

AGENDA ITEM  
12C

Date: November 25, 2019

Council Action Date: December 9, 2019

**TO:** Honorable Mayor and City Council**FROM:** Gregory G. Diaz, City Attorney**SUBJECT:** Consideration and Adoption of Flavored Tobacco Ban and Tobacco Retailer Licenses Ordinance**SUMMARY**

City Council directed staff to draft an ordinance with the goal of banning the sale of flavored tobacco products, establish a tobacco license fee and prohibit the sale of tobacco products within 1,000 feet of schools. Staff is proposing to amend the City's current smoking regulations, found in Chapter 8.350 of the San Buenaventura Municipal Code, to prohibit the sale of flavored tobacco products and add a new chapter to the San Buenaventura Municipal Code to establish a new tobacco retailer license that is non-transferable, requires compliance with the City's smoking regulations, and prohibits new tobacco retailers within 1,000 feet of any school. In light of the recent public health crisis, the Emergency Ordinance will ban the sale of flavored tobacco products. The regular Ordinance will also ban the sale of flavored tobacco products and establish the new tobacco retailer license.

**RECOMMENDATION**

- a. Introduce and adopt as an Emergency Ordinance after making the findings required by the Charter the Emergency Ordinance, title as follows

"AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING CHAPTER 8.350, 'SMOKING REGULATIONS,' OF THE SAN BUENAVENTURA MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN THE CITY OF SAN BUENAVENTURA AND DECLARING THE URGENCY THEREOF"

- b. Introduce and waive the first reading of the Ordinance, title as follows:

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING CHAPTER 8.350,

‘SMOKING REGULATIONS,’ OF THE SAN BUENAVENTURA MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS IN THE CITY OF SAN BUENAVENTURA; AND ADDING CHAPTER 6.410, ‘TOBACCO RETAILER LICENSES,’ TO THE SAN BUENAVENTURA MUNICIPAL CODE TO PROVIDE REGULATIONS AND A LICENSING PROCESS FOR TOBACCO RETAILERS”

- b. Set the second reading and adoption at the City Council meeting of January 13, 2020.

### **DISCUSSION/ANALYSIS**

On July 15, 2019, City Council directed Staff to draft a City Ordinance with the goal to ban the sale of all flavored tobacco products and vape juices in Ventura, including online sales of e-cigarettes, oils, cigarillos, cigarettes, and loose tobacco; to prohibit new tobacco retail licenses within 1,000 feet of any school, tobacco retail license would not be transferrable, and establish an annual tobacco retail licensing fee and increased penalties in an amount sufficient to provide necessary funds to enforce this new Ordinance.

After researching the issue, staff determined that these goals could be accomplished in an amendment to the existing tobacco regulations, Municipal Code Chapter 8.350, to ban the sale of flavored tobacco products, and an addition of a new Chapter that provides for a new tobacco retailer license in the City.

### **Emergency Ordinance – Flavored Tobacco Ban**

#### **a. Background**

In 2009, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) banned the manufacture of flavored cigarettes. However, the law contains an exception for menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco. Moreover, California does not have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth. Tobacco companies have developed flavored tobacco products that have the same youth-friendly characteristics as already banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach. Smokeless tobacco products, including chewing tobacco, snuff, and snus, also come in flavors such as mint, wintergreen, berry, cherry, and apple. Hookah

tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes. Nicotine solutions, which are also known as e-liquids and are used with e-cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum. In fact, among middle and high school e-cigarette users, the availability of flavors was the second most common reason for using the product (31%). Like menthol, these flavorings help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.

Over the past few months, there has been a rapid increase in the number of cases of e-cigarette, or vaping, product use associated lung injury (EVALI). As of November 20, 2019, 2,290 cases of EVALI have been reported to CDC from 49 states (all except Alaska), the District of Columbia, and 2 U.S. territories (Puerto Rico and U.S. Virgin Islands) and forty-seven deaths have been confirmed, including four in California. The Center for Disease Control and Prevention (“CDC”) is investigating the cause of EVALI, which appears to be related to the use of e-cigarettes, or vaping. Many different substances and product sources are still under investigation, and it may be that there is more than one cause of this outbreak. Therefore, the CDC has recommended that individuals cease use of all e-cigarettes and vaping products.

In response to the concerns regarding teen use of flavored tobacco products, as well as mounting evidence that vaping may significantly impact lung function, 49 cities and counties in California, and over 230 localities nationwide, have adopted a flavored tobacco ban.

b. Key Provisions of the Emergency Ordinance

The Emergency Ordinance, Attachment A, amends Chapter 8.350, “Smoking Regulations”, of the San Buenaventura Municipal Code to prohibit the sale flavored tobacco products within the City. The key provisions of this amendment are as follows:

- (1) Restricts the sale of all flavored tobacco products, including the following:
  - a. Flavored cigarettes already prohibited by the Tobacco Control Act;
  - b. Menthol cigarettes;
  - c. Flavored other tobacco products, such as cigars, little cigars, cigarillos, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices, and the solutions used in electronic smoking devices (both nicotine and non-nicotine based); and
  - d. Flavored components, parts, and accessories, such as flavored rolling papers, filters, and blunt wraps.
- (2) Exempts from this flavor ban cessation products that are authorized for sale by the FDA.

- (3) Establishes a six-month delay from the flavor ban for any tobacco retailer operating at the effective date of the Ordinance. This delay provides all existing tobacco retailers with a six-month period to sell their remaining inventory of flavored tobacco products. This provision is recommended to avoid any takings challenge. Allowing tobacco retailers a reasonable time to amortize the value of any investment in property, *i.e.* selling any remaining flavored tobacco products, that cannot be used after the prohibition takes effect, prevents a taking.<sup>1</sup>
- (4) Prohibits online sales of flavored tobacco products and paraphernalia in the City limits.

c. Emergency Findings Required to Adopt the Ordinance

Under Section 706(c) of the City Charter, the City Council is authorized to adopt “emergency ordinances” which become effective immediately upon adoption when the City Council determines the same is necessary to preserve the public peace, health, or safety, and the emergency ordinance contains the reasons for its urgency. Emergency ordinances are an extraordinary occurrence and require special findings to be made by the City Council as well as a supra-majority in order to adopt them. The supra-majority is four-fifths vote of the City Council. With a seven member City Council, four-fifths is actually six of seven affirmative votes. If any members of the City Council are absent from the meeting, a unanimous vote is required to adopt an emergency ordinance.

