



PLANNING DEPARTMENT

**City of Guadalupe
918 Obispo Street
P.O. Box 908
Guadalupe, CA 93434
Tel (805) 356-3903**

To: Mr. Mayor and City Councilmembers
From: Larry Appel, Contract Planning Director
Date: June 1, 2020
Re: Monthly Planning Report Covering May 2020

MINISTERIAL PROJECTS

Zoning Clearances Approved	8
Zoning Clearances Denied	0
ADUs Approved	0
Zoning Clearances Appealed	0
Business Licenses Approved	2
Business Licenses Denied	0

DISCRETIONARY PROJECTS

The following projects are in for Planning Department review and have been worked on during May:

- DJ Farms South – tract map being processed
- Pasadera GP/SP amendment being processed
- Work on Brown CUP for vehicle repair at 209 Guadalupe Street
- Sign Ordinance update postponed to September 22nd
- General Plan RFP bid opening scheduled for June 5th
- General Plan and Rezone of various sites within the City
- Review of Mitigated Negative Declaration for Caltrans Hwy 1 bridge replacement
- Begin working on LEAP grant for further planning funding

If any Councilmember is interested in a particular project or would like to know its status, please let me know and I would be happy to provide the information.

Guadalupe City Planning Department

Planning Processing Summary for May 2020

(06-01-2020 update)

<u>Case No.</u>	<u>Name</u>	<u>Submittal Date</u>	<u>Comp. Date</u>	<u>Status</u>	<u>OK for Bldg. Permit Issuance</u>
2017-130-TPM \$\$	DJ Farms South Master TPM	10-12-17	Complete-09-27-19	COMPLETE letter sent on 09-27-19. Project under review by planner.	NO
2019-063-DR 2019-064-CUP \$\$	Housing Authority of SB Co	06/12/19	COMP letter sent 10-15-19	PSHH are working towards receiving Certificate of Occupancy in the next few months. Sign Plans approved.	NO
2019-067-VTTM \$\$	Pasadera Lot 9			Working on bonding prior to recordation, prepared draft CC resolution for FM and SIA, reviewed MMRP.	NO
2018-135-GPZ No\$	General Plan amendment and Rezone of several areas of the City	08/29/18	N/A	Staff has completed field work and identified all parcels to be included in the application. Letters to owners will go out in May.	N/A
N/A	General Plan Update	2019 City Council authorization	N/A	RFP sent out to three consulting firms on April 10 th . Proposals are due back by June 5 th	N/A
2018-133-OA No\$	Round 3 Zoning Ordinance Updates	8/12/19	N/A	Preparing new zoning ordinance Chapter 55 for Home Occupations and Cottage Food Industries	N/A
2018-133 OA No\$	Sign Ordinance	2/24/20	N/A	Rewrite Sign Ordinance as new Chapter 18.51 of the Municipal Code. First reading on September 22 nd	N/A

No\$ = unreimbursed planning work

\$ = projects where a fixed fee has been paid

\$\$ = projects where a variable fee / deposit is made and the applicant is billed for time beyond the initial deposit

06/01/2020

Ministerial Permit Report– May 2020

(Reported 06-01-20)

Zoning Clearances Approvals

Buchan patio cover	2020-055-ZC	106 Nelson Drive
Hernandez paving	2020-056-ZC	135 Pelican Lane
Salas paving	2020-057-ZC	4373 Jalama Drive
Gomez paving	2020-058-ZC	4543 Castillo Drive
Buenrostin paving	2020-061-ZC	152 Surfbird Lane
Herrera paving (ZV correction)	2020-062-ZC	150 Egret Lane
Scott paving	2020-064-ZC	4512 Buena Vista Drive
Secure Fleet Srv. (paving)	2020-065-ZC	209 Guadalupe Street

Zoning Clearances Denied

None

Business License Approvals

Abernethy Guitars 1155 Guadalupe Street

M3AN Audio 4526 Esparanza Drive

Business License Denials

None

Administrative Use Permits

None



**CITY OF GUADALUPE
BUILDING DEPARTMENT**

STATUS REPORT

MONTH: May, 2020

	This Month	Last Month	Year to Date	Last Year
Visitors	4	5	95	194
Inspections	473	569	2,904	2,576
Building Permits Issued	6	2	110	96
Certificate of Occupancy	4	9	40	27

VISITORS: Permits, Planning application submittals, submitted plan updates, general information

5/6/2020	FR 7	Lot 135, Fire sprinklers pitot flow test ok.					X		
5/6/2020	FR 7	Lot 136, Fire sprinklers pitot flow test ok.					X		
5/6/2020	FR 7	Lot 137, Fire sprinklers pitot flow test ok.					X		
5/6/2020	FR 7	Lot 138, Fire sprinklers pitot flow test ok.					X		
5/6/2020	FR 7	Lot 139, Fire sprinklers pitot flow test ok.					X		
5/6/2020	FR 6	Lot 85, Gas piping only, no pressure test available.					X		
5/6/2020	FR 6	Lot 86, Gas piping.					X		
5/6/2020	FR 10	Lot 86, Gas pressure test ok.					X		
5/6/2020	FR 6	Lot 108, Gas piping.					X		
5/6/2020	FR 10	Lot 108, Gas pressure test ok.					X		
5/6/2020	FR 6	Lot 107, Gas piping.					X		
5/6/2020	FR 10	Lot 107, Gas pressure test ok.					X		
5/6/2020	FR 6	Lot 106, Gas piping.					X		
5/6/2020	FR 10	Lot 106, Gas pressure test ok.					X		
5/6/2020	FR 6	Lot 105, Gas piping.					X		
5/6/2020	FR 10	Lot 105, Gas pressure test ok.					X		
5/7/2020	AD 10	Ssheduling and records update.					X		David, 4.5 hrs,
5/7/2020	FR 10	Lot 105, Gas pressure test.					X		30 inspections, warm, s
5/7/2020	F 1	4922 Final addition, one item to replace, balance of final ok.						X	5/7/2020
5/7/2020	F 2	4922, Final electric, need to install afci breakers for the new						X	
5/7/2020	F 2	lights and wall outlets						X	
5/7/2020	F 3	4922 Surfbird, Final mechanical.					X		
5/7/2020	F 4	4922 Surfbird, Final plumbing					X		
5/7/2020	F 5	4922 Surfbird, Title 24 papers ok.					X		
5/7/2020	F 6	4922 Surfbird, existing smokies in existing house, did not check						X	
5/7/2020	F 6	new smokie in new master bedroom, will check at re-final.						X	
5/7/2020	F 3	Lot 124, Final fau, cancel at site, not ready.						X	
5/7/2020	F 3	Lot 125, Final fau, cancel at site, not ready.						X	
5/7/2020	F 3	Lot 126, Final fau, early gas release, email gas co.						X	
5/7/2020	SC 6	Lot 126, Ceiling insulation.						X	
5/7/2020	F 3	Lot 127, Final fau, early gas release, email gas co.						X	
5/7/2020	SC 6	Lot 127, Ceiling insulation						X	

5/7/2020	F 3	Lot 128, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 128, Ceiling insulation.			X	
5/7/2020	F 3	Lot 129, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 129, Ceiling insulation.			X	
5/7/2020	F 3	Lot 130, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 130, Ceiling insulation.			X	
5/7/2020	F 3	Lot 131, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 131, Ceiling insulation.			X	
5/7/2020	F 3	Lot 132, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 132, Ceiling insulation.			X	
5/7/2020	F 3	Lot 133, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 133, Ceiling insulation.			X	
5/7/2020	F 3	Lot 134, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 134, Ceiling insulation.			X	
5/7/2020	F 3	Lot 135, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 135, Ceiling insulation.			X	
5/7/2020	F 3	Lot 136, Final fau, early gas release, email gas co.			X	
5/7/2020	SC 6	Lot 136, Ceiling insulation.			X	
5/8/2020	AD 9	Scheduling and records update.			X	David, 4.75 hrs,
5/8/2020	FR 1	Lot 81, Rough electric.			X	14 inspections, warm,
5/8/2020	FR 1	Lot 81, Etag issued, email PG+E			X	breeze, activity picking
5/8/2020	FR 3	Lot 81, Rough mechanical.			X	5/8/2020
5/8/2020	FR 7	Lot 81, Rough sprinklers, no hydro test available.			X	
5/8/2020	FR 1	Lot 82, Rough electric.			X	
5/8/2020	FR 1	Lot 82, Etag issued, email PG+E			X	
5/8/2020	FR 3	Lot 82, Rough mechanical.			X	
5/8/2020	FR 7	Lot 82, Rough sprinklers, no hydro test available.			X	
5/8/2020	FR 1	Lot 83, Rough electric.			X	
5/8/2020	FR 1	Lot 83, Etag issued, email PGE			X	
5/8/2020	FR 7	Lot 83, Rough sprinklers, no hydro test available.			X	
5/8/2020	FR 1	Lot 84, Rough electric.			X	
5/8/2020	FR 1	Lot 84, Etag issued, email PG+E			X	
5/8/2020	FR 7	Lot 84, Rough sprinklers, no hydro test available.			X	

5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 3.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 4.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 5.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 6.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 7.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 8.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 9.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 10.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 11.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 12.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 13.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 14.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 15.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 16.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, unit 17.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, laundry gang room.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, mechanical gang room.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat communications room.				X	
5/14/2020	SC 9	856 Pioneer, Scratch coat, solar storage room.				X	
5/14/2020	MS 4	1080 Obispo, Consultation with Jesus at site				X	
5/14/2020	AD 1	1080 Obispo, Consultation with Jesus at site				X	
5/15/2020	AD 9	Scheduling and records update.				X	
5/15/2020	FR 5	1057 Gularte, Rough framing.				X	
5/15/2020	SC 3	1057 Gularte, Lath attachment.				X	
5/15/2020	FR 4	1057 Gularte, Rough plumbing.				X	
5/15/2020	FR 3	1057 Gularte, Rough mechanical, need 1" or more clearance to				X	
							David, 5.0 h hrs, 32 insp warm, very windy. 5/15/2020

5/15/2020	FR 3	roof sheathing and truss cords for the fau B vent, install the				X	
5/15/2020	FR 3	dryer venting thru the roof, ok to insulate, all items can be				X	
5/15/2020	FR 3	viewed later.				X	
5/15/2020	FR 1	1057 Gualarte, Rough electric.		X			
5/15/2020	FR 1	1080 Obispo, Rough electric.		X			
5/15/2020	FR 4	1080 Obispo, Rough plumbing.		X			
5/15/2020	FR 5	1080 Obispo, Rough framing.		X			
5/15/2020	FR 6	1080 Obispo, Gas piping, most of new line installed, small				X	
5/15/2020	FR 6	length to install later.				X	
5/15/2020	FR 10	1080 Obispo, Gas pressure ok, still need additional length for				X	
5/15/2020	FR 10	new flash water heater.				X	
5/15/2020	FR 1	Lot 85, Rough electric.		X			
5/15/2020	FR 1	Lot 85, Etag issued, email PG+E		X			
5/15/2020	FR 1	Lot 86, Rough electric.		X			
5/15/2020	FR 1	Lot 86, Etag issued, email PG+E		X			
5/15/2020	F 4	Lot 86, Rough plumbing.		X			
5/15/2020	FR 7	Lot 86, Rough fire sprinklers, no hydro test available.		X			
5/15/2020	SC 6	Lot 80, Wall insulation ok, ceiling later at final.		X			
5/15/2020	FR 1	Lot 105. Rough electric.		X			
5/15/2020	FR 1	Lot 105, Etag issued, email PG+E		X			
5/15/2020	FR 4	Lot 105, Rough plumbing.		X			
5/15/2020	FR 1	Lot 106, Rough electric.		X			
5/15/2020	FR 1	Lot 106, Etag issued, email PG+E		X			
5/15/2020	FR 4	Lot 106, Rough plumbing.		X			
5/15/2020	FR 1	Lot 107, Rough electric.		X			
5/15/2020	FR 1	Lot 107, Etag issued, email PG+E		X			
5/15/2020	FR 4	Lot 107, Rough plumbing.		X			
5/15/2020	FR 1	Lot 108, Rough electric.		X			
5/15/2020	FR 1	Lot 108, Etag issued, email PG+E		X			
5/15/2020	FR 4	Lot 108, Rough plumbing.		X			
5/15/2020	FR 1	Lot 109, Rough electric.		X			
5/15/2020	FR 1	Lot 109, Etag issued, email PG+E		X			
5/15/2020	FR 4	Lot 109, Rough plumbing.		X			

5/18/2020	AD 9	Scheduling and records update.		X		David, 3.0 hrs today, + 1 hr from Friday+ 4.0 hrs, 9 inspections, sunny so far wind.
5/18/2020	PW	Lot 133 to lot 135, approx. 150' of sidewalk approved to pour.		X		
5/18/2020	FR 1	Lot 108, Rough electric		X		
5/18/2020	FR 3	Lot 108, Rough mechanical.		X		
5/18/2020	FR 4	Lot 108, Rough plumbing.		X		
5/18/2020	FR 7	Lot 108, Rough fire sprinklers, no hydro test available.		X		5/18/2020
5/18/2020	SC 3	Lot 108, Stucco lath attachment.		X		
5/18/2020	SC 3	Lot 81, Stucco lath attachment.		X		
5/18/2020	SC 3	Lot 82, Stucco lath attachment.		X		
5/18/2020	SC 6	1080 Obispo, wall and ceiling insulation.		X		
5/19/2020	AD 9	Scheduling and records update.		X		
5/19/2020	MS 4	Site visit w/ Shannon S. War memorial bldg.		X		David, 5.0 hrs, 10 inspections some wind, warm.
5/19/2020	SC 1	Lot 111, Drywall attachment ok.		X		5/19/2020
5/19/2020	SC 1	Lot 78, Drywall attachment ok.		X		
5/19/2020	SC 1	Lot 79, Drywall attachment ok.		X		
5/19/2020	FR 10	Lot 79, Interior gas test.		X		
5/19/2020	SC 6	Lot 81, Wall insulation, ceiling at final.		X		
5/19/2020	SC 6	Lot 82, Wall insulation, ceiling at final.		X		
5/19/2020	SC 6	Lot 83, Wall insulation ok, ceiling at final.		X		
5/19/2020	FR 7	Lot 107, Rough sprinklers, no hydro test available.		X		
5/19/2020	FR 7	Lot 107, Rough mechanical.		X		
5/20/2020	AD 9	Scheduling and records update.		X		
5/20/2020	F 1	Lot 139, Final building, all ok except for the malfunctioning smokies and carbon monox alarms, will recheck tomorrow, will issue c/o tomorrow as well.		X		David, 3.0 hrs, 15 inspections then sunny and warm, r
5/20/2020	F 1	Lot 139, Final electric.		X		5/20/2020
5/20/2020	F 3	Lot 139, Final mechanical.		X		
5/20/2020	F 4	Lot 139, Final plumbing.		X		
5/20/2020	F 5	Lot 139, Title 24 energy papers ok.		X		
5/20/2020	F 6	Lot 139, Smokies and carbon monox alarms not functioning today, will recheck tomorrow.		X		
5/20/2020	F 10	Lot 139, Automatic landscape rain sensor computer installed.		X		

5/27/2020	F 5	Lot 120, Title 24 papers ok.				X	
5/27/2020	F 6	Lot 120, Smokies and carbon monox alarms tested ok.				X	
5/27/2020	F 10	Lot 120, Fire sprinklers bell ok.				X	
5/27/2020	F 10	Lot 120, Automatic landscape rain sensor computer installed.				X	
5/27/2020	SW 2	4626 11TH St, Laundry gang room exterior gas line, email gas co.				X	
5/27/2020	SW 2	4626 11th St, Apt A, exterior gas line, email gas co.				X	
5/27/2020	SW 2	4626 11th St, Apt B, exterior gas line, email gas co.				X	
5/27/2020	SW 2	4626 11th St, Apt C, exterior gas line, email gas co.				X	
5/27/2020	SW 2	4626 11th St, Apt D, exterior gas line, email gas co.				X	
5/27/2020	SW 2	4626 11th St, Apt E, exterior gas line, email gas co.				X	
5/27/2020	SW 2	4626, 11th St, Apt F, exterior gas line, email gas co.				X	
5/27/2020	SW 2	All of the above notes for 4626 11th St: approx. 500 feet of				X	
5/27/2020	SW 2	1.5 inch polyethylene pipe yard lines approved for pressure,				X	
5/27/2020	SW 2	depth and tracer wire.				X	
5/27/2020	SW 2	All of above exterior gas lines are located at building "A"				X	
5/27/2020	SC 1	1080 Obispo, drywall attachment ok.				X	
5/28/2020	AD 9	Scheduling and records update.				X	
5/28/2020	F 1	Lot 138, Final building, cert of occupancy issued.				X	David, 3.75 hrs, 25 inspe
5/28/2020	F 2	Lot 138, Final electrical.				X	warm, sunny.
5/28/2020	F 3	Lot 138, Final mechanical.				X	5/28/2020
5/28/2020	F 4	Lot 138, final plumbing.				X	
5/28/2020	F 5	Lot 138, Title 24 papers ok.				X	
5/28/2020	F 6	Lot 138, Smokies and carbon monox alarms tested.				X	
5/28/2020	F 10	Lot 138, Fire sprinklers bell ok.				X	
5/28/2020	F 10	Lot 138, Automatic landscape rain sensor computer installed.				X	
5/28/2020	FN 5	Lot 87, Setbacks.				X	
5/28/2020	FN 5	Lot 87, Footings.				X	
5/28/2020	FN 5	Lot 87, Forms.				X	
5/28/2020	FN 5	Lot 87, Rebar reinforcement, post tension cables, holdowns.				X	
5/28/2020	FN 5	Lot 87, Capillary break.				X	
5/28/2020	FN 5	Lot 88, Setbacks.				X	
5/28/2020	FN 5	Lot 88, Footings.				X	
5/28/2020	FN 5	Lot 88, Forms.				X	

5/28/2020	FN 5	Lot 88, Rebar reinforcement, post tension cables, holdowns.					X	
5/28/2020	FN 5	Lot 88, Capillary break.					X	
5/28/2020	FN 5	Lot 89, Setbacks.					X	
5/28/2020	FN 5	Lot 89, Footings.					X	
5/28/2020	FN 5	Lot 89, Forms.					X	
5/28/2020	FN 5	Lot 89, Rebar reinforcement, post tension cables, holdowns.					X	
5/28/2020	FN 5	Lot 89, Capillary break.					X	
5/28/2020	FR 5	5181 Surfbird, Pergola rough framing.					X	
5/28/2020	F 1	5181 Surfbird, Pergola final.					X	
5/29/2020	AD 9	Scheduling and records update.					X	David, 6.0 h hrs, 61 insp
5/29/2020	SW 2	4626 11th St, Apt A, email gas co.					X	fog early, sl
5/29/2020	SW 2	4626 11th St, Apt B, email gas co.					X	then clouds
5/29/2020	SW 2	4626 11th St, Apt C, email gas co.					X	5/29/2020
5/29/2020	SW 2	4626 11th St, Apt D, email gas co.					X	
5/29/2020	SW 2	4626 11th St, Apt E, email gas co.					X	
5/29/2020	SW 2	4626 11th St, Apt F, email gas co.					X	
5/29/2020	SW 2	4626 11th St. All of the above notes are for 4626 11th St , Bldg "B"					X	
5/29/2020	SW 2	approx. 500 feet of 1.5" polyethylene yard lines are approved					X	
29-May	SW 2	for depth, pressure and tracer wire.					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 1					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 1					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 2					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 2					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt.3					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 3					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 4					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 4					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 5					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 5					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 6					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 6					X	
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 7					X	
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 7					X	

