

## ORDINANCE NO. 1064

### ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 5.26 [TOBACCO RETAIL LICENSES] OF TITLE 5 [BUSINESS LICENSES AND REGULATIONS] AND CHAPTER 7.30 [SMOKING REGULATED OR PROHIBITED] OF TITLE 7 [HEALTH AND SANITATION] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does hereby ordain as follows:

#### SECTION 1. FINDINGS AND DETERMINATIONS.

A. Research has found health risks associated with using electronic smoking devices. One study found that both e-cigarettes and traditional cigarettes are independently associated with increased risk of heart attack.<sup>1</sup>

B. The American Lung Association has stated that there is risk for irreversible lung damage and disease as a result of vaping.<sup>2</sup>

C. The 2018 Monitoring the Future Survey found that over 60% of 10<sup>th</sup> grade students said it was easy to get vaping devices and e-liquids.<sup>3</sup>

D. The 2018 National Youth Tobacco Survey discovered that almost 15% of middle and high school e-cigarette users (younger than 18) reported that they got the devices from a vape shop in the past month, 8.4% from a gas station or convenience store, and 6.5% from the Internet.<sup>4</sup>

E. In June 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) was signed into law to give the U.S. Food & Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products. The Tobacco Control Act was enacted in order to protect the public and create a healthier future for all Americans. Tobacco companies are required to provide the FDA with detailed information about their products' ingredients. Additionally, among other authorities, the Tobacco Control Act allows the FDA to implement standards for tobacco products to protect public health. For example, the FDA can regulate nicotine and ingredient levels in tobacco products.<sup>5</sup>

F. The California Student Tobacco Survey found that in San Mateo County, the current e-cigarette use prevalence among high school students was 20.8% - much higher than the state prevalence of 10.9%. Additional findings showed 86.4% of teens currently using tobacco reported using a flavored product: use of flavored products was widespread

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<sup>1</sup> 5 Jun 2019 <https://doi.org/10.1161/JAHA.119.012317> Journal of the American Heart Association. 2019; Volume 8, No. 12.

<sup>2</sup> Moritz, T. (2019, March 18). Vaping: It's All Smoke and Mirrors. Retrieved from <https://www.lung.org/about-us/blog/2019/03/vaping-smoke-and-mirrors.html>

<sup>3</sup> University of Michigan, 2018 Monitoring the Future Study, Trends in Availability – Tables 15-17. See <http://monitoringthefuture.org/data/18data/18drtbl15.pdf> and <http://monitoringthefuture.org/data/18data/18drtbl16.pdf>

<sup>4</sup> FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/media/121384/download>

<sup>5</sup> FDA. (2018, January 17). Family Smoking Prevention and Tobacco Control Act – An Overview. Retrieved from <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview>

across all tobacco products and all demographic categories. And more than 2 in 5 teens – 42.4% -- reported purchasing their own e-cigarettes, with more than 30% of this group saying they buy them directly from a local store. Among those who purchased e-cigarettes in a local store, 54.5% purchased them at a vape shop<sup>6</sup>

G. Flavored tobacco products have fueled youth tobacco use. Flavors improve the taste and mask the harshness of tobacco products, making it easier for kids to try the product and ultimately become addicted. There is conclusive evidence that flavors – of which there are over 15,000 available -- play a key role in youth initiation and continued use of tobacco products. In fact, over 80 percent of kids who have used tobacco started with a flavored product.<sup>7,8</sup>

H. U.S. Surgeon General Vivek H. Murthy, M.D., M.B.A. stated that “Most e-cigarettes contain nicotine, which can cause addiction and can harm the developing adolescent brain. Compared with older adults, the brain of youth and young adults is more vulnerable to the negative consequences of nicotine exposure. The effects include addiction, priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders.”<sup>9</sup>

I. In 2016, it was estimated that 20.5 million (4 in 5) middle and high school students in the U.S. were exposed to advertisements for e-cigarettes from at least one source. This was a significant increase compared to 2014 and 2015 data. Furthermore, almost 17.7 million (7 in 10) youths were exposed to advertisements for e-cigarettes in retail stores in 2016, while about 2 in 5 had exposure on the Internet or on television, and almost 1 in 4 had exposure through magazines and newspapers. E-cigarette advertising has an association with e-cigarette use among youths. The advertising themes and strategies used are similar to traditional cigarette advertising tactics that have been found to appeal to youths.<sup>10</sup>

J. Newly released data from the 2019 National Youth Tobacco Survey (NYTS) shows that e-cigarette use among high school students more than doubled from 2017 to 2019, to 27.5 percent of students, or more than 1 in 4 high schoolers.<sup>11</sup>

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<sup>6</sup> Results of the Statewide 2017-18 California Student Tobacco Survey, Zhu S-H, Zhuang YL, Braden K, Cole A, Gamst A, Wolfson T, Lee J, Ruiz CG, Cummins SE (2019). <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/2017-18CaliforniaStudentTobaccoSurveyBiennialReport.pdf>

<sup>7</sup>Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014,” Journal of the American Medical Association, published online October 26, 2015.