The proposed Emergency Ordinance provides the following reasons that emergency and urgent action is required:

- (1) As of November 20, 2019, 2,290 cases of e-cigarette, or vaping, product use associated lung injury (EVALI) have been reported to the Center for Disease Control and Prevention (“CDC”) from 49 states (all except Alaska), the District of Columbia, and 2 U.S. territories.
- (2) As of November 20, 2019, forty-seven deaths have been confirmed in 25 states and the District of Columbia, including four in California.
- (3) The number of reported cases of EVALI increases on a weekly basis.
- (4) The CDC is currently leading a complex investigation into the cause of EVALI that spans almost all states, involves over 2,000 patients, and a wide variety of brands and substances and e-cigarette, or vaping, products.
- (5) The CDC has not yet determined the sole cause of EVALI, but rather

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<sup>1</sup> *Metromedia, Inc. v. City of San Diego*, 28 Cal.3d 848, 882 (1980), reversed on other grounds, 453 U.S. 490 (1981); *Safeway Inc. v. City & Cty. of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).

stated that many different substances and product sources are still under investigation, and it may be that there is more than one cause of this outbreak.

- (6) The CDC stated that the only way to assure that an individual is not at risk while the investigation continues is to refrain from use of all e-cigarette, or vaping, products.
- (7) The City Council has determined that one method to help avoid these health and safety risks from occurring in the City is to prohibit the sale of flavored tobacco products and paraphernalia.
- (8) The City Council finds that this Emergency Ordinance is a necessary step to protect the health and safety of City residents pending the conclusion of the CDC's investigation.

### **Regular Ordinance – Flavored Tobacco Ban and Tobacco Retailer License**

The regular Ordinance, Attachment B, establishes both a ban on the sale of flavored tobacco products to people within City limits and a new tobacco retailer license.

#### **1. Flavored Tobacco Ban**

Although the flavored tobacco ban will be effective immediately if the City Council adopts the Emergency Ordinance, it is staff's recommendation that the City Council adopt the same provisions in a traditional ordinance. The regular Ordinance includes the same substantive provisions, minus the emergency findings, as contained in the Emergency Ordinance. By adopting the same provisions under a traditionally noticed schedule, the City would ensure that any potential challenges to the adoption of the Emergency Ordinance would not prevent the flavored tobacco ban from taking effect at a later date.

#### **2. Tobacco Retailer License**

##### **a. Background**

The California Cigarette and Tobacco Products Licensing Act of 2003 ("CTPLA") established a statewide licensing program that required tobacco retailers, among others, to obtain a license from the State of California. The CTPLA focuses on decreasing tobacco product tax evasion—not protecting public health—and provides no funding to support enforcement activities by local governments. Importantly, the CTPLA and other state laws do not preempt or supersede local tobacco control laws (except local tobacco taxes), meaning that local jurisdictions can enact ordinances requiring

tobacco retailer licenses and other laws that focus on protecting public health by, for example, providing for the suspension or revocation of a tobacco retailer license for illegal sales to underage individuals.

Other state and federal laws also regulate various aspects related to the retail sale of tobacco products. California Penal Code 308, for example, prohibits the selling, giving, or furnishing of tobacco products and tobacco paraphernalia to most individuals under the age of 21. The Stop Tobacco Access to Kids Enforcement Act also prohibits tobacco sales to most individuals under the age of 21, restricts tobacco self-service displays and vending machine sales, and requires retailers to post signs at the point of sale about illegal underage tobacco sales. At the federal level, cigarettes must be sold in packages of at least 20, and the FDA requires retailers to check the identification of anyone purchasing tobacco products under the age of 27. Nevertheless, significant regulatory gaps remain and youth continue to access cigarettes and other tobacco products. Local governments may choose to take action to address these gaps by enacting tobacco control policies to further protect public health and advance health equity.

Nearly 200 California cities and counties have adopted tobacco retailer license ordinances. More than 100 of these ordinances meet criteria set by the American Lung Association in California's Center for Tobacco Policy and Organizing for tobacco retailer license best practices:

- (1) All tobacco retailers are required to obtain a license and renew it annually.
- (2) The license fee is sufficient to fund the effective administration and enforcement of the licensing program, including compliance checks.
- (3) A violation of any local, state, or federal tobacco control law constitutes a violation of the local license.
- (4) Penalties for violations include fines and license suspension and revocation.

As currently drafted, the new tobacco retailer license meets these best practices standards and implements additional requirements to further protect public health.

b. Key Provisions of the Ordinance

The Ordinance establishes Chapter 6.410, "Tobacco Retailer Licenses," of the San Buenaventura Municipal Code to require a business license for any tobacco retailer operating in the City. A tobacco retailer is defined broadly as any person (person, corporation or other legal entity) who offers for sale or in exchange for consideration any tobacco product or tobacco paraphernalia, including but not limited to cigars, cigarettes, cigarillos, chewing tobacco, pipe tobacco, electronic smoking devices, and any component, part, product, or accessory.

Prior to this Ordinance, tobacco retailers were required to obtain a City business license but there was no requirement for a separate tobacco retailer license. A tobacco

retailer license will allow the City to better address the actions of tobacco retailers, restrict the sale of tobacco products within 1,000 feet of schools, and provide a regulatory framework for enforcing the Ordinance.

The key provisions of the Ordinance are as follows:

- (1) Establishes a tobacco retailer license for all tobacco retailers operating within the City.
- (2) Establishes an application process to obtain a tobacco retailer license.
- (3) Requires existing tobacco retailers to apply for a tobacco retailer license within 30 days of the effective date of the Ordinance and allows for continued operation until the license is either issued or denied.
- (4) Allows for the City to set a license fee to cover the costs to administer the program.
- (5) Prohibits operation of a tobacco retailer within 1,000 feet of schools.
- (6) Exempts existing tobacco retailers from 1,000-foot ban, subject to meeting certain conditions.
- (7) Sets grounds and procedures for the suspension or revocation of a tobacco retailer license.
- (8) Establishes an appeal process for the denial, suspension or revocation of a tobacco retailer license.
- (9) Establishes that tobacco retailer licenses are non-transferrable.
- (10) Establishes authority for Code Enforcement to conduct at least two compliance checks per year.

## **FINANCIAL IMPACT**

The Ordinance adds tobacco retailer license fees for the reasonable regulatory costs of processing the license application and any costs incurred by the City to administer and ensure compliance with the program. Finance & Technology is in the process of reviewing the proposed fees, which are expected to offset most program costs. However, it is anticipated the revenue generated by the proposed fees will not fully fund a new Code Enforcement Officer position so existing Code Enforcement staff will be used to conduct compliance checks. As a result, low priority cases will take longer to complete in order to ensure the higher priority cases, including tobacco-related violations, are handled in a timely manner. The fee resolution will be presented to the City Council at the second reading of the Ordinance on January 13, 2020.

## **ALTERNATIVES**

As drafted, the Ordinance does not ban *all* e-cigarettes and tobacco products – rather, it bans only flavored e-cigarettes and tobacco products. Some California cities and counties have taken the extra step in light of the public health crisis from smoking e-cigarettes to outright ban the sale of all e-cigarettes. Should the City Council wish to take this stronger approach, the City Council may direct staff to revise the Ordinance to ban the sale of all e-cigarettes.

