

ORDINANCE NO. 765 N.S.

AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 12 OF THE PIEDMONT MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS

The City Council of the City of Piedmont hereby ordains as follows:

SECTION 1. INTENT

By adopting this ordinance, the Piedmont City Council intends to prohibit the sale of flavored tobacco products within Piedmont due to the detrimental effects flavored tobacco has on the health of adults and children.

SECTION 2. FINDINGS

The Surgeon General has declared e-cigarette use among youth an epidemic. While youth use of combustible cigarettes has decreased dramatically, e-cigarette use, also known as “vaping”, has significantly increased. 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. Studies show that among middle and high school students nationally, vaping has increased by 78 percent between 2017 and 2018, with over 3.6 million youth using e-cigarettes in 2018. In the 2019-2020 California Healthy Kids Survey, 13% of 9th grade, 16% of 10th grade, 24% of 11th grade, and 34% of 12th grade Piedmont students reported they had used vaping products 4 or more times;

According to the Federal Food and Drug Administration, nearly 80% of youth ages 12-17 and nearly 75% of young adults ages 18-25 who were currently tobacco users in 2014 reported that the first tobacco product they ever 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. Tobacco companies have used flavorings in vaping 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.

Based upon the facts stated above, the City Council finds that a local prohibition against the sale of flavored tobacco is an effective means to reduce the availability of these products to youth, thereby protecting the public health and safety by discouraging tobacco initiation and continued use.

SECTION 3. AMENDMENT OF EXISTING SECTION 12.25

The following definitions are added to Section 12.25 of the City Code. The City Clerk is instructed to insert these definitions into the section alphabetically and renumber the subsections accordingly.

““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, alcoholic beverage, herb, or spice; provided, however, that 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.”

““Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.””

““Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange 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 Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.”

#### SECTION 4. AMENDMENT OF EXISTING SECTION 12.29

Section 12.29 of the City Code is renumbered to Section 12.30 and amended in its entirety to read as follows:

“Violations of Sections 12.26 through 12.29 of this Article shall be an infraction. The City Council shall set the fine for violations from time to time by resolution.”

#### SECTION 5. PROHIBITION OF THE SALE OF FLAVORED TOBACCO

A new section, numbered 12.29 is added to the Piedmont City Code as follows:

“No person, business, tobacco retailer, or any other legal entity, shall sell or offer for sale, or possess with intent to sell or offer for sale, any flavored tobacco product.

(a) Presumptions for flavored tobacco products. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:

(1) Made a public statement or claim that the tobacco product imparts a Characterizing Flavor.

(2) Used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a Characterizing Flavor, including, but not limited to, use of descriptive terms such as “sweet” or “spicy” that imply a Characterizing Flavor; or

(3) Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a Characterizing Flavor.”

SECTION 6.            CODIFICATION

The City Clerk is directed to codify this ordinance in a manner which reflects the legislative intent of the City Council.

SECTION 7.            SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

SECTION 8.            POSTING AND EFFECTIVE DATE

This Ordinance shall be posted at City Hall after its second reading by the City Council for at least 30 days and shall become effective 30 days after the second reading.

SECTION 9.            CALIFORNIA ENVIRONMENTAL QUALITY ACT

Adoption of this Ordinance prohibiting the sale of flavored tobacco products is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, *et seq.* and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 *et. seq.*), including without limitation, Public Resources Code section 21065 and California Code of Regulations 15378 for the following reasons: the action is exempt under the “common sense” exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.



I certify that the foregoing ordinance was passed and adopted as a part of the consent calendar by Resolution 63-2022 at the regular meeting of the City Council of the City of Piedmont on September 19, 2022, by the following vote:

Ayes:	Andersen, Cavanaugh, King, Long, McCarthy
Noes:	None
Absent:	None

Attest: \_\_\_\_\_  
John O. Tulloch, City Clerk