

ORDINANCE NO. O2M21-4786

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA
ADDING CHAPTER 5.90 TO THE ALHAMBRA MUNICIPAL CODE
ESTABLISHING A TOBACCO RETAIL LICENSING PROGRAM AND
PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS**

The City Council of the City of Alhambra hereby ordains as follows:

SECTION 1. Findings. The City Council of the City of Alhambra hereby declares and finds:

WHEREAS, the City Council received presentations on February 22 and March 22, 2021 concerning the hazards of smoking and flavored tobacco products; and

WHEREAS, the City Council was presented with a model tobacco retail license ordinance that largely mirrors those used in surrounding communities to address health issues; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City Council to protect the health, safety, and welfare of our residents; and

WHEREAS, the findings supporting the need for such an ordinance and the benefits of same are attached hereto and incorporated herein as Exhibit A to this ordinance.

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to youth, 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.

SECTION 2. Chapter 5.90 is hereby added to the Alhambra Municipal Code to read as follows:

CHAPTER 5.90 TOBACCO RETAIL LICENSE

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§ 5.90.010 DEFINITIONS. The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

ARM'S LENGTH TRANSACTION means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

CIGAR means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

CIGARETTE means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its Packaging and Labeling, is likely to be offered to, or purchased by, Consumers as a Cigarette described herein.

CHARACTERIZING FLAVOR means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that 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.

CONSUMER means a Person who purchases a Tobacco Product or Tobacco Paraphernalia for consumption and not for Sale to another.

COUPON means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

DEPARTMENT means the City's Finance Department and any agency or Person designated by the Department to enforce or administer the provisions of this Chapter.

DIRECTOR means the City's Finance Director or designee.

DRUG PARAPHERNALIA shall have the meaning set forth in California Health and Safety Code Sections 11014.5, 11364.5, and 11364.7 as those sections may be amended from time to time.

ELECTRONIC CIGARETTE shall have the same meaning as set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

ELECTRONIC DEVICE means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic 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, or any other product name or descriptor.

FLAVORED TOBACCO PRODUCT means any Tobacco Product that imparts a Characterizing Flavor.

FULL RETAIL PRICE means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

LABELING means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.

LITTLE CIGAR means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little Cigar" includes, but is not limited to, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.

MANUFACTURER means any Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.

PACKAGE or **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.

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

PROPRIETOR means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

SALE or **SELL** means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

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 retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

TOBACCO PARAPHERNALIA means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

TOBACCO PRODUCT means:

- (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; and
- (2) any electronic device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO RETAILER means any Person who Sells, offers for Sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange.

YOUTH DECOY means a person under the age of eighteen (18), but not younger than fifteen (15), who is supervised by the police department or code enforcement division to conduct random onsite sting investigations against a Tobacco Retailer to determine compliance with tobacco retailing laws.

§ 5.90.020. GENERAL REQUIREMENTS AND PROHIBITIONS.

(A) TOBACCO RETAILER'S LICENSE REQUIRED. Commencing on January 1, 2022, it shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which Tobacco Retailing is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

(B) COMPLIANCE WITH ALL LAWS REQUIRED. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license is issued, it shall be a violation of this Chapter for any Person, Proprietor, or any of the Tobacco Retailer's agents or employees, to violate any local, State, or Federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(C) DISPLAY OF LICENSE. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(D) RETAIL SALES TO PERSONS YOUNGER THAN THE MINIMUM AGE UNDER STATE LAW PROHIBITED. No Person engaged in Tobacco Retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any Tobacco Products or Tobacco Paraphernalia to any Person who is younger than the legal age, under State law, to purchase and possess Tobacco Products or Tobacco Paraphernalia.

(E) MINIMUM AGE FOR PERSONS SELLING TOBACCO. No Person who is younger than the minimum age established by State law for the purchase or possession of any Tobacco Product or Tobacco Paraphernalia shall engage in tobacco retailing.

(F) POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of twenty-seven (27) years without first examining a valid, legal photo identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Products or Tobacco Paraphernalia. The Tobacco Retailer shall refuse sale of any Tobacco Products or Tobacco Paraphernalia to any Person who appears to be under the age of twenty-seven (27) years, who fails to present valid, legal photo identification prior to the sale or transfer.