5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 8								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 8								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 9								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 9								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 10								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 10								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 11								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 12								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 13								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 13								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 14								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 14								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 15								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 15								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 16								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 16								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing, apt. 17								X
5/29/2020	FR 8	864 Pioneer, DWV top out, apt. 17								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing laundry gang room.								
5/29/2020	FR 8	864 Pioneer, DWV top out laundry gang room.								X
5/29/2020	FR 4	864 Pioneer, Rough plumbing solar storage room.								X
5/29/2020	FR 8	864 Pioneer, DWV for 2nd story corridor deck drains.								X
5/29/2020	FR 8	864 Pioneer, DWV for 3rd story corridor deck drains.								X
5/29/2020	FR 3	1057 Gularate, Rough mechanical fixes from last visit ok.								X
5/29/2020	SC 6	1057 Gularate, Wall insulation, ceiling later at final.								X
5/29/2020	FR 5	4202 11th St, Light gauge steel drop ceiling at the community room, kitchen, administration rooms, project is complete with all framing today.								X
5/29/2020	FR 5	4202 11th St, Light gauge steel drop ceiling at the community room, kitchen, administration rooms, project is complete with all framing today.								X
5/29/2020	F 1	Lot 121, Final building, all ok except for 4 broken smokies and carbon monox alarms, will recheck on June 1, cert of occupancy issued today.								X
5/29/2020	F 1	Lot 121, Final building, all ok except for 4 broken smokies and carbon monox alarms, will recheck on June 1, cert of occupancy issued today.								X
5/29/2020	F 1	Lot 121, Final building, all ok except for 4 broken smokies and carbon monox alarms, will recheck on June 1, cert of occupancy issued today.								X
5/29/2020	F 2	Lot 121, Final electrical.								X
5/29/2020	F 3	Lot 121, Final mechanical.								X
5/29/2020	F 4	Lot 121, Final plumbing.								X



Public Works/Engineering Report May 2020

Development

Pasadera

In May, City staff reviewed documentation and authorized a partial release of bonds for Lot 4 for completed public infrastructure.

Beachside Coolers

In May, City staff reviewed the operation manual and certification for the Beachside Cooler storm water features.

Guadalupe Court

In May, City staff reviewed the operations manual and certification for the Guadalupe court stormwater features.

Facilities

American Legion Hall

City staff is drafting a transitional agreement in response to a discussion with American Legion members on January 24, 2020. The transitional agreement is being drafted to help the City recover facilities maintenance and utilities costs associated with this facility.

The American Legion Hall termite repairs were delayed due to the discovery of lead paint. New bids are being sought to address this complication.

Senior Center

Reroofing the Senior Center began May 26, 2020. This project is expected to take three weeks.

Public Works Garage

Fixing the garage door on the Public Works garage is scheduled for June.

LeRoy Park Community Center

Bids for the renovation of the community center at Leroy Park were rejected on May 26. The project was rebid May 29.

Fleet

Proceeds from the sale of a utility trailer and SMOOTH Econoline van, in the amount of \$4,090.63 were wired to the City from Govplanet, on May 21, 2020.

Streets

ATP Project

The City received an invoice in the amount of \$5,150 from Crandall Construction on May 11, for relocating the hydrant at 9th and Guadalupe Street to accommodate the ATP cycle 3 pedestrian improvements. The City received invoices from R. Burke Corporation (construction), Filippin engineering (contract inspection), and Earth systems consulting (soils testing) for work performed in April directly related to this construction project. Ultimately, the bulk of these funds will be reimbursed from the state. The construction project is moving forward smoothly. Additional costs are expected to be incurred for repair of approximately 600 ft.² of sidewalk on the east side Guadalupe Street, a change in the hot mix asphalt design required by Caltrans just prior to installation, added curb on the backside of the corner on the north west corner of the 9th St. and Guadalupe Street intersection, and backfill along the portion of the sidewalk on the east side of Guadalupe Street. At the end of May a total of \$13,192.80 in change orders has been approved, which is approximately 3% of the total project cost. The project is currently scheduled to be completed mid-June. April's contractor invoices for this project were submitted to the state for reimbursement on May 28.

Mobility and Revitalization Plan

The City received the final reimbursement check of \$17,546.57 from the sustainability grant for the Mobility and Revitalization Plan on May 29.

Safe Routes to School

The City of Guadalupe submitted a grant application for pedestrian improvements on 11th St. adjacent to Buren Elementary School in the amount of \$114,710, along with eight other applications. \$740,422 was requested for \$458,838 worth of funds. The City ranked number 4 out of 9 projects and is included in the list of projects recommended to North County subregional to receive full funding. Approval of the funding occurred at the May SBCAG board meeting. City staff has programmed this funding to be spent in fiscal year 21 – 22 to coordinate with Escalante Meadows construction.

LaGuardia Sidewalk

City staff hired a surveyor for a day to review and confirm the existence of sufficient easement on LaGuardia and Gularte Streets for installation of a sidewalk. City staff met with the surveyor on May 12 to review documentation and discuss progress. The City received funding from the People's Self-help Housing development fees to install this sidewalk. Adequate easement exists

across all but one property for the extent of the sidewalk. City staff will need an appraiser to evaluate the value of the remaining easement needed and negotiate with the property owner.

Job Order Contracting

In May, the City signed an agreement with the County of Santa Barbara to allow the City to piggyback on the County's Job Order Contracting agreement. Job Order Contracting involves the vetting of contractors through a competitive process, allowing public work contracting to be completed on a work order, rather than a competitive bid, process. The City met with Gordian, the administrator of the Job Order Contracting agreement with Santa Barbara County on May 12 and again on May 27 to discuss the possibility of conducting this year's slurry seal maintenance work through the county's Job Order Contracting agreement. These discussions in no way obligate the City to use this process, but rather provide the City with an alternative potential methodology for completing construction work.

Transit

Development of the updated Short Range Transit Plan approved in Resolution 2020 – 02 was scheduled for completion by the agreement end date of July 15, 2020. Work was progressing well until the pandemic. City staff met with Moore and Associates staff on May 13 to discuss how to move forward. The consultant put forth the option of a virtual open house to replace public workshops. City staff is advocating for public workshops and is willing to extend the project outline to December 31, 2020 to see if social distancing restrictions lift sufficiently to hold public workshops later in the year. The consultant is amenable to this and will circle back with City staff at the end of June to discuss.

Water

Tognazzini Waterline Relocation

Crandall Construction began the work to reroute the waterline on Tognazzini Avenue around the sewer manhole on May 11. In the process of excavating the new location of the water line, they hit the active waterline that had already been rerouted. An emergency waterline shut down occurred that day while City staff repaired the waterline. The contractor discontinued the waterline replacement but removed the abandoned pipe from the manhole and rebuilt the manhole so that this error will not be made again in the future.

Obispo Waterline Replacement

The Obispo Street waterline from 9th Street to 12th St. is insufficiently sized for fire flows, per the 2014 Water Master Plan. A consultant was selected in April to complete the design of the section of waterline. The kickoff meeting for this project was held on May 1. Design of this waterline is anticipated to be completed by July 2020.

CCWA

Allocation increased from 15% to 20% on May 22. This allocation increase provides for an extra 35 gpm water supply from the State.

Communications

Obsolete communications equipment from the old Bonita Tank were causing communications failures on the water system. On May 7, Autosys, Inc. rerouted communications to alleviate this problem.

Toganazzini Well

On May 5, Tognazzini Well's casing appeared to fail, causing a significant amount of sand in the water. The well was immediately turned off. Well casings are usually not cost-effective to repair, especially for small wells. Now that Pasadera well is online, the water system has adequate supply and redundancy that Tognazzini well is no longer as critical a facility as it once was.

Pasadera Well

On May 21, Pasadera well fail to operate automatically. The following day, Autosys, Inc. identified a small coding problem with the programmable logic control (PLC) program that was causing the well to shut off unnecessarily. The coding was adjusted so that this problem will not occur in the future.

Wastewater

Collections System

On the evening of May 26, sewer monitor gave warning of potential overflow at Highway 1 lift station. Staff and Clays cleared a blockage on Mahoney Lane.

Pioneer Lift Station

Pioneer lift station pump was replaced by city staff with technical assistance from Perry's Electric. This work was completed on May 12.

Sewer Main and Lift Station Replacement

Staff requested a formal title report for a property potentially impacted by the sewer main replacement project to confirm location of a sewer easement so that the City could verify site control, a requirement for the CDBG grant. That title report was received on May 7.

Effluent Pump Station

The kickoff meeting for this project was held on Thursday, May 7. Review of the electrical conditions at the site was completed on May 14. Design of this project is anticipated to be completed by November 2020.

Effluent Spray Field

The City received two invoices from the company leasing the property on which the City has a long-term lease agreement for effluent spray field. The two invoices were for \$3,016 and \$11,715 for fence work and groundwork, respectively. Both tasks are the responsibility of the City to pay under the lease agreement for this property. I spoke with both the land owner and

the company about the fact that the larger invoice exceeds the amount allowed for single vendor under the City's purchasing guidelines. Unfortunately, this work had already been completed. The landowner provided an explanation as to why the amount was so high, including the fact that it had been so long since the ground had been worked, so the bill was higher than expected. The land owner has indicated that future such projects will be completed only after receiving written approval to proceed from the City, providing staff the opportunity to obtain additional quotes for projects over \$5,000.

Clay's Lease Agreement

The City of Guadalupe entered into a five-year lease agreement with Clay's Septic on September 9, 2015 for the rental of City property at the wastewater treatment plant in exchange for waste disposal and solids handling. This lease agreement expires on September 8, 2020. City staff reviewed the lease agreement and began negotiations with Clay's Septic on May 11.

Process

Wastewater operator Dave Miklas and Estanislau (Junior) Gutierrez have actively tweaked the wastewater process to achieve only one violation the month of May. During this process, they determined that the mixed liquor suspended solids (MLSS) needs to be higher than is what is typically expected for wastewater processes, and that the return activated sludge flow (RAS) needs to be much lower than originally thought. When the biological process at the treatment plant is off kilter, it takes a considerable amount of time and patience to bring it back into compliance. These two operators have demonstrated their understanding of the process and operator skills of observation and patience to achieve a healthy and effective process. In May, an electrical problem at the treatment plant's largest flow contributor cost higher than normal flows the last week in May. The operators adjusted the process for the duration of the problem to reduce the total number of violations received for the month. One of the lessons learned from this event was that the treatment process is a difficult time handling flow surges into the process.

Capital Projects Status Update

May 2020

PROJECT DESCRIPTIONS	2019-20 TOTAL	Status
Buildings		
Public Works Corporation Yard Building	\$ 60,000	On hold.
O'Connell Park Booster Pump	\$ 30,000	Service, \$4,450. \$2,800 repurposed to gopher control.
Financial Accounting Software	\$ 75,000	Awaiting decision from Finance
Parks		
Leroy Park (Community Center and Site)	\$ 1,000,000	Out to bid
O'Connell Park Improvement	\$ 200,000	Funding available only for new, not maintenance.
Streets, Sidewalks, Bicycle Facilities		
Street Maintenance FY 19/20	\$ 315,000	Done 9/3/19. Total cost \$257,177.76.
Street Rehabilitation FY 19/20 (West Main Street)	\$ 451,200	Underground waterline upgrade needed before paving.
Mobility and Downtown Revitalization Project	\$ 117,029	Done and fully reimbursed
Guadalupe and Obispo Streets Pedestrian Improvements	\$ 400,000	Construction underway. Project scheduled to be completed mid June.
La Guardia and Gualarte Lanes Pedestrian Improvements	\$ 179,537	One easement missing. Appraiser to evaluate value.
Water		
Recoat Elevated Tank (Design)	\$ 50,000	Final plans and specifications received.
Bonita Water Facilities Removal	\$ 400,000	On hold.
Tognazini Well Discharge	\$ 100,000	\$1,200 new chem feed pump reduced starts from 4x/day to 4x/week. No further work needed.
Wastewater		
WWTP Site Cleanup	\$ 50,000	Work completed with available material.
WWTP Office Improvements	\$ 30,000	Substantially completed. Included roof, hot water heater, fumigation, cleanup.
Effluent Irrigation Pump Station Rehabilitation (Design)	\$ 76,725	Design begun. Scheduled to be completed in November.
Sewer Main Improvements	\$ 1,400,000	Submitted CDBG application February 14. Submitted Caltrans encroachment permit February 10.
Collection System Cleaning	\$ 50,000	Sewer monitors installed January. Generator received in April.
Transfer to CIP fund 089:	4,984,491	

Completed.



REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of June 9, 2020

151
Prepared by:
Peggy Woods, Contract Planner

[Signature]
Approved by:
Todd Bodem, City Administrator

SUBJECT: Public Hearing to consider 2020-059-CUP, a request of John A. Smith, on behalf of the property owner Steve Brown, Brown Family Trust, to approve a conditional use permit (CUP) for a vehicle repair and service, and storage facility, located at 209 Guadalupe Street, Guadalupe, CA, (Assessor's Parcel Numbers 115-193-018 and 115-193-019).

RECOMMENDATION:

It is recommended that the City Council:

- 1) Receive a presentation from staff; and
- 2) Conduct a public hearing, including: a) an opportunity for the applicant to present the proposed project, b) receive any comments from the public; and
- 3) Adopt Resolution No. 2020-40 approving a conditional use permit for the Brown Vehicle Repair facility (2020-059-CUP).

BACKGROUND:

The project site is located at 209 Guadalupe Street, on the northwest corner of the intersection of Guadalupe Street and Second Street. A gas station operated on this site from the 1930s to the 1980s. In 1986, it was discovered that three of a total of seven underground fuel storage tanks were leaking. All seven tanks were subsequently dug up and removed from the site. An extensive site cleanup ensued after the tanks were removed from the site. According to the applicant, the site received a remedial action completion certificate in 1997 from Santa Barbara County. This information was verified using the State Water Resources Control Board GeoTracker website. In recent history, the site was used illegally for the storage of vehicles and other items. The site was cleared of the illegal storage prior to Mr. Brown taking ownership of the property.

Guadalupe Street abuts the site to the east and Second Street abuts the site to the south. An alley abuts the site to the west. Surrounding uses include a telephone equipment building to the north, a produce business across Guadalupe Street to the east, single-family residences across the alley to the west, and a church across the street to the south. Ingress and egress from the facility will be off existing driveways on Guadalupe Street and Second Street.

The existing project site is partially developed, consisting of a single structure of approximately 2,000 square feet, impervious yard area, and perimeter fencing along the back of the sidewalk.

DISCUSSION:

The applicant, John A. Smith, seeks a conditional use permit to allow for reuse of the site, and to make improvements to the site. The proposed use is a vehicle repair and service facility, including the repair of automobiles, trucks, and farm machinery. The applicant states that the majority of the business is mobile with repair occurring on the highway or in the fields. The applicant proposes to utilize the project site and the existing building as the base of operation for the vehicle repair and service business. The applicant proposes to operate Monday through Friday from 7:00 a.m. to 5:00 p.m., with some periodic activity on Saturday. The applicant states that some vehicle repair will occur on the project site during normal business hours, but the delivery of vehicles to the facility will not occur after 8:00 p.m. due to standard tow truck business practices, and very little, if any, walk-in customers will occur. Some overnight storage of vehicles will occur on the site. The property owner currently operates a similar business in Santa Maria but wishes to expand in Guadalupe.

The applicant states that up to four employees will be based at the facility and will include a secretary and three mechanics. The applicant further states that the mechanics will spend a significant portion of their time in the field.

The applicant proposes the following site improvements:

- Clean up the lot.
- Replace the roof and metal siding on the existing building.
- Paint the existing building.
- Construct concrete slabs to the north and east of the existing building.
- Install new, vinyl-slatted chain link fence and rolling gate on the Second Street side.
- Install landscape improvements along the Second Street side, to the corner with Guadalupe Street.
- Decrease the width of the driveway in front of the existing service door facing Second Street.

A building permit was issued recently for the reroof of the existing building and the building has been repainted. The concrete slabs to the north and east of the existing building have been approved for construction. No new buildings are proposed.

In accordance with the Guadalupe Municipal Code Section 18.40.030, Conditional Uses, automobile, truck or farm machinery service, repair and storage facilities are uses subject to obtaining a conditional use permit in the industrial-commercial (M-C) zone district. The proposed reuse of the property will comply with this requirement.

In accordance with the Guadalupe Municipal Code Section 18.40.050 materials and equipment storage areas, all equipment and materials storage areas shall be screened by a solid fence, wall or screen planting not less than 6 feet in height. The applicant proposes to utilize the existing 6-foot high chain link fence along the Guadalupe Street frontage to screen the property. However, the site plan shows

the existing fence in the public right-of-way. The preliminary draft conditions of approval of the conditional use permit includes a requirement to relocate the existing fence so that it is located out of the public right-of-way. The applicant proposes slatting the existing fence.

The applicant proposes to install a new 6-foot high chain link fence with vinyl slats and rolling gate along the Second Street frontage. The proposed new chain link fence and gate will be located on the project site 1.5 feet behind the property line.

The preliminary draft conditions of approval of the conditional use permit includes a requirement for the applicant to slat the existing chain link fence and the proposed fence and rolling gate and that such slatting be maintained in good condition for the life of the project.

Economic Development / Light Industrial Land Use Goals and Policies:

The existing 2002 Guadalupe General Plan has a limited number of policies to help direct or define uses in the city. Below are policies from the Economic Development Element as well as the Land Use Element.

Econ Goal #1, (pg. 65) – Expand employment opportunities to offer stable means of income, promote, stabilize and develop Guadalupe, provide economic security for the community and insure the continued means to maintain the life-style of new and existing residents.

Econ Policy #1, (pg. 65) – The City shall use its land use and zoning regulations to help protect the economic position of viable commercial areas.

Econ Policy #6, (pg. 66) – Encourage and promote new types of commercial and industrial uses in order to diversify the City's economic base.

LUE Goal #6, (pg. 55) – To develop vacant and under-utilized land within existing urban and suburban areas for the maximum benefit of the entire community.