<sup>8</sup>Written Testimony of Matthew L. Myers President Campaign for Tobacco-Free Kids Before the House of Representatives Committee on Energy and Commerce Subcommittee on Health Hearing on “Legislation to Reverse the Youth Tobacco Epidemic” October 16, 2019. <https://docs.house.gov/meetings/IF/IF14/20191016/110091/HHRG-116-IF14-Wstate-MyersM-20191016.pdf>

<sup>9</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdfpdf icon](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdfpdf icon)

<sup>10</sup> Marynak K, Gentzke A, Wang TW, Neff L, King BA. Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014-2016. MMWR Morb Mortal Wkly Rep 2018;67:294-299. DOI: <http://dx.doi.org/10.15585/mmwr.mm6710a3>

<sup>11</sup> FDA, “Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, NonTobacco-Flavored E-Cigarette Products,” September 11, 2019, <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>. Current use defined as any use in the past month.

K. Altogether, 5 million middle and high school students used e-cigarettes in 2019 – an increase of nearly 3 million users in two years.<sup>12</sup>

L. Another national study showed that e-cigarette use among 8th, 10th and 12th graders has more than doubled in the past two years<sup>13</sup>

M. Electronic smoking device (or “e-cigarette, vape, vape pen, e-hookah, etc.”) usage by youth has been rising. Usage by high school students increased 78% between 2017-2018 with 1 in 5 high school students currently using and 1 in 20 middle school students currently using the products.<sup>14</sup> The devices were available in the U.S. marketplace in the mid-2000s<sup>15</sup> and in 2014, the products were the most commonly used tobacco product among middle and high school students.<sup>16</sup>

N. On November 19, 2019, the American Medical Association (AMA) called for a total ban on all e-cigarette and vaping products that do not meet Food and Drug Administration (FDA) approval as cessation tools in the wake of the recent lung illness outbreak linked to more than 2,000 illnesses and over 40 deaths across the country and a spike in youth e-cigarette use.

SECTION 2. REPEAL OF SECTION. Section 5.26.010 [Requirement for a permit] of Title 5 [Business Licenses and Regulations] of the Menlo Park Municipal Code is hereby repealed as follows. Underlined text indicates an addition and ~~strikethrough~~ text indicates a deletion.

~~5.26.010 Requirement for a permit.~~

~~It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the Environmental Health Division of the San Mateo County Department of Health ("Environmental Health Division") for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually.~~

SECTION 3. AMENDMENT OF CODE. Chapter 5.26 [Tobacco Retail Licenses] of Title 5 [Business Licenses and Regulations] of the Menlo Park Municipal Code is hereby amended as follows. Underlined text indicates an addition and ~~strikethrough~~ text indicates a deletion.

### 5.26.010 Definitions.

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<sup>12</sup> Edney, A., et al., “Vaping Furor Intensifies as Trump Vows Tough U.S. Scrutiny”, Bloomberg, September 11, 2019, <https://www.bloomberg.com/news/articles/2019-09-11/trump-to-hold-meeting-on-vaping-after-reports-of-u-s-illness>.

<sup>13</sup> Miech, R, et al., “Trends in Adolescent Vaping, 2017-2019,” New England Journal of Medicine, published online September 18, 2019.

<sup>14</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. *Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students – United States, 2011-2018.* MMWR Morb Mortal Wkly Rep 2018;67:1276-1277. DOI: <http://dx.doi.org/10.15585/mmwr.mm6745a5>

<sup>15</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdfpdf icon](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdfpdf icon)

<sup>16</sup> Arrazola RA, Singh T, Corey CG, et al. Tobacco use among middle and high school students—United States, 2011–2014. MMWR Morb Mortal Wkly Rep 2015;64:381–5. [PubMedexternal icon](#)

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

(a) "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 aroma relating to any fruit, chocolate, vanilla, 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.

(b) "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.

(c) "Director" shall mean the director of the San Mateo County Environmental Health Division or designee, the City Manager or designee or code enforcement officer.

(d) "Distinguishable" means perceivable by either the sense of smell or taste.

(e) "Electronic cigarette" means any of the following products:

(1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(2) Any component, part, or accessory of such a device or delivery system that is used during its operation.

(3) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.

(4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.

(5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if Sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and Sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

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

(g) "Person" means any individual, partnership, cooperative association, private corporation, or any other legal entity.

(h) "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

(i) "Sell", "Sale" or "to Sell" means any transaction where, for any consideration, ownership is transferred from one Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange, distribution or barter, in any manner or by any means.