(G) DRUG PARAPHERNALIA. It shall be a violation of this Chapter for any Person engaged in Tobacco Retailing or any of the Tobacco Retailer's agents or employees to violate any local, State, or Federal law regulating controlled substances or Drug Paraphernalia, except that conduct authorized pursuant to State law shall not be a violation of this Chapter.

(H) SELF-SERVICE DISPLAYS PROHIBITED. No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a self-service display or engage in Tobacco Retailing by means of a Self-Service Display. A Tobacco Retailer who chooses to display Tobacco Products or Tobacco Paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.

(I) WINDOWS.

- (1) In the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a license is issued, it shall be a violation of this Chapter for a Proprietor, or any of the Tobacco Retailer's agents or employees, to cover more than 10 percent of the window area with window signs unless otherwise prohibited in the applicable zone, whichever is more restrictive shall apply in accordance with Chapter 23.50 of this Code.

- (2) All windows and doors shall be maintained to ensure law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from exterior public rights-of-way or from the entrance. However, this subsection shall not apply to premises where there are no windows, or where the design or location of windows or landscaping precludes a view of the interior of the premises from exterior public rights-of-way or from the entrance.

(J) FALSE AND MISLEADING ADVERTISING PROHIBITED. A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:

- (1) shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a license; and
- (2) shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the Sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable Consumer to believe that such products can be obtained at that location.

§ 5.90.030. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

(A) Commencing July 1, 2022, it shall be a violation of this chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any Flavored Tobacco Product.

(B) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.

(C) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

- (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
- (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- (3) taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.

§ 5.90.040. TOBACCO PRODUCT PRICING AND PACKAGING.

(A) PACKAGING AND LABELING. No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer's Packaging

intended for Sale to Consumers; and (2) conforms to all applicable federal Labeling requirements.

(B) DISPLAY OF PRICE. The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.

(C) PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No Tobacco Retailer shall:

- (1) honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than the Full Retail Price;
- (2) sell 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 in consideration for the purchase of any Tobacco Product or any other item; or
- (3) provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

§ 5.90.050. APPLICATION PROCEDURE.

(A) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco Sales and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the City that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 5.90.130 of this chapter. Nothing in this chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

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

- (1) The name, address, and telephone number of each Proprietor of the business seeking a license.
- (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
- (3) A single name and mailing address 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 business address specified in subparagraph (2) above.

- (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state license for the Sale of Tobacco Products, if the Tobacco Retailer sells products that require such license.
- (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found 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 Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- (7) A statement signed by each Proprietor that no Drug Paraphernalia is or will be sold at the business seeking the license.

(B) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.

(C) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law.

§ 5.90.060. ISSUANCE AND RENEWAL OF LICENSE.

(A) Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (1) The application is incomplete, inaccurate, false, or misleading;
- (2) The Department has information that the applicant, or the applicant's agent(s) or employee(s), violated any local, State, or federal tobacco control law within the preceding 180 days; or
- (3) The application seeks authorization for tobacco retailing at an address where a previous Tobacco Retail License has been suspended, revoked, or is subject to suspension or revocation proceedings for any violation of any of the provisions of this Chapter. However, this shall not constitute a basis for denial of a Tobacco Retail License if either or both of the following apply:
 - (a) The applicant provides documentation which clearly demonstrates that the applicant has acquired or is in the process of acquiring the premises or business in an Arm's Length Transaction; or
 - (b) It has been more than five years since the most recent Tobacco Retail License for that location was revoked.

(B) **Renewal of Tobacco Retail License.** A Tobacco Retail License shall be valid for one year and must be renewed between 30 and 60 days prior to the expiration of the Tobacco Retail License. A Tobacco Retail License may be renewed for additional one

year periods by submission of a renewal application and the applicable fee. Any Tobacco Retail License that is suspended, has been revoked within the previous five years, or is subject to suspension or revocation proceedings shall not be renewed until suspension or revocation proceedings are complete and the suspension or revocation period, if any, is over.

§ 5.90.070 BUSINESS LICENSE REQUIRED.

In addition to the Tobacco Retail License, any Tobacco Retailer must have a valid business license as required by Title 5 of this Code.