LUE, Light Industrial Policy #19, (pg. 57) – The City will provide for industrial development which serves to improve the local economy and does not otherwise detract from the Guadalupe environment.

LUE, Light Industrial Policy #23, (pg. 57) – Proposed industrial activities shall be served by service infrastructure without detriment to the existing service systems.

Goals and Policies Consistency: The project, as proposed, would be consistent with the above-mentioned policy statements and goals taken from the 2002 General Plan. The business will provide income for the owner and his employees and will provide a valuable service to surrounding agricultural activities and operations. Since the previous use of the property involved storage of a mixed collection of equipment in various states of repair, the proposed use and improvements would enhance the value of the property, and provide for a service that would support the agricultural community. The business will be utilizing existing utilities serving the site. In summary, the proposed project would be consistent with applicable policies of the General Plan.

CEQA Review:

The project consists of the repair of an existing structure and facilities on an existing developed site. The repair and service business will operate in the existing structure, thereby involving negligible expansion of the former uses on the site. Based on the limited size of the operation, the project has been found to be exempt from CEQA based on the Categorical Exemption Class 1 (Existing Facilities – minor alterations to and operations within an existing building), CEQA Guidelines Section 15301.

PUBLIC NOTICE:

Staff duly published the required Public Hearing Notice on May 29, 2020. Copies of the Public Notice were also mailed to property owners within a 300-foot radius of the subject property.

ATTACHMENTS:

1. Resolution No. 2020-40, including CEQA Class 1 Categorical Exemption (Exhibit 1), Approval Findings (Exhibit 2), and Conditions of Approval (Exhibit 3)
2. Vicinity Map
3. Site Plan
4. Floor Plan

RESOLUTION NO. 2020-40

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GUADALUPE,
CALIFORNIA, APPROVING THE CONDITIONAL USE PERMIT FOR BROWN
VEHICLE REPAIR 2020-059-CUP**

WHEREAS, John A. Smith (the "Applicant"), on behalf of the property owner Steve Brown, Brown Family Trust, has submitted an application to the City of Guadalupe for a conditional use permit (vehicle repair) for an approximately 0.52-acre site at 209 Guadalupe Street within the City of Guadalupe (APNs 115-193-018 and 115-193-019); and

WHEREAS, staff duly published notice of a June 9, 2020 public hearing regarding 2020-059-CUP, and mailed copies of the notice to all residences within a 300-foot radius of the Brown Vehicle Repair facility; and

WHEREAS, after taking public testimony and hearing evidence from City staff, the City Council finds, pursuant to the findings attached to this resolution as Exhibit 2 and subject to the project's Conditions of Approval attached to this resolution as Exhibit 3, that the approval of the conditional use permit and project description, is consistent with the City's General Plan and applicable chapters of the City's Municipal Code; and

WHEREAS, the City Council has considered the entire administrative record, including application materials, staff report, the California Environmental Quality Act determination, and oral and written testimony from interested persons; and

WHEREAS, the City Council finds that after completely reviewing this conditional use permit, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and therefore the activity is not subject to CEQA per CEQA Guidelines Section 15301, Existing Facilities, (Notice of Exemption is attached to this resolution as Exhibit 1); and

WHEREAS, the City Council finds that approval of the conditional use permit would be consistent with the City's General Plan and the provisions of Title 18 (Zoning Code) of the Guadalupe Municipal Code; and, therefore, the City Council has the ability to make the required findings, including findings pursuant to the California Environmental Quality Act; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Guadalupe does hereby find and determine as follows:

SECTION 1. The findings set forth in Exhibit 2 to this resolution are true and correct in regards to the conditional use permit, which are hereby adopted and incorporated herein by this reference.

SECTION 2. After reviewing the project description and this conditional use permit completely, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and therefore the activity is not subject to CEQA per CEQA Guidelines Section 15301, Existing Facilities.

SECTION 3. The Conditional Use Permit (2020-059-CUP) is approved, subject to the Conditions of Approval set forth in Exhibit 3 of this Resolution.

SECTION 4. The City Clerk shall certify as to the adoption of the Resolution.

SECTION 5. The Planning Department shall file Exhibit 1, Notice of Exemption, with the Santa Barbara County Clerk.

PASSED, APPROVED AND ADOPTED this 9th day of June 2020 on motion of Councilmember _____, seconded by Councilmember _____ and on the following roll call vote, to wit:

AYES: Councilmembers:
NOES:
ABSENT: Councilmembers:
ABSTAIN:

I, Joice Earleen Raguz, City Clerk of the City of Guadalupe DO HEREBY CERTIFY that the foregoing Resolution, being **Resolution No. 2020-xxx**, has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the City Council, held June 9, 2020, and that same was approved and adopted.

CITY OF GUADALUPE

BY: _____
Ariston Julian, Mayor

ATTEST:

APPROVED AS TO FORM:

Joice E. Raguz, City Clerk

Philip F. Sinco, City Attorney

Exhibits:

- Exhibit 1 - CEQA Categorical Exemption
- Exhibit 2 - Findings
- Exhibit 3 - Conditions of Approval

To: County Clerk
County of Santa Barbara
123 E. Anapamu Street
Santa Barbara, CA 93101

From: City of Guadalupe
918 Obispo Street
Guadalupe, CA 93434

Project Title: Brown Vehicle Repair

Project Applicant: John A. Smith, Tartaglia Engineering

Project Location-Specific: 209 Guadalupe Street

Project Location-City: Guadalupe

Project Location-County: Santa Barbara County

Description of Nature, Purpose, and Beneficiaries of Project:

The conditional use permit allows the operation of a vehicle repair and service facility, located on an existing developed site that had been used previously as a gas station. The site is currently a vacant storage yard. The majority of the repair and service will occur on the highways or in the agricultural fields. The proposed project also involves the repair of concrete work and planters. New landscaping is proposed. Adequate parking and internal circulation is provided. No new buildings are proposed. Some storage of vehicles will occur.

Name of Public Agency Approving Project: Guadalupe City Council

Name of Person or Agency Carrying Out Project: Peggy Woods, Contract Planner

Exempt Status: (check one)

- Ministerial (Sec. 15268);
- Declared Emergency (Sec. 15269(a));
- Emergency Project (Sec. 15269(b)(c));
- Categorical Exemption. State type and section number: Class 1 (15301) for Existing Facilities**
- General Exemption (Section 15061(b)(3))

Reasons why project is exempt:

The project uses an existing developed site with a similar use as the previous uses of the property. No greater traffic will be generated as most of the operation occurs on the highways or in the fields. Only a few walk-in customers are expected to utilize the operation, and therefore noise will not impact neighboring properties. The business is operated Monday through Friday, from 7:00 a.m. to 5 p.m., and occasional work will occur on Saturday. After reviewing this CUP for its business operating plan, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and therefore the activity is not subject to CEQA.

Contact Person: Peggy Woods (Area Code) Phone Number/Ext: (805) 735-9245

Signature: _____ Title: Contract Planner

Date received for filing at County Clerk's Office: _____

(Form prepared March 2018)

EXHIBIT 2. FINDINGS FOR APPROVAL

BROWN VEHICLE REPAIR 2020-059-CUP

1.0 CEQA Findings

1.1 CONSIDERATION OF THE CATEGORICAL EXEMPTION AND FULL DISCLOSURE

The City Council has considered the Categorical Exemption (Class 1) together with the comments received and considered during the public review process for the project. The Categorical Exemption has been completed in compliance with CEQA, and is adequate for this proposal.

1.2 FINDING OF NO SIGNIFICANT EFFECT

On the basis of the whole record, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and therefore the activity is not subject to CEQA.

1.3 LOCATION OF DOCUMENTS

The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the City of Guadalupe, 918 Obispo Street, Guadalupe, CA 93434.

2.0 Administrative Findings

2.1 CONDITIONAL USE PERMIT FINDINGS

Pursuant to City of Guadalupe Municipal Code, Section 18.72.050, a conditional use permit shall be approved only if all of the following findings can be made:

A. *The project is consistent with the General Plan.*

The proposed vehicle repair and service facility will provide income for the applicant and will provide a valuable service to surrounding agricultural activities and operations. Since the most recent use of the property involved the storage of a mixed collection of equipment in various states of repair, the proposed use and site improvements would enhance the value of the property, and provide a service that would support the agricultural community. In summary, the proposed project would be consistent with applicable policies of the General Plan as described in the staff report.

- B. That the project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City.*

The proposed project will replace previous uses on the site including a gas station and a storage yard. The majority of the proposed repair and service business will occur on the highways and in the field. Limited walk-in traffic is expected. The proposed improvements will enhance the neighborhood and the southern entrance into the City through the new fencing, new landscaping and signage, and through replacement of the roof and painting of the building. Conditions will be put on this project to ensure that the vehicle repair and service facility will be compatible with the surrounding area. Therefore, the project will be beneficial to the City and surrounding community.

**EXHIBIT 3
BROWN VEHICLE REPAIR
2020-059-CUP
CONDITIONS OF APPROVAL**

Planning Department Conditions:

1. **Project Description.** The permittee shall comply with the project description, and site plan (Attachment 3), dated June 9, 2020. Any changes from the project description or conditions may require a permit amendment, as determined by the Planning Director. Contact the Planning Department prior to changing anything onsite. The property shall be sold, leased or financed in compliance with this project description, site plan and conditions of approval. **The Project Description consists of the following: Operation of a vehicle repair and service facility, including the repair of automobiles, trucks, and farm machinery. The majority of the business is mobile with repair occurring on the highway or in the fields. The applicant proposes to utilize the project site and the existing building as the base of operation for the vehicle repair and service business. The applicant proposes to operate Monday through Friday from 7:00 a.m. to 5:00 p.m., with some periodic activity on Saturday. Some vehicle repair will occur on the project site during normal business hours, but that the delivery of vehicles to the facility will not occur after 8:00 p.m. due to standard tow truck business practices. Very little, if any, walk-in customers will occur. Some overnight storage of vehicles will occur on the site.**

The applicant states that up to four employees will be based at the facility and will include a secretary and three mechanics. The applicant further states that the mechanics will spend a significant portion of their time in the field.

The applicant proposes the following site improvements:

- Clean up the lot.
- Replace the roof and metal siding on the existing building.
- Paint the existing building.
- Construct concrete slabs to the north and east of the existing building.
- Install new, vinyl-slatted chain link fence and rolling gate on the Second Street side.
- Install landscape improvements along the Second Street side, to the corner with Guadalupe Street.
- Decrease the width of the driveway in front of the existing service door facing Second Street.

No new buildings are proposed.

2. **Screening of Materials and Equipment Storage Areas.** In accordance with Guadalupe Municipal Code Section 18.40.050 all outside materials and equipment storage areas shall be screened by a solid fence, wall or screen planting not less than 6 feet in height. To meet this requirement, the applicant proposes to use the existing 6-foot chain

link fence along Guadalupe Street and install a new 6-foot chain link fence and rolling gate along Second Street. The fencing shall be installed prior to operation of the new business. All fencing shall be slatted. All fencing shall be located outside of the street right-of-way and if necessary, fencing shall be moved in order to comply.

3. Building Permit. A building permit for relocation of the existing chain link fence and construction of the proposed 6-foot chain link fence is required prior to installation.
4. Slats. The applicant/property owner shall maintain the slats in the chain link fencing in good condition through the life of the project. The applicant/property owner shall replace any broken or missing slats in the chain link fencing and rolling gate.
5. Exterior Lighting. As proposed, exterior lighting will consist of a wall pack unit. The wall pack unit shall not be installed on the west side of the building. No unobstructed direct beam of exterior lighting shall be directed toward any residential use in the neighborhood. Exterior lighting fixtures on the project site shall be shielded and directed downward.
6. Hours of Operation. As proposed by the applicant, the hours of all business operations and activities on the project site shall be limited to no earlier than 7:00 a.m. and no later than 5:00 p.m., Monday through Saturday. Tow truck arrivals may occur up to 8:00 p.m. as described in the project description in Condition No. 1.
7. Noise. The use of pneumatic tools shall be limited to the hours between 8:00 a.m. and 5:00 p.m.
8. Waste Disposal. Disposal of all hazardous waste materials shall occur in accordance with all applicable local and state regulations.
9. Landscape Plan. A landscape plan, which includes the size and species of plants and a layout of the irrigation system, shall be submitted to the Planning Department for review and approval. The landscaping shall be installed in conformance with the approved landscape plan prior to operation of the new business. The landscaping shall be maintained as installed for the life of the project.
10. Existing Tree. The existing tree in the tree well located in the Second Street right-of-way shall remain.
11. Signs. All proposed signs shall comply with the sign ordinance (Municipal Code Section 18.52.150). All proposed signs shall be located on the property and not on public right-of-way. A zoning clearance shall be processed for all requested signs.
12. Site Maintenance. The entire site shall be permanently maintained free of accumulated dirt and litter and in an otherwise neat and attractive manner.

13. The business owner/operator and property owner shall sign the ACKNOWLEDGMENT OF CONSENT TO PERMIT CONDITIONS before the business can open.
14. All processing fees shall be paid prior to issuance of a Zoning Clearance for operation of the vehicle repair and service business.
15. Business License. A business license shall be applied for and issued to the business owner/operator prior to opening.
16. Additions or Changes in Use. The applicant/property owner are reminded that a new conditional use permit is required for the expansion of any structure, or for any change in use, or for any expansion of area used.
17. This permit shall be in full compliance with all administrative provisions of Chapter 18.72.

Public Works Department Conditions:

18. The site plan shows that the existing fence along Guadalupe Street encroaches into the public right-of-way by approximately three feet. Relocate the fence along Guadalupe Street to the existing property line.
19. The three-quarter inch water service to the alley is substandard. There is already a service line and meter box on Guadalupe Street. The applicant/property owner shall establish water service to the property from the meter box on Guadalupe Street.
20. The planter on Second Street is deteriorating. The applicant shall provide plans to the City of Guadalupe, Public Works Department to address the deteriorating planter and to obtain an encroachment permit prior to repairing the planter.



**ATTACHMENT 2
VICINITY MAP
2020-059-CUP**



**REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of June 9, 2020**


Prepared by:
Todd Bodem, City Administrator

SUBJECT: Introduction of Tobacco Control Ordinance: 1) adding Chapter 5.53 regarding licensure of tobacco retailers; and 2) adding 8.60 regulating smoking in public places and multiunit housing

RECOMMENDATION:

Move to introduce Ordinance No. 2020-489 adding Chapter 5.53 (Licensure of Tobacco Retailers) and Chapter 8.60 (Smoking in Public Places) to the Guadalupe Municipal Code.

EXECUTIVE SUMMARY:

At its February 25, 2020 meeting, the City Council directed staff to develop tobacco control regulations in order to raise its grade designated from the American Lung Association (ALA) of Guadalupe's "F" to an "A" status. In order to raise the grade, the regulations should control tobacco sales as it pertains to products, pricing, and proximity/density and also, create smoke-free protections in outdoor places and multiunit housing. Staff has prepared an ordinance that would: 1) add Chapter 5.53 (Tobacco Retailers – Business, Taxes, Licenses and Regulations) to the Guadalupe Municipal Code; and 2) add 8.60 (Smoking in Public Places with a Comprehensive Smoke-Free Public Places and Multiunit Housing) to the Guadalupe Municipal Code. The purpose and intent of these changes is to protect the public health by providing the orderly regulation of businesses selling tobacco and protections against secondhand smoke.

BACKGROUND:

I. GUADALUPE'S HISTORY OF TOBACCO CONTROL AND PREVENTION

The City of Guadalupe does not have a smoking ordinance. The City could use the assistance of a grant to help support and fund the preparatory steps towards developing and implementing an ordinance regarding tobacco retailer licenses and comprehensive smoke free public places and multiunit housing regulations. However, Guadalupe has a "can do" attitude in getting things done so as staff prepared the appropriate ordinance, and will figure out a way to implement the process and procedures utilizing existing staff resources, budgets, and work on obtaining future grants if available.

If these ordinances are approved by the City Council, it is anticipated that during the initial implementation, enforcement will be handled by the Guadalupe Police Department to the extent

possible, but that, eventually, enforcement actions regarding sales of tobacco products to underage persons and compliance checks 2 to 4 times per year will be funded by grants from the Santa Barbara County's Public Health Department and the State Department of Justice (DOJ). As a result of this type of on-going monitoring, the City more than likely will start seeing statistics and perceived improvements in tobacco retailer compliance rate.

II. TOBACCO RETAILERS LICENSING (TRL) IN CALIFORNIA AND CERTAIN PRODUCT BANS

Local cities and counties began adopting local tobacco retailing licensing ordinances in the early 2000's when officials realized that they were necessary to provide local control and increased enforcement to prevent illegal sales to minors. As of October 2019, at least 180 cities in California have adopted strong local tobacco retailer license laws representing over half of the State.

<https://center4tobaccopolicy.org/wp-content/uploads/2019/05/Matrix-of-Strong-Local-TRL-Ordinances-May-2019-05-07.pdf>) Article 1

A study published in the journal Pediatrics in 2019, found that youth living in cities with strong tobacco retailer licenses were less likely to ever use cigarettes or e-cigarettes, and less likely to use these products regularly than youth living in cities without licensing.

<https://pediatrics.aappublications.org/content/pediatrics/early/2019/01/03/peds.2017-3536.full.pdf>) Article 2

Cities began banning sales of flavored tobacco products in 2014, after kid-friendly candy and fruit flavored "starter" tobacco products began to appear in stores. As of May 2019, 26 California cities have included bans on the sale of flavored tobacco products including menthol cigarettes, and flavored vape products.

<https://center4tobaccopolicy.org/wp-content/uploads/2019/05/Matrix-of-Local-Ordinances-Restricting-Flavored-Tobacco-2019-05-07.pdf>) Article 3

On December 18, 2018, the Surgeon General declared that e-cigarette use among youth is an epidemic because of a huge increase in the rate of young people's use of these products (<https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>), and that aggressive steps must be taken to protect our children from nicotine addiction and other associated health risks caused by e-cigarettes. Between 2017 and 2018, youth vaping increased 78% - the largest one-year increase recorded for any one substance ever.

<https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>) Article 4

According to the CDC's 2019 National Youth Tobacco Survey, over 1 out of every 4 high school students (approximately 25%) use e-cigarettes/vape on a regular basis – or 5 million youth. This is a marked increase from 11.7% of youth who said they used e-cigarettes in 2017. The CDC have found that fruit, candy, and mint/menthol flavorings attract children and youth to start smoking and/or vaping. According to over 64% of youth who use e-cigarettes, the top two flavor categories are fruit and menthol/mint.

