

ORDINANCE NO. _____
AN ORDINANCE OF THE CITY OF GLENDALE, CALIFORNIA
AMENDING SECTIONS 5.94.020 AND 5.94.150 AND ADDING SECTION 5.94.160 TO THE
GLENDALE MUNICIPAL CODE, 1995, BANNING THE SALE OF FLAVORED TOBACCO
PRODUCTS

WHEREAS, pursuant to the City of Glendale's police power, as granted under Article XI, section 7 of the California Constitution, the City Council of the City has the authority to enact and enforce ordinances and regulations for public health, safety and welfare; and

WHEREAS, based upon its concerns about the sale of and effects of the use of tobacco products, the City Council of the City of Glendale has previously adopted Glendale Municipal Code Chapter 5.94 – Tobacco Retailers, and Chapter 8.52 – Smoking; and

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and

WHEREAS, documents obtained during litigation against the tobacco industry reveal that tobacco companies have used fruit, candy, and alcohol flavors for electronic smoking devices as a means to target youth. Tobacco industry documents stated that "sweetness can impart a different delivery taste dimension which younger adults may be receptive to," that "[i]t's a well known [sic] fact that teenagers like sweet products," and that flavored products would have appeal "in the under 35 age group, especially in the 14-24 group."; and

WHEREAS, marketing and public health research shows that flavors such as fruit, candy, and alcohol hold an intense appeal to minors and young adults; and

WHEREAS, the City Council has a substantial interest in protecting young people from the harms of tobacco use, curtailing their introduction to tobacco products and reversing the trend of young people using flavored tobacco products; and

WHEREAS, while neither federal nor California state laws restrict the sale of menthol cigarettes despite their characterizing flavor, the Tobacco Products Scientific Advisory Committee Report to the FDA noted that menthol cigarettes were used by adolescents at a higher rate than any other age group and their removal from the marketplace would benefit public health; and

WHEREAS, the City Council recognizes those dangers of menthol cigarettes to public health and desires to ban menthol cigarettes in the City of Glendale alongside other flavored tobacco products; and

WHEREAS, hookah smoking is part of a cultural tradition for many Glendale residents, hookah pipes and their components are generally too large to be concealed, and

hookah tobacco is only useable in a hookah pipe—accordingly the City Council agrees to exempt hookah tobacco from the ban on flavored tobacco products; and

WHEREAS, pursuant to its police powers, the City has authority to regulate the sale of flavored tobacco products in the City; and

WHEREAS, in order to protect public health, safety, and welfare, the City Council desires to adopt an ordinance which will prohibit the sale of flavored tobacco products.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GLENDALE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds that all of the facts, findings, and conclusions set forth above in this Ordinance are true and correct and hereby incorporate them by this reference. The adoption of this Ordinance is therefore necessary for the immediate protection of the public safety, health and welfare.

SECTION 2. Section 5.94.020 of the Glendale Municipal Code, 1995, entitled “Definitions,” is hereby amended to read as follows:

5.94.020 Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them unless otherwise noted:

“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 two (2) informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies, partners, corporate or other entities which have some or all of the same directors and/or principals, or any 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 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. Characterizing flavor includes flavor in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices.

“Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco, which because of its appearance, the type of tobacco

used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this section.

“Cigarette” also includes “roll-your-own” tobacco, meaning tobacco, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as tobacco for making, cigarettes. For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one (1) individual “cigarette.”

“Electronic smoking device” means any device that uses electricity to heat or deliver nicotine or other substances, whether natural or synthetic, to the person inhaling from the device, including but not limited to electronic cigarettes, electronic cigars, electronic pipes, electronic hookahs, or vaping devices, commonly known as “E-cigarettes”.

“Flavored tobacco product” means any tobacco product, as defined in this Chapter, which imparts a characterizing flavor.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Premium Cigar” means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

“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 (10) 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.

“Self-service display” means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, including hookahs, holders of smoking materials of all types, cigarette rolling machines, electronic smoking devices, and any other item, component, part, or accessory, designed for the smoking or ingestion of tobacco or tobacco products, whether or not sold separately.

“Tobacco product” means (1) any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, 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, chewing tobacco, pipe tobacco and snuff; or (2) any electronic smoking device, regardless of whether it contains any tobacco or tobacco byproducts. “Tobacco product” does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, in public view, tobacco, tobacco products, electronic smoking devices and products, or tobacco paraphernalia. Any person who distributes free or low cost samples of tobacco products or tobacco paraphernalia shall be deemed to be a tobacco retailer under this chapter.