§ 5.90.080. LICENSES NONTRANSFERABLE.

A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

§ 5.90.090. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the permit. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including, but not limited to:

- (A) any provision of this code, including but not limited to zoning, building and business license provisions; and/or
- (B) any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. Obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

§ 5.90.100. FEE FOR LICENSE.

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

§ 5.90.110. COMPLIANCE MONITORING.

Compliance with this chapter shall be monitored by the Department and the City's Code Enforcement Division. In addition, any peace officer may enforce the penal provisions of this chapter. The City may designate additional Persons to monitor compliance with this chapter.

Monitoring may include, but is not limited to, unannounced inspections and/or youth decoy operations during a Tobacco Retailer's hours of operation.

The City shall not enforce any law establishing a minimum age for Tobacco Products or Tobacco Paraphernalia purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "youth decoy") if the potential violation occurs when:

- (1) The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City.
- (2) The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations.
- (3) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a Person under the age of 18 years old including but not limited to a youth decoy operation, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented by the City.

§ 5.90.120. VIOLATIONS.

(A) It shall be a violation of this Chapter for any Person, tobacco retailer/licensee, or its agent(s) or employee(s), to violate any federal, State, or local tobacco law or regulation, including any provision of this Chapter. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

(B) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.

(C) The failure of the tobacco retailer/licensee, or the applicant's agent(s) or employee(s) to allow any peace officer, the Director, or any authorized City official to conduct unscheduled inspections of the premises of the business for the purpose of ensuring compliance with any federal, State, or local tobacco law or regulation, including any provision of this Chapter, at any time the business is open for business shall constitute a violation.

(D) No tobacco retailer/licensee or its agent(s) or employee(s) may sell or offer for sale any little cigar or cigarillo unless it is sold in a package of at least 20 little cigars or cigarillos. Little cigars or cigarillos may not be sold individually or in packages of less than 20 units.

(E) Tobacco retailing by means of a self-service display is prohibited, pursuant to State law.

(F) A Tobacco Retail License may be issued to authorize tobacco retailing at a fixed location only. Tobacco retailing on foot or from vehicles, carts, or any other non-fixed location, is prohibited and shall be considered a violation of this Chapter.

(G) No Drug Paraphernalia. It shall be a violation of this Chapter for a tobacco retailer/licensee, or its agent(s) or employee(s) to violate any local, State or Federal law regulating controlled substances or Drug Paraphernalia, such as, for example, California Health and Safety Code Sections 11014.5, 11364.5, and 11364.7.

§ 5.90.130. SUSPENSION OR REVOCATION OF LICENSE.

(A) In addition to any other remedy authorized by law, a Tobacco Retail License may be suspended or revoked as provided in this Section if it is discovered that any of the following occurred:

(1) The licensee, or the licensee's agent(s) or employee(s), violated any provision of this Chapter. Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee, nor shall violations by a prior licensee at the same location be accumulated against a subsequent licensee at the same location;

(2) The original or renewal application contained incomplete, inaccurate, false, or misleading information;

(3) One or more of the bases for denial listed in Section 5.90.060 existed before the Tobacco Retail License was issued; or

(4) A licensee is convicted of a misdemeanor or felony violation of any federal, State, or local tobacco law or regulation, including any provision of this Code.

(B) During any period of suspension or revocation, the licensee shall remove all tobacco products and tobacco paraphernalia from view, including from displays and behind counter storage areas, whether or not visible to the public. All tobacco products and tobacco paraphernalia must be placed in a room that is separate from the area where point of sale transactions occur, or removed from the tobacco retail location entirely. Failure to do so may be considered a subsequent violation.

(C) During any period of suspension or revocation, the tobacco retailer/licensee shall conspicuously post, at each point of sale register and near the entrance door of the tobacco retail location, a notice of a Tobacco Retail License suspension provided by the Department. The notice shall include the suspension or revocation period, reason for suspension or revocation, tobacco retailer/licensee and location information, and Department contact information to report violations.

