

**STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of February 22, 2022

**TO:** Honorable Mayor and Members of the City Council

**SUBMITTED BY:** Ruthann G. Ziegler, Special Counsel

**APPROVED BY:** Thomas Lloyd Smith, City Attorney *TLS*

**SUBJECT:** Proposed Ordinance Amending Section 6-8.02 of the Antioch Municipal Code to Add the Definitions of Characterizing Flavor, Cigar, and Little Cigar (including Cigarillo) and Amending Section 6-8.14 Both to Restrict Tobacco Retailers or Businesses from Selling or Providing Tobacco with Characterizing Flavor, Selling or Providing Electronic Cigarettes or E-Cigarettes, and To Regulate the Size and Price of Specified Packages of Cigarettes, Little Cigars, and Cigars

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**RECOMMENDED ACTION**

It is recommended that the City Council introduce, waive the first reading, and read by title only the proposed amendment to the City's Municipal Code attached hereto as Attachment A.

The proposed amendment would:

- Add the definition of "characterizing flavor"
- Prohibit the sale of tobacco or tobacco products with characterizing flavor
- Prohibit a tobacco retailer or business from selling, offering for sale, possessing with the intent to sell, offer in exchange for any form of consideration, or provide at no cost any electronic cigarette or e-cigarette for use with tobacco or tobacco products
- Add the definitions of "cigars" and "little cigars," with the latter including cigarillos
- Prohibit a tobacco retailer or business from selling, offering for sale, possessing with the intent to sell, offering in exchange for any form of consideration, or providing at no cost
  - Any package of fewer than twenty little cigars
  - Any package of fewer than six cigars
  - Any package of cigarettes, little cigars or cigars at a price that is less than ten dollars per package, including applicable fees and taxes.

### **FISCAL IMPACT**

The proposed action may have a minimal effect on the City's budget through decreased sales of the restricted tobacco and tobacco products.

### **DISCUSSION**

The Council previously considered this topic at its May 25, 2021 meeting during a detailed presentation by YTAPP (Youth Tobacco Advocacy Policy Project). The May 25 staff report and the materials submitted by YTAPP are incorporated herein by reference. The Council's consensus was to bring back an ordinance reflecting much of YTAPP's proposal.

YTAPP had six elements in its proposal. Four of those elements are reflected in the draft ordinance attached hereto as Exhibit A. The other two elements, which involved land use restrictions, are addressed in a separate staff report on tonight's agenda because those two elements went first to the Planning Commission for review and recommendation prior to tonight's City Council meeting.

The draft ordinance refers to a tobacco retailer or business. Under the Antioch Municipal Code, a "tobacco retailer" is an establishment that sells tobacco or tobacco products; however, certain businesses may sell tobacco or tobacco products and *not* be a tobacco retailer. Such businesses are a convenience store when ancillary to a gas station and with less than 20% of its sales area devoted to tobacco products or a retail business larger than 5000 square feet with less than 5% of its sales area devoted to tobacco products.

Below is a discussion of how the draft ordinance would implement the four elements.

1. Ban on tobacco products with characterizing flavors, such as mint, menthol, chocolate.

YTAPP requested a ban on flavored tobacco. The proposed ordinance adds a definition of characterizing flavor (Section 6-8.02) identical to the definition used by several other California jurisdictions and restricts a tobacco retailer or business from selling, offering for sale, possessing with the intent to sell, offering in exchange for any form of consideration, or providing at no cost any tobacco or tobacco product with a characterizing flavor. (Section 6-8.14 A.)

While California has adopted a similar ban via SB 793, the state is not currently enforcing the ban and, instead, is waiting for the outcome of a November 2022 referendum.

2. Ban on electronic cigarettes and e-cigarettes.

YTAPP asked for a ban on electronic smoking devices for use with tobacco. The proposed ordinance restricts a tobacco retailer or business from selling, offering for sale, possessing with the intent to sell, offering in exchange for any form of

consideration, or providing at no cost any electronic cigarette or e-cigarette for use with tobacco or tobacco products. (Section 6-8.14 B.)

3. Requiring a minimum package size for cigarettes, little cigars, and cigars.

YTAPP asked for restrictions on package size of certain tobacco products. The proposed ordinance adds definitions of cigars and little cigars, which includes cigarillos (Section 6-8.02) and restricts a tobacco retailer or business from selling, offering for sale, possessing with the intent to sell, offer in exchange for any form of consideration, or provide at no cost any package of fewer than twenty little cigars or any package of fewer than six cigars. (Section 6-8.14 C (1) and (2).)

