02

ORDINANCE NO. 7,673-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 9.80.020, 9.80.030, AND 9.80.035 TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS AND TO REQUIRE A MINIMUM PACKAGE SIZE FOR CIGARS AND LITTLE CIGARS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Legislative findings:

The City Council hereby finds that:

1. Approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;[i]

2. 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;[ii]

3. Despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;[iii]
- In 2017, 22.8% of high school students in California had tried cigarette smoking;[iv]

4. The federal Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,[v] largely because these flavored products are marketed to youth and young adults,[vi] and younger smokers were more likely than older smokers to have tried these products;[vii]

5. Neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

6. In 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;[viii]

7. Mentholated and flavored products have been shown to be "starter" products for youth who begin using tobacco[ix] and these products help establish tobacco habits that can lead to long-term addiction;[x]

8. Flavored tobacco has significant public health implications for youth, people of color, low income populations, and members of LGBTQ+ communities as a result of targeted industry marketing strategies and product manipulation;[xi]

9. As a result of the FDA ban on all flavored cigarette products (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker post flavor ban fell by 17%;[xii]

10. Similar to flavored cigars and little cigars, electronic cigarette companies have marketed to minors with sweet flavors to "graduate" users toward unflavored tobacco products;

- The National Youth Tobacco Survey reported that the most commonly selected reasons for use of e-cigarettes among middle and high school students included the availability of "flavors such as mint candy, fruit, or chocolate" (31% of respondents);[xiii] There was also a 7% increase of high school students who used flavored e-cigarettes

from 61% in 2017 to 68% in 2018, unlike the steady decline of cigarette use seen among youth.[xiv]

- The Surgeon General has concluded that e-cigarette use among youths and young adults is of public health concern; exposure to nicotine during adolescence can cause addiction and can harm the developing adolescent brain.
- E-cigarette use is strongly associated with the use of other tobacco products among youth and young adults, particularly the use of combustible tobacco products. For example, in 2015, 58.8% of high school students who were current users of combustible tobacco products were also current users of e-cigarettes.[xv]

11. Youth whose first tobacco product was flavored are more likely to become current tobacco users than those whose first product was tobacco-flavored.[xvi] Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;

12. Although federal and state law ban the sale of individual cigarettes,[xvii] neither federal nor California state laws restrict the sale of individual little cigars and cigars;

13. Many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.[xviii] For example:

- 87.4% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than $1.00;[xix]
- From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%; and[xx]

14. The availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use.[xxi]

Section 2. That Section 9.80.020 of the Berkeley Municipal Code is hereby amended to read as follows:

Section 9.80.020 Definitions.

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand units.

B. “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) 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 subparagraph (1).

C. "Characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, that is 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 of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, and any spice; provided, however, that no tobacco product shall be determined to have a characterizing

flavor solely because of the use of additives or flavorings or the provision of ingredient information.

D. “Consumer” means a person who purchases a tobacco product for consumption and not for sale to another.

E. “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

F. "Electronic nicotine delivery system" means any electronic and/or battery-operated device that can be used to deliver an inhaled dose of nicotine or other substances, including but not limited to electronic cigarettes, vaporizer pens, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, or any other product name or descriptor, and including any component, part, or accessory of such a device, whether or not sold separately, including but not limited to cartomizers, clearomizers, atomizers, and tips.

G. "E-liquid" means any liquid, gel or other substance designed for use with an electronic nicotine delivery system, including but not limited to e-juice, smoke juice or any other product name or descriptor. Excluded from this definition is any non-nicotine containing liquid, gel or other substance that contains cannabis in any form as its active ingredient.

H. "Flavored tobacco product" means any tobacco product that imparts a characterizing flavor.

I. “Full Retail Price” means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

J. “Labeling” means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.

K. “Little cigar” means any roll of tobacco, other than a cigarette, wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand units. “Little cigar” includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.

L. “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

M. “Package” or “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.

N. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

O. "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 percent (10%) 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.

P. "School" means a building or group of buildings and associated grounds used for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other public or private educational institutions offering a general course of study at primary, secondary or high school levels (grades K through 12) which is equivalent to the courses of study at such levels offered by the BUSD, as specified by City Council Resolution from time to time. Pre-school, vocational or trade programs shall be considered schools only when incidental to the primary use as a school as defined herein. Excluded from this definition are buildings operated by public or private education institutions in which the total student enrollment is less than 25 students and private residences at which students participate in home-based or independent study programs.

Q. “Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

R. "Tobacco paraphernalia" means items or instruments designed for the consumption, or preparation for consumption, of any substance containing tobacco or derived from tobacco, including but not limited to cigarette papers or wrappers, pipes, hookahs, and cigarette rolling machines.

S. "Tobacco product" means:

1: Any substance containing, made of, or derived from tobacco or nicotine including but not limited to cigarettes, cigars, cigarillos, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, and shisha;

2: Any e-liquid;

3: Any electronic nicotine delivery system; and

4: Any tobacco paraphernalia.