(D) When the Director finds a violation as set forth in this Chapter, the Tobacco Retail License may be suspended or revoked as follows:

(1) Upon finding by the Director of a first Tobacco Retail License violation within any five year period, the Tobacco Retail License may be suspended for up to 30 days;

(2) Upon a finding by the Director of a second Tobacco Retail License violation within any five year period, the Tobacco Retail License may be suspended for up to 90 days;

(3) Upon a finding by the Director of a third Tobacco Retail License violation in any five year period, the Tobacco Retail License may be suspended for up to 120 days; and

(4) Upon a finding by the Director of a fourth Tobacco Retail License violation within a five year period, the Tobacco Retail License shall be revoked.

§ 5.90.140 SUSPENSION OR REVOCATION PROCEDURE.

(A) Before a Tobacco Retail License is suspended or revoked, the Director shall provide written notice to the licensee. Said notice shall include the following:

(1) A statement that the proprietor's Tobacco Retail License is being suspended or revoked pursuant to this Chapter;

(2) The Code Section violated by licensee or licensee's agents or employees;

(3) A description of the violation that occurred;

(4) The address of the business where the violation occurred; and

(5) The procedure for requesting an administrative review.

(B) A licensee served with a notice of suspension or revocation may request an administrative review to contest the suspension or revocation. The request must be made in writing and filed with the City Manager within 10 calendar days of service of the notice of suspension or revocation. Failure to timely request an administrative review shall be deemed a waiver of the right to request such a review and a failure to exhaust administrative remedies.

(C) After receiving a timely administrative review request, the City Manager shall schedule an administrative review within 20 calendar days of receipt of the written request and designate a reviewing officer. The City Manager may appoint as a reviewing officer, any Department or other City employee who is not directly involved in inspection or enforcement of tobacco retailing establishments.

(D) The proprietor shall be given written notice of the date, time, and location of the administrative review and the name of the reviewing officer who will conduct the administrative review at least 10 calendar days in advance of the review.

(E) The reviewing officer, in their discretion, may grant a reasonable continuance upon the written request and showing of good cause.

(F) At the administrative review, the Department has the burden of providing by a preponderance of the evidence that the alleged violation occurred.

(G) The failure to appear at the administrative review shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

(H) Within 10 calendar days after the close of the administrative review, the reviewing officer shall issue a written decision on the suspension or revocation of the Tobacco Retail License, including a statement of the basis for the decision. The reviewing officer's written decision shall constitute the final administrative decision of the City.

(I) If the Director revokes a Tobacco Retail License, no new Tobacco Retail License may be issued for five years after that revocation.

§ 5.90.150 VIOLATION—OTHER PENALTIES.

(A) In addition to any other penalties and remedies provided by law, including the provisions of this Chapter, any violation of the provisions of this Chapter may be charged as a misdemeanor pursuant to Chapter 1.12 of this Code, or, in the discretion of the prosecutor, as an infraction. Any person who violates any provision of this Chapter is subject to an administrative citation pursuant to Chapter 1.13 as well as a civil action, including but not limited to, an injunction, as well as prosecution for any criminal violation.

(B) In addition to any other penalty under this Chapter, a person found to have engaged in tobacco retailing without a valid Tobacco Retail License shall be ineligible to apply for or be issued a Tobacco Retail License as follows:

(1) After a person is caught in violation of this Section, no new Tobacco Retail License may be issued for the person as a proprietor until 30 days have passed from the date of the violation; and

(2) Each day that a person engages in tobacco retailing without a valid Tobacco Retail License shall constitute a separate violation.

(C) Any person found by the Director to be ineligible to be issued a Tobacco Retail License pursuant to this Section may request an administrative review within 10 days of notice of the violation. The request must be made to the Director in writing. Any administrative review shall be held pursuant to the provisions of Section 5.90.140 of this Chapter.

(D) Violations of this Chapter are hereby declared to be public nuisances pursuant to this Code.

§ 5.90.160 CONFLICT WITH OTHER LAWS, SEVERABILITY, SAVING CLAUSE.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter or the application of such provision to other persons or circumstances shall not be affected thereby.”

SECTION 3. The Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves

procedures for protection of the environment. The Ordinance is also exempt from CEQA pursuant to Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance takes effect 40 days from the date of its adoption.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED THIS 10th DAY OF MAY, 2021.