4. Requiring a minimum price for certain tobacco products.

YTAPP suggested a minimum price for certain tobacco products. The proposed ordinance restricts a tobacco retailer or business from selling, offering for sale, possessing with the intent to sell, offering in exchange for any form of consideration, or providing at no cost any package of cigarettes, little cigars, or cigars at a price less than ten dollars per package, including applicable fees and taxes. (Section 6-8.14 C (3).)

## **ATTACHMENT**

A. Proposed ordinance amending Antioch Municipal Code §§6-8.02 and 6.8-14

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH  
AMENDING SECTION 6-8.02 OF THE ANTIOCH MUNICIPAL CODE TO ADD THE  
DEFINITIONS OF CHARACTERIZING FLAVOR, CIGAR, AND LITTLE CIGAR  
(INCLUDING CIGARILLO) AND AMENDING SECTION 6-8.14 OF THE ANTIOCH  
MUNICIPAL CODE BOTH TO RESTRICT TOBACCO RETAILERS OR BUSINESSES  
FROM SELLING OR PROVIDING TOBACCO WITH CHARACTERIZING FLAVOR,  
SELLING OR PROVIDING ELECTRONIC CIGARETTE OR E-CIGARETTE AND TO  
REGULATE THE SIZE AND PRICE OF SPECIFIED PACKAGES OF CIGARETTES,  
LITTLE CIGARS, AND CIGARS**

The City Council of the City of Antioch does ordain as follows:

**SECTION 1:**

The City Council is committed to taking the steps necessary to provide a healthy, safe environment for all City residents. Towards that goal, the City is concerned about the adverse effect of cigarettes and related tobacco products on its residents, including minors.

**SECTION 2:**

Over the years, the City Council has adopted various ordinances relating to the use of tobacco to protect the health of its residents. The Council received an information presentation by community youth concerned about the effects of tobacco and requesting additional restrictions on tobacco and tobacco products.

**SECTION 3:**

Consistent with the goal referenced above, the Council wishes to take additional steps restricting tobacco and tobacco products in the City.

**SECTION 4:**

Section 6-8.02 is modified to add the following definitions:

**CHARACTERIZING FLAVOR.** A taste or aroma other than the taste or aroma of tobacco, imparted either prior to or during consumption of 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 beverages, 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.

**CIGAR.** Any roll of tobacco, other than a cigarette, wrapped entirely or in part in tobacco or in any substance containing tobacco and weighing more than three pounds per thousand.

**LITTLE CIGAR.** Any roll of tobacco, with or without a filter, other than a cigarette, wrapped entirely or in part in tobacco or in any substance containing tobacco and weighing no more than three pounds per thousand. "Little cigar" includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "cigarillo."

## **SECTION 5:**

Section 6-8.14 is modified to state:

### **Section 6-8.14 [RESERVED]. RESTRICTIONS ON TOBACCO RETAILERS AND BUSINESSES**

**A. No tobacco retailer or business shall sell, offer for sale, possess with the intent to sell, offer in exchange for any form of consideration, or provide at no cost any tobacco or tobacco product with a characterizing flavor.**

**B. No tobacco retailer or business shall sell, offer for sale, possess with the intent to sell, offer in exchange for any form of consideration, or provide at no cost any electronic cigarette or e-cigarette for use with tobacco or tobacco products.**

**C. No tobacco retailer or business shall sell, offer for sale, possess with the intent to sell, offer in exchange for any form of consideration, or provide at no cost any of the following:**

**(1) Any package of fewer than twenty little cigars**

**(2) Any package of fewer than six cigars**

**(3) Any package of cigarettes, little cigars, or cigars at a price that is less than ten dollars per package, including applicable fees and taxes.**

## **SECTION 6: Severability.**

If any section, subsection, provision or part of this ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this ordinance, and the application of such provision to other person or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

**SECTION 7. CEQA.**

The above amendments to the City's Municipal Code are not considered a project under the California Environmental Quality Act under the common sense exemption (CEQA Guidelines §15061(b)(3) because the proposed amendments will not have a direct or reasonably foreseeable indirect physical change or effect on the environment. The proposed ordinance does not change the existing zoning in the affected areas; rather, the proposed ordinance is an overlay on the existing zoning, already approved and adopted by the City.

**SECTION 8:**

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.

\* \* \* \* \*

**I HEREBY CERTIFY** that the forgoing ordinance was introduced and adopted at a regular meeting of the City Council of the City of Antioch, held on the \_\_\_\_ of \_\_\_\_ 2021, and passed and adopted at a regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_ 2021, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
**Lamar Thorpe, Mayor of the City of Antioch**

**ATTEST:**

\_\_\_\_\_  
**Elizabeth Householder**  
**City Clerk of the City of Antioch**