<https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>) Article 5

Since June 2019, multiple congressional hearings have been held to investigate the youth e-cigarette epidemic to apply pressure on the FDA to act on a flavored e-cigarette product ban. All e-cigarette manufactures are required to submit their applications documenting the safety of their products by May 2020 to the FDA, and any products that do not receive approval by May 2021 will be taken off the market. This may result in the subsequent removal of some e-cigarette devices from the market for manufacturers who fail to either apply on time or to meet the FDA's standards. FDA has recently asked a court to allow it to delay this timeline, so its action could be significantly pushed back by the current public health crisis.

Unwilling to wait more than a year for uncertain federal actions, several California jurisdictions (San Francisco, Livermore, Berkeley, Richmond) have banned the sale of e-cigarette devices and their liquids. The boards of supervisors in Santa Clara and Contra Costa counties have recently taken first votes on this ban. In addition, the states of Washington, Michigan, New York, Rhode Island, and Massachusetts have adopted emergency measures to prohibit the sale of all electronic smoking devices and the liquids until the manufacturers apply for and receive FDA approval although four of the states have been held up due to litigation.

<https://www.publichealthlawcenter.org/resources/states-and-tribes-stepping-protect-communities-dangers-e-cigarettes-actions-and-options>) Article 6

Massachusetts and Rhode Island have subsequently made their prohibitions on flavored tobacco products and flavored e-cigarettes, respectively, permanent, and New York just announced plans to do so as well. Maryland has also taken emergency action against disposable flavored e-cigarettes popular with youth.

<https://baltimore.cbslocal.com/2020/02/10/maryland-comptroller-announces-prohibition-on-sales-of-disposable-flavored-e-cigarettes-first-in-us/>) Article 7

California legislation that would prohibit the sale of flavored tobacco products has been introduced but is not certain to pass in this session or the next.

Local Licensing of Tobacco Retailers

As of 2016, California adopted Tobacco 21, making it illegal to sell or furnish tobacco products to anyone under 21 years old, with the exception of active military 18 to 20 years old. In December of 2019, the federal age of sale for tobacco products (including e-cigarettes) also increased to 21, with no military exception. However, without local enforcement mechanism as provided by a TRL, compliance is low. The State does not have sufficient funding to conduct local community level monitoring of sales.

In fact, California's Department of Justice (DOJ) has been encouraging local municipalities to adopt tobacco retailer licensing by providing grant monies to conduct local compliance checks and to begin the process of adopting self-sustaining TRLs. The City of Benicia has been funded by a two-year DOJ grant which ends in June 30, 2020, for example.

The proposed tobacco retailer regulations would require any State licensed tobacco retailer to obtain a City Tobacco Retailer License and, furthermore, to renew such license annually. Retailers would pay a license fee to cover the City's cost to administer and enforce the ordinance (charging a sufficient fee is a key requirement of the ALA criteria). Penalties for violation include suspensions and revocations (consistent with the ALA criteria). In addition, the proposed ordinance would regulate the types of products to be sold, the pricing, and place/proximity of retailers.

Components of the Proposed Tobacco Retailer License (TRL) for Guadalupe

Guadalupe will assess the current number of establishments licensed by the State of California to sell tobacco. Staff recommends that a pharmacy should not be able to obtain a license, and this provision has been included in the proposed ordinance.

A tobacco retailer license would serve three main purposes: 1) to be able to continue a successful compliance check program with self-sustaining fee that would cover the cost of administering and conducting the program; 2) to establish an infrastructure to be able to add provisions to address emerging tobacco products, pricing, and place/proximity regulations to reduce the likelihood of youth access to tobacco products; and 3) to institute local sanctions like fines, suspensions and revocations to encourage compliance. The following website to Policy Options Fact Sheet provides justifications for each of the provisions listed in this section.

https://www.changelabsolutions.org/sites/default/files/PolicyOptionsFactSheet-Dec%202018%20Revision_FINAL_20181220.pdf) Article 8

The basic components of a TRL are as follows:

1. Requires all businesses selling any tobacco products obtain an annual TRL;
2. Annual fee that covers the cost of administration and enforcement;
3. Strong fines/sanctions to encourage compliance including license suspension and revocation;
4. Violations of federal, state, and local tobacco control laws are considered violations of the TRL.

In addition to the basic TRL components, the proposed ordinance will also ban the sale of all flavored tobacco products including vape juices, flavored little cigars and chew, and menthol cigarettes.

Pricing is a key component. Youth are most sensitive to pricing with research showing that a 10% increase in price yields a 3-5% decline in youth consumption. Preventing the sale of small packs of little cigars or cheap cigars also makes the overall price less attractive to a young person experimenting with new products. Therefore, the following pricing minimums are being recommended to discourage youth consumption, and these minimums are consistent with County-level minimum prices:

1. Minimum package size for low cost cigar products (20, the same as cigarettes under federal law);
2. Minimum price for cigarettes and little cigar packs (\$10/pack);
3. Minimum package size for cigars under 10 dollars (pack of 6);
4. Minimum price for cigars (\$5);
5. A ban on redemption of discount coupons and promotions. All tobacco products must be sold at full retail price.

Place/Proximity provisions restrict how many retailers sell tobacco, what types of retailers sell it, and where they may sell it. The proposed TRL addresses these issues by enacting the following measures:

1. Prohibits tobacco retailers within 1000 feet of a school.
2. Prohibits sales of tobacco from a self-service display.
3. Prohibits delivery sales and mobile sales of tobacco products.
4. Prohibits tobacco sales in pharmacies.

In regard to understanding public support within the City of banning flavored tobacco and e-cigarette products, the City has not conducted any formal or informal polls. However, the City Council has strongly recommended that City staff come back to Council with a strong set of ordinances to help reduce the use of tobacco products. The City Council could decide to invite all of the tobacco sellers to an informational meeting about the proposed TRL ordinance before and/or after adopting it.

III. COMPREHENSIVE SMOKE-FREE PUBLIC PLACES AND MULTIUNIT HOUSING ORDINANCE

The section of the proposed ordinance adding Chapter 8.60 includes comprehensive smoke-free regulations for multiunit housing, places of employment, and public places. The City's currently does not prohibit smoking, including vaping, in City-owned facilities and within 20 feet of all City-owned and leased buildings (although state law includes these prohibitions), or in its public parks, recreational trails and facilities, or in tobacco shops and lounges. These prohibitions are included in the proposed ordinance. Although state law currently prohibits smoking in, and within 20 feet, of all City-owned facilities, including these provisions into the proposed ordinance will provide the City with its own laws to enforce either criminally by way of Code Enforcement.

The new ordinance adds the following outdoor areas to be protected: within 20 feet of all doorways/windows/vents of public and private buildings and areas that are nonsmoking; commercial area sidewalks, and recreational areas including sidewalks; outdoor dining including restaurants and bars; service areas (bus stops, ATM, etc.); tobacco retailers and smoking lounges (thus making smoking lounges illegal); and outdoor worksites. In addition, the common indoor and outdoor areas of multiunit housing as well as the units will also be covered. The prohibition includes vaping and cannabis smoke/vape.

Smoke-free multiunit housing protections have been included in the draft ordinance in response to requests raised by Guadalupe townhouse and condominium residents earlier this year who have been unable to resolve unwanted secondhand smoke exposures from neighboring units.

Local Smoke-Free Public Places Ordinances in California

As of February 2019, 113 cities have adopted a set of smoke-free outdoor air laws. In most cases, smoke-free outdoor air laws are complaint driven. It has been the experience of cities that have adopted these laws that community support, education, and signage are usually sufficient to ensure compliance.

The city has not done any outreach to residences or businesses.

Multiunit Housing

The city has not conducted a survey of the number of Guadalupe total number of housing units. This ordinance will cover attached townhomes or duplexes, condominiums and apartments. The provisions of the smoke-free multiunit housing section provide that smoking is prohibited on the entire property, inside all attached units of apartments, condominiums, townhouses, and landlords include the NO SMOKING provisions in their leases. The prohibition does not cover detached single-family homes, even if they have an accessory dwelling unit.

Landlords, property managers, and homeowners associations will be required to post signage, alert all residents of the changes, and send out an annual reminder of the smoke-free requirements to all residents. The ordinance also includes a definition of secondhand smoke as a nuisance to provide residents with a legal tool when seeking relief through small claims court or civil court.

Local Smoke-Free Multiunit Housing Ordinances

In the decade since cities in California began to adopt laws to prohibit smoking in apartments, condominiums and townhouses, 63 California cities, representing 2.5 million residents, now live in cities with strong smoke-free housing laws.

<https://center4tobaccopolicy.org/wp-content/uploads/2019/02/Matrix-Comprehensive-Outdoor-Secondhand-Smoke-Ordinances-2019-02-27.pdf>) Article 9

FISCAL IMPACT:

The Police Department and Code Enforcement staff will identify grant funding opportunities to cover additional future costs. These grant funds will be allocated for staff and resources, cost of printing signage for distribution to business owners, retail and residential property owners, as well as continued education and assistance for implementation. In regard to the tobacco license fee, a cost analysis will be conducted after adoption of final ordinance to recover actual costs of the administration and compliance checks.

PUBLIC NOTICE:

Staff published a 1/8 page display ad in a newspaper of general circulation on or before May 30, 2020.

ATTACHMENTS:

1. Ordinance No. 2020-489 entitled "An Ordinance of the City Council of the City of Guadalupe Adding Chapter 5.53, Licensure of Tobacco Retailers, and Chapter 8.60, Smoking in Public Places and Multiunit Residences, to the Guadalupe Municipal Code.

Tobacco Retail Licensing and Youth Product Use

Roe L. Astor, MPH,^a Robert Urman, PhD,^a Jessica L. Barrington-Trimis, PhD,^a Kiros Berhane, PhD,^a Jane Steinberg, PhD,^a Michael Cousineau, PhD,^a Adam M. Leventhal, PhD,^a Jennifer B. Unger, PhD,^a Tess Cruz, PhD,^a Mary Ann Pentz, PhD,^a Jonathan M. Samet, MD, MS,^b Rob McConnell, MD^a

abstract

BACKGROUND: Restricting youth access to tobacco is a central feature of US tobacco regulatory policy, but impact of local tobacco retail licensing (TRL) regulation on cigarette smoking rates remains uncertain. Effects of TRL on other tobacco product use and use as adolescents reach the age to legally purchase tobacco products has not been investigated.

METHODS: Prevalences of ever and past 30-day cigarette, electronic cigarette (e-cigarette), cigar, and hookah use were assessed in a survey of a cohort of 1553 11th- and 12th-grade adolescents (mean age: 17.3 years); rates of initiation were evaluated 1.5 years later. An American Lung Association (2014) youth access grade was assigned to each of 14 political jurisdictions in which participants lived on the basis of the strength of the local TRL ordinance.

RESULTS: At baseline, participants living in 4 jurisdictions with “A” grades (ie, with most restrictive ordinances) had lower odds of ever cigarette use (odds ratio [OR] 0.61; 95% confidence interval [CI] 0.41–0.90) and of past 30-day use (OR 0.51; 95% CI 0.29–0.89) than participants in 10 D- to F-grade jurisdictions. At follow-up at legal age of purchase, lower odds of cigarette use initiation (OR 0.67; 95% CI 0.45–0.99) occurred in jurisdictions with stronger TRL policy. Lower odds of e-cigarette initiation at follow-up (OR 0.74; 95% CI 0.55–0.99) and of initiation with past 30-day use (OR 0.45; 95% CI 0.23–0.90) were also associated with better regulation.

CONCLUSIONS: Strong local TRL ordinance may lower rates of cigarette and e-cigarette use among youth and young adults.



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Dr McConnell conceptualized and designed the study and reviewed and revised the manuscript; Mr Astor collected data on tobacco retail licensing in study communities, conducted a literature review, and drafted the manuscript; Dr Urman conducted all data analyses; Drs Barrington-Trimis, Berhane, Steinberg, Cousineau, Leventhal, Unger, Cruz, Pentz, and Samet provided advice on the analysis and interpretation of results and reviewed and provided guidance on the development of the manuscript; and all authors approved the final manuscript as submitted.

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WHAT'S KNOWN ON THIS SUBJECT: Restricting youth access to tobacco has long been a central feature of US tobacco regulatory policy, but the impact of local tobacco retail licensing regulation on electronic cigarette use rates remains uncertain.

WHAT THIS STUDY ADDS: Strong local tobacco retail licensing ordinances may lower rates of cigarette and electronic cigarette use among youth and young adults. Success of regulations restricting youth access to cigarettes and alternative tobacco products may depend on ensuring a robust enforcement scheme.

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Most US states have had laws to restrict the sale of cigarettes to minors for decades.¹ Because there was widespread violation of these laws by tobacco vendors,² Congress passed the Synar Amendment to the Public Health Service Act in 1993,³ which required that states enact laws banning cigarette sales to minors and that they enforce such laws with compliance checks using undercover “decoys” posing as underage customers.^{4,5}

Enforcement of these youth access regulations is a central feature of US tobacco control programs. However, although compliance checks of vendors have been shown to reduce sales to minors, their effectiveness in reducing youth smoking rates is less certain, for example, because they may obtain cigarettes legally purchased by older friends.^{6,7} Key regulatory features that are reported to reduce both compliance violations and youth cigarette use include a mandatory tobacco retailer licensing fee to provide sustainable funding of undercover decoys to make at least 1 annual visit to each vendor and fines or penalties for violations.^{7,8} Low rates of vendor compliance checks, which occur annually at only a small fraction of tobacco vendors under existing state and federal enforcement programs,^{9,10} and inadequate penalties may explain why associations with youth smoking rates have not consistently been observed.⁷ Within states, compliance enforcement may vary markedly on the basis of local ordinances that provide funding to do so. Given the expense involved in enforcement and the lack of expert consensus on its benefits, additional studies are warranted to assess the effectiveness in reducing youth cigarette use.

The impact of youth access restriction on the initiation of alternative tobacco products, such as electronic cigarettes (e-cigarettes), hookah, and cigars, has not been studied, although prevalence of ever

using these products is high.¹¹ An additional gap in understanding the effectiveness of youth tobacco access restriction is during the transition to the legal age of purchase. Most adult smokers historically have initiated cigarette use by age 18,¹² which is the legal age of purchase in most states. There have been few prospective studies examining the effect of tobacco licensing and youth access restriction on cigarette and alternative tobacco product use during this transition to adult life.

Among participants in the Southern California Children’s Health Study, we evaluated whether youth living in jurisdictions with a strong tobacco retail licensing (TRL) ordinance had reduced prevalence of cigarette and other tobacco use, compared with participants in jurisdictions with a poor TRL ordinance. In addition, using prospectively collected data, we assessed the association of local ordinances with the initiation of tobacco product use during a cohort follow-up as youth reached 18 years of age, the age at which the sale of tobacco products was legal in California at the time of the study.

METHODS

Study Population

Between January and June of 2014, a total of 2097 11th- and 12th-grade participants in the Southern California Children’s Health Study (mean age: 17.3; SD: 0.6) completed self-administered questionnaires collecting detailed information about cigarette and alternative tobacco product use. Follow-up online questionnaire data were collected on 1553 participants (74% of the 2097 at baseline) as they reached 18 years of age, between January 2015 and June 2016 (mean age: 18.8; SD: 0.6). Additional characteristics of the study sample have been described previously.^{13,14}

Ethics Statement

The study was approved by the University of Southern California Institutional Review Board. Parental written informed consent and child assent were obtained for all Children’s Health Study participants <18 years of age. Participants age 18 or older provided written informed consent.

Tobacco and Alternative Tobacco Product Use

At each survey, participants were asked whether they had ever tried e-cigarettes, cigarettes, cigars, or hookah and the number of days each product was used in the past 30 days.¹² Participants who had “never tried” a product (not “even 1 or 2 puffs”) were classified as never users. Those reporting an age at first use of each tobacco product were classified as ever (lifetime prevalent) users of that product at baseline. Rates of initiation were calculated on the basis of a new report of use of a tobacco product at follow-up among participants not reporting use of that product at baseline. Both prevalent users and initiators of each tobacco product were further characterized on the basis of past 30-day use.

Evaluation of Local Tobacco Regulatory Licensing to Reduce Youth Access

There were 14 political jurisdictions with corresponding tobacco product ordinances across the 12 participating Children’s Health Study communities. Four study jurisdictions were assigned an A grade on the basis of the 2014 American Lung Association (ALA) “Reducing Sales of Tobacco Products” to youth scale, which is used to evaluate the strength of the local TRL ordinance across California.¹⁵ An A grade required adequate annual retail license fees, which were paid by all tobacco retailers (including gas stations, convenience stores, larger grocery stores, and pharmacies),

to cover the administration of an enforcement program and regular compliance checks in each store. An A grade also required (1) an annual renewal of this local license; (2) a provision that any violation of local, state, or federal law is a violation of the license; and (3) a graduated penalty system for violators, including financial deterrents such as fines or other penalties, including license revocation or suspension.¹⁵

The remaining study jurisdictions were assigned an F grade (8) or a D grade (1). An F grade indicated either (1) no local ordinance mandating a license fee or (2) a fee insufficient to fund administrative and compliance checks as well as none of the 3 other provisions for an A grade. The jurisdiction with the D grade had a licensing fee that was insufficient to cover administration and compliance checks, but it had at least 1 of the other 3 provisions listed above that were needed for an A grade. The D and F communities were collapsed for data analysis, because the insufficient annual fee is a central feature of regulation to reduce youth access.^{7,15} No study jurisdiction in this sample had B or C grades corresponding to TRL policies of intermediate quality.¹⁵

ALA assigned grades to other categories of tobacco policy (smoke-free housing policy, smoke-free outdoor policy, and overall tobacco policy).¹⁵ These policies, which are not specific to youth tobacco product access, were not associated with tobacco product use in this study, and results are not presented.

Covariates

Self-administered questionnaires completed by parents of participants were used to assess sociodemographic characteristics, including sex, ethnicity (Hispanic, non-Hispanic white, other), age at baseline, and parental education (completed high school or less, some

college, or completed college or more).

Statistical Analysis

Unconditional logistic regression models were used to evaluate the associations of living in a jurisdiction with an ALA grade A versus D or F TRL ordinance with baseline ever and past 30-day use of cigarettes, e-cigarettes, hookah, cigars, or use of any of these tobacco products in separate models. Models were also fit to evaluate associations of ALA grade with the initiation of each product, with or without past 30-day use. In models used to evaluate the initiation of use of each tobacco product between baseline and follow-up, the sample was restricted to baseline never users of that product. Odds ratios (ORs) and 95% confidence intervals (CIs) were used to estimate the association of each tobacco product use with an ALA grade. All models were adjusted for sex, ethnicity, highest parental education, and baseline age, factors that have been associated both with e-cigarette use and cigarette use in previous studies.^{13,14} Each tobacco product-specific model was also adjusted for a baseline history of use of any other tobacco product, because there was clustering of the tobacco product outcomes.¹³ A missing indicator category for covariates and any other tobacco product use was included where appropriate. Additionally, all models included a random effect for community to account for similarities among subjects within jurisdictions. In a sensitivity analysis, models were further adjusted for time between baseline and follow-up questionnaire completion. Statistical analyses were based on 2-sided hypotheses tested at a 0.05 level of significance, using SAS 9.4 (SAS Institute, Inc, Cary, NC).