(j) "Tobacco Product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff;

2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(k) "Tobacco retailer" or "retailer" means any store, stand, booth, concession or other enterprise that engages in the retail sale or exchange of tobacco products or electronic cigarettes.

#### **5.26.011 Requirements and prohibitions.**

(a) Permit required. It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the Environmental Health Division of the San Mateo County Department of Health ("Environmental Health Division") for each location where such sales are conducted. Permits are valid for one year and the retailer shall renew annually. (Ord. 967 § 2 (part), 2010).

(b) Lawful business operation. It shall be a violation of this Chapter for any retailer to violate any local, state, or federal law applicable to tobacco products or the retailing of such tobacco products.

(c) Notice of minimum age for purchase of tobacco products. Retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Environmental Health Division.

(d) Prohibition on sale of flavored tobacco products.

(1) The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.

(2) There shall be 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 a characterizing flavor.

(e) Prohibition on sale of electronic cigarettes. No tobacco retailer or other person shall sell any electronic cigarette to a person.

(f) Prohibition on sale of tobacco products at pharmacy. No pharmacy or pharmacy employee or agent shall sell or offer for sale any tobacco product. No new tobacco retailer permit may be issued to a pharmacy under this Chapter. No existing tobacco retailer permit issued under this Chapter 4.98 may be renewed by a pharmacy.

(g) Prohibition on sale of tobacco products to individuals under 21. No retailer shall sell any tobacco product to any individual who is under 21 years of age.

(h) Vending machines prohibited. No tobacco product shall be sold to the public from a vending machine or appliance; or any other coin, token, credit card or debit card operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(i) Distribution of free samples and coupons. No person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco, or smoking products for commercial purposes shall in the course of such business distribute, or direct, authorize or permit any agent or employee to distribute, (1) any cigarette, electronic cigarette or other tobacco or smoking product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person.

(j) Out of package sales. No person shall sell or offer for sale cigarettes or smokeless tobacco not in the original packaging provided by the manufacturer.

(k) Self-service displays prohibited. No person, firm, association or corporation shall sell, permit to be sold or offer for sale any tobacco product by means of self-service displays, or by any means other than vendor assisted sales.

5.26.020 Application, issuance and renewal procedure.

(a) Application for a tobacco retailer's permit shall be submitted in the name of the entity or person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Environmental Health Division and contain the following information:

- (1) The name, address, and telephone number of the applicant;
  - (2) The business name, address, and telephone number of each location where tobacco is retailed; and
  - (3) Such other information as the director of the Environmental Health Division ("director") or his or her designee determines is necessary for implementation of this chapter.
- (b) Applicants for renewal must follow the application procedures set forth in subsection (a) of this section. Renewal of a tobacco retailer's permit shall be denied if the application is for a person or location for which a suspension is in effect. (Ord. 967 § 2 (part), 2010).

5.26.030 Display of permit.

Upon receipt of an application for a tobacco retailer's permit, the director or his or her designee shall issue a permit which must be prominently displayed at each location where tobacco retail sales are conducted. (Ord. 967 § 2 (part), 2010).

5.26.040 Fees for permit.

The fee for a tobacco retailer's permit shall reflect the County of San Mateo's costs of processing the permit and regulating compliance with this chapter and shall be contained in Section 5.64.070 of the San Mateo County Ordinance Code. (Ord. 967 § 2 (part), 2010).

5.26.050 Permit is nontransferable.

Tobacco retailer's permits are nontransferable as between entities, retailers, individuals, locations or otherwise. (Ord. 967 § 2 (part), 2010).

5.26.060 Enforcement of applicable law.

If an agent or employee of the tobacco retailer violates any provisions of this chapter or any federal or state tobacco-related law, the tobacco retailer shall immediately report the violation to the Environmental Health Division. (Ord. 967 § 2 (part), 2010).

5.26.070 Suspension of permit.

(a) Grounds for Suspension. A tobacco retailer's permit may be suspended, as set forth below in subsection (b) of this section, by the director or his or her designee upon a finding, after notice and opportunity to be heard, that either of the following occurred:

- (1) After the permit was issued it was determined that the application for the permit is incomplete or inaccurate.
- (2) The permittee or his or her agent has violated any provision of this chapter or any federal or state tobacco-related law.

(b) Time Period of Suspension of Permit.

(1) The first time that the director or his or her designee makes the finding that a violation of either subsection (a)(1) or (2) of this section has occurred, the permit to sell tobacco products shall be suspended for up to thirty days.

(2) The second time that the director or his or her designee makes the finding set forth in subsection (a)(1) or (2) of this section within twenty-four months of the first determination, the permit to sell tobacco products shall be suspended for no less than thirty days and up to ninety days.

