

**CITY OF OROVILLE  
ORDINANCE NO. 1841**

**ORDINANCE OF THE CITY OF OROVILLE AMENDING SECTIONS 17.04.060 AND 5.28.010 AND  
ADDING SECTIONS 5.28.095, 5.28.130 AND 5.28.140 OF THE OROVILLE MUNICIPAL CODE  
REGARDING PROHIBITING THE SALE OF FLAVORED TOBACCO**

**WHEREAS**, tobacco use remains the leading cause of preventable death in the United States, killing more than 480, 000 people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes. the financial costs it imposes on society, and the burdens it places on our health care system; and

**WHEREAS**, flavored tobacco products are commonly sold by California tobacco retailers. For example: 97.4% of stores that sell cigarettes sell menthol cigarettes; 94.5% of stores that sell little cigars sell them in flavored varieties; 84.2% of stores that sell electronic smoking devices sell flavored varieties; and 83.8% of stores that sell chew or snus sell flavored varieties; and

**WHEREAS**, each day, approximately 2,500 children in the United States try their first cigarette; and another 8,400 children under 18 years of age become new regular, daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored. Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely to use menthol-, candy and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah tobacco, than adults. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using flavored little cigars or flavored cigarettes. Further, 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. Nicotine solutions, which are consumed via electronic smoking devices such as electronic

cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum; and

**WHEREAS**, much as young people disproportionately use flavored tobacco products including menthol cigarettes, the same can be said of certain minority groups. In one survey, the percentage of people who smoke cigarettes that reported smoking menthol cigarettes in the prior month included, most dramatically, 82.6% of Blacks or African-Americans who smoke cigarettes. The statistics for other groups were: 53.2% of Native Hawaiians or other Pacific Islanders who smoke cigarettes; 36.9% of individuals with multiracial backgrounds who smoke cigarettes; 32.3% of Hispanics or Latinos who smoke cigarettes; 31.2% of Asians who smoke cigarettes; 24.8% of American Indians or Alaska Natives who smoke cigarettes; and 23.8% of Whites or Caucasians who smoke cigarettes. People who identify as LGBT and young adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use. The disproportionate use of menthol cigarettes among targeted groups, especially the extremely high use among African-Americans, is troubling because of the long-term adverse health impacts on those groups; and

**WHEREAS**, between 2004 and 2014, overall smoking prevalence decreased, but use of menthol cigarettes increased among both young adults (ages 18-25) and other adults (ages 26+). These statistics are consistent with the finding that smoking menthol cigarettes reduces the likelihood of successfully quitting smoking. Scientific modeling has projected that a national ban on menthol cigarettes could save between 300,000 and 600,000 lives by 2050.

**NOW THEREFORE**, the City Council of the City of Oroville does ordain as follows:

**SECTION 1.** Oroville Municipal Code Section 17.04.060 is hereby amended as follows:

*Characterizing Flavor. 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, alcohol beverage, 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.*

*"Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.***Tobacco paraphernalia.** Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this title, electronic cigarette supplies are considered tobacco paraphernalia.

**Tobacco product.** Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, 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. For the purpose of this title, electronic cigarettes are considered a tobacco product. For the purposes of this title, tobacco products exclude products with a characterizing flavor.

**SECTION 2. Oroville Municipal Code Section 5.28.010 is hereby amended to read as follows:**

**“5.28.010 Definitions.**

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

**“Arm’s length transaction”** means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between 2 informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm’s length transaction.

**“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, alcohol beverage, 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.

**“Flavored tobacco product”** means any tobacco product that contains a constituent that imparts a characterizing flavor.

**“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 10% 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 share ultimate control over the day-to-day operations of a business.

**“Self-service display”** means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

**“Smoking.”** Refer to Section 9.04.170 for definition.

**“Tobacco paraphernalia”** means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, vaporizers and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. For the purpose of this chapter, electronic cigarette supplies are considered tobacco paraphernalia.

**“Tobacco product”** means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, 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. For the purpose of this chapter, electronic cigarettes are considered a tobacco product. For the purposes of this title, tobacco products exclude products with a characterizing flavor.

**“Tobacco retailer”** means any person who sells, offers for sale, or exchanges 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, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ord. 1794 § 1)”

**SECTION 3.** Section 5.28.095 is hereby added to the Oroville Municipal Code to read as follows:

**“5.28.095 Sale or offer for sale of flavored tobacco products prohibited.**

(a)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.

(b)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.”

**SECTION 4.** Sections 5.28.130 and 5.28.140 are hereby added to the Oroville Municipal Code to read as follows:

**“5.28.130 No conflict with federal or state law.**

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.

**5.28.140 Severability.**

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 5.28, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The City Council hereby declares that it would have passed this chapter, and

each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional.”

**First Reading Passed** by the Oroville City Council at a meeting on January 7, 2020.

**ADOPTED** by the Oroville City Council at a meeting of January 21, 2020 by the following vote:

- AYES: Council Member Hatley, Pittman, Goodson, Smith, Draper, Vice Mayor Thomson and Mayor Reynolds
- NOES: None
- ABSTAIN: None
- ABSENT: None



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Chuck Reynolds, Mayor

APPROVED AS TO FORM:



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Scott E. Huber, City Attorney

ATTEST: *January 28, 2020*



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Jackie Glover, Assistant City Clerk