Further, the Ordinance bans both flavored cigars and flavored hookah products. Under this ban, the business model for cigar lounges and hookah bars in Ventura is drastically altered. In developing flavor bans, some cities have opted to specifically exempt cigar lounges and hookah bars from the flavor ban. Should the City Council wish to exempt cigar lounges and/or hookah bars, the City Council may direct staff to revise the Ordinance to reflect this exemption.

Prepared by: Megan Lorenzen, Assistant City Attorney I

## **ATTACHMENTS:**

- A Flavor Ban Emergency Ordinance
- B Flavor Ban and Licensing Ordinance



**ORDINANCE NO. 2019-\_\_\_\_\_**

**AN EMERGENCY ORDINANCE OF THE  
CITY COUNCIL OF THE CITY OF SAN  
BUENAVENTURA, CALIFORNIA,  
AMENDING CHAPTER 8.350, "SMOKING  
REGULATIONS," OF THE SAN  
BUENAVENTURA MUNICIPAL CODE TO  
PROHIBIT THE SALE OF FLAVORED  
TOBACCO PRODUCTS IN THE CITY OF  
SAN BUENAVENTURA AND  
DECLARING THE URGENCY THEREOF**

**WHEREAS**, Section 706(c) of the Charter of the City of San Buenaventura authorizes the City Council to adopt emergency ordinances which become effective immediately upon adoption when the City Council determines the same is necessary to preserve the public peace, health, or safety, and the emergency ordinance contains the reasons for its urgency; and

**WHEREAS**, As of November 20, 2019, 2,290 cases of e-cigarette, or vaping, product use associated lung injury (EVALI) have been reported to the Center for Disease Control and Prevention ("CDC") from 49 states (all except Alaska), the District of Columbia, and 2 U.S. territories; and,

**WHEREAS**, As of November 20, 2019, forty-seven deaths have been confirmed in 25 states and the District of Columbia, including four in California; and,

**WHEREAS**, The number of reported cases of EVALI increases on a weekly basis; and,

**WHEREAS**, The CDC is currently leading a complex investigation into the cause of EVALI that spans almost all states, involves over 2,000 patients, and a wide variety of brands and substances and e-cigarette, or vaping, products; and,

**WHEREAS**, The CDC has not yet determined the sole cause of EVALI, but rather stated that many different substances and product

sources are still under investigation, and it may be that there is more than one cause of this outbreak; and,

**WHEREAS,** The CDC stated that the only way to assure that an individual is not at risk while the investigation continues is to refrain from use of all e-cigarette, or vaping, products; and,

**WHEREAS,** The City Council has determined that one method to help avoid these health and safety risks from occurring in the City is to prohibit the sale of flavored tobacco products and paraphernalia; and,

**WHEREAS,** The City Council finds that this Emergency Ordinance is a necessary step to protect the health and safety of City residents pending the conclusion of the CDC's investigation.

The Council of the City of San Buenaventura does ordain as follows:

Section 1. AMENDMENT TO CODE. Section 8.350.010, "Findings and Purpose," of Chapter 8.350, "Smoking Regulations," of the San Buenaventura Municipal Code is hereby amended to read as follows:

**"Sec. 8.350.010. – Findings and Purpose.**

- A. The City Council of the City of San Buenaventura finds that:
1. Numerous studies have found that tobacco smoke or the smoke of any other weed or plant is a major contributor to indoor air pollution.
  2. Reliable studies have shown that breathing secondhand smoke is a significant health hazard for all population groups.
  3. Health hazards induced by breathing secondhand smoke include lung cancer,

respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm.

4. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restriction on smoking in public places and places of employment.
5. Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to businesses.
6. Smoking is a positive danger to health and a cause of material annoyance, inconvenience, discomfort, and health hazard to those who are present in areas exposed to secondhand smoke.
7. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to persons under 21 years of age except active duty military personnel who are 18 years of age or older (California Penal Code § 308).
8. Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor California law restricts 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.

9. It is very common to find flavored tobacco products in California tobacco retailers as evidenced by the following:
  - i. 97.4% of stores that sell cigarettes sell menthol cigarettes;
  - ii. 94.5% of stores that sell cigarillos sell them in flavored varieties;
  - iii. 84.2% of stores that sell electronic smoking devices sell flavored varieties; and,
  - iv. 83.8% of stores that sell chew or snus sell flavored varieties.
10. More than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes).
11. Mentholated and flavored products have been shown to be starter products for youth who begin using tobacco, and these products help establish tobacco habits that can lead to long-term addiction.
12. At least one study has found that the majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product.

13. Young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco.
14. 70% of middle school and high school students who currently use tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets.
15. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using cigarillos or flavored cigarettes.
16. Much of the growing popularity of cigarillos and smokeless tobacco is among young adults and appears to be linked to the use of flavored products.
17. The Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015.

B. The purposes of this Chapter are:

1. To protect the public health, safety, and welfare by prohibiting smoking in public places and places of employment.
2. To strike a reasonable balance between the needs of persons who smoke and the guarantee to nonsmokers of the right to breathe smoke-free air, and to recognize that, where these conflict, the

- need to breathe smoke-free air shall have priority.
3. To treat electronic smoking devices in the same manner as conventional cigarettes and tobacco products.
  4. To discourage the illegal purchase of tobacco products by persons under the age of 21.
  5. To protect youth from the harms of tobacco use.”

Section 2. AMENDMENT TO CODE. Section 8.350.020, “Definitions,” of Chapter 8.350, “Smoking Regulations” of the San Buenaventura Municipal Code is hereby amended to read as follows:

**“Sec. 8.355.020. Definitions.** The following words, phrases and terms, as used in this Chapter, shall be defined as follows:

*Bar* means an area which is primarily devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term bar shall not include the restaurant dining area.

*Business* means any sole proprietorship, joint venture, corporation, or any other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are

delivered.

*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.

*City* means the City of San Buenaventura, California.

*Electronic Smoking Device* means an electronic or battery-operated device that delivers vapors of nicotine and/or other substances for inhalation. This term includes every variation and type of such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vapor cigarette, an electronic hookah, a heated tobacco unit, or any other similar product. This term does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of diseases.

*Employee* means any person who is employed or

retained by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity, business, or employer.

*Employer* means any person or business, including a public entity or nonprofit entity, who retains the services of one or more individual persons.

*Enclosed Area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, such as office landscaping or similar structures.

*Flavored Tobacco Product* means any Tobacco Product that imparts a Characterizing Flavor.

*Home Occupation* means any nonresidential use within a dwelling which is permitted by the City's regulations.

*Incidental Food Sales/Service* means the sale or service of food products in a bar if such sale/service constitutes 25 percent or less of the annual gross income of the bar.

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



*Manufacturer* means any person, including any re-packer or re-labeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product, or imports a finished Tobacco Product for sale or distribution into the United States.

