

ORDINANCE NO. 19-___

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, EXTENDING A MORATORIUM ON THE ESTABLISHMENT OF NEW TOBACCO RETAILERS WHO SELL FLAVORED TOBACCO PRODUCTS FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS, THROUGH AND INCLUDING OCTOBER 7, 2020

THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. On October 1, 2019, the Los Angeles County (County) Board of Supervisors adopted an ordinance that requires tobacco retailers in the County unincorporated areas to obtain a business license, as well as a Tobacco Retailers License. The ordinance also prohibits the sale of flavored tobacco products, including electronic cigarette and vaping products, beginning 180 days from the effective date of the County ordinance.
- B. The County's stated rationale for the ordinance is based largely on health concerns, especially health concerns of youth.
- C. The Los Angeles City Attorney recently submitted a report to the Los Angeles City Council recommending a ban on flavored tobacco products. The report describes the results of a study funded by the National Institute on Drug Abuse, the National Institutes of Health, the FDA, and the Department of Health and Human Services which found that the vast majority of youth who self-reported ever experimenting with a tobacco product reported that they started with a flavored tobacco product.
- D. City of Santa Clarita (City) staff has met with representatives of the County Sheriff's Department to begin to explore the extent of the issues of youth vaping and smoking in Santa Clarita. City staff also intends to reach out to representatives of the various school districts in the Santa Clarita Valley to evaluate these issues.
- E. City staff intends to continue to monitor pending legislation as well as the effectiveness of the legislative approaches taken by various local jurisdictions to generate options for Council consideration.
- F. City staff is aware that several existing retailers in the City are selling flavored tobacco products. City staff is concerned that during this period of research and study, the County's ordinance could have the effect of causing tobacco retailers in the County to relocate to Santa Clarita to avoid the new County regulations.
- G. The potential for additional retailers to proliferate in the City while City staff is exploring the scope of the health issues and possible legislative solutions presents an immediate threat to the health and welfare of the City's residents - especially youth in the City. Government

Code section 65858 authorizes the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time. Adoption of this ordinance as a temporary urgency interim zoning regulation will preserve the status quo in the City and afford sufficient time for City staff to present more permanent options for the City Council's consideration.

- H. On October 8, 2019, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment of new tobacco retailers that sell flavored tobacco. Per the terms of Government Code Section 65858, that ordinance can only remain in effect for 45 days, unless extended by 10 months and 15 days (for a total of one year), after the conduct of a public hearing. If extended, the moratorium can be extended for one additional year beyond that.
- I. As an urgency ordinance, this ordinance will require adoption by a 4/5 vote of the City Council and will extend the current moratorium by an additional 10 months and 15 days.
- J. As required by Government Code section 65858, a report as to staff's activities in furtherance of this ordinance was made available at the City Clerk's office beginning November 1, 2019.
- K. Notice of a public hearing to consider this ordinance was published as required by law, and such public hearing was conducted by the City Council.

SECTION 2. Environmental Findings. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

SECTION 3. Extension of Moratorium. In accordance with Government Code section 65858(a), and pursuant to the findings stated herein, the City Council hereby: (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this interim Urgency Ordinance; (2) finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (3) declares and imposes a temporary moratorium for the immediate preservation of the public health, safety, and welfare as set forth below:

- A. For a period of 10 months and 15 days from the expiration of the moratorium imposed by Ordinance No. 19-7, (extending to and through October 7, 2020) no retail sale of flavored

tobacco products may be commenced within the City limits by any tobacco retailer not currently selling same on October 8, 2019, and City staff is directed not to issue any permits or entitlements that would facilitate commencement of such uses.

- B. For purposes of this ordinance, in addition to the relevant definitions in Santa Clarita Municipal Code Chapter 9.50 (Tobacco Control), the following definitions apply:

“Tobacco Retailer” means any person who sells, offers for sale or distribution, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, distributed, exchanged or offered for exchange.

“Flavored tobacco product” means any tobacco product which imparts a characterizing flavor.

“Tobacco product” means the following:

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, little cigars (including, but not limited to small cigars and cigarillos), chewing tobacco, pipe tobacco, and snuff; or
2. Any electronic smoking device that delivers nicotine or other substances, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, electronic hookah, or vaping device.
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.
4. “Tobacco Product” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“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. Characterizing flavor includes flavor in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices.

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, characterizing flavors in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device,

including electronic smoking devices, and any other item designed or used for the smoking or ingestion of tobacco products.

- C. A violation of this ordinance is a public nuisance per se, enforceable through any civil, criminal, or equitable remedy, including, but not limited to, civil actions, injunctions, administrative citations, or criminal penalties.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date and Duration. This ordinance is an urgency ordinance enacted under Government Code section 65858(a). This urgency ordinance will take effect upon adoption by a four-fifths (4/5) vote of the City Council and extends the moratorium imposed on October 8, 2019, by Ordinance No. 19-7 to and through October 7, 2020, and will automatically expire thereafter unless extended by the City Council under Government Code section 65858.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

SECTION 7. Study. Staff is directed to study and analyze issues related to the sale and use of flavored tobacco products, especially by persons under the age of 21, including but not limited to, evaluating the extent to which local regulation is permitted or preempted and options for prohibiting, limiting, licensing, or otherwise restricting sales and use of such products.

PASSED, APPROVED, AND ADOPTED this 12th day of November, 2019.

MAYOR

ATTEST:

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF SANTA CLARITA)

I, Mary Cusick, City Clerk of the City of Santa Clarita, do hereby certify that the foregoing Ordinance No. 19- was introduced and adopted as an urgency measure pursuant to the terms of California Government Code Section 65858 and 36937(b) at a regular meeting of the City Council on the 12th day of November 2019, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

AND I FURTHER CERTIFY that the foregoing is the original of Ordinance No. and was published in The Signal newspaper in accordance with State Law (G.C. 40806).

CITY CLERK