(3) The third and each subsequent time that the director or his or her designee makes the finding set forth in subsection (a)(1) or (2) of this section within twenty-four months of a prior determination, the permit to sell tobacco products shall be suspended for no less than ninety days and up to one year.

(c) Effective Date of Suspension.

(1) If the director or his or her designee makes oral findings and issues an order of suspension at the hearing, the suspension will be effective ten days from the date of the hearing, unless a timely appeal is filed in accordance with subsection (d) of this section.

(2) If the director or his or her designee makes written findings and issues an order of suspension by certified mail after the hearing, the suspension will be effective fifteen days from the date appearing on the notice of that finding and order of suspension, unless a timely appeal is filed in accordance with subsection (d) of this section.

(d) Appeal of Suspension.

(1) The decision of the director or his or her designee is appealable to the San Mateo County Licensing Board.

(2) An appeal must be in writing, be addressed to the director and be hand-delivered to the offices of the Environmental Health Division.

(3) An appeal must be received by the Environmental Health Division before the effective date of suspension provided by subsections (c)(1) or (2) of this section in order to be considered.

(4) The filing of a timely appeal will stay a suspension pending a decision on the appeal by the San Mateo County Licensing Board.

(5) The decision of the San Mateo County Licensing Board shall be a final administrative order, with no further administrative right of appeal. (Ord. 967 § 2 (part), 2010).

5.26.080 Administrative fine.

(a) Grounds for Fine. A fine may be imposed upon findings made by the director or his or her designee, the City Manager or designee or a code enforcement officer, that any retailer, individual, or entity who is an owner of a retail establishment:

(1) Does not have a valid tobacco retailer's permit; and



(2) Offers for sale any tobacco, flavored tobacco, electronic cigarette, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or products prepared from tobacco.

(b) Amount of Fine. Upon findings made under subsection (a) of this section, the retailer, individual, or entity who is an owner of a retail establishment shall be subject to an administrative fine as follows:

(1) A fine not exceeding one hundred dollars for a first violation.

(2) A fine not exceeding two hundred dollars for a second violation.

(3) A fine not exceeding five hundred dollars for the third and subsequent violations.

(4) Each day that tobacco products, flavored tobacco or electronic cigarettes are offered for sale without a permit shall constitute a separate violation. A finding of "offering for sale" will be made if these tobacco products are actually sold and/or displayed in the retail establishment.

(c) Fine Procedures. Notice of the fine shall be served on the retailer, individual, or entity who is owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the director or his or her designee contesting the imposition of the fine. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the director shall be a final administrative order, with no administrative right of appeal.

(d) Failure to Pay Fine. If said fine is not paid within thirty days from the date appearing on the notice of the fine or of the notice of determination of the director or her or his designee after the hearing, the fine shall be referred to a collection agency within or external to the County of San Mateo. In addition, any outstanding fines must be paid prior to the issuance of any permit by the San Mateo County Environmental Health Division of the Department of Health. (Ord. 967 § 2 (part), 2010).

5.26.090 Authorization of enforcement by San Mateo County personnel.

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce this chapter on behalf of the city, within the jurisdiction areas of the city. Such enforcement authority includes, but is not limited to, the collection of fees and fines, expending such revenue in the enforcement of the tobacco retailer requirements, holding hearings, suspending permits and issuing administrative fines.

SECTION 4. AMENDMENT OF CODE. Chapter 7.30 [Smoking Regulated or Prohibited] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby amended as follows. Underlined text indicates an addition and ~~strikethrough~~ text indicates a deletion.

7.30.010 Definitions

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(18) "Secondhand smoke" means the tobacco smoke created by burning or carrying of any lighted pipe, cigar, or cigarette of any kind, and the smoke exhaled by an individual who engages in smoking. Secondhand aerosol emitted from electronic cigarettes as defined in Section 5.26.010(d) shall be considered secondhand smoke for purposes of this chapter.

...

(20) "Smoking" or "smoke" means possessing a lighted tobacco product, or any other lighted weed or plant (including, but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette of any kind), or the lighting of a tobacco product, or any other weed or plant (including, but not limited to, a pipe, a hookah pipe, cigar, or cigarette of any kind) or use or operation of an electronic cigarette as defined in Section 5.26.010(e).

(21) "Tobacco product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, electronic cigarettes as defined in Section 5.26.010(e), pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

SECTION 5. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines. The ordinance is a clean up ordinance and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 7. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the tenth day of December, 2019.

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PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the seventeenth day of December, 2019 by the following vote:

AYES: Carlton, Combs, Mueller, Nash, Taylor

NOES: None

ABSENT: None

ABSTAIN: None

APPROVED:

  
\_\_\_\_\_  
Ray Mueller, Mayor

ATTEST:

  
\_\_\_\_\_  
Judi A. Herren, City Clerk