*Nonprofit Entity* means any corporation, unincorporated association, or other entity created for charitable, philanthropic, educational, character-building, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives of the entity and not to private gain. A public entity is not a nonprofit entity within the meaning of this Section.

*Open Space* means a natural, open space area owned, used, or maintained by the City, and devoted to habitat, agriculture, or passive recreation and not designated a park by the City.

*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.

*Place of Employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the

course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care or health care facility.

*Public Entity* means any county, municipality, school or special district or political subdivision of the state, to the extent such public entity is subject to the jurisdiction of the City.

*Public Place* means any area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production, and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters, and waiting rooms. A private residence is not a public place.

*Public Park* means any park, reservation, playground, swimming pool, recreation center or any other area in the City, owned or used by the City and devoted to active or passive recreation.

*Restaurant* means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated outdoor eating area, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the

premises for serving elsewhere, including catering functions, except that the term restaurant shall not include a bar.

*Retail Tobacco Store* means a retail store utilized primarily for the sale of Tobacco Products and Tobacco Paraphernalia and in which the sale of other products is merely incidental.

*Service Line* means any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoke or Smoking* means the carrying, inhaling, or emitting the fumes or vapors of a lighted or activated pipe, cigar, cigarette, electronic smoking device, or any other lighted or activated smoking product or equipment used to burn any tobacco product, weed, plant, or other combustible substance in any manner or in any form. Smoke does not mean the combustion of material solely for olfactory purposes such as, for example, smoke from incense, that does not contain any tobacco or nicotine, or the emissions from a product specifically approved by the United State Food and Drug Administration for use in mitigating or preventing disease.

*Sports Arena* means enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public

assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

*Tobacco Licensing Administrator* means the City employee so designated by the City Manager.

*Tobacco Paraphernalia* means any item designed or marketed for the consumption, use, or preparation of Tobacco Products, including, but limited to, cigarette papers or wrappers, pipes, cigarette rolling machines, and any accessories used with electronic smoking devices, such as, but not limited to, cartridges, cartomizers, atomizers, e-liquid, smoke juice, tips, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices.

*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, cigarillos, chewing tobacco, pipe tobacco, snuff;
- (2) any Electronic Smoking Device;
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, Tobacco Product includes Tobacco Paraphernalia and any component, part, product, 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. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

*Tobacco Vending Machine* means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a Tobacco Product."

Section 3. AMENDMENT TO CODE. Section 8.350.040, "Tobacco Products and Paraphernalia and Sale Thereof," of Chapter 8.350, "Smoking Regulations" of the San Buenaventura Municipal Code is hereby amended to read as follows:

**"Sec. 8.350.040. - Tobacco Products and Paraphernalia and Sale Thereof.**

**A. Regulation of Tobacco Products.**

**1. Signage. Any person in the business of**

selling or otherwise distributing or marketing cigarettes, electronic smoking devices, or other Tobacco Products or Tobacco Paraphernalia for commercial purposes shall conspicuously post at each point of sale signs that meet the following specifications:

- (a) Contain the following words with initial letters capitalized in the following manner:  
The Sale Of Tobacco Products To Persons Under 21 Years Of Age Is Prohibited By Law. Valid Identification May Be Required. To Report An Unlawful Tobacco Sale, Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.
- (b) Be square in shape and no smaller than 5.5 inches high by 5.5 inches wide (30.25 square inches) or be rectangular in shape and no smaller than 3.66 inches high by 8.5 inches wide (31.11 square inches). A sign may be larger; however, the sign shall be proportionate to one set of the dimensions set forth in this subdivision. The sign must be printed in ink that is of high contrast from the color of the background material. The size, typeface, and weight of the

lettering must be in conformance with California Code of Regulations, Title 17, Section 6902. Signs may be available from the Tobacco Education Clearing House of California at [www.tobaccofreecatalog.org](http://www.tobaccofreecatalog.org).

2. Identification. No person or employee shall sell, offer to sell or permit to be sold, any Tobacco Products and Tobacco Paraphernalia or Electronic Smoking Device to any purchaser who appears to be under 27 years of age, without first verifying by means of photographic identification containing the bearer's date of birth that the purchaser is not under 21 years of age.
3. Promotion of Products Regulated. No person in the business of selling or otherwise distributing or marketing Tobacco Products or Tobacco Paraphernalia for commercial purposes shall, in the course of such business, distribute any Tobacco Product or Tobacco Paraphernalia, or coupon, certificate, or other written material which may be redeemed for such without charge, to any person on a public street or sidewalk or in a public park or on other public grounds.
4. Tobacco Vending Machine Prohibited. No Tobacco Product or Tobacco Paraphernalia or Electronic Smoking

Device may be sold, offered for sale or distributed by or from a vending machine or appliance, or any other device designed or used for vending purposes.

5. Self-Service Display. No person or employee shall sell, offer for sale, or display for sale, any Tobacco Product or Tobacco Paraphernalia, or Electronic Smoking Device, by means of a self-service display or by any means other than vendor or employee-assisted sales.
  6. Vendor or Employee Assistance Required. All Electronic Smoking Devices, and Tobacco Products or Tobacco Paraphernalia shall be displayed and offered for sale exclusively by means of vendor or employee assistance, and placement of such products shall be in a location which requires retrieval by vendor or employee assistance.
- B. Out of Package Sales. No Person shall sell or offer for sale Electronic Smoking Devices, Tobacco Products or Tobacco Paraphernalia not in the original packaging provided by the Manufacturer and with all required health warnings.
- C. Disposal of Smoking Waste. No Person shall dispose of any Tobacco Product or Tobacco Paraphernalia, or any part of any Tobacco Product or Tobacco Paraphernalia, in any place where Smoking is prohibited under this



Chapter, except in a designated waste disposal container.

D. Sale of Flavored Tobacco Products

Prohibited. 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 deliver or offer for sale or delivery, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product to a person in the City.

1. 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.
2. 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:
  - (a) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
  - (b) 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,
- (c) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

E. Exemption. A Tobacco Retailer lawfully operating in the City as of the date this Section is adopted is exempt from Subsection (D) of this Section for a period of up to 6 months from the effective date of this ordinance, provided that all of the following requirements are met:

- (1) Within 30 days of the effective date of this section, the Tobacco Retailer submits to the Tobacco Licensing Administrator written notice that it seeks temporary exemption from subsection (D) and documentation that demonstrates: (i) the Tobacco Retailer was lawfully operating as of the date this Section was adopted; and (ii) sold one or more Tobacco Product or Tobacco Paraphernalia, in the three months preceding the effective date of this Section. The submission shall include a copy of the Tobacco Retailer's active City business license and proof of the sale of a Tobacco Product or Tobacco Paraphernalia and all other information the Tobacco Licensing Administrator

may request to determine the Tobacco Retailer's qualifications for this exemption.

