

ORDINANCE O2020-\_\_

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA MUNICIPAL CODE BY REPEALING CHAPTER 5.20 ("CIGARETTE VENDING MACHINES"); REPEALING CHAPTER 8.20 ("SMOKING") AND REPLACING IT WITH A NEW CHAPTER 8.20 ("SMOKING REGULATIONS"); AND AMENDING SECTIONS 12.36.005 ("DEFINITIONS") AND 12.36.280 ("SMOKING PROHIBITED IN ALL CITY PARKS") RELATING TO SMOKING IN CITY PARKS

WHEREAS, the City desires to update its smoking regulations in the Napa Municipal Code ("NMC") to make them consistent with State law; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

**SECTION 1: Amendment.** NMC Chapter 5.20 "Cigarette Vending Machines" is hereby repealed in its entirety.

**SECTION 2: Amendment.** NMC Chapter 8.20 "Smoking Regulations" is hereby repealed in its entirety and replaced with a new Chapter 8.20 "Smoking Regulations", which is adopted to read as set forth on Exhibit "A" attached hereto and incorporated herein by reference.

**SECTION 3: Amendment.** The definition of "Smoking" in NMC Section 12.36.005 is hereby amended by deleting the existing text in its entirety and replacing it with the following:

"Smoking" shall have the meaning set forth in Section 8.20.020 of this code.

**SECTION 4: Amendment.** NMC Section 12.36.280 "Smoking prohibited in all city parks" is hereby amended by deleting the existing text in its entirety and replacing it with the following:

12.36.280 Smoking prohibited in all city parks.

Smoking is prohibited in any park. It is a violation of this code for any person to be smoking in any park. It is a violation of this code for any responsible person (such as the event organizer who is issued a permit to use a park, in accordance with Chapter 12.48) to permit smoking in any park.

## ATTACHMENT 1

**SECTION 5: Severability.** If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 6: Effective Date.** This Ordinance shall become effective January 1, 2021.

City of Napa, a municipal corporation

MAYOR: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }  
COUNTY OF NAPA } SS:  
CITY OF NAPA }

I, Tiffany Carranza, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the 6<sup>th</sup> day of October, and had its second reading and was adopted and passed during the public meeting of the City Council on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_

Tiffany Carranza  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Michael W. Barrett  
City Attorney

**EXHIBIT “A”**

**Chapter 8.20 SMOKING REGULATIONS**

**8.20.010 Findings and purpose.**

The purpose of this chapter is to document the regulations, prohibitions, and restrictions concerning the sale and smoking of tobacco products, with the goal of protecting the public health, safety, and welfare of the residents of and visitors to the City. It is the City’s intent for the provisions of this chapter to be supplemental to, and not in conflict with federal or state law; and to establish local standards that impose greater restrictions on the access to and use of tobacco products, to the extent authorized by federal or state law.

**8.20.020 Definitions.**

The words, phrases, and terms used in this chapter will have the meaning set forth in this section unless another meaning is clearly apparent from the context.

“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, 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.

“Cigar Lounge” means a business establishment that is dedicated, in whole or in part, to the smoking of cigars and derives 40% or more of its gross revenue on a quarterly (three-month) bases from the sale of premium cigars and is restricted for entrance to persons ages twenty-one and over.

“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.

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

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

## ATTACHMENT 1

“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.

“Labeling” means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

“Loose leaf tobacco” consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

“Packaging” means a pack, box, carton, or container of any kind, or, if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

“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. A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

“Responsible Person” shall have the meaning set forth in Section 1.16.010 of this code.

“Retail location” means both of the following:

- A. A building from which tobacco products are sold at retail.
- B. A vending machine.

“Self-service display” shall have the meaning set forth in California Business and Professions Code Section 22962, which shall include the open display of tobacco products in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

“Smoking” shall have the meaning set forth in California Business and Professions Code Section 22950.5. “Smoking” shall include inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product (specifically including “cannabis,” as defined by Section 17.52.275(B) of this code) intended for inhalation, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

“Tobacco product” shall have the meaning set forth in California Business and Professions Code Section 22950.5. “Tobacco product” does not include a 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 the product is

marketed and sold solely for such an approved purpose. "Tobacco product" includes any of the following:

- 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.
- D. A substance regulated by California Penal Code Section 308, including any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance.

"Tobacco retailer" means a person who engages in this state in the sale of tobacco products directly to the public from a retail location. "Tobacco retailer" includes a person who operates vending machines from which tobacco products are sold in this state.

"Vending machine" shall have the meaning set forth in California Business and Professions Code Section 22960, which shall include any mechanical device which dispenses personal property (such as a tobacco product) when a coin, bill, token, credit card, or other method of payment is inserted into the mechanical device.

### **8.20.030 Prohibiting smoking in enclosed places of employment.**

- A. Smoking is prohibited in any workplace, or any enclosed place of employment, in a manner that violates California Labor Code Section 6404.5.
- B. It is a violation of this code for any responsible person to permit smoking in a workplace or enclosed place of employment in a manner that violates California Labor Code Section 6404.5.
- C. It is a violation of this code for any person to be smoking in a workplace or enclosed place of employment in a manner that violates California Labor Code Section 6404.5.

### **8.20.040 Prohibiting the sale of tobacco products from vending machines or self-service displays.**

- A. It is a violation of this code for any responsible person to use a vending machine to sell, offer for sale, or possess with the intent to sell or offer for sale, a tobacco product.

- B. It is a violation of this code for any responsible person to use a self-service display to sell, offer for sale, or possess with the intent to sell or offer for sale, a tobacco product.

**8.20.050 Prohibiting the sale of flavored tobacco products.**

- A. It is a violation of this code for any responsible person to sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product. 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, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.
- B. Notwithstanding the prohibition of Subsection A of this section 8.20.050:
  - a. This section does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:
    - i. The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.
    - ii. The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.
    - iii. The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.
    - iv. If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.
  - b. The section does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.
  - c. The section does not apply to loose leaf tobacco or premium cigars.

**8.20.060 Regulating the manner of sale of tobacco products.**

- A. Each retailer of tobacco products shall comply with California Business and Professions Code Section 22952(b), including the obligation to

post conspicuously, at each point of purchase, a warning sign stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. The warning sign shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 21 years of age. The warning signs shall include a toll-free telephone number to the department for persons to report unlawful sales of tobacco products to any person under 21 years of age. At a minimum, the warning sign shall include a statement, in letters of at least one quarter inch in height, that: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID IS REQUIRED."

- B. It is a violation of this code for any person to sell, offer for sale, or possess with the intent to sell or offer for sale, a tobacco product to any person under 21 years of age.
- C. Each person engaging in the retail sale of tobacco products shall check the identification of purchasers of tobacco products, to establish the age of the purchaser, if the purchaser reasonably appears to be under 21 years of age.

### **8.20.070 Enforcement.**

Any violation of this chapter is subject to enforcement in accordance with Chapter 1.16 (Violation of Code – Enforcement) of this code (particularly including the remedies identified in Section 1.16.010), as well as the enforcement actions set forth in Chapter 17.72 (Enforcement) of this code.