RESULTS

Of the 2097 participants, 31.1% (652) lived in a jurisdiction with an

ALA 2014 TRL A grade, and 68.9% (1445) students lived in jurisdictions with D or F grades. Sex and ethnic distributions were similar in A and D or F jurisdictions, but students in A jurisdictions were more likely to come from less-educated households (Table 1). Unadjusted prevalence and initiation rates for each tobacco product were lower in jurisdictions with A than with D or F grades, with the exception of new initiation of hookah with past 30-day use. Initiation rates were substantial among never tobacco product users at baseline, in particular for e-cigarette use. Both prevalence and initiation rates of past 30-day tobacco product use generally did not exceed 10% for any product.

For baseline prevalence of ever and past 30-day use of cigarette and e-cigarette ever use, and to a lesser degree for prevalence of cigar use, jurisdictions with A grades had generally lower use rates than D or F jurisdictions (Supplemental Fig 3). However, within both grade groups, there was considerable variability in prevalence rates across jurisdictions for all tobacco products. Rates in individual jurisdictions had wide CIs (results not shown) because of small sample size. Rates of tobacco product initiation at follow-up were also generally quite variable across the jurisdictions within both A and D or F grades (Supplemental Fig 4).

At baseline, participants living in the 4 jurisdictions with A grades had lower odds of ever using a cigarette (OR 0.61; 95% CI 0.41–0.90) and of past 30-day use (OR 0.51; 95% CI 0.29–0.89) than participants in 10 D- to F-grade jurisdictions, after adjusting for sociodemographic covariates and other tobacco product use at baseline (Fig 1).

Living in A-grade jurisdictions was associated with lower odds of initiation of cigarette use between baseline and the follow-up questionnaire (OR 0.67; 95% CI 0.45–0.99 [Fig 2]). The risks of

TABLE 1 Prevalence of Sociodemographic Characteristics, Lifetime, and Current (Last 30-Day) Use of Each Tobacco Product at Baseline and Rates of Product Initiation at Follow-up Among Youth Residing in a Jurisdiction With ALA Reduced Tobacco Sales, Grade A or D or F

	Grade A	Grade D or F
	N (%) ^a	N (%) ^a
Sex		
Male	324 (49.7)	735 (50.9)
Female	328 (50.3)	710 (49.1)
Ethnicity		
Hispanic white	349 (53.5)	736 (50.9)
Non-Hispanic white	230 (35.3)	504 (34.9)
Other	73 (11.2)	205 (14.2)
Parent education		
Less than or equal to high school	245 (41.3)	460 (34.3)
Some college	219 (36.9)	502 (37.4)
College or more	129 (21.8)	379 (28.3)
Prevalent ever tobacco product use at baseline		
Cigarette	89 (13.7)	302 (21.0)
E-cigarette	123 (19.0)	379 (26.4)
Hookah	158 (24.3)	411 (28.6)
Cigars	69 (10.6)	204 (14.2)
Any tobacco product	214 (32.9)	564 (39.2)
Prevalent past 30-d tobacco product use at baseline		
Cigarette	24 (3.7)	95 (6.6)
E-cigarette	56 (8.6)	145 (10.1)
Hookah	62 (9.5)	162 (11.3)
Cigars	21 (3.2)	55 (3.8)
Any tobacco product	107 (16.5)	267 (18.6)
Initiation of tobacco product use (between baseline and follow-up)^b		
Cigarette	52 (13.1)	156 (18.0)
E-cigarette	92 (24.7)	235 (29.7)
Hookah	55 (15.9)	146 (18.9)
Cigars	49 (12.0)	158 (17.1)
Any tobacco product	85 (27.7)	198 (30)
Initiation with past 30-d tobacco product use at follow-up^b		
Cigarette	17 (4.3)	52 (6.0)
E-cigarette	17 (4.7)	69 (8.9)
Hookah	16 (4.7)	32 (4.2)
Cigars	12 (2.9)	36 (3.9)
Any tobacco product	24 (7.9)	78 (12.1)

^a The denominator (652 in grade A; 1445 in grade D or F) varies because of missing values in covariates.

^b Restricted to nonusers of each product (or of any tobacco product) at baseline.

initiation of e-cigarettes (OR 0.74; 95% CI 0.55–0.99) and of initiation with past 30-day use (OR 0.45; 95% CI 0.23–0.90) were also lower in A-grade than D- or F-grade jurisdictions. In sensitivity analyses adjusting for time since turning 18 at follow-up, there was no change in the protective effect estimate of living in a well-regulated (A-grade) jurisdiction (results not shown). Participants still living in their jurisdiction of origin at follow-up evaluation would have had consistent exposure to the same regulatory environment. In this sample, there were stronger protective A-grade

compared with D- or F-grade associations with cigarette and e-cigarette initiation at follow-up (and of initiation of e-cigarettes with past 30-day use) than in the entire sample (results not shown). The protective association of A-grade residence with initiation of cigar use was similar in magnitude to the association with cigarette and e-cigarette use but was not statistically significant.

DISCUSSION

Central features of the ALA TRL grade include a licensing fee

sufficient to fund compliance checks and enforcement of regulations prohibiting tobacco sales to minors and penalties for violating the law, features of TRL that have been reported to be necessary to reduce sales to and use by youth.⁷ Compared with living in a jurisdiction with poor TRL policy, youth in a jurisdiction satisfying these criteria were less likely to smoke in high school. In a prospective follow-up of the cohort, the odds of initiation of e-cigarette use, with or without past 30-day use, and of initiation of cigarette use were also lower in well-regulated jurisdictions. Stronger associations among participants still living in their jurisdiction of origin at follow-up evaluation, with consistent exposure to the same regulatory environment throughout, also suggest that the benefits of good TRL policy extended both beyond cigarette use to e-cigarette use and into early adult life at age 18 when the sale of tobacco products was legal at the time of the study. The protective associations were large, with risk lower by one-third to a half in the strong compared with weak TRL jurisdictions (depending on the outcome).

There has been uncertainty regarding the effects of youth access restrictions on cigarette use.^{6,7,16} Some authors of prospective studies in which age-specific prevalence of tobacco use was assessed before and after regulatory intervention to restrict youth access found reductions in cigarette use,^{17–20} but others found no benefit.^{21,22} Authors of 1 review of studies that reported changes in smoking associated with youth access restrictions found no relationship of vendor compliance or of changes in vendor compliance, with smoking prevalence in a meta-analysis of available studies,⁶ perhaps because the restriction of commercial access resulted in a shift to social sources of cigarettes such as older friends or siblings. Authors of other observational studies have

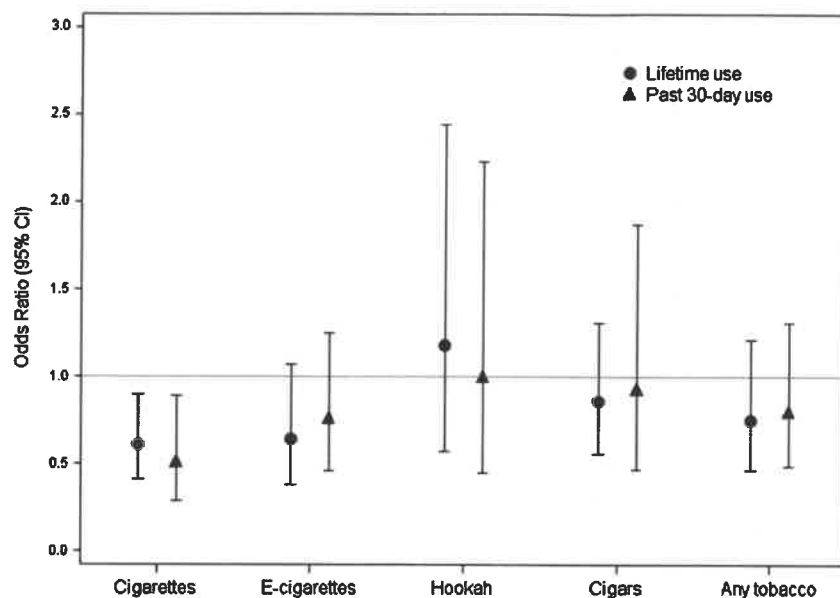


FIGURE 1

Associations of prevalent lifetime and current (last 30-day) use of each tobacco product at baseline with residence in ALA Reduced Tobacco Sales grade A jurisdictions, compared with residence in grade D or F jurisdictions. Models were adjusted for sex, ethnicity, parental education, age at baseline, and for any other tobacco product use at baseline (except for any tobacco product use prevalence, which was compared with never users of any tobacco product) and included a random effect for jurisdiction.

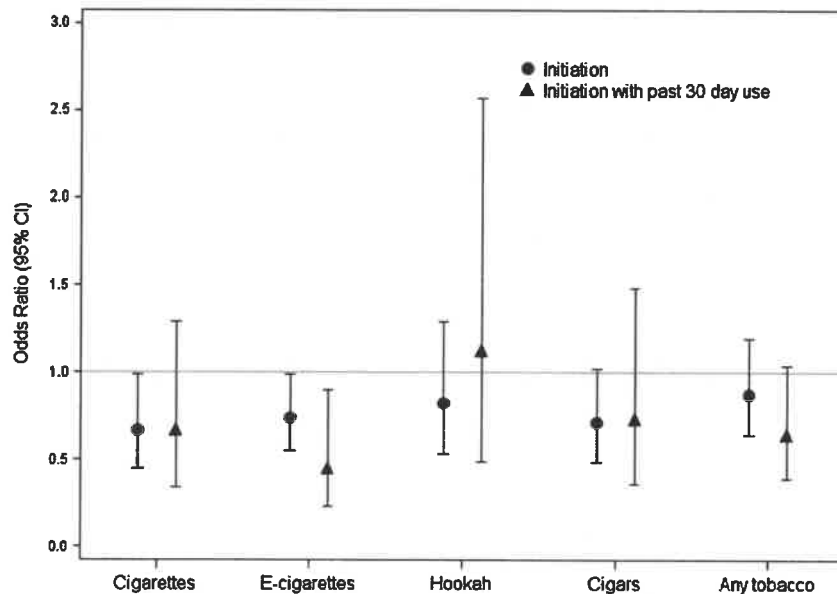


FIGURE 2

Associations of initiation of use of each tobacco product between baseline and follow-up and initiation and current (last 30-day) use, with residence in ALA Reduced Tobacco Sales grade A jurisdictions, compared with residence in grade D or F jurisdictions. Each model was restricted to nonusers of product at baseline. Models were adjusted for sex, ethnicity, parental education, age at baseline, and for any other tobacco product use at baseline (except for any tobacco product use initiation, which was compared with never users of any tobacco product at either baseline or follow-up) and included a random effect for jurisdiction.

found reduced smoking rates in communities with youth access restrictions, but it was not clear that reduced access mediated the reduction in smoking rates.^{19,23} For example, sustained reductions in adolescent daily smoking rates were observed in Minnesota communities that were randomly assigned to intervention supporting community organizers to develop and promote good TLR ordinances, compared with nonintervention communities.²⁰ However, it was not clear whether the observed reductions in smoking rates were due to youth access restrictions and improved vendor compliance or to other regulatory features resulting from the intervention, such as bans on vending machines and requirements for posted signs reporting age of sale policies, or for storing cigarettes behind the sales counter.¹⁷

Our results are broadly consistent with findings of a comprehensive review in which authors concluded that lower smoking rates occur if local TRL requires yearly compliance checks with effective enforcement.⁷ Our study is 1 of the few that assessed associations of TRL with both prevalence and initiation rates in a prospective assessment of the same participants during an adolescent period of known high incidence of initiation. The prospective cohort design of the study also provided the opportunity to examine the impact of TRL on legal tobacco product use by young adults. The reduced risk of initiation of cigarette and e-cigarette use at follow-up in jurisdictions with better TRL regulation (with effect estimates that were unaffected by adjusting for time since turning 18 at follow-up) suggests that regulation may have lowered initiation rates even after participants reached the age for legal purchase. Although most adult smokers historically first use cigarettes before age 18,¹² in our cohort, rates of initiation of tobacco

product use were substantial, even in well-regulated jurisdictions. For example, in jurisdictions with an A grade, rates of initiation of cigarette and e-cigarette use during the follow-up period were 13.1% and 24.7%, respectively (from Table 1); these high rates of experimentation indicate a need for interventions to reduce initiation in this susceptible age window.

An alternative explanation for the protective effects of better TRL policy is that the associations reflected broadly unfavorable community attitudes toward cigarette use, including other tobacco regulations that affected the use of cigarettes and e-cigarettes to minors. If this were the explanation, we might expect to have seen associations with the other ALA tobacco grades relating to, for example, smoke-free housing, smoke-free outdoor air, or the overall tobacco grade in a jurisdiction. However, protective effects only of the TRL grade were observed.

Lower odds of cigar use initiation associated with better TRL regulation, although not statistically significant, were similar in magnitude to reductions in odds of the initiation of cigarettes and e-cigarettes. However, living in a jurisdiction with stronger regulation was not protective for baseline prevalence or subsequent initiation of hookah use. Sales of hookah paraphernalia often occur in specialty shops and hookah bars where cigarettes may not have been sold²⁴ and therefore may not consistently have been subjected to the same rigorous compliance checks as traditional cigarette vendors. E-cigarettes are commonly sold at locations that also sell cigarettes that would have been subject to TRL regulation, and a state law passed in 2010 made it illegal to sell e-cigarettes to minors.²⁵ However, e-cigarettes are also sold in specialty “vape” shops,²⁶ and at

the time of the study, e-cigarettes were not specifically categorized as a tobacco product.²⁷ Therefore, vape shops were not required by state law to obtain a tobacco vendor license if they were not selling other tobacco products. If strong TRL regulation was responsible for the lower rates of e-cigarette use in A-grade jurisdictions, it is possible that similar TRL requirements for vape shops would have resulted in larger protective effects.

The US Food and Drug Administration (FDA) has contracts with regulators in most states to restrict youth tobacco access and also conducts its own inspections and hires third parties to conduct compliance checks.²⁸ However, the frequency of compliance checks is generally low, because of resource limitations, and penalties for violation of the law vary widely between states. California, for example, which has been a leader in tobacco control, annually inspected, on average, only 7% of tobacco retailers in 2016.^{9,10} If a high rate of compliance checks, accompanied by enforcement, is necessary to reduce youth smoking as our results suggest, then strong local TRL ordinances may be an important option to reduce teen tobacco product use through access restriction.^{10,29,30}

The study has some limitations. The ALA criteria for an A grade covered a relatively broad spectrum of TRL policy relevant to youth access, including larger fees, compliance access, and penalties if vendors violated the law. Identifying the possible effects of specific features of the TRL policy was not possible. A minimum proportion of vendors actually undergoing compliance checks was not specified, and it was not possible to assess the effect of the proportion of vendors visited. In addition, the “deeming rule” that defined e-cigarettes and hookah as tobacco products means that TRL

will be required of all vendors of these products.³¹ The recent increase in the legal age of tobacco product purchase to 21 years in California, passed after data collection for this study was completed, means that the associations of TRL policy with use during the transition to legal age of purchase may no longer be applicable to California. However, the results may broadly be generalizable to local jurisdictions in states with a legal purchase age of 18 years, with the exception of a few states that have prohibited local jurisdictions from enacting more stringent local regulation.³² The increase of poorly regulated e-cigarette Internet vendors, a relatively new way for minors to obtain tobacco products illegally at the time of data collection, may limit the future impact of TRL as a regulatory tool.³³ Future follow-up of this cohort is warranted to determine the persistence of associations with strong youth TRL and to examine longitudinally potential mediating factors, such as social characteristics of neighborhoods and communities and individuals’ changing tobacco social environment over time. There were also other potential confounders or mediators of TRL effects, such as differences in school-level tobacco prevention programs or number of tobacco outlets by jurisdiction, that were not available to study.

CONCLUSIONS

The results suggest that a strong local TRL ordinance that provides adequate resources to fund regular compliance checks and enforcement may result in large reductions in the use of cigarettes and may also result in reduced e-cigarette use. The benefits of these policies may extend into early adult life. The study also suggests that the success of future FDA regulation to reduce youth cigarette and alternative tobacco product access and use, under rules

deeming these products to be subject to FDA regulation,³¹ may depend on the availability of resources for universal annual compliance checks and enforcement targeted to both traditional and alternative tobacco product vendors. Continued monitoring is needed to assess the impact on the effectiveness of TRL

policy within the rapidly evolving tobacco product patterns of use, new national regulation, and poorly regulated Internet sales.

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ABBREVIATIONS

ALA: American Lung Association
CI: confidence interval
e-cigarette: electronic cigarette
FDA: US Food and Drug Administration
OR: odds ratio
TRL: tobacco retail licensing

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2018 NYTS Data: A Startling Rise in Youth E-cigarette Use

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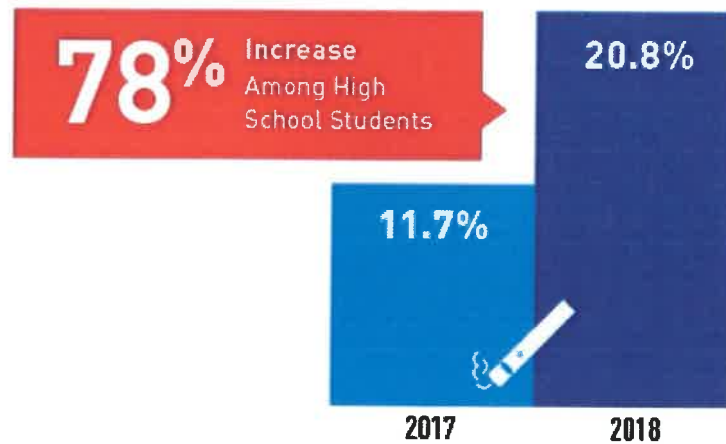


2018 NATIONAL YOUTH TOBACCO SURVEY FINDS CAUSE FOR CONCERN

According to 2018 National Youth Tobacco Survey (NYTS) (https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_w) data, current e-cigarette use—or “vaping”—among middle and high school students increased alarmingly between 2017 and 2018, with over 3.6 million kids currently using e-cigarettes in 2018. Each year, the NYTS—a nationally representative survey funded by FDA and CDC—sheds light on the latest rates of tobacco use among both middle and high school students. In recent years, e-cigarettes have become the most commonly used tobacco product by U.S. teens; however, rates of use generally declined between 2015 and 2017. Unfortunately, the 2018 NYTS data show a sharp and startling reversal of overall declines in youth tobacco use from previous years.¹

E-cigarette Use among High School Students

SURGE IN YOUTH CURRENT E-CIGARETTE USE



From 2017 to 2018, current e-cigarette use—defined by use on at least one day in the past 30 days—by high school students increased 78 percent, from 11.7 to 20.8 percent, accounting for a troubling 3.05 million American high school students using e-cigarettes in 2018. In addition, the proportion of current e-cigarette users in high school who reported use on 20 days or more in the past 30-day period increased from 20 percent to 27.7 percent between 2017 and 2018.¹

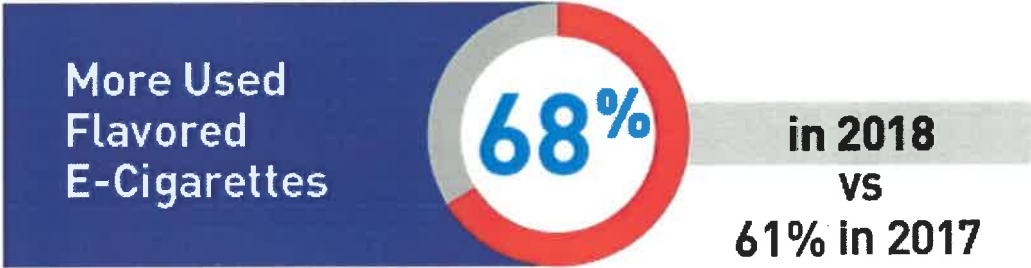
Flavors: A Reason for Use

During the one-year period between 2017 and 2018, among high school students who currently used e-cigarettes, use of flavored e-cigarettes increased as well. Use of any flavored e-cigarette went up among current users from 60.9 percent to 67.8 percent, and menthol use increased from 42.3 percent to 51.2 percent among all current e-cigarette users—including those using multiple products—and from 21.4 percent to 38.1 percent among exclusive e-cigarette users.

