

URGENCY ORDINANCE NO. 19-0016-U

AN URGENCY ORDINANCE OF THE CITY OF MANHATTAN BEACH AMENDING MANHATTAN BEACH MUNICIPAL CODE CHAPTER 4.118 TO PROHIBIT THE SALE OF ALL VAPE PRODUCTS, ELECTRONIC SMOKING DEVICES AND FLAVORED TOBACCO, DECLARING AN URGENCY THEREFOR, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby amends the title of Manhattan Beach Municipal Code Chapter 4.118 to read as follows:

“Chapter 4.118 - PERMITS FOR TOBACCO PRODUCTS AND PROHIBITION OF THE RETAIL SALE OF ELECTRONIC SMOKING DEVICES AND FLAVORED TOBACCO”

SECTION 2. The City Council hereby amends subsection B of Manhattan Beach Municipal Code Section 4.118.010 to read as follows:

“B. Encourage responsible retailing of tobacco products.”

SECTION 3. The City Council hereby amends Manhattan Beach Municipal Code Section 4.118.020 to amend the definitions of “Electronic smoking device” and “Tobacco product” and add a definition of “Characterizing flavor,” to read as follows:

“‘Electronic Smoking Device’ means (1) an electronic or battery-operated device or delivery system that can deliver an inhalable dose of nicotine to the user or (2) any product intended or sold for use with such a device. ‘Electronic smoking device’ includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaping device, vaporizer, or any other product name or descriptor. ‘Electronic smoking device’ also includes any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver an inhalable dose of nicotine to a person.

‘Tobacco product’ means any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. Tobacco product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

'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. Characterizing flavor includes flavor in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices."

SECTION 4. The City Council hereby amends Manhattan Beach Municipal Code Section 4.118.030 to prohibit electronic smoking devices and all flavored tobacco products and delete all references to electronic smoking devices as follows:

"4.118.030 - Requirements and prohibitions.

A. **Permit Required.** It shall be unlawful for any person to act as a retailer of tobacco products in the City without first obtaining and maintaining a valid retailer permit pursuant to this chapter for each location at which that activity is to occur.

B. **Lawful Business Operation.** It shall be a violation of this chapter for any retailer to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices, or the retailing of such products.

C. **Display of Permit.** Each retailer permit shall be prominently displayed in a publicly visible place at the permitted location.

D. **Notice of Minimum Age for Purchase of Tobacco Products.** Retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the City.

E. **Positive Identification Required.** No retailer shall sell or transfer a tobacco product to another person who appears to be under 30 years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state law to purchase and possess the tobacco product.

F. **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 tobacco products shall engage in retailing.

G. **False and Misleading Advertising Prohibited.** A retailer either without a valid retailer permit or with a suspended retailer permit:

1. Shall keep all tobacco products out of public view.
2. Shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the retailer's location or that could lead a reasonable consumer to believe that tobacco products can be obtained at that location.

H. Flavored Tobacco Products. No retailer shall sell a tobacco product that imparts a characterizing flavor.

I. Vending Machines Prohibited. No tobacco product shall be sold, offered for sale, or distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including but not limited to, machines or devices that use remote control locking mechanisms.

J. Electronic Smoking Devices. No retailer shall sell an electronic smoking device or a tobacco product that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be used with an electronic smoking device.”

SECTION 5. The City Council hereby amends subsections C and D of Manhattan Beach Municipal Code Section 4.118.040 to delete references to electronic smoking devices as follows, with all other provisions of Section 4.118.040 remaining unchanged:

“C. No retailer permit may be issued to authorize retailing at any location within a 500 feet radius of a school. The prohibition contained in this subsection C shall not apply to any lawfully operating retailer of tobacco products that would otherwise become ineligible to receive or renew a retailer permit due to the creation or relocation of a school.

D. No retailer permit may be issued to authorize retailing at a location which is within a 500 feet radius of a location occupied by another retailer. The prohibition contained in this subsection D shall not apply to existing retailers of tobacco products operating lawfully on the date immediately prior to this chapter becoming effective.”

SECTION 6. CEQA Finding. This Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question (prohibiting the retail sale of flavored tobacco and electronic smoking devices) may have a significant effect on the environment.

SECTION 7. Declaration of Facts Constituting the Urgency. Tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that cigarette smoking is responsible for more than 480,000 premature deaths per year in the United States, including 41,000 deaths resulting from secondhand smoke exposure. Nicotine is highly addictive, toxic to developing fetuses, and harms adolescent brain development. Electronic cigarette aerosol can contain cancer-causing chemicals and tiny particles that reach deep into lungs. In the United States, youth are more likely than adults to use e-cigarettes. In 2018, more than 3.6 million United States middle and high school students used e-cigarettes in the 30 days prior to the survey, including 4.9% of middle school students and 20.8% of high school students. 31% of Manhattan Beach Unified School District 11th grade students reported using electronic cigarettes or other vaping devices within 30 days prior to the survey. As of October 8, 2019, 1,299 lung injury

cases and 26 deaths associated with using electronic cigarette, or vaping, products have been reported to the Center for Disease Control (CDC).

The City Council recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. The City Council anticipates that reducing access to tobacco products in the City will lead to less people smoking these products and increased compliance with the City's smoking regulations.

For all these reasons, *inter alia*, there is an urgent need for the immediate preservation of the public peace, health, and safety to enact this ordinance on an urgency basis.

SECTION 8. HARDSHIP EXTENSION. An application for a hardship extension to extend compliance with this Ordinance may be approved by the City Council. Hardship extension applications shall be filed in writing with the Director of Finance and shall contain all documentation relied upon to support the hardship claim. A hardship extension application must be filed no later than November 15, 2019, pursuant to the process prescribed by the City. The City Council shall grant a hardship extension upon making a finding that denial of the extension and enforcement of this Ordinance against the applicant's property would result in the applicant being deprived of all economically viable use of the property. The City Council may consider other factors in order to determine hardship and base its decision on such other factors. A retailer may continue to sell tobacco, tobacco products, or electronic smoking devices while a hardship extension application is pending before the City Council.

SECTION 9. INTERNAL CONSISTENCY. Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

SECTION 10. SEVERABILITY. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or their application and, to this end, the provisions of this Ordinance are severable.

SECTION 11. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 11. EFFECTIVE DATE. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health, and safety within the meaning of Government Code Section 36937(b); and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption.

ADOPTED November 5, 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM



QUINN M. BARROW
City Attorney