

ORDINANCE NO. 2945

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AMENDING CHAPTER 6.44 OF TITLE 6 OF THE GARDEN GROVE MUNICIPAL CODE PERTAINING TO REGULATION OF THE SALE OF TOBACCO PRODUCTS

City Attorney Summary

This Ordinance amends Chapter 6.44 (Regulation of the Sale of Tobacco Products) of Title 6 (Health and Sanitation) of the Garden Grove Municipal Code to reflect recent changes in State law concerning tobacco sales and to expressly prohibit the sale of tobacco products to persons under 21 years of age, the sale of tobacco products through vending machines, and the sale of flavored tobacco products.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, HEREBY FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, conventional tobacco products including cigars and hookah are also sold in flavors (such as menthol and wintergreen) that can appeal to youths and young adults and influence tobacco initiation and continued use; and

WHEREAS, despite local, State, and federal efforts to limit youth access to tobacco, flavored tobacco and vaping products, minors are still able to access these products; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, with various tobacco control laws including: the prohibition against the sale or furnishing of tobacco products and smoking paraphernalia to minors (Cal. Pen. Code, § 308); the sale or furnishing of vaping products to minors (Cal. Health & Safety Code, § 119405); and the sale of loose or single cigarettes; and

WHEREAS, the Stop Tobacco Access to Kids Enforcement (STAKE) Act prohibits the sale of tobacco and restricts its access to anyone under 21 years of age, requires tobacco retailers to check the identification of tobacco purchasers who appear to be under 21 years of age, and requires notices to be posted on or around tobacco products (Cal. Bus. & Prof. Code, § 22956); and

WHEREAS, in August 2020, the California Legislature passed, and Governor Newsom signed into law Senate Bill 793 ("SB 793"), prohibiting the sale of most flavored tobacco products (codified at Cal. Health & Safety Code, §104559.5); and

WHEREAS, State law permits local jurisdictions to adopt ordinances that impose greater restrictions on the access to tobacco products than the restrictions imposed by State law; and

WHEREAS, the City of Garden Grove desires to update its Municipal Code to reflect recent changes in State law concerning tobacco sales, and to expressly prohibit the sale of tobacco products to persons under 21 years of age, the sale of tobacco products through vending machines, and the sale of flavored tobacco products; and

WHEREAS, the City Council finds that the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA"), Cal. Pub. Resources Code Section 21000 et seq. pursuant to Section 15061 of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section § 15061(b)(3)) because it can be seen with certainty that adoption of the proposed Ordinance will not have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1 The City Council finds that the above recitals are true and correct.

SECTION 2 Chapter 6.44 (Regulation of the Sale of Tobacco Products) of Title 6 (Health and Sanitation) of the Garden Grove Municipal Code is hereby amended as follows (deletions in ~~strikeout~~ text; additions in **bold/underline** text):

Chapter 6.44 REGULATION OF THE SALE OF TOBACCO PRODUCTS

6.44.010 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, vanilla, chocolate, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. 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. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

"Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

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

"Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

“Hookah” means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

“Hookah tobacco retailer” means a tobacco retailer that is engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories.

“Minor” means any person under the age of 18 years.

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

“Self-service display” means any open display of tobacco products and point-of-sale tobacco-related promotional products that the public has access to without the intervention of an employee.

“Shisha tobacco product” means a tobacco product smoked or intended to be smoked in a hookah. “Shisha tobacco product” includes, and maybe referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. “Shisha tobacco product” does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

“Tobacco product” means **a tobacco product as defined in Section 104495 of the California Health and Safety Code, as that provision may be amended from time to time, including but not limited to the following:** ~~any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco that may be utilized for smoking, chewing, inhaling, or other manner of ingestion.~~

- A. **A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.**
- B. **An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.**
- C. **Any component, part, or accessory of a tobacco product, whether or not sold separately.**

“Tobacco product flavor enhancer” means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

“Tobacco retailer” means any person or governmental entity that operates a store, stand, booth, **vending machine**, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

“Vendor-assisted” means that only a store employee has access to the tobacco product and assists a customer by supplying the tobacco product, and the customer does not take possession of the tobacco product until it is purchased.

6.44.020 Prohibitions

A. No person, business, tobacco retailer, or owner, manager, or employee of a business or tobacco retailer shall be engaged in the sale of tobacco products without first posting a plainly visible sign at the point of purchase of tobacco products that **complies with all requirements established by the State Department of Public Health pursuant to subdivision (b) of section 22952 of the California Business and Professions Code.** ~~has wording substantially similar to:~~

~~THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. PHOTO IDENTIFICATION IS REQUIRED OF PURCHASERS APPEARING TO BE UNDER 21 YEARS OF AGE.~~

~~The letters of the sign shall be at least one-half inch high.~~

B. No person, business, tobacco, retailer or owner, manager, or employee of any business or tobacco retailer shall sell, offer to sell or permit to be sold, any tobacco product to any purchaser who appears to be under ~~18~~ **21** years of age, without first verifying by means of photographic identification containing the bearer’s date of birth, that the purchaser is not under ~~18~~ **21** years of age, unless the seller has some other reasonable and reliable basis for determining the purchaser’s age.

C. No person, business, tobacco retailer, or owner, manager, or employee of any business or tobacco retailer shall sell, offer to sell, or permit to be sold, any tobacco product not in the original packaging provided by the manufacturer and with all required health warnings.

D. No person, business or tobacco retailer or owner, manager, or employee of any business or tobacco retailer shall sell, offer for sale, display for sale, or permit to be sold, offered for sale, or displayed for sale, any tobacco product by means of self-service display, **vending machine**, or by any means other than vendor-assisted sales.

E. No person, business or tobacco retailer or owner, manager, or employee of any business or tobacco retailer shall sell, offer for sale, display

for sale, or permit to be sold, offered for sale, or displayed for sale, any flavored tobacco product or tobacco product flavor enhancer. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has characterizing flavor.

6.44.030 Exceptions

A. Section 6.44.020(A), (B), (C) and (D) shall not apply to any establishment where access to the premises by persons under ~~18~~**21** years of age is prohibited by law.

B. **Section 6.44.020(E) shall not apply to loose leaf tobacco or premium cigars, as defined in Section 104495.5 of the California Health and Safety Code.**

C. **Section 6.44.020(E) shall not apply to the sale of flavored shisha tobacco products by a lawfully established and duly licensed hookah tobacco retailer, provided the hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time and operates in compliance with all applicable state and local laws.**

SECTION 3: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4: Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

SECTION 5: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 28th day of November 2023.

/s/ STEVE JONES
MAYOR

ATTEST:

/s/ TERESA POMEROY, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, TERESA POMEROY, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on November 14, 2023, with a vote as follows:

AYES: COUNCIL MEMBERS: (6) O'NEILL, TRAN, DOVINH, KLOPFENSTEIN,
NGUYEN-PENALOZA, JONES
NOES: COUNCIL MEMBERS: (0) NONE
ABSTAIN: COUNCIL MEMBERS: (1) BRIETIGAM

and was passed on November 28, 2023, by the following vote:

AYES: COUNCIL MEMBERS: (6) O'NEILL, DOVINH, KLOPFENSTEIN,
NGUYEN-PENALOZA, BRIETIGAM, JONES
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (1) TRAN

/s/ TERESA POMEROY, CMC
CITY CLERK