Flavors in tobacco products are problematic, as they can be very appealing to youth, and are frequently listed as one of the top three reasons this population uses e-cigarettes.^{2,3}

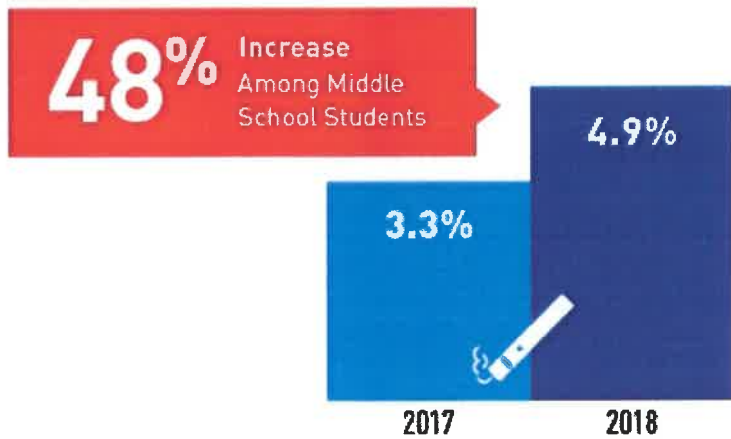
Additionally, kids whose first tobacco product was flavored are more likely to become current tobacco users than those whose first product was tobacco-flavored.⁴

AMONG HIGH SCHOOL CURRENT E-CIGARETTE USERS — Rise in Use of Flavors



E-cigarette Use Among Middle School Students

SURGE IN YOUTH CURRENT E-CIGARETTE USE



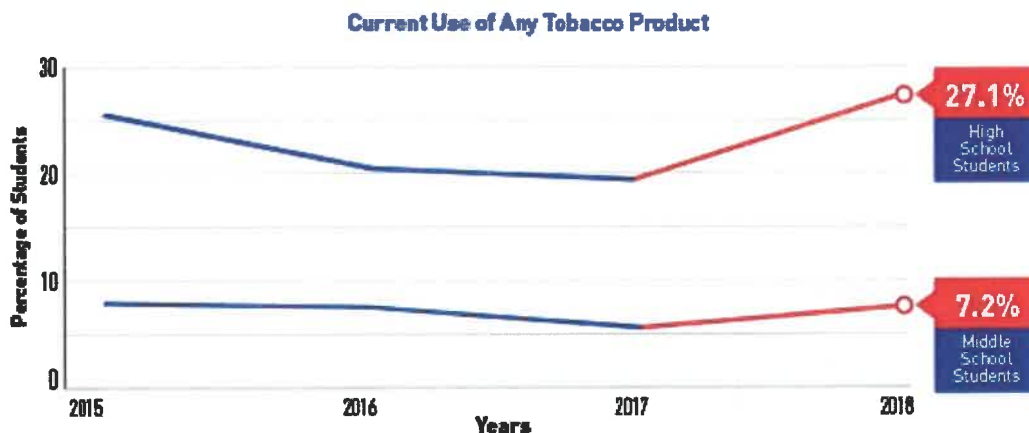
E-cigarette use among middle school students is also on the rise, jumping 48 percent from 2017 to 2018. Today, a total of 4.9 percent of middle school students—or 570,000 kids—are current e-cigarette users.¹

What caused this sharp increase in use?

NYTS study authors hypothesize the last year's increase in e-cigarette use among youth could be attributable to use of USB-flash-drive-like e-cigarettes, including JUUL, which have garnered popularity among youth. These products have high nicotine content; appealing flavors; and the ability to be easily concealed and used discreetly.

Reasons for Concern

E-CIGARETTE USE SURGE LED TO UPTICK IN OVERALL TOBACCO USE — Reversing Previous Declines



The significant rise in e-cigarette use among both student populations has resulted in overall tobacco product use increases of 38 percent among high school students and 29 percent among middle school students between 2017 and 2018, negating declines seen in the previous few years.¹

This is a cause for concern because tobacco use is the leading cause of preventable disease and death in the United States and because nearly all tobacco products contain nicotine. As adolescent brains are still developing, nicotine exposure during youth and young adulthood can

change the way the brain works, leading to a lifetime of addiction and, in some cases, causing long-lasting effects such as increased impulsivity and mood disorders.⁵ Studies also find teens who use e-cigarettes have an increased risk of trying combustible cigarettes.⁶

While completely switching from combustible cigarettes to e-cigarettes may potentially benefit addicted adult smokers' health,⁶ no tobacco product—including e-cigarettes—is safe for youth to use.

FDA is committed to protecting future generations by preventing youth access to tobacco products, curbing marketing of tobacco products aimed at youth, and educating teens about the dangers of using any tobacco product, including e-cigarettes, as well as educating retailers about their key role in protecting youth. Learn more: FDA's Youth Tobacco Prevention Plan (/tobacco-products/youth-and-tobacco/fdas-youth-tobacco-prevention-plan).

Additional Resources

- Youth Tobacco Use: Results from the National Youth Tobacco Survey (/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey)
- Statement from FDA Commissioner Scott Gottlieb, M.D., on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use (/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco)
- Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018 (<https://www.cdc.gov/vitalsigns/youth-tobacco-use/>)
- CDC Press Release: Results from 2018 National Youth Tobacco Survey show dramatic increase in e-cigarette use among youth over past year (<https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>)
- CDC MMWR: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018 (https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_w)
- National Youth Tobacco Survey (https://www.cdc.gov/tobacco/data_statistics/surveys/nyts/index.htm)
- Information on regulation of e-cigarettes and other ENDS (/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends)
- FDA's Youth Tobacco Prevention Plan (/tobacco-products/youth-and-tobacco/fdas-youth-tobacco-prevention-plan)

- FDA's "The Real Cost" Youth E-Cigarette Prevention Campaign (/tobacco-products/public-health-education/real-cost-campaign)

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Youth Tobacco Use: Results from the National Youth Tobacco Survey

On this page:

- [2019 E-Cigarette Data](#)
- [Understanding Why Students Use E-Cigarettes](#)
- [Goals of NYTS](#)

2019 E-Cigarette Data

FDA and CDC released findings from the 2019 National Youth Tobacco Survey. The results show disturbing rates of e-cigarette use among both middle and high school students in 2019, with more than 5 million youth reporting having used e-cigarettes in the past 30 days and nearly one million reporting daily use. While cigarette smoking is at an all-time low among high school students, increases in e-cigarette use have reversed progress made in the decline of overall youth tobacco use.



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2019 NATIONAL YOUTH TOBACCO SURVEY

SHOWS

YOUTH e-cigarette use at ALARMING LEVELS

OVER 5 Million youth are currently using e-cigarettes



NEARLY 1 Million used the product daily

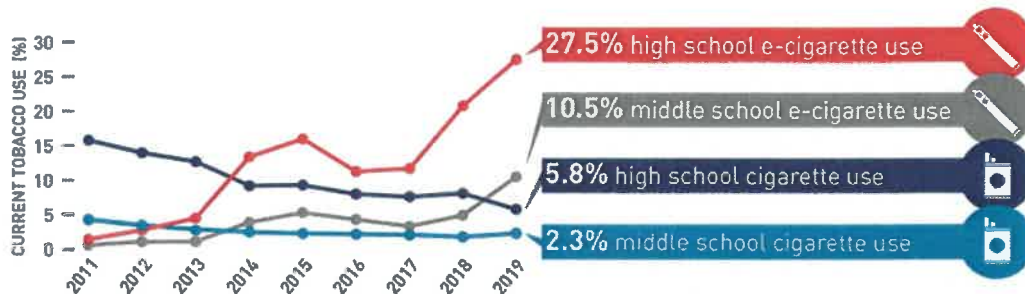


ABOUT 1.6 MILLION youth used the product frequently (on 20 or more days per month)

MAJORITY of the current e-cigarette users reported



Current e-cigarette use has **INCREASED DRAMATICALLY**, while current cigarette use has dropped, **UNDERMINING PROGRESS** toward reducing overall tobacco use



Why is this concerning?

The use of e-cigarettes, particularly those with high levels of nicotine, places youth at risk for developing nicotine addiction. Nicotine exposure during adolescence could harm brain development. Additionally, youth who use e-cigarettes are more likely to start smoking cigarettes. Further, e-cigarette aerosol may expose users to other harmful substances such as heavy metals, volatile organic compounds, and ultrafine particles that could harm the lungs.



Read the full reports:

- e-Cigarette Use Among Youth in the United States, 2019 (<https://jamanetwork.com/journals/jama/fullarticle/2755265>) [Ⓔ](http://www.fda.gov/about-fda/website-policies/website-disclaimer)
- Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018 (<https://www.cdc.gov/vitalsigns/youth-tobacco-use/>)

Learn about the Youth Tobacco Prevention Plan (</tobacco-products/youth-and-tobacco/fdas-youth-tobacco-prevention-plan>) and FDA's ongoing strategies to reduce youth access and use of e-cigarettes.

Understanding Why Students Use E-Cigarettes

CDC and FDA analyzed data from NYTS 2016 to assess reasons youth use e-cigarettes. Among those who had ever used an e-cigarette, the most commonly selected reasons for use were:

- Use by "friend or family member" (39.0%)
- Availability of "flavors such as mint, candy, fruit, or chocolate" (31.0%)
- The belief that "they are less harmful than other forms of tobacco such as cigarettes" (17.1%)

Read the full report: [Reasons for Electronic Cigarette Use Among Middle and High School Students—National Youth Tobacco Survey, United States, 2016](https://www.cdc.gov/mmwr/volumes/67/wr/mm6706a5.htm) (<https://www.cdc.gov/mmwr/volumes/67/wr/mm6706a5.htm>)

Goals of NYTS

FDA is committed to a science-based approach that addresses public health issues associated with tobacco use. We collaborate with CDC on this nationally representative survey of middle and high school students that focuses exclusively on tobacco use. NYTS was designed to provide national data on long-term, intermediate, and short-term indicators key to the design, implementation, and evaluation of comprehensive tobacco prevention and control programs.

Additional Resources

- Statement from FDA Commissioner Scott Gottlieb, M.D., on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use (</news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco>)
- Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018 (<https://www.cdc.gov/vitalsigns/youth-tobacco-use/>)
- CDC Press Release: Results from 2018 National Youth Tobacco Survey show dramatic increase in e-cigarette use among youth over past year (<https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>)
- MMWR: Tobacco Use Among Middle and High School Students—United States, 2011–2017 (https://www.cdc.gov/mmwr/volumes/67/wr/mm6722a3.htm?s_cid=mm6722a3_w)
- Press Release: Results from 2018 National Youth Tobacco Survey show dramatic increase in e-cigarette use among youth over past year (</news-events/press-announcements/results-2018-national-youth-tobacco-survey-show-dramatic-increase-e-cigarette-use-among-youth-over>)
- 2018 NYTS Data: A Startling Rise in Youth E-Cigarette Use (</tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>)
- 2018 NYTS Infographic (<https://wayback.archive-it.org/7993/20191001050352/https://www.fda.gov/media/120063/download>) [Ⓔ](http://www.fda.gov/about-fda/website-policies/website-disclaimer)
- 2017 NYTS Infographic (<http://wayback.archive-it.org/7993/20180725114323/https://www.fda.gov/downloads/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/UCM5698>)

[↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>)

- 2016 NYTS Infographic (<http://wayback.archive-it.org/7993/20171101140702/https://www.fda.gov/downloads/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/UCM56988>)
[↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>)
- 2015 NYTS Infographic (<http://wayback.archive-it.org/7993/20170112124853/http://www.fda.gov/downloads/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/UCM44304>)
[↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>)
- MMWR: Reasons for Electronic Cigarette Use Among Middle and High School Students – National Youth Tobacco Survey, United States, 2016 (<https://www.cdc.gov/mmwr/volumes/67/wr/mm6706a5.htm>)
- CDC Historical NYTS Data and Documentation (https://www.cdc.gov/tobacco/data_statistics/surveys/nyts/index.htm)
- National Youth Tobacco Survey at CDC (http://www.cdc.gov/TOBACCO/data_statistics/surveys/NYTS/index.htm)
- Informing Tobacco Regulation through Research (</tobacco-products/about-center-tobacco-products-ctp/informing-tobacco-regulation-through-research>)

States and Tribes Stepping in to Protect Communities from the Dangers of E-cigarettes: Actions and Options (2020)

Updated February 25, 2020

In the wake of recent alarming reports of vaping-related lung injuries, resulting in at least [68 confirmed deaths in the U.S.](#), the nation's public health community and government authorities have reacted with concern and a variety of measures.

Given that this crisis coincides with an [unprecedented increase](#) in youth e-cigarette use in the United States and a recent [declaration](#) by the Surgeon General that youth use of e-cigarettes has become an "epidemic," states and Tribes are stepping in to protect the health of youth and the broader community against e-cigarettes. A recent [report](#) found that a majority of youth who use e-cigarettes prefer flavored products. Some of the many [risks](#) of youth e-cigarette use include harm to brain development and increased likelihood of addiction. In recent months, various states and Tribes have taken bold action, primarily against flavored products, to protect youth against the harms of e-cigarettes.

State Action

California

On September 16, 2019, Governor Gavin Newsom issued an [executive order](#) to address the youth e-cigarette epidemic in California. Among other directives in the executive order, Governor Newsom ordered the Department of Public Health to initiate a \$20 million digital and social media campaign to educate California's youth and parents about the dangers of vaping as well as to develop recommendations to decrease youth access to vaping devices.

Most recently, on February 3, 2020, the California Bureau of Cannabis Control [announced](#) that it submitted [proposed emergency cannabis regulations](#) to, among other measures, require cannabis businesses to post their Quick Response Codes in storefront windows so that customers can verify the license status of these businesses to ensure their products, including those used for vaping, are regularly tested.

Massachusetts

On September 24, 2019, Massachusetts Governor Charlie Baker [declared](#) a public health emergency in response to a suspected link between the use of e-cigarette and marijuana vaping products and severe lung disease in the state. As part of the declaration, Governor Baker called for a ban on the sale of all flavored and non-flavored vaping products and devices, including tobacco and marijuana. In accordance with the public health emergency declaration, the state's Commissioner of the Department of Public Health issued an [order](#) to implement the ban.

In the course of litigation against the ban, the state was required to file emergency regulations in place of the order. The [regulations](#) were filed on October 28, 2019 and went into effect upon filing. These emergency regulations banned the broadest range of products by a state to date and were intended to last for three months. On November 5, 2019, a judge ruled that enforcement of Massachusetts' vaping ban could not include medical-use marijuana vaping products unless the state's Cannabis Control Commission decided to continue that enforcement. In response, the Commission issued a [quarantine order](#) which applied to all marijuana vaping products other than medical-use marijuana flower vaporizers.

Most recently, on December 11, 2019, the Massachusetts Public Health Council rescinded the emergency regulations and approved [new regulations](#) related to the sale of vaping products, which include a prohibition on [online sales](#) of flavored vaping products. On December 12, 2019, the Cannabis Control Commission [amended its quarantine order](#) to once again allow certain marijuana vaping products on the market, including, but not limited to, those manufactured after December 12, 2019 that meet new testing and labeling mandates. These acts follow new Massachusetts legislation [signed into law](#) by Governor Charlie Baker on November 27, 2019 that will restrict the sale of flavored tobacco products, including menthol cigarettes, among other measures.

Michigan

On September 4, 2019, Governor Gretchen Whitmer [ordered](#) the Michigan Department of Health and Human Services to issue emergency rules to ban the sale of flavored tobacco vaping products, including menthol, in retail stores and online after her Chief Medical Executive found that youth vaping constitutes a public health emergency. On September 18, 2019, the state's [final emergency rules](#) were filed. The ban was to remain in effect for six months with the potential for an extension of up to six more months. However, the ban is not currently in effect because a judge blocked it in the course of ongoing litigation on October 15, 2019.

On November 22, 2019, Michigan's Marijuana Regulatory Agency issued [emergency rules](#) requiring labeling of inactive ingredients in marijuana vaping products and prohibiting the addition of those ingredients unless approved by the FDA for inhalation. Additionally, as of November 22, 2019, marijuana product retailer licensees may only continue selling marijuana vaping products under [certain conditions](#).

Missouri

On October 15, 2019, Missouri Governor Mike Parson signed an [executive order](#) regarding youth vaping in the state. The order directed the Department of Health and Senior Services, the Department of Elementary and Secondary Education, and the Department of Public Safety to collaborate in developing a statewide campaign by November 14, 2019 to educate and prevent youth from using vaping products.

Montana

On October 8, 2019, Montana joined the states taking emergency action in response to the youth e-cigarette epidemic and outbreak of vaping-related lung injuries and deaths. Governor Steve Bullock [directed](#) the state's Department of Public Health and Human Services to use its authority to enact emergency rules to prohibit the sale of flavored e-cigarettes, including flavored nicotine, THC, and CBD vaping products, both in stores and online. On October 22, 2019, the [emergency rules](#) were scheduled to go into effect and to last for 120 days. The ban did not go into effect, however, as it was temporarily blocked by a judge on October 18, 2019. Most recently, on December 17, 2019, a judge ruled that the ban

could go into effect and the state's Department of Public Health and Human Services commenced enforcement the following day, with the intent to continue enforcement for 120 days.

