sale of flavored tobacco reduced smoking among youth (ages 12 to 17 years) by 43% and young adults (ages 18 to 25 years) by 27%, the California Legislature adopted Senate Bill 793 in 2020 to prohibit the sale of flavored tobacco in California, and

WHEREAS, The Tracy City Council has received public comment including verbal comments and electronic mail from members of the public expressing concerns about youth access to tobacco, tobacco products and tobacco paraphernalia and in particular e-cigarettes and vapes, and

WHEREAS, The Tracy City Council adopts this Ordinance based on the information contained in these recitals and the information presented at a noticed public hearing on November 17, 2020, and

WHEREAS, The Tracy City Council adopts this Ordinance pursuant to the Council's police power as established by California Constitution Article XI Section 7 and as further authorized in Government Code section 65850.

The City Council of the City of Tracy does ordain as follows:

SECTION 1. Added Section. A new Section 10.08.3194 of Title 10 of the Tracy Municipal Code is hereby added to read as follows:

10.08.3194 – Tobacco Retail Uses.

- (a) Purpose and Intent. On August 28, 2020, Senate Bill 793 was signed into law to prohibit the sale of flavored tobacco in California. The bill does not preempt or otherwise prohibit the adoption of local regulations that impose greater restrictions on access to tobacco products. The Tracy City Council exercised its police power to adopt this zoning ordinance with the express purpose of limiting youth exposure and access to tobacco, tobacco products, and tobacco paraphernalia by establishing location restrictions for tobacco retailers. This section is not intended to give any person or entity authority to engage in tobacco retailing in the City of Tracy.
- (b) Definitions. Unless otherwise provided in this section, the definitions set forth in Chapter 10.08 (Zoning Regulations) apply. The following words shall have the meanings set forth below when used in this section:
 - (1) "Day care center" means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers, as well as child care centers pursuant to Section 1596.951 of the California Health and Safety Code. This definition shall have the same meaning as set forth in Section 1596.76 of the California Health and Safety Code, as the same may be amended from time to time.
 - (2) "School" means those sites upon which full-time instruction in any of the grades K through 12 (twelve) is provided where the primary purpose is education. "School" includes public schools, private schools, and charter schools, but does not include any private site upon which education is primarily conducted in private homes.
 - (3) "Sensitive youth use" means a school, day care center, or youth center as defined in this section.
 - (4) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, electronic cigarettes, e-cigarettes, electronic smoking devices, electronic cigarette cartridges, electronic smoking device cartridges and related products, and any other item designed or used for the smoking or ingestion of tobacco products.
 - (5) "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, chewing tobacco, e-cigarette or electronic smoking device, or any other form of tobacco or product containing at least 50 (fifty) percent tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product (e.g., skin patches, lozenges, gum and prescription medications), or for other

therapeutic purposes where that product is marketed and sold solely for such approved use.

- (6) "Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange any tobacco, tobacco product, or tobacco paraphernalia for consideration, without regard to the quantity sold, offered for sale, exchanged, or offered to exchange.
 - (7) "Tobacco retailing" means the conduct of selling, offering for sale, exchanging, or offering to exchange any tobacco, tobacco product, or tobacco paraphernalia for any form of consideration, without regard to the quantity sold, offered for sale, exchanged or offered to exchange.
 - (8) "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to: private youth membership organizations or clubs, social service teenage club facilities, video arcades where ten (10) or more video games or game machines or devices are operated, and where minors are legally permitted to accept services, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or in City, county, or state parks. This definition shall not include any private gym, martial arts, yoga, ballet, music, art studio or similar studio of this nature, nor shall it include any athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.
- (c) Location Restrictions for Tobacco Retailers.
- (1) The following location restrictions apply to all tobacco retailers operating in the City:
 - i. Tobacco retailing shall only be conducted at fixed locations; and
 - ii. Tobacco retailers shall be located at least 600 (six hundred) feet from a sensitive youth use; and
 - iii. If located on separate parcels, the distance between the tobacco retailer and the sensitive youth use property shall be measured from the outer boundaries of the sensitive youth use parcel to the closest structure containing the tobacco retailer; and
 - iv. If located on the same parcel, the distance between the structures containing the tobacco retailer and any sensitive youth use shall be at least 600 (six hundred) feet.
 - (2) In addition to the restrictions outlined above in subsection (c)(1), a tobacco retailer that dedicates more than ten percent (10%) of their total retailing square footage (e.g. cigar store or smoke shop) to tobacco, tobacco products, or tobacco paraphernalia must be located at least 600 feet from any parcel zoned for residential use in the City.
 - (3) Nonconforming Tobacco Retail Use.
 - i. Any tobacco retailer lawfully operating in the City of Tracy on the date this ordinance is adopted shall be considered a nonconforming use and may continue to operate at their existing location subject to Article 25 of Chapter 10.08 of the Tracy Municipal Code.
 - ii. The establishment of a sensitive youth use within 600 (six hundred) feet of a tobacco retailer after a tobacco retailer commences legal operations shall render the tobacco retailer a nonconforming use which may continue to operate at their existing location subject to Article 25 of Chapter 10.08 of the Tracy Municipal Code.

SECTION 2. Severability. If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 3. Effective Date. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 4. Publication. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

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The foregoing Ordinance 1303 was introduced at a special meeting of the Tracy City Council on the 10th day of November 2020, and finally adopted on the 17th day of November, 2020, by the following vote:

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| AYES: | COUNCIL MEMBERS: ARRIOLA, RANSOM, VARGAS, YOUNG, RICKMAN |
| NOES: | COUNCIL MEMBERS: NONE |
| ABSENT: | COUNCIL MEMBERS: NONE |
| ABSTAIN: | COUNCIL MEMBERS: NONE |

SIGNED: Robert Rickman, Mayor

ATTESTED: Adrienne Richardson, City Clerk