"Tobacco product" does not include drugs, devices or combination products, authorized by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.2

T. "Tobacco retailer" means any person or business that operates a store, stand, booth concession or other place at which the sales of tobacco products are made to purchasers for personal consumption or use. (Ord. 7441-NS § 3, 2015: Ord. 7377-NS § 2, 2014: Ord. 6720-NS § 2, 2002)

Section 3. That Section 9.80.031 of the Berkeley Municipal Code is hereby added to read as follows:

Section 9.80.031 Sale of Flavored Tobacco Prohibited.

A. It shall be a violation of a tobacco retailer’s license for a licensee or his or her agent or employee to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.

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, individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer

for sale.

C. 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, color, and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts 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 4. That Section 9.80.032 of the Berkeley Municipal Code is hereby added to read as follows:

Section 9.80.032 Tobacco Product Pricing and Packaging.

A. It shall be a violation of a tobacco retailer's license for a licensee or his or her agent or employee to sell or offer for sale, or to possess with the intent to sell or offer for sale, any tobacco product to any consumer unless such product: (1) is sold in the original manufacturer's packaging intended for sale to consumers; and (2) conforms to all applicable federal labeling requirements.

B. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed to indicate the price of the product.

C. It shall be a violation of a tobacco retailer's license for a licensee or his or her agent or employee to sell or offer for sale, or to possess with the intent to sell or offer for sale, to a consumer:

1. Any little cigar unless it is sold in a package of at least 20 (twenty) little cigars ; or

2. Any cigar unless it is sold in a package of at least 6 (six) cigars.

D. No tobacco retailer shall sell to a consumer:

1. Cigarettes at a price that is less than $8.00 per package of 20 cigarettes, including all applicable taxes and fees;

2. Little cigars at a price that is less than $8.00 per package of little cigars, including all applicable taxes and fees; or

3. Cigars at a price that is less than $7.00 per cigar, including all applicable taxes and fees.

E. The minimum prices established in subdivision D shall be adjusted annually by the annual average of the percentage change in the Consumer Price Index for all urban consumers for all items for the San Francisco-Oakland-Hayward statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

F. No tobacco retailer shall:

1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;

2. Sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in

consideration for the purchase of any tobacco product or any other item; or

3. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.

Section 5. That Berkeley Municipal Code Section 9.80.035 is hereby amended to read as follows:

Section 9.80.035 Limits on eligibility for a tobacco retailer license.

A. No new tobacco retailer license may be issued to a pharmacy.

B. No existing tobacco retailer license may be renewed by a pharmacy.

C. No new tobacco retailer license may be issued to authorize the sale of tobacco products with six hundred (600) feet of any school as measured by a straight line from the nearest point of the property line of the parcel on which the school is located to the nearest point of the property line of the parcel on which the business is located.

D. 1. Effective January 1, 2017, no person shall sell, give away, barter, exchange, or otherwise deal in electronic nicotine delivery systems or e-liquid within six hundred (600) feet of any school as measured by a straight line from the nearest point of the property line of the parcel on which the school is located to the nearest point of the property line of the parcel on which the business is located.

2. Subdivision D.1 shall not prohibit the sale of electronic nicotine delivery systems to persons who demonstrate that they are qualified patients or primary caregivers as defined in Health and Safety Code section 11362.7 or persons with identification cards issued pursuant to Health and Safety Code section 11362.71, provided that such electronic nicotine delivery systems are unaccompanied by any tobacco product defined in Sections 9.80.020.K.1 or 9.80.020.K.2.

E. A map identifying the areas falling within six hundred (600) feet of schools shall be adopted by the City Council by resolution, and may be amended from time to time. (Ord. 7441-NS § 5, 2015: Ord. 7377-NS § 3, 2014)

Section 5. Effective date.

This Ordinance shall take effect and be in force from and after 30 days after date of enactment; provided, however, that Sections 9.80.031 and 9.80.032 shall not take effect until 6 months after date of enactment.

Section 6. Preemption.

It is the intent of the City Council of the City of Berkeley to supplement applicable state and federal law and not to duplicate or contradict such law, and this ordinance shall be construed consistently with that intention. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

Section 7. Severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The City Council of the City of Berkeley hereby declares that it would have passed this ordinance, and each

section, subsection, sentence, clause, phrase, and word not declared invalid, unconstitutional, or unenforceable without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid, unconstitutional, or unenforceable.

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[i] U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.

[ii] U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.

[iii] California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2016.* Sacramento, CA: California Department of Public Health. 2016. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf.

[iv] Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ.* 2018;67(8):1-114. doi: 10.15585/mmwr.ss6708a1; Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2017. Supplementary Tables 52-93: Tobacco Use. 2018; https://www.cdc.gov/healthyyouth/data/yrbs/2017_tables/tobacco_use.htm.

[v] 21 U.S.C. § 387g(a)(1)(A).