New York

On September 17, 2019, New York State [implemented a ban](#) on flavored e-cigarettes, excluding menthol, after Governor Andrew Cuomo directed the Public Health and Health Planning Council to vote on [emergency regulations](#). Earlier in the week, on September 15, 2019, Governor Cuomo also directed State Police and the Department of Health to collaborate on enforcement efforts to decrease sales of e-cigarettes to youth. On September 26, 2019, Governor Cuomo [announced](#) that the flavored e-cigarette ban would be updated to include menthol upon recommendation of the New York State Health Commissioner. Enforcement of the ban would have gone into effect on October 4, 2019 but was put on hold by an appellate court the day prior as part of ongoing litigation. On December 12, 2019, the Public Health and Health Planning Council voted to extend the ban for 90 days although it is not currently in effect due to pending litigation.

Oregon

On October 4, 2019, Oregon Governor Kate Brown issued an [executive order](#) to address the vaping-related public health crisis in the state. The order directed the Oregon Health Authority and the Oregon Liquor Control Commission to use their emergency rulemaking authority to adopt rules banning all flavored vaping products, including tobacco and marijuana. These agencies were also directed to develop various legislative proposals, as well as to develop plans within 90 days regarding consumer warnings, ingredient disclosure, and testing, among other areas. Additionally, the order created a Vaping Public Health Workgroup to collect and analyze information and advise the Governor and state agencies regarding the state's vaping public health crisis.

The Oregon Health Authority's [temporary rules](#), as well as the Oregon Liquor Control Commission's [rules](#), were filed on October 11, 2019 with an effective date of October 15, 2019. However, the Oregon Court of Appeals granted a temporary stay on October 17, 2019 to block enforcement of the Oregon Health Authority's rules and also granted a stay on November 14, 2019 to block enforcement of both agency's rules. As a result, the Oregon Health Authority [suspended](#) its temporary rule on January 16, 2020.

Rhode Island

On September 25, 2019, Rhode Island Governor Gina Raimondo issued an [executive order](#) to combat youth e-cigarette use in the state. The order directed state agencies to implement a variety of measures, including instructing the state's Department of Health to create emergency regulations banning the sale of flavored e-cigarettes. The [emergency health regulations](#) were promulgated on October 4, 2019 and ban the sale of flavored vaping products, including menthol; there are exemptions in the regulations for compassion centers and licensed cultivators. The emergency regulations will be in effect for 120 days, with the possibility of an extension for 60 days.

Utah

On October 2, 2019, Utah's Department of Health filed an [emergency rule](#) in response to vaping-related lung injury cases in the state. By October 7, 2019, general tobacco retailers and retail tobacco specialty businesses were to display a mandatory warning sign regarding unregulated THC vaping substances in

order to sell e-cigarette products. Additionally, by the same date, general tobacco retailers were to stop selling flavored vaping products, including menthol, although issuance of citations would be delayed until October 21, 2019. On October 28, 2019, a judge issued a temporary order blocking future enforcement of the rule prohibiting the sale of flavored vaping products. However, the rule mandating display of a warning sign remained in effect. On November 7, 2019, the Utah Department of Health agreed not to move forward with the emergency flavored vaping product ban.

Washington

On September 27, 2019, Washington became the fifth state to move towards banning certain vaping products. Washington Governor Jay Inslee issued an [executive order](#) directing the state's Board of Health to ban all flavored vaping products, including flavored THC vapor products, through emergency rulemaking at its October 9 meeting. The order also instructed the state's Department of Health and Liquor and Cannabis Board to take action related to consumer warnings and ingredient disclosure. The [emergency rules](#) by the Board of Health were filed and went into effect on October 10, 2019. On October 16, 2019, the [emergency rules](#) by the Liquor and Cannabis Board were filed and went into effect.

On November 18, 2019, the Washington State Board of Health voted to amend its emergency rules to include a prohibition on the sale and distribution of vapor products that contain vitamin E acetate after the CDC [identified](#) it as a chemical of concern among people with vaping-related lung injuries. This prohibition on vitamin E acetate-containing vapor products became effective upon filing on November 20, 2019 and will last for 120 days.

Options for Other States Contemplating Temporary or Emergency Action

Apart from state legislative activity, state options to combat the youth e-cigarette epidemic and vaping-related lung injury outbreak depend on available authority under state law. Potential sources of authority to take state action against vaping products include:

- Gubernatorial authority in times of disaster or emergency
- State agency authority to use emergency rulemaking
- Injunctive relief

Summary of Current Litigation Challenges to State Action

At least one lawsuit has been filed in each state that took steps to enact an emergency ban on certain vaping products. These lawsuits challenge the bans by asserting various claims, including violations of the commerce clause, contract clause and First Amendment, as well as regulatory taking, federal preemption, ultra vires action, and improper emergency rulemaking procedure. Courts have granted temporary restraining orders or preliminary injunctions in New York, Michigan, Montana, Oregon and Utah to at least temporarily block enforcement of emergency bans in those states. Currently, the temporary vaping product bans in Montana, Rhode Island, and Washington are in effect, although they face pending legal challenges.

Tribal Action

Iipay Nation of Santa Ysabel

On September 12, 2019, the Lipay Nation of Santa Ysabel **announced** that it was temporarily suspending the sales of all cannabis-containing vaping products at a dispensary on Tribal lands in light of the recent outbreak of vaping-related lung injuries and deaths.

Lac Courte Oreilles Tribe

On October 7, 2019, the Lac Courte Oreilles Tribal Governing Board voted unanimously to **ban** vaping product sales in all tribal retail outlets and use of vaping products on all Tribal property. Unlike emergency state action in response to the vaping crisis, this ban is permanent.

Muckleshoot Tribe

On November 5, 2019, the Muckleshoot Tribal Council banned the sale of flavored vaping products. Additionally, it decided to restrict sales of tobacco products, including vaping products, to those who are 21 or older. Unlike recent temporary state action to address the vaping health crisis, this vaping product ban is permanent.

Oglala Sioux Tribe

On September 24, 2019, the Oglala Sioux Tribal Council passed an **ordinance** to ban all electronic smoking devices on the Pine Ridge Reservation. The ban took effect immediately but prosecution for violations was delayed for 30 days after enactment. Unlike the temporary state action taken recently in response to the outbreak of vaping-related lung injuries and increase in youth e-cigarette use, the ban enacted by the Oglala Sioux Tribe is permanent.

Puyallup Tribe

On October 11, 2019, the Puyallup Tribal Council instituted a ban on the sale of flavored vaping products, including both tobacco and marijuana, that will last for 100 days. The ban went into effect for flavored marijuana vaping products on October 11, 2019 and for flavored tobacco vaping products on November 1, 2019.

Saint Regis Mohawk Tribe

On December 6, 2019, the Saint Regis Mohawk Tribal Council signed a resolution to address the vaping epidemic among youth. The resolution prohibits the sale and distribution of all flavored vaping products and also increases the minimum purchase age for vaping products to 21. These restrictions went into effect on January 1, 2020 and are permanent.

Turtle Mountain Band of Chippewa Tribe

It was **reported** that the Turtle Mountain Band of Chippewa Tribe also decided to ban the sale of all vaping products on Tribal land; use of vaping products will remain lawful on the reservation. The ban went into effect at the end of October 2019 and places a permanent restriction on vaping product sales.

Federal Action

On September 11, 2019, the White House **announced** that the federal government planned to act to ban flavored e-cigarettes, including menthol-flavored products. Specifically, the U.S. Food and Drug

Administration planned to develop guidelines to remove all e-cigarette flavors, aside from tobacco flavor, from the market. Subsequent [reports](#) stated that the White House was reconsidering a ban that would include mint and menthol vaping products. The media then [reported](#) that the White House had retreated from plans to act to ban flavored vaping products.

However, federal officials [announced](#) a policy banning certain flavored vaping products on January 2, 2020. The ban will prohibit the sale of flavored e-cigarette cartridges, other than menthol and tobacco flavors, but will allow for the continued sale of flavored liquid nicotine sold in open tank systems.

Corporate Action

Some companies have taken action to pull vaping products off their shelves in light of the recent vaping health crisis. Kroger, Walgreens, and Walmart, for instance, recently decided to discontinue the sale of e-cigarettes, while Rite Aid stopped selling e-cigarettes in April 2019. Apple announced on November 15, 2019 that it will ban vaping apps from its App Store.

Additional Considerations

Although a ban on flavored e-cigarettes is a step in the right direction to protect the health of youth, there can be unintended consequences unless other flavored tobacco products are also prohibited. For instance, any flavored e-cigarette ban that does not include menthol increases the risk that youth users will simply switch from banned e-cigarette flavors to menthol, if not already using a mint or menthol flavor like many youth do. Also, a ban on flavored e-cigarettes, even one including menthol, could push nicotine-addicted youth to transition to menthol-flavored combustible cigarettes or flavored cigarillos or cigars, which are legally sold in most communities.

Finally, temporary state action to address the harms of youth e-cigarette use is not a substitute for bold, comprehensive, and permanent local and state policy. And as the above litigation summary highlights, temporary or emergency state action to address the vaping health crisis has been universally challenged and complicated by litigation.

The Public Health Law Center is available to provide free legal technical assistance to explore and analyze both potential short- and long-term solutions to the youth e-cigarette epidemic to interested communities throughout the United States.

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CORONAVIRUS IN MD

Maryland Comptroller Announces Prohibition On Sales Of Disposable Flavored E-Cigarettes, First In US

By [Rachel Menloff](#) February 10, 2020 at 10:46 pm Filed Under: [Baltimore](#), [Baltimore News](#), [E-Cigarettes](#), [Health](#), [Local TV](#), [Maryland](#), [Maryland News](#), [Talkers](#)




ANNAPOLIS (WJZ) — Maryland Comptroller Peter Franchot said he’s doubling down on flavored electronic smoking devices widely popular among kids by taking a first-in-the-nation approach to prohibiting the sale of certain Electronic Smoking Devices.

The U.S. Food and Drug Administration rolled out its new ban on favored cartridge-based e-cigarettes, but Franchot said the move is not enough. That’s why he said he’s going a step further by also banning disposable flavored e-cigarettes which aren’t included under the FDA ban.

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"With these enforcement actions, Maryland is the first state in the country, that we are aware of, to go beyond the new FDA regulations to more aggressively combat the epidemic of underage use of electronic smoking devices," Franchot said Monday.

The comptroller said according to state law, officials have statutory authority since the FDA has said that all electronic smoking devices are illegally marketed as sold.

"We are taking these actions because the FDA fell short in their responsibility," he said.

The comptroller had created the "e-facts Task Force on Electronic Smoking Devices" to learn more about the industry and see what action should be taken.

The task force has met three times, according to the comptroller.

It will hold its final session on February 17 to discuss recommendations.

There are anywhere from 7,000 and 8,000 retailers in the state who would otherwise sell the products. Franchot's office is now training state inspectors who will be keeping an eye out for the devices.

"We've already been in touch with wholesalers to let them know that this product is no longer authorized here," field enforcement director Jeff Kelly said. "We'll go back to wholesalers. We'll be at the retailers and we'll be looking for this product."

When asked whether he's worried about legal pushback from tobacco companies, Franchot said in part the companies have enough money and attorneys to fight back.

Comments

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Policy Provisions for a Tobacco Retailer License

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. ChangeLab Solutions' *Comprehensive Tobacco Retailer Licensing Ordinance* (TRL model ordinance) contains the basic elements for an effective licensing ordinance that can be used to enforce federal, state, and local tobacco control laws. Communities can supplement the TRL model ordinance with additional policy options (also called *plug-ins*) to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative impact of tobacco use on public health, and advance health equity.

This fact sheet describes several additional policy options. The TRL model ordinance and plug-ins are available at www.changelabsolutions.org/publications/model-TRL-Ordinance. If you would like help in adapting any of these models for your community, please contact us at www.changelabsolutions.org/tobaccoquestions.

Restrictions on Eligibility for a License

A local tobacco retailer licensing ordinance allows a community to exercise better control over where tobacco products are sold. Tobacco retailer density tends to be higher in communities that experience structural inequities. Limiting where tobacco is sold can reduce youth consumption and help to combat tobacco-related health disparities.

Tobacco-free pharmacies

This policy option prohibits businesses that contain pharmacies from obtaining a tobacco retailer license. The sale of tobacco products at stores containing pharmacies may convey a mixed message to consumers, who often rely on these businesses for health-related services. Because stores containing pharmacies frequently provide health-related information to the public, communities may be concerned that the sale of tobacco at these stores conveys a tacit approval of these products to the public. Further, stores containing pharmacies often stock tobacco products near cessation aids, compromising the efforts of smokers who are trying to quit.

No licenses near schools

This policy option prohibits a license for a business operating too close to a school. Children are more likely to experiment with tobacco products when tobacco retailers are located near schools. In addition, tobacco manufacturers aggressively target advertisements for menthol cigarettes near California high schools with higher proportions of Black students. Communities can use this eligibility restriction in combination with a restriction on licenses near other youth-populated areas to establish tobacco-free zones surrounding schools and other areas frequented by youth and young adults.

No licenses near other youth-populated areas

This policy option prohibits tobacco retailer licensing for businesses located close to areas frequented by youth such as playgrounds, libraries, child care centers, and parks that are open to the public. Restricting tobacco sales within a certain distance from areas where youth often gather may help reduce both youth and adult smoking rates.

Nearly 200 California cities and counties have adopted TRL ordinances. More than 100 of these ordinances meet criteria established by the American Lung Association in California's Center for Tobacco Policy and Organizing and include effective provisions related to eligibility, fees, and enforcement.

For more information on strong tobacco retailer licensing laws and the communities that have adopted them, see center4tobaccopoly.org/tobacco-policy/tobacco-retail-environment.



Several communities have prohibited businesses that contain pharmacies from obtaining tobacco retailer licenses because these businesses provide health-related services to the public. For more information on prohibiting tobacco product sales in pharmacies, see www.changelabsolutions.org/infographic/tobacco-free-pharmacies.

New tobacco retailers must be a specified distance from current retailers

To prevent the concentration of tobacco retailers within particular neighborhoods, this policy option restricts how close tobacco retailers may be to one another. The number of tobacco retailers in a neighborhood affects youth smoking behaviors and youth access to tobacco products. Additionally, tobacco retailer density is greater in communities with low incomes and high proportions of residents who identify as African American or Hispanic, which perpetuates disparities in tobacco use and associated negative health effects.

No licenses near cannabis retailers

This policy option prohibits tobacco retailer licensing for businesses located near cannabis retailers. Research has found that cannabis dispensaries are disproportionately concentrated in communities of color and areas with large numbers of young adults. Regulating the proximity of tobacco retailers to cannabis retailers is one way to combat the overconcentration of these businesses in underserved communities.

Number of available licenses is limited based on population

This policy option caps the total number of tobacco retailer licenses that can be issued in a city or county based on population. While state law limits the number of alcohol licenses that can be issued in a particular area, there is no similar cap on tobacco retailer licenses. Communities can also apply this approach at a more granular level by setting license caps for each administrative subdivision (eg, San Francisco's caps on licenses within each supervisor district). Communities may be concerned about the number of tobacco retailers in their city or county because greater tobacco retailer density may lead to higher smoking rates. This policy option provides one tool that a community can use to restrict the total number of tobacco retailer licenses that may be issued.

No license for restaurants or bars

This policy option prohibits restaurants, bars, and other businesses that offer food or alcohol for on-site consumption from obtaining a tobacco retailer license. Communities may want to place restrictions on restaurants because non-traditional retailers such as restaurants illegally sell tobacco products to minors at higher rates than other retailers. Communities may want to prohibit tobacco sales at bars because young adult bar patrons already have particularly high smoking rates.

No license for businesses that allow smoking

This policy option prohibits a business from obtaining a tobacco retailer license if the business allows smoking anywhere on the premises. Although state law prohibits smoking in most businesses, smoking is still permitted in tobacco shops, private smokers lounges, and unenclosed outdoor areas, such as bar patios. One purpose of this policy option is to separate places where smoking is permitted from places where tobacco is sold to minimize impulsive tobacco use, such as social smoking at bars.

Additional Requirements for Retailers

A local tobacco retailer licensing ordinance provides an effective tool to enforce a wide range of laws related to the sale and use of tobacco products. The following policy options allow communities to address public health concerns related to tobacco sales and use in communities most often targeted by the tobacco industry.

Minimum pack size for little cigars and cigars

This policy option limits the sale of cigars sold individually and in small packages. These products are particularly appealing to youth due to their low prices, with some cigars selling for less than 70 cents apiece. Though little cigars and cigarillos are often similar to cigarettes, they are not covered by the federal and state laws that prohibit retailers from selling cigarettes individually or in small quantities. In 2014, nearly two-thirds of US middle school and high school cigar smokers reported using flavored cigars. One option



Communities can use tobacco retailer licensing to prohibit the redemption of coupons and discounts that make tobacco products more affordable for youth.



A variety of cigars, little cigars, and cigarillos are packaged for single sale and sold for less than a dollar each. As part of tobacco retailer licensing, communities can prohibit the sale of cigars sold individually or in small packages.

for reducing youth access to inexpensive cigars is to prohibit the sale of individual cigars and to establish a minimum pack size for these products. For more information on this policy option, see our fact sheet, available at www.changelabsolutions.org/publications/limiting-teen-friendly-cigars.

Minimum price for tobacco products

This policy option allows communities to establish minimum prices for tobacco products, such as a pack of cigarettes or little cigars. A price floor raises the cost barrier for tobacco sales and can be especially effective in deterring youth tobacco use. Like excise taxes, minimum pricing presents additional equity concerns because it's a regressive measure. However, preliminary evidence suggests that establishing a minimum price for tobacco products is a promising strategy to reduce tobacco use and tobacco-related health disparities. Setting a minimum price for some products, such as electronic smoking devices, requires more careful deliberation due to the way these products are packaged and sold. Communities interested in setting minimum prices for products other than cigarettes and cigars should contact ChangeLab Solutions for assistance.

No redemption of discounts, coupons, and promotions

This policy option prohibits retailers from honoring discounts, coupons, and promotions for tobacco products. Tobacco companies target youth and underserved communities with price discounts and coupons, so this policy option can be an effective way to combat health equity issues associated with tobacco use.

No sales of flavored tobacco products, including menthol cigarettes

This policy option prohibits licensed retailers from selling all flavored tobacco products, including menthols and flavored alternative tobacco products such as electronic smoking devices. Flavored tobacco products are considered starter products that help establish long-term tobacco use. Additionally, marketing for these products targets youth, communities of color, and LGBTQ communities.

