

# Ordinance Fact Sheet

**TO:** CITY COUNCIL

**DATE:** October 25, 2021

**FROM:** CITY ATTORNEY

**SUBJECT:** AMENDMENTS TO THE TOBACCO RETAILER LICENSE ORDINANCE,  
AND THE TOBACCO USE PREVENTION ORDINANCE

**TITLE OF PROPOSED ORDINANCE:**

AN ORDINANCE OF THE CITY OF PASADENA, CALIFORNIA AMENDING THE TOBACCO RETAILER LICENSE ORDINANCE, TITLE 5, CHAPTER 5.74 OF THE PASADENA MUNICIPAL CODE; AND THE TOBACCO USE PREVENTION ORDINANCE, TITLE 8, CHAPTER 8.78 OF THE PASADENA MUNICIPAL CODE.

**PURPOSES OF THE ORDINANCE:**

The purpose of this ordinance is to revise the Pasadena Municipal Code pursuant to City Council direction given on February 3, 2020, and August 16, 2021.

**REASONS WHY LEGISLATION IS NEEDED:**

The recommended amendments to the Pasadena Municipal Code are necessary to update the Pasadena Municipal Code ("PMC") to align with current state and federal definitions related to tobacco products, tobacco paraphernalia, tobacco use, age identification requirements, and tobacco sales.

The ordinance would also prohibit the sale and distribution within the city of mentholated cigarettes and other flavored tobacco products, including flavored products for electronic smoking devices, including electronic smoking device liquids, flavored little cigars, flavored hookah, and tobacco look-alike products. Flavored tobacco products, including flavored hookah, disguise the harshness of tobacco and according to the Journal of the American Medical Association, 81% of youth who have ever used tobacco products started with a flavored product.

**Background**

At the February 3, 2020, Special Joint Meeting of the Pasadena City Council and the

Pasadena Unified School District Board Of Education, the Board of Education adopted Resolution 2545 encouraging communities to restrict the sale of flavored tobacco products and menthol cigarettes, and the City Council recommended staff evaluate:

- Increasing the penalty for violating the Tobacco Use Prevention Ordinance to a misdemeanor (the Tobacco Retailer License Ordinance already contains an option for violations to be charged as misdemeanors);
- Prohibiting retailers from reapplying for a City business license when revoked due to PMC tobacco ordinance violations; and
- Banning the sale of flavored tobacco within the City of Pasadena.

At the August 16, 2021 City Council meeting, the City Council tabled the Tobacco Ordinance Amendments and requested staff evaluate the potential economic impact of the recommended action, summarize the status of Senate Bill ("SB") 793, and evaluate concerns about the impact of a flavored tobacco sales ban on hookah.

There are a total of 88 licensed tobacco retailers in Pasadena that sell flavored tobacco including seven that advertise the sale of hookah products. In June 2021, Tobacco Control Program staff visited approximately 40 tobacco retailers to review and discuss their tobacco inventory and sales. The majority of retailers declined to share inventory and sales information.

In September 2021, Tobacco Control Program staff visited the seven Pasadena retailers that advertise the sale of hookah products to review hookah product availability and share of shelf space. Six of the seven retailers visited were tobacco only stores. The seventh retailer sold tobacco and other products. No tobacco products for hookah (flavored or unflavored) were visible at any of the stores, but it is possible that product is stored behind the service counter.

The tobacco industry has relied on flavored products to successfully market to young people, with nearly all tobacco use beginning in childhood and adolescence. In all, 88% of adult smokers who smoke daily report that they started smoking in their teens. Data and research from the Food and Drug Administration, National Institutes of Health and others have found that:

- For each tobacco product, at least two-thirds of youth reported using these products "because they come in flavors I like."
- 97% of current youth e-cigarette users had used a flavored product in the past month.

In 2018, the FDA Commissioner, Scott Gottlieb stated "I'm deeply concerned about the availability of menthol-flavored cigarettes. I believe these menthol-flavored products represent one of the most common and pernicious routes by which kids initiate on combustible cigarettes. The menthol serves to mask some of the unattractive features of smoking that might otherwise discourage a child from smoking."

Flavors improve the taste and mask the harshness of tobacco products, making it easier for kids to try these products and ultimately become life-long users. Ending the sale of

all flavored tobacco products is critical to stopping the youth e-cigarette epidemic and creating the first tobacco-free generation.

There is a growing movement by policy makers at all levels to prohibit the sale of flavored and mentholated tobacco products. Five states and hundreds of cities have taken action. At least 310 localities nationwide have passed restrictions on the sale of flavored tobacco products including at least 120 specifically restricting the sale of menthol cigarettes. In California, 109 jurisdictions have passed flavored tobacco bans, including unincorporated areas of Los Angeles County and the cities of Beverly Hills, Burbank, Carson, Compton, Culver City, Cudahy, El Monte, Glendale, Hermosa Beach, Laguna Niguel, Long Beach, Manhattan Beach, Maywood, Redondo Beach, West Hollywood and Ventura. Of the 109 jurisdictions with a flavored ban, only 8 have a hookah exemption.

If approved, the Tobacco Ordinance Amendments will prohibit the sale of flavored tobacco products but not its use, except where already prohibited. For example, California state law prohibits smoking in indoor places and the Pasadena Municipal Code prohibits smoking in certain outdoor public spaces, including unenclosed areas of bars and restaurants. Use of flavored tobacco products, including flavored hookah, in indoors settings and unenclosed areas of bars and restaurants would continue to be prohibited.

### **State Action**

In August 2020 Governor Newsom signed Senate Bill ("SB") 793 prohibiting the sale of flavored tobacco products in California except hookah tobacco, loose-leaf tobacco, and premium cigars. In January 2021, a referendum qualified for the ballot putting SB 793 on hold until a referendum vote can be conducted in the November 2022 general election. SB 793 does not preempt local action when prohibiting the sale of flavored tobacco products. The proposed ordinance amendments would ensure the Pasadena community bans flavored tobacco rather than wait another year for a referendum vote.

### **Federal Action**

In April 2021, the U.S. Food and Drug Administration ("FDA") announced it is working toward issuing proposed product standards within the next year to ban menthol as a characterizing flavor in cigarettes and ban all characterizing flavors (including menthol) in cigars. The FDA has not provided a timeline explaining when any such ban will go into effect.

### **ENVIRONMENTAL DETERMINATION:**

On February 3, 2020, the City Council found that the Ordinance, as proposed, is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption).

**PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:**

City of Pasadena residents, business owners and visitors will be impacted by this Ordinance.


**FISCAL IMPACT:**

Estimating the impact of a ban on flavored tobacco sales is not possible given sales and inventory data is not publicly available. The total anticipated cost of this action in FY2022 is \$28,000, which will support 100 hours of staff time to enforce the proposed amendments and \$18,000 in administrative costs, educational materials, and postage. A transfer to the Health Fund from the General Fund operating reserve will support these costs in FY2022. Ongoing costs will be included in Public Health's annual operating budget submission in future fiscal years.

Respectfully submitted,

  
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