[vi] U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/; Villanti AC, Collins LK, Niaura RS, Gagosian SY, Abrams DB. Menthol cigarettes and the public health standard: a systematic review. *BMC Public Health.* 2017;17(1):983. doi: 10.1186/s12889-017-4987-z; Villanti AC, Johnson AL, Ambrose BK, et al. Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014). *Am J Prev Med.* 2017;53(2):139-151. doi: 10.1016/j.amepre.2017.01.026.

[vii] U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.

[viii] California Department of Public Health California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties.* 2016. Available at: http://healthystoreshealthycommunity.com/media-center/?campaign.

[ix] U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/; Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006;8(3):403-413. doi: 10.1080/14622200600670389; Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007;32(9):1964-1969. doi: 10.1016/j.addbeh.2006.12.023.

[x] U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/; Oliver AJ, Jensen JA, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res.* 2013;15(1):88-92. doi: 10.1093/ntr/nts093.

[xi] United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), aff'd in part, vacated in part, 566 F.3d 1095 (D.C. Cir. 2009), and order clarified, 778 F. Supp. 2d 8 (D.D.C. 2011); U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/; Yerger VB, Przewoznik J, Malone RE. Racialized geography, corporate activity, and health disparities: tobacco industry targeting of inner cities. *J Health Care Poor Underserved.* 2007;18(4 Suppl):10-38. doi: 10.1353/hpu.2007.0120; Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health.* 2008;98(9):1685-1692. doi: 10.2105/AJPH.2007.125542; Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med.* 2015;48(1):93-97. doi: 10.1016/j.amepre.2014.07.044.

[xii] Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med.* 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.

[xiii] Tsai J, Walton K, Coleman BN, et al. Reasons for Electronic Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey, United States, 2016. MMWR Morb Mortal Wkly Rep 2018;67:196–200. Available at: https://www.cdc.gov/mmwr/volumes/67/wr/mm6706a5.htm

[xiv] Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. *Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students* — United States, 2011–2018. MMWR Morb Mortal Wkly Rep 2018;67:1276–1277. DOI: http://dx.doi.org/10.15585/mmwr.mm6745a5external icon

[xv] US Department of Health and Human Services. *E-cigarette use among youth and young adults: a report of the Surgeon General.2016. Available at:* https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf

[xvi] Villanti, A.C., A.L. Johnson, B.K. Ambrose, et al., ‘‘Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013–2014),’’ American Journal of Preventive Medicine, 53(2):139–151, 2017.

[xvii] 21 C.F.R. § 1140.16(b); Cal. Penal Code §§ 308.2-308.3(a).

[xviii] California Department of Public Health California Tobacco Control Program. *Tobacco in the Retail Environment.* 2012. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/TobaccoRetailEnvironmentFactSheetEasyPrint.pdf.

[xix] California Department of Public Health California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties.* 2016. Available at: http://healthystoreshealthycommunity.com/media-center/?campaign.

[xx] Cullen J, Mowery P, Delnevo C, et al. Seven-year patterns in US cigar use epidemiology among young adults aged 18-25 years: a focus on race/ethnicity and brand. *Am J Public Health.* 2011;101(10):1955-1962. doi: 10.2105/AJPH.2011.300209.

[xxi] U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf; Institute of Medicine. *Ending the Tobacco Problem: A Blueprint for the Nation.* Washington, DC. 2007. Available at: https://www.nap.edu/catalog/11795/ending-the-tobacco-problem-a-blueprint-for-the-nation; Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products.* 2012. Available at: https://www.thecommunityguide.org/sites/default/files/assets/Tobacco-Increasing-Unit-Price.pdf; Centers for Disease Control and Prevention. State Cigarette Minimum Price Laws—United States, 2009. *MMWR Morb Mortal Wkly Rep.* 2010;59(13):389-392; Chaloupka FJ, Cummings KM, Morley C, Horan J. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tob Control.* 2002;11(Supplement 1):i62-i72. doi: 10.1136/tc.11.suppl_1.i62; Chaloupka FJ, Yurekli A, Fong GT. Tobacco taxes as a tobacco control strategy. *Tob Control.* 2012;21(2):172-180. doi: 10.1136/tobaccocontrol-2011-050417; Huang J, Gwarnicki C, Xu X, Caraballo RS, Wada R, Chaloupka FJ. A comprehensive examination of own- and cross-price elasticities of tobacco and nicotine replacement products in the U.S. *Prev Med.* 2018. doi: 10.1016/j.ypmed.2018.04.024; Pesko MF, Huang J, Johnston LD, Chaloupka FJ. E-cigarette price sensitivity among middle- and high-school students: evidence from monitoring the future. *Addiction.* 2018;113(5):896-906. doi:

10.1111/add.14119; Jawad M, Lee JT, Glantz S, Millett C. Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis. *Tob Control.* 2018. doi: 10.1136/tobaccocontrol-2017-054056.

At a regular meeting of the Council of the City of Berkeley held on July 23, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.