- (2) The Tobacco Licensing Administrator determines the Tobacco Retailer meets the qualifications set forth in Subsection (E)(1).
- (3) The Tobacco Licensing Administrator shall render a written decision to the Tobacco Retailer within 30 days of the submission Tobacco's Retailer's written notice."

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. California Environmental Quality Act. The City Council finds that the enactment of this Ordinance is determined to be exempt under Section 15061(b)(3) of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that its adoption merely implements a regulatory process that will not foreseeably result in construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

Section 6. Effective Date. This Ordinance is an Emergency Ordinance pursuant to City Charter Section 706(c) and shall be in full force and effect immediately upon its adoption.

Section 7. Publication. The City Clerk is directed to cause a summary of this Emergency Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Emergency Ordinance was introduced, passed, and adopted at a regular meeting of the City Council of the City of San Buenaventura on the 9th day of December, 2019.

\_\_\_\_\_  
Matt LaVere, Mayor

ATTEST:

\_\_\_\_\_  
ANTOINETTE M. MANN, MMC, CRM  
CITY CLERK

APPROVED AS TO FORM  
Gregory G. Diaz, City Attorney

  
\_\_\_\_\_  
Megan Lorenzen  
Assistant City Attorney

11/26/19  
Date

**ORDINANCE NO. 2019-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF SAN BUENAVENTURA,  
CALIFORNIA, AMENDING CHAPTER 8.350,  
“SMOKING REGULATIONS,” OF THE SAN  
BUENAVENTURA MUNICIPAL CODE TO  
PROHIBIT THE SALE OF FLAVORED  
TOBACCO PRODUCTS IN THE CITY OF  
SAN BUENAVENTURA; AND ADDING  
CHAPTER 6.410, “TOBACCO RETAILER  
LICENSES,” TO THE SAN  
BUENAVENTURA MUNICIPAL CODE TO  
PROVIDE REGULATIONS AND A  
LICENSING PROCESS FOR TOBACCO  
RETAILERS**

The Council of the City of San Buenaventura does ordain as follows:

Section 1. AMENDMENT TO CODE. Section 8.350.010, “Findings and Purpose,” of Chapter 8.350, “Smoking Regulations,” of the San Buenaventura Municipal Code is hereby amended to read as follows:

**“Sec. 8.350.010. – Findings and Purpose.**

- A. The City Council of the City of San Buenaventura finds that:
1. Numerous studies have found that tobacco smoke or the smoke of any other weed or plant is a major contributor to indoor air pollution.
  2. Reliable studies have shown that breathing secondhand smoke is a significant health hazard for all population groups.
  3. Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise

tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm.

4. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restriction on smoking in public places and places of employment.
5. Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to businesses.
6. Smoking is a positive danger to health and a cause of material annoyance, inconvenience, discomfort, and health hazard to those who are present in areas exposed to secondhand smoke.
7. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to persons under 21 years of age except active duty military personnel who are 18 years of age or older (California Penal Code § 308).
8. Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor California law restricts 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.
9. It is very common to find flavored tobacco products in California tobacco retailers as evidenced by the following:
  - i. 97.4% of stores that sell cigarettes sell menthol cigarettes;

- ii. 94.5% of stores that sell cigarillos sell them in flavored varieties;
  - iii. 84.2% of stores that sell electronic smoking devices sell flavored varieties; and,
  - iv. 83.8% of stores that sell chew or snus sell flavored varieties.
- 10. More than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes).
- 11. Mentholated and flavored products have been shown to be starter products for youth who begin using tobacco, and these products help establish tobacco habits that can lead to long-term addiction.
- 12. At least one study has found that the majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product.
- 13. Young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco.
- 14. 70% of middle school and high school students who currently use tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets.
- 15. Data from the National Youth Tobacco Survey indicate that more than two-fifths

of U.S. middle school and high school smokers report using cigarillos or flavored cigarettes.

16. Much of the growing popularity of cigarillos and smokeless tobacco is among young adults and appears to be linked to the use of flavored products.
17. The Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015.

B. The purposes of this Chapter are:

1. To protect the public health, safety, and welfare by prohibiting smoking in public places and places of employment.
2. To strike a reasonable balance between the needs of persons who smoke and the guarantee to nonsmokers of the right to breathe smoke-free air, and to recognize that, where these conflict, the need to breathe smoke-free air shall have priority.
3. To treat electronic smoking devices in the same manner as conventional cigarettes and tobacco products.
4. To discourage the illegal purchase of tobacco products by persons under the age of 21.
5. To protect youth from the harms of tobacco use."

Section 2. AMENDMENT TO CODE. Section 8.350.020, "Definitions," of Chapter 8.350, "Smoking Regulations" of the San Buenaventura Municipal Code is hereby amended to read as follows:



**“Sec. 8.355.020. Definitions.** The following words, phrases and terms, as used in this Chapter, shall be defined as follows:

*Bar* means an area which is primarily devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term bar shall not include the restaurant dining area.

*Business* means any sole proprietorship, joint venture, corporation, or any other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

*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.

*City* means the City of San Buenaventura, California.

*Electronic Smoking Device* means an electronic or battery-operated device that delivers vapors of nicotine and/or other substances for inhalation. This

term includes every variation and type of such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vapor cigarette, an electronic hookah, a heated tobacco unit, or any other similar product. This term does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of diseases.

*Employee* means any person who is employed or retained by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity, business, or employer.

*Employer* means any person or business, including a public entity or nonprofit entity, who retains the services of one or more individual persons.

*Enclosed Area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, such as office landscaping or similar structures.

*Flavored Tobacco Product* means any Tobacco Product that imparts a Characterizing Flavor.

*Home Occupation* means any nonresidential use within a dwelling which is permitted by the City's regulations.

*Incidental Food Sales/Service* means the sale or service of food products in a bar if such sale/service constitutes 25 percent or less of the annual gross income of the bar.

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

*Manufacturer* means any person, including any repacker or re-labeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product, or imports a finished Tobacco Product for sale or distribution into the United States.

*Nonprofit Entity* means any corporation, unincorporated association, or other entity created for charitable, philanthropic, educational, character-building, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives of the entity and not to private gain. A public entity is not a nonprofit entity within the meaning of this Section.

*Open Space* means a natural, open space area owned, used, or maintained by the City, and devoted to habitat, agriculture, or passive recreation and not designated a park by the City.

*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.

*Place of Employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms,

conference and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care or health care facility.

*Public Entity* means any county, municipality, school or special district or political subdivision of the state, to the extent such public entity is subject to the jurisdiction of the City.

*Public Place* means any area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production, and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters, and waiting rooms. A private residence is not a public place.

*Public Park* means any park, reservation, playground, swimming pool, recreation center or any other area in the City, owned or used by the City and devoted to active or passive recreation.