“Use or consumption of tobacco products” means and includes the exercise of any right or power over cigarettes incident to the ownership thereof other than the sale of the cigarettes or the keeping or retention thereof for the purpose of sale.

“Youth decoy” means a person under the age of eighteen (18), but not younger than fifteen (15), who is used by the police department to conduct random onsite sting investigations to determine compliance with tobacco retailing laws.

SECTION 3. Section 5.94.150 of the Glendale Municipal Code, 1995, entitled “Compliance monitoring and enforcement,” is hereby amended to read as follows:

5.94.150 Compliance monitoring and enforcement.

A. The provisions of this chapter shall be enforced by the Glendale police department, neighborhood services inspectors and code enforcement personnel, and permit investigators. Compliance checks shall determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco and is complying with the ban on selling, offering for sale, or possession with the intent to sell flavored tobacco products. In addition to the enforcement powers established in section 5.04.210 of this code, all police officers and persons charged with the duty of enforcement of this chapter shall have and exercise the power:

1. To conduct investigations and unannounced compliance checks; and to issue warning notices and provide such educational materials that will result in compliance.
2. To enter, free of charge or restriction, at any time, any place of business for which a permit is required by this chapter, and to demand the exhibition of such permit for the current term by any person engaged or employed in the transaction of such business; and if such person shall then and there fail to exhibit such permit, such person shall be liable to the penalty provided for a violation of chapters 5.04 and 5.08

B. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or equity:

Whenever evidence of a violation of this chapter is obtained, in part, through the participation of a youth decoy supervised by a peace officer, the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented. Upon learning of any violation of this chapter or upon learning of any threat to violate or to continue to violate this chapter, the city manager may, with the approval of the city council, direct that an action be brought in the name of the city to enjoin the violation or continued violation of this chapter.

C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

SECTION 4. Section 5.94.160 is hereby added to the Glendale Municipal Code, 1995, regarding the prohibition of sale of flavored electronic smoking products.

5.94.160 Sale of flavored tobacco products prohibited.

A. 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 offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product or any component, part, or accessory intended to impart, or imparting a characterizing flavor in any form, to any tobacco product or electronic smoking device. This paragraph shall not apply to hookah tobacco in a form that may only be used in a non-electronic hookah pipe or water pipe. This paragraph shall not apply to premium cigars.

B. There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored tobacco products, including but not limited to any components, parts, or accessories intended to impart, or imparting, a characterizing flavor in any form to any tobacco product or electronic smoking device, possesses such flavored tobacco products with intent to sell or offer for sale. "Presumption", as used in this Chapter, means that the court must find the existence of the facts presumed unless and until its nonexistence is proven by a preponderance of the evidence.

C. There shall be a rebuttable presumption that a tobacco product is or contains a flavored tobacco product if a retailer, manufacturer, or any employee or agent of a retailer or manufacturer:

1. Makes or disseminates a public statement or claim to the effect that the tobacco product imparts a characterizing flavor; or
2. Uses text and/or images on the tobacco product's labeling or packaging that explicitly indicate that the tobacco product imparts a characterizing flavor.

SECTION 5. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act ("CEQA") and, therefore, an environmental review is not required under Section 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment]; Section 15060(c)(3) [the activity is not a project as defined in Section 15378]; and Section 15061(b)(3)[no possibility exists that the activity in question may have a significant effect on the environment] of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the ordinance:

1. Has no potential for resulting in physical change to the environment, directly or indirectly; and
2. Prevents changes in the environment.

SECTION 6. Severability. This Ordinance's provisions are severable. If any portion of this Ordinance or its application to any person or circumstance is held invalid or unconstitutional, that decision does not affect the validity of the Ordinance's remaining portions and the Ordinance's application to other persons and circumstances. The City Council declares that it would have passed the remainder of this Ordinance without the invalid or unconstitutional provision.

SECTION 7. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage.

Adopted by the Council of the City of Glendale on the _____ day of _____, 2021.

Mayor

ATTEST:

City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF GLENDALE)

I, Aram Adjemian, City Clerk of the City of Glendale, hereby certify that the foregoing Ordinance was adopted by the Council of the City of Glendale, California, at a regular meeting held on the _____ day of _____, 2021, and that the same was adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

City Clerk