/s/ Sasha Renée Pérez
Mayor Sasha Renée Pérez

ATTEST:

/s/ Lauren Myles
Lauren Myles, City Clerk

APPROVED AS TO FORM

/s/ Joseph M. Montes
Joseph M. Montes, City Attorney

I, Lauren Myles, City Clerk of the City of Alhambra, certify Ordinance No. O2M21-4786 was adopted by the City Council at a regular meeting held May 10, 2021, by the following vote:

AYES: LEE, MAZA, MALONEY, ANDRADE-STADLER, PÉREZ
NOES: NONE
ABSENT: NONE

/s/ Lauren Myles
Lauren Myles, City Clerk

Exhibit A

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;¹

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;³²

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;¹

WHEREAS, tobacco use is the number one cause of preventable death in California³³ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;
- More than 25% of all adult cancer deaths in California are attributable to smoking;³⁴
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;³⁵
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;¹

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);³⁶
- More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;³⁶
- From 2002 to 2012, smoking prevalence increased among African American youth;³⁶
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;³⁶
- Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their population in California;³⁶
- Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;³⁶

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;³⁶
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;³⁶
- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases;^{35,37}
- In 2017, 22.8% of high school students in California had tried cigarette smoking;^{38,39}

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,² as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;²⁴
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;⁴⁰
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;³⁵

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;^{38,39}
- 7.6% of California tobacco retailers unlawfully sold tobacco products to minors in 2015;³⁶

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the City Council to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

- Cigarettes are the number one product sold in U.S. convenience stores, and in 2012, they generated an average of \$622,248 in sales per store;⁴¹
- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth tobacco sales laws;^{4,42}
- Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;
- A review of 33 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 32 of these communities after the ordinances were enacted, with an average decrease of 28% in the youth sales rate;³

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,⁵ largely because these flavored products are marketed to youth and young adults,^{4,9,43} and younger smokers were more likely than older smokers to have tried these products;⁴

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

WHEREAS, in 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;⁴⁴

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{4,45,46} and that these products help establish tobacco habits that can lead to long-term addiction;^{4,47}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);⁶

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;^{2,4,48,49}

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;⁵⁰

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,⁷ and possibly Hispanic and Latino individuals;⁸ and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American menthol smokers;⁷

WHEREAS, as a result of the FDA ban on all flavored cigarette products (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker post flavor ban fell by 17%;⁵¹

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco;⁵²

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;⁵³⁻⁶⁰

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 actually increased among youth;^{4, 61-65}

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use; ^{1, 11-14,16-19}

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;⁶⁶

WHEREAS, a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;¹²

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{17, 19}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{4,15} and evidence suggests that tobacco companies deliberately target youth with price reductions;^{14,22-24,67}

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,³¹ Newport menthol cigarettes cost less in areas with higher proportions of African Americans,³¹ and underserved communities are targeted with price discounts and coupons;^{68,69}

WHEREAS, tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their marketing budgets on price discounts, accounting for nearly \$8 billion of \$8.7 billion advertising and promotional expenditures in 2016;^{13,14,20}

WHEREAS, the tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average \$1.04 per pack (or 18.6% off the total);²⁶

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;²¹

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{27,70} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.²⁸ For example:

- 87.4% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;⁴⁴
- From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%;¹⁰

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales⁷¹ and may significantly reduce cigar use among youth;⁷²

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;²⁹

WHEREAS, studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%;²⁵ the impact of a \$10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt 10 million smokers to quit; and that state-level minimum floor price laws designed to raise the average price of cigarette packs by \$2.00 could decrease cigarette consumption by 15.9% and reduce income-based smoking disparities more than a comparable excise tax increase;³⁰

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{4,73}

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (eg, requiring identification checks) is necessary to achieve reductions in youth tobacco sales;⁷⁴

WHEREAS, the National Academy of Medicine recommends imposing penalties on business owners to provide sufficient incentives to comply with the law, and business owners with an economic incentive to avoid violations are more likely to establish company-wide policies and incorporate instruction on tobacco laws into employee training;⁷⁵

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, California courts have affirmed the power of the City Council to regulate business activity to discourage violations of law. See, eg, *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010);

WHEREAS, over 130 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco.⁴⁹

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