*Restaurant* means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated outdoor eating area, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term restaurant shall not include a bar.

*Retail Tobacco Store* means a retail store utilized primarily for the sale of Tobacco Products and Tobacco Paraphernalia and in which the sale of other products is merely incidental.

*Service Line* means any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoke or Smoking* means the carrying, inhaling, or emitting the fumes or vapors of a lighted or activated pipe, cigar, cigarette, electronic smoking device, or any other lighted or activated smoking product or equipment used to burn any tobacco product, weed, plant, or other combustible substance in any manner or in any form. Smoke does not mean the combustion of material solely for olfactory purposes such as, for example, smoke from incense, that does not contain any tobacco or nicotine, or the emissions from a product specifically approved by the United State Food and Drug Administration for use in mitigating or preventing disease.

*Sports Arena* means enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

*Tobacco Licensing Administrator* means the City employee so designated by the City Manager.

*Tobacco Paraphernalia* means any item designed or marketed for the consumption, use, or preparation of Tobacco Products, including, but limited to, cigarette papers or wrappers, pipes, cigarette rolling machines, and any accessories used with electronic smoking devices, such as, but not limited to, cartridges, cartomizers, atomizers, e-liquid, smoke juice, tips, electronic smoking device batteries, electronic smoking device chargers, and

any other item specifically designed for the preparation, charging, or use of electronic smoking devices.

*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, cigarillos, chewing tobacco, pipe tobacco, snuff;
- (2) any Electronic Smoking Device;
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, Tobacco Product includes Tobacco Paraphernalia and any component, part, product, 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. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

*Tobacco Vending Machine* means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a Tobacco Product."

Section 3. AMENDMENT TO CODE. Section 8.350.040, "Tobacco Products and Paraphernalia and Sale Thereof," of Chapter 8.350, "Smoking Regulations" of the San Buenaventura Municipal Code is hereby amended to read as follows:

**"Sec. 8.350.040. - Tobacco Products and Paraphernalia and Sale Thereof.**

A. Regulation of Tobacco Products.

1. Signage. Any person in the business of selling or otherwise distributing or marketing cigarettes, electronic smoking devices, or other Tobacco Products or Tobacco Paraphernalia for commercial purposes shall conspicuously post at each point of sale signs that meet the following specifications:
  - (a) Contain the following words with initial letters capitalized in the following manner:  
The Sale Of Tobacco Products To Persons Under 21 Years Of Age Is Prohibited By Law. Valid Identification May Be Required. To Report An Unlawful Tobacco Sale, Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.
  - (b) Be square in shape and no smaller than 5.5 inches high by 5.5 inches wide (30.25 square inches) or be rectangular in shape and no smaller than 3.66 inches high by 8.5 inches wide (31.11 square inches). A sign may be larger; however, the sign shall be proportionate to one set of the dimensions set forth in this subdivision. The sign must be

printed in ink that is of high contrast from the color of the background material. The size, typeface, and weight of the lettering must be in conformance with California Code of Regulations, Title 17, Section 6902. Signs may be available from the Tobacco Education Clearing House of California at [www.tobaccofreecatalog.org](http://www.tobaccofreecatalog.org).

2. Identification. No person or employee shall sell, offer to sell or permit to be sold, any Tobacco Products and Tobacco Paraphernalia or Electronic Smoking Device to any purchaser who appears to be under 27 years of age, without first verifying by means of photographic identification containing the bearer's date of birth that the purchaser is not under 21 years of age.
3. Promotion of Products Regulated. No person in the business of selling or otherwise distributing or marketing Tobacco Products or Tobacco Paraphernalia for commercial purposes shall, in the course of such business, distribute any Tobacco Product or Tobacco Paraphernalia, or coupon, certificate, or other written material which may be redeemed for such without charge, to any person on a public street or sidewalk or in a public park or on other public grounds.
4. Tobacco Vending Machine Prohibited. No Tobacco Product or Tobacco Paraphernalia or Electronic Smoking Device may be sold, offered for sale or distributed by or from a vending machine or appliance, or any other



- device designed or used for vending purposes.
5. Self-Service Display. No person or employee shall sell, offer for sale, or display for sale, any Tobacco Product or Tobacco Paraphernalia, or Electronic Smoking Device, by means of a self-service display or by any means other than vendor or employee-assisted sales.
  6. Vendor or Employee Assistance Required. All Electronic Smoking Devices, and Tobacco Products or Tobacco Paraphernalia shall be displayed and offered for sale exclusively by means of vendor or employee assistance, and placement of such products shall be in a location which requires retrieval by vendor or employee assistance.
- C. Out of Package Sales. No Person shall sell or offer for sale Electronic Smoking Devices, Tobacco Products or Tobacco Paraphernalia not in the original packaging provided by the Manufacturer and with all required health warnings.
- D. Disposal of Smoking Waste. No Person shall dispose of any Tobacco Product or Tobacco Paraphernalia, or any part of any Tobacco Product or Tobacco Paraphernalia, in any place where Smoking is prohibited under this Chapter, except in a designated waste disposal container.
- D. Sale of Flavored Tobacco Products Prohibited. 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 deliver or offer for sale or delivery, or to

possess with intent to sell or offer for sale, any Flavored Tobacco Product to a person in the City.

1. 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.
2. 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:
  - (a) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
  - (b) 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,
  - (c) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

- E. Exemption. A Tobacco Retailer lawfully operating in the City as of December 9, 2019 is exempt from Subsection (D) of this Section for a period of up to 6 months from December 9, 2019, provided that all of the following

requirements are met:

- (1) Within 30 days of the effective date of this section, the Tobacco Retailer submits to the Tobacco Licensing Administrator written notice that it seeks temporary exemption from subsection (D) and documentation that demonstrates: (i) the Tobacco Retailer was lawfully operating as of the date this Section was adopted; and (ii) sold one or more Tobacco Product or Tobacco Paraphernalia, in the three months preceding the effective date of this Section. The submission shall include a copy of the Tobacco Retailer's active City business license and proof of the sale of a Tobacco Product or Tobacco Paraphernalia and all other information the Tobacco Licensing Administrator may request to determine the Tobacco Retailer's qualifications for this exemption.
- (2) The Tobacco Licensing Administrator determines the Tobacco Retailer meets the qualifications set forth in Subsection (E)(1).
- (3) The Tobacco Licensing Administrator shall render a written decision to the Tobacco Retailer within 30 days of the submission Tobacco's Retailer's written notice."

Section 4. ADDITION TO CODE. Division 6, "Business Regulations," of the San Buenaventura Municipal Code is hereby amended by the addition of a new chapter, Chapter 6.410, "Tobacco Retailer Licenses," to read as follows:

## “Chapter 6.410 Tobacco Retailer Licenses

### **Sections:**

- Sec. 6.410.010. – Purpose.**
  - Sec. 6.410.020. – Definitions.**
  - Sec. 6.410.030. – Tobacco Retailer License Required.**
  - Sec. 6.410.040. – Application for Tobacco Retailer License.**
  - Sec. 6.410.050. – License Fee.**
  - Sec. 6.410.060. – Issuance of Tobacco Retailer License.**
  - Sec. 6.410.070. – Renewal of Tobacco Retailer License.**
  - Sec. 6.410.080. – Grounds for Suspension or Revocation.**
  - Sec. 6.410.090. – Process for Denial of Renewal, Revocation, or Suspension.**
  - Sec. 6.410.100. – Written Request for Appeal.**
  - Sec. 6.410.110. – Appeal Hearing.**
  - Sec. 6.410.120. – Display of Tobacco Retailer License.**
  - Sec. 6.410.130. – Existing Tobacco Retailer Exemption**
  - Sec. 6.410.140. – Tobacco Retailer Licenses Nontransferable.**
  - Sec. 6.410.150. – Tobacco Retailer License Compliance Monitoring.**
  - Sec. 6.410.160. – Violations and Penalties.**
- Sec. 6.410.010. – Purpose.**

It is the intent of the City, in enacting this Chapter, to discourage violations of laws which prohibit or regulate the sale or distribution of Tobacco Products to minors, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefor.

## **Sec. 6.410.020. – Definitions.**

The following words, phrases and terms, as used in this Chapter, shall defined as follows:

*City* means the City of San Buenaventura, California.

*Electronic Smoking Device* means an electronic or battery-operated device that delivers vapors of nicotine and/or other substances for inhalation. This term includes every variation and type of such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vapor cigarette, an electronic hookah, a heated tobacco unit, or any other similar product. This term does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment or prevention of diseases.

*Enforcement Agency* means the City's Code Enforcement Division.

*Hearing Officer* means the City employee designated by the City Manager to serve in this capacity.

*Tobacco Licensing Administrator* means the City employee so designated by the City Manager.

*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 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 can or does share, ultimate control over the day-to-day operations of a business.

*School* means a building or group of buildings and associated grounds used for educational and/or classroom purposes operated by the Ventura Unified School District and/or other public or private educational institutions offering a general course of study at primary, secondary, or high school levels (grades K through 12). Pre-school, vocational or trade programs shall be considered schools only when incidental to the primary use as a school defined herein. Excluded from this definition are buildings operated by public or private education institutions in which total student enrollment is less than fifteen students and private residences at which students participate in home-based or independent study programs.

*Tobacco Paraphernalia* means any item designed or marketed for the consumption, use, or preparation of Tobacco Products, including, but limited to, cigarette papers or wrappers, pipes, cigarette rolling machines, and any accessories used with electronic smoking devices, such as, but not limited to, cartridges, cartomizers, atomizers, e-liquid, smoke juice, tips, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

*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, cigarillo, chewing tobacco, pipe tobacco, snuff;

- (2) any Electronic Smoking Device;
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, Tobacco Product includes Tobacco Paraphernalia and any component, part, product, 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.

*Tobacco Retailer License* means the regulatory license issued by the City pursuant to this Chapter to a Tobacco Retailer. The initial tobacco retailer license and annual renewal is made expressly contingent upon the Tobacco Retailer's ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the sale and distribution of Tobacco Products.

**Sec. 6.410.030. – Tobacco Retailer License Required.**

- A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid Tobacco Retailer License pursuant to this Chapter for each location at which that activity is to occur.
- B. A Tobacco Retailer License may only be issued to authorize tobacco retailing at a fixed location. Itinerant Tobacco Retailing and Tobacco Retailing from vehicles is prohibited.
- C. No license will be issued to authorize Tobacco Retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises. Tobacco Retailing in bars and restaurants serving alcoholic beverages is prohibited.
- D. No Tobacco Retailer License will be issued to authorize Tobacco Retailing within 1,000 feet of any School except as authorized in Section 6.410.130.

**Sec. 6.410.040. – Application for Tobacco Retailer License.**

- A. An application for a Tobacco Retailer License, along with a license fee, shall be submitted to the Tobacco Licensing Administrator for each location of a Tobacco Retailer. All applications submitted shall be on a form supplied by the Tobacco Licensing Administrator and shall contain the following information:
  - 1. The name, address, and telephone number of each Proprietor.



2. The business name of the Tobacco Retailer, and the address and telephone number of the fixed location for which a Tobacco Retailer's License is sought.
  3. Whether or not any Proprietor has previously been issued a Tobacco Retailer License pursuant to this Chapter that is, or was at any time, suspended or revoked, and, if so, the dates of the suspension period or the date of revocation.
  4. A copy of the Tobacco Retailer's City business license.
  5. Such other information as the Tobacco Licensing Administrator deems necessary for enforcement of this Chapter.
- B. Tobacco Retailers operating lawfully as the effective date of this Chapter must submit an application within 30 days of the effective date of this Section. If a timely application is submitted, Tobacco Retailers may continue operating temporarily until a Tobacco Retailer's License is either issued or denied.

**Sec. 6.410.050. – License Fee.**

The fee for issuance or renewal of a Tobacco Retailer License shall be set by Resolution of the City Council to cover the costs of processing the renewal application, together with any costs incurred by the City to administer the program under this Chapter. The license fee shall be paid to the City at the time the Tobacco Retailer License application or renewal is submitted.

**Sec. 6.410.060. – Issuance of Tobacco Retailer License.**

- A. Once the application for a Tobacco Retailer License is deemed complete, the Tobacco Licensing Administrator shall issue a Tobacco Retailer License within 30 calendar days unless any of the following grounds for denial exist:
1. The application is inaccurate;
  2. The application contains false or misleading information;
  3. The application seeks authorization for Tobacco Retailing at an address that appears on a Tobacco Retailer License that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this Code;
  4. The application seeks authorization for Tobacco Retailing in an area where Tobacco Retailing is not permitted under the City's zoning code or the restrictions in this Chapter, or that is unlawful pursuant to any other local, state, or federal law.
- B. If the Tobacco Licensing Administrator determines grounds for denial exist, the Tobacco Licensing Administrator shall issue a written denial to the applicant within 30 days of the date the application was deemed complete.
- C. The applicant may appeal the denial of a Tobacco Retailer License to a hearing officer designated by the City Manager subject to the requirements of Sections 6.410.100 and 6.410.110 of this Code. If the appeal is denied by the hearing officer, the applicant

may file an appeal to the City Council subject to the requirements of Sections 6.410.100 and 6.410.110 of this Code. The decision of the City Council shall be final.

**Sec. 6.410.070. – Renewal of Tobacco Retailer License.**

- A. A Tobacco Retailer License is valid for one year and a complete application for renewal must be submitted not later than 60 days prior to the expiration of the Tobacco Retailer License.
- B. The renewal application shall contain all the information required for new applicants under Section 6.410.040 of this Code.
- C. The applicant shall pay a fee under Section 6.410.050 of this Code.
- D. The Tobacco Licensing Administrator shall issue a renewed Tobacco Retailer License within 30 calendar days after the renewal application is deemed complete unless, after a hearing under Section 6.410.090 of this Code, any of the grounds in Sections 6.410.060(A)(1)-(4) of this Code are determined to exist.

**Sec. 6.410.080. – Grounds for Suspension or Revocation.**

A Tobacco Retailer License may be suspended or revoked if it is determined after a hearing required by Section 6.410.090 of this Code that:

- A. There have been more than two violations of this Chapter and/or any law, rule and/or regulation within any one-year period.
- B. There have been more than four violations of this Chapter and/or any law, rule, and/or regulation within any five-year period.
- C. The information contained in the application, including supplemental information, if any, is found to be false in any material respect.

**Sec. 6.410.090. - Process for Denial of Renewal, Revocation, or Suspension.**

- A. Upon a determination that there may be grounds to deny renewal of, revoke, or suspend a Tobacco Retailer License, the Tobacco Licensing Administrator shall schedule a hearing before a hearing officer designated by the City Manager. The Tobacco Licensing Administrator shall set a time and place for the hearing and shall notify the Tobacco Retailer License holder, in writing, of such date and time, not later than ten working days before the date of the scheduled hearing. The hearing notice shall specify the allegations in support of denying renewal of, revoking, or suspending the Tobacco Retailer License.
- B. At the hearing, the Tobacco Retailer License holder shall be provided the opportunity to present evidence why the Tobacco Retailer License should not be denied renewal, revoked or suspended, or, where subject to denial of renewal or revocation, why a suspension of the Tobacco Retailer License with conditions should be considered instead. The hearing shall be an informal hearing. The

formal rules of evidence provided for in any state law are inapplicable to this hearing. Either party may present witnesses or documents in support of their position.

- C. The hearing officer may suspend the Tobacco Retailer License with conditions for reinstatement or grant the renewal of the license with conditions, if the hearing officer determines there are sufficient facts that the violations can be remedied in a timely manner. Should the Tobacco Retailer License holder fail to timely comply with the imposed conditions for reinstatement, the Tobacco Retailer License shall be revoked.
- D. Within ten working days after the hearing, the hearing officer shall issue a determination in writing, specifying the conclusions and supporting reasons for or against the denial of renewal, revocation, or suspension. The determination notice shall be sent registered or certified mail and first-class mail to the Tobacco Retailer License holder and any other party that has requested notice.
- E. The determination of the hearing officer may be appealed to the City Council subject to the requirements of Sections 6.410.100 and 6.410.110 of this Code. The decision of the City Council shall be final.
- F. If the Tobacco Retailer License holder fails to appeal within ten calendar days of the date the determination notice was delivered, then the denial of renewal, revocation, or suspension shall become final with no further right to appeal or review.

#### **Section 6.410.100. Written Request for Appeal.**

- A. Within ten calendar days after the date of an adverse decision by the Tobacco Licensing Administrator or hearing officer, a written appeal may be filed with the City Clerk setting forth the factual and legal basis for the appeal.
- B. At the time of filing the appeal the appellant shall pay the designated appeal fee, established by Resolution of the City Council.

#### **Section 6.410.110. Appeal Hearing.**

- A. Upon receipt of the written appeal, the matter shall be set for a hearing before the appropriate appeals authority. The matter shall be heard de novo and the hearing shall be conducted pursuant to the procedures set forth by the City.
- B. The City shall set a time and place for the appeal hearing and shall notify the Tobacco Retailer License holder, in writing, of such date and time, not later than ten working days before the date of the scheduled appeal hearing. The appeal hearing shall be conducted within 60 days of the filing of the appeal.
- C. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing. Either party may present witnesses or documents in support of their position.
- D. The City shall notify the appellant of the appropriate appeals authority's decision, in

writing, within ten working days of the appeal hearing.

**Sec. 6.410.120. – Display of Tobacco Retailer License.**

Each Tobacco Retailer License shall be prominently displayed in a publicly visible location at the licensed Tobacco Retailer.

**Sec. 6.410.130. – Existing Tobacco Retailer Exemption.**

A Tobacco Retailer operating lawfully within 1,000 feet of any School on the date this Chapter is effective shall be permitted to continue selling Tobacco Products and Tobacco Paraphernalia so long as all of the following conditions are met:

1. The Tobacco Retailer complies with all the requirements of this Chapter.
2. The Tobacco Retailer applies for a Tobacco Retailer License within 30 days of the effective date of this Section.
3. The Tobacco Retailer License is timely renewed annually thereafter under Section 6.410.070 of this Code, without lapse or permanent revocation (as opposed to temporary suspension).
4. The Tobacco Retailer has not closed for business or has not ceased Tobacco Retailing for more than 60 consecutive days.
5. The Tobacco Retailer does not substantially change the business premises or business operation for the purpose of increasing the sale or display of Tobacco Products.

6. The Tobacco Retailer retains the right to operate under all other applicable local, state, and federal laws.
7. The Tobacco Retailer has not been sold, transferred or assigned since the effective date of this Chapter.

**Sec. 6.410.140. – Tobacco Retailer Licenses Nontransferable.**

A Tobacco Retailer License is nontransferable. If the Tobacco Retailer changes business location, the Tobacco Retailer must apply for a new Tobacco Retailer License. If the Tobacco Retailer is sold, the new owner must apply for a Tobacco Retailer License for that location.

**Sec. 6.410.150. – Tobacco Retailer License Compliance Monitoring.**

Compliance with this Chapter shall be monitored by the enforcement agency. At least two compliance checks of each Tobacco Retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the Tobacco Retailer License fee.

**Sec. 6.410.160. – Violations and Penalties.**

- A. Each and every violation of this Chapter by any person is a misdemeanor and may be punished as such according to the provisions of Chapter 1.150 of this Code.
- B. Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.



- C. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by this Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief. Violators shall be liable for payment to the City of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney's fees, and any other relief or remedy available at law or in equity. The City may also pursue any and all remedies and actions available and applicable under state and local laws.
- D. The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law."

Section 5. 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 6. California Environmental Quality Act. The City Council finds that the enactment of this Ordinance is determined to be exempt under Section 15061(b)(3) of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that its adoption merely implements a regulatory process that will not foreseeably result in construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

Section 7. Effective Date. This Ordinance will take effect on the 30<sup>th</sup> day following its final passage and adoption.


PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Matt LaVere, Mayor

ATTEST:

\_\_\_\_\_  
ANTOINETTE M. MANN, MMC, CRM  
CITY CLERK

APPROVED AS TO FORM  
Gregory G. Diaz, City Attorney

\_\_\_\_\_  
Megan Lorenzen  
Assistant City Attorney

12/5/19  
Date