No drug paraphernalia sales

This policy option gives communities an additional tool to combat sales of drug paraphernalia. Under this provision, if a retailer is found to have violated state laws regarding drug paraphernalia or controlled substances, that retailer will also be in violation of the tobacco retailer license, and the penalties of the licensing ordinance will apply. For more information on this policy option, see our fact sheet, available at www.changelabsolutions.org/publications/drug-paraphernalia.

Signage requirements

ChangeLab Solutions' *Model California Ordinance for Reducing Storefront Window Signage* prohibits tobacco retailers from covering more than 15% of their windows with signs. The percentage can be adjusted to fit the needs of the community. This strategy is similar to California's Lee Law, which is intended to promote public safety in liquor stores by restricting the amount of advertising that retailers can display on their windows.

Enforcement Options

The TRL model ordinance contains mandatory penalties for violating the licensing provisions. This policy option provides additional enforcement options.

Alternatives to license suspension

The TRL model ordinance mandates suspension of a license if a retailer violates the ordinance. However, in some circumstances, a local jurisdiction may want discretion to impose a different penalty if warranted. This policy option allows local government staff to impose a fine on a retailer instead of suspending the retailer's license for the time specified in the ordinance. If your community wants to provide this discretion, mandatory minimum alternative penalties should still be specified in your ordinance. For example, this policy option provides that a fine would be available only for a first or second violation and only if the retailer admits that a violation occurred.



Limiting signage can promote public safety by ensuring that enforcement officials have a clear view into stores.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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Photos by Lydia Daniller and ChangeLab Solutions.

ORDINANCE NO. 2020-489

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUADALUPE ADDING CHAPTER 5.53, LICENSURE OF TOBACCO RETAILERS, AND CHAPTER 8.60, SMOKING IN PUBLIC PLACES AND MULTIUNIT RESIDENCES, TO THE GUADALUPE MUNICIPAL CODE

WHEREAS, the U.S. Centers for Disease Control and Prevention reports that 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;

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;

WHEREAS, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;
- More than 25% of all adult cancer deaths in California are attributable to smoking;
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);
- More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;
- Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;

WHEREAS, 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, but studies show

that restricting access to these flavored products would have a large benefit to overall public health; and

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction; and

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting, as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;

WHEREAS, 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;

WHEREAS, youth are particularly responsive to changes in tobacco prices, and evidence suggests that tobacco companies deliberately target youth with price reductions;

WHEREAS, the tobacco industry’s price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, those who use price minimization strategies lower per-pack cost an average \$1.04 (or 18.6% off the total);

WHEREAS, the City Administrator and Department of Public Safety, as the Administrative Authority, is proposing changes to amend the City of Guadalupe Municipal Code by adding Chapter 5.53, Licensure of Tobacco Retailers, and Chapter 8.60, Smoking in Public Places and Multiunit Housing; and

WHEREAS, the City Council finds that adding Chapters 5.53 and 8.60 set forth in this Ordinance are exempt from the California Environmental Quality Act (CEQA) review pursuant to 14 CCR 15061(b)(3).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUADALUPE ORDAINS AS FOLLOWS:

SECTION 1: Chapter 5.53 is hereby added to the Guadalupe Municipal Code to read as follows:

CHAPTER 5.53 LICENSURE OF TOBACCO RETAILERS

5.53.010 Findings and Purpose

A. It is the intent of the City Council, in enacting this chapter, to discourage violations of laws which prohibit or discourage sale or distribution of tobacco products and tobacco paraphernalia to minors and young people, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed.

B. All amendments to this chapter shall be applied in a prospective manner only, not retrospectively to situations, conditions or facts existing at the time of or prior to the amendment.

5.53.020 Definitions

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

A. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of a violation of this chapter, is not an arm's length transaction.

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 herein.

C. "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.

D. "Delivery sale" means any sale of tobacco products to a consumer if products and/or tobacco:

1. the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

2. the tobacco products are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the tobacco products.

D. "Department" means the City of Guadalupe Department of Public Safety or the duly authorized designee of the Department of Public Safety.

E. "Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device

includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

F. "Flavored tobacco product" means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements or claims concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

G. "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.

H. "Licensing agent" means the City of Guadalupe Department of Finance or the duly authorized designee of the Department of Finance.

I. "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. Little cigar includes, but is not limited to, tobacco products known or labeled as small cigars, little cigars, or cigarillos.

J. "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

K. "Pharmacy" means a place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

L. "School" means any public or private kindergarten, elementary, middle, junior high, or high school.

M. "Self-Service Display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

N. "Tobacco paraphernalia" means holders of smoking materials of all types, cigarette rolling machines, and any other item designed for smoking, preparation, storing or consumption of tobacco products.

O. "Tobacco product" means:

1. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

2. any electronic smoking device, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

3. any component, part, or accessory of subsection O.1. or O.2., whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

4. Tobacco product does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, nor does it mean cannabis products as defined by the Health and Safety Code § 11018.1 or cannabis as defined by Business and Professions Code § 26001, as these laws may be amended from time to time.

P. "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.

Q. "Tobacco retailing" shall mean engaging in the activities of a tobacco retailer.

R. "Tobacco retailer license" or "license" means a business license that permits the retail sale of tobacco paraphernalia.

5.53.030 Requirement for tobacco retailer license

It is unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer license pursuant to this chapter for each location at which tobacco retailing is to occur. Tobacco retailer licenses are valid for one year. An application to renew a tobacco retailer license should be submitted prior to the expiration of the license.

5.53.040 Application procedure

A. An application for a tobacco retailer license, plus one copy, shall be submitted to the licensing agent in the name of the person(s) proposing to conduct tobacco retailing and shall be signed by such person(s) or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:

1. The name, address, and telephone number of the applicant(s);

2. The business name, address, and telephone number of each location for which a license is sought.

3. Such other information as the licensing agent deems necessary for enforcement of this chapter.

B. Once an application has been submitted to the licensing agent, it will be promptly forwarded to the Department for review. The Department shall, within twenty-one business days of receipt of the application, recommend whether or not the licensing agent should issue the tobacco retailer license.

5.53.050 Issuance of tobacco retailer license

A. Within thirty business days of the licensing agent's receipt of an application for a tobacco retailer license, the licensing agent shall issue a license, unless it has been determined by the licensing agent or Department that the issuance of the license should be denied, based on the following criteria:

1. The application is incomplete or inaccurate;
2. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension or revocation with prejudice is in effect pursuant to section 5.53.160 of this chapter; or
3. The application seeks authorization for tobacco retailing in an area that is in violation of section 5.53.110, or in a manner that is in violation of section 5.53.090, city zoning pursuant to Title 18 of this code, or in violation of any other provision of city, state, or federal law.
4. The application seeks authorization for tobacco retailing in a pharmacy. No pharmacy or any retail establishment that operates an on-site pharmacy will be granted a license.

B. A denial of a tobacco retailer license may be appealed pursuant to section 5.53.160.

C. The licensing agent shall keep a permanent record of all tobacco retailer licenses issued, but may destroy such records as provided by law with the approval of the City Council.

5.53.060 Display of tobacco retailer license

Each licensee shall prominently display the tobacco retailer license at each location where tobacco retailing occurs.

5.53.070 Fees for tobacco retailer license

A. The initial fee or renewal fee for a tobacco retailer license shall be set forth in the "Tobacco Retailer License Fee Schedule" that is adopted by resolution. The fee shall be paid to the licensing agent when a tobacco retailer license application is submitted.

B. Renewal. Renewal fees are due the thirty days prior to the date of expiration of a tobacco retailer license. If the renewal fee is not paid on time, a penalty of fifty percent of the renewal fee shall be added to the renewal fee. If the renewal fee and any applicable late penalty are not paid before the date of expiration of a tobacco retailer license, then the licensing agent shall automatically revoke the license. Thereafter, if the licensee desires to

resume tobacco retailing, a new license application must be submitted to the licensing agent in accordance with section 5.53.040, along with the license fee and late penalty.

5.53.080 Tobacco retailer licenses are nontransferable

A. A tobacco retailer license is nontransferable. If a person to whom a tobacco retailer license has been issued changes the business location or sells the business, then that person must obtain a new license prior to acting as a tobacco retailer at the new location, or the buyer of the business must obtain a license in the new owner's name before acting as a tobacco retailer.

B. Prior violations at a location shall continue to be counted against a location and license revocation periods shall continue to apply to a location unless:

1. The location is being or has been fully transferred to a new owner; and
2. The new owner(s) provide the licensing agent with clear and convincing evidence that the new owner(s) is acquiring or has acquired the location in an arm's length transaction.

5.53.090 Tobacco retailers must operate at a fixed location

No tobacco retailer license may be issued to authorize tobacco retailing at other than a fixed location. All sales of tobacco products and tobacco paraphernalia to consumers shall be conducted face-to-face and over the counter at the licensed location. For example, tobacco retailing by persons on foot, from vehicles, or at mobile kiosks is prohibited, and delivery sales of tobacco products to consumers is prohibited.

5.53.100 Prohibited sales

- A. No person engaged in tobacco retailing may:
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 service; or
 3. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
 4. Provide any free or nominally-priced sample of any tobacco product to any person.
 5. Sell:
 - a. A flavored tobacco product;
 - b. Any little cigar unless it is sold in a package of at least twenty little cigars;
 - c. Any cigar unless it is sold in a package of at least at least six cigars, provided, however, that this subsection shall not apply to a cigar that has a price of at least \$10.00 per cigar, including all applicable taxes and fees;

- d. Cigarettes at a price that is less than \$10.00 per package of twenty cigarettes, including all applicable taxes and fees;
- e. Little cigars at a price that is less than \$10.00 per package of little cigars, including all applicable taxes and fees; or
- f. Cigars in a package at a price that is less \$5.00 per cigar, including all applicable taxes and fees.
- g. Any tobacco product by means of a self-service display.

B. The minimum prices established in this section 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 Los Angeles statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

5.53.110 Prohibition of tobacco retailing within one thousand feet of a school

- A. No tobacco retailer license may be issued to authorize tobacco retailing within one thousand feet of a school.
- B. All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailer to the nearest point on the parcel boundary of the nearest school.

5.53.120 Positive identification requirements for sale of tobacco products and tobacco paraphernalia

No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of thirty, without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess tobacco products or tobacco paraphernalia.

5.53.130 Minimum age for persons selling tobacco products and tobacco paraphernalia

No person who is younger than the minimum age established by state or federal law for the purchase of tobacco products or tobacco paraphernalia may engage in tobacco retailing or work for a tobacco retailer.

5.53.140 False and misleading advertising prohibited

A tobacco retailer without a valid tobacco retailer license, including for example, a tobacco retailer license that has been suspended or revoked, shall not display any advertisement promoting the sale or distribution of tobacco products or tobacco paraphernalia at the tobacco retailer's location and shall keep all such products out of public view.

5.53.150 Compliance monitoring

A. Compliance with this chapter shall be primarily enforced by the Department, in conjunction with code enforcement. However, any peace officer may enforce the penal provisions of this chapter against a tobacco retailer.

B. The Department will check the compliance of each tobacco retailer two to four times per twelve-month period. However, the Department may check the compliance of a tobacco retailer more or less often, depending on a tobacco retailer's compliance history. Nothing in this paragraph shall create a right of action for any tobacco retailer or other person, against the county or its agents.

5.53.160 Revocation or suspension of tobacco retailer license, and appeals

A. Grounds for Revocation or Suspension.

1. A tobacco retailer license shall be revoked if the Department finds that one or more of the basis for denial of a license under section 5.53.050 of this chapter exists. The revocation shall be without prejudice to the filing of a new application for a license following correction of the conditions that required revocation of the license, unless the Department finds that missing information was intentionally withheld, or inaccurate information was intentionally provided.

2. A tobacco retailer license shall be suspended, if the Department finds that the licensee or his or her agent or employee has violated this chapter or any federal, state, or local law governing the sale, distribution, advertisement, labeling, packaging, manufacturing, or display of tobacco, tobacco products or tobacco paraphernalia, including, but not limited to: Penal Code Section 308a, or Business and Professions Code Sections 22950 et seq. (Stop Tobacco Access to Kids Enforcement Act "STAKE Act") or sections 37-7 and 37-8 of Santa Barbara County's code, or Business and Professions Code Section 25612.5(c)(7).

3. The licensing agent shall give notice of revocation or suspension to a licensee by personal service or by certified mail return receipt requested, addressed to where the license was issued. The notice of revocation or suspension shall be effective when notice is personally served, or when the certified mail return receipt is returned to the licensing agent. If the licensee fails to file a timely appeal of the suspension or revocation pursuant to this section, the notice of suspension or revocation shall be final, subject only to judicial review.

B. Suspension of Tobacco Retailer License. If the Department finds that there are grounds for suspension of a tobacco retailer license, the following sanctions shall be imposed:

1. Upon a first finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for thirty days.

2. Upon the second finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for ninety days.

3. Upon the third or subsequent finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for twelve months.

C. Appeal of Denial, Revocation and/or Suspension. The decision of the licensing agent to deny the issuance of a tobacco retailer license or the decision of the Department to revoke or suspend a license can be appealed to the Department or its designee. All appeals must be in writing and filed with Department, within ten days of receipt of notice of denial, or within ten days of the effective date of the notice of revocation or suspension of a tobacco retailer license. The Department shall set an appeal hearing at the earliest practicable time and shall give written notice of the hearing to the parties at least ten days before the date of the hearing. At the hearing any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Within a reasonable time after the conclusion of the hearing, the Department shall make a written decision. An appeal shall stay all proceedings until the appeal is resolved. Any decision rendered by the Department shall be a final administrative decision.

5.53.170 Penalties—Enforcement

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Title 1, Chapter 1.08 of this code.
- B. Violations of this chapter are hereby declared to be public nuisances.
- C. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the county counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

5.53.180 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter or the rules adopted hereby. The City Council of the City of Guadalupe hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 2: Chapter 8.60 is hereby added to the Guadalupe Municipal Code to read as follows:

CHAPTER 8.60 – SMOKING IN PUBLIC PLACES AND MULTIUNIT HOUSING

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

A. "Adjacent unenclosed property" means any unenclosed area of property, publicly or privately owned, that abuts a multiunit residence, but does not include property containing detached single-family homes.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes. A business also includes owner-operated entities with no employees in which the owner is the only worker.

C. "Cannabis" has the meaning set forth in California Business and Professions Code Section 26001(f), as that section may be amended from time to time.

D. "Common area" means every enclosed area and unenclosed area of a multiunit residence that residents of more than one unit of that multiunit residence are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

E. "Dining area" means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink, including, but not limited to restaurants.

F. "Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

G. "Employee" means any person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.

H. "Employer" means any business or nonprofit entity that retains the service of one or more employees.

I. "Enclosed area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

1. any type of overhead cover, whether or not that cover includes vents or other openings, and is bounded by walls, doorways, windows, or vegetation of any height, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area; or

2. walls or other vertical constraints to airflow, including, but not limited to, vegetation, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the areathat exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

J. "Multiunit residence" means property containing two (2) or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, hotels and motels, and long-term health care facilities. Multiunit residences do not include the following:

1. a mobile home park;
2. a campground;
3. a marina or port;
4. a single-family home, except if used as a health care facility subject to licensing requirements; and

5. a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2, as they may be amended from time to time, or an ordinance of the City adopted pursuant to those sections, except if the single-family home or in-law/second unit is used as a health care facility subject to licensing requirements.

K. "Nonprofit entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a nonprofit entity within the meaning of this chapter.

L. "Nonsmoking area" means any enclosed area or unenclosed area in which smoking is prohibited by

1. this chapter or other law;
2. binding agreement relating to the ownership, occupancy, or use of real property;

or

3. a person with legal control over the area.

M. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

N. "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation. Place of employment includes all retail or wholesale tobacco shops, and all tobacco retailers licensed by the City.

O. "Private smokers' lounge" means any enclosed area in or attached to a retailer wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, hookahs, cigars, and pipes.

P. "Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

Q. "Reasonable distance" means a distance of twenty (20) feet in any direction from an area in which smoking is prohibited.

R. "Recreational area" means any area including streets and sidewalks publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. "Recreational area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding

trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.

S. "Retail or wholesale tobacco shop" means any business establishment, the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, electronic smoking devices and smoking accessories.

T. "Service area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. "Service area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

U. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, heating, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, heating, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no cannabis, tobacco, or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. "Smoke" includes, but is not limited to, tobacco smoke, aerosol from an electronic device or heated product, and cannabis smoke or aerosol.

V. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco product, cannabis product, or any plant product 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, and includes, but is not limited to tobacco smoke, vapors from an electronic device, and cannabis smoke or aerosol.

W. "Tobacco product" means

1. any 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, snuff; and

2. any electronic smoking device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

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. "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.

X. "Unenclosed area" means any area that is not an enclosed area.

Y. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room

occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

8.60.020 Prohibition of Smoking in City Facilities,

Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or operated by the City.

8.60.030 Prohibition of Smoking in Enclosed Areas.

Smoking is prohibited in the enclosed areas of the following places within the City:

- A. Places of employment;
- B. Public places;
- C. Common areas of multiunit residences;
- D. Retail and wholesale tobacco shops; and
- E. Private smokers' lounges;
- F. Service areas;
- G. Recreational areas;
- H. Dining areas.

8.60.040 Smoking Restrictions in Units of Multiunit Residences.

Smoking is prohibited in all units of a multiunit residence, including any associated exclusive-use enclosed areas or unenclosed areas, such as a private balcony, porch, deck, or patio.

8.60.050 Prohibition of Smoking in Unenclosed Areas.

A. Smoking is prohibited in the unenclosed areas of the following places within the City:

- 1. Recreational areas;
- 2. Service areas;
- 3. Dining areas;
- 4. Places of employment;
- 5. Any private or public sidewalks located within a commercial zone; and any public place located within a commercial zone.
- 6. Common areas of multiunit residences, provided, however, that a person with legal control over a common area may designate a portion of the unenclosed area of the common area as a designated smoking area if the area:
 - a. is located a reasonable distance from any unit or enclosed area where smoking is prohibited:
 - b. by this chapter or other law;
 - c. by binding agreement relating to the ownership, occupancy, or use of real property; or
 - d. by designation of a person with legal control over the property:

- i. does not include, and is a reasonable distance from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, recreational areas, and sandboxes;
- ii. is no more than ten percent (10%) of the total unenclosed area of the multiunit residence for which it is designated;
- iii. has a clearly marked perimeter;
- iv. is identified by conspicuous signs;
- v. is completely within an unenclosed area; and
- vi. does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this code, state law, or federal law.

B. In the case of a smoking area created by agreement or designation, this provision does not apply unless the person designating the smoking area has actual knowledge of; or has been given notice of, the agreement or designation. A person with legal control over a designated smoking area may be obliged to modify, relocate, or eliminate it as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established.

C. Other public places, when being used for a public event including, but not limited to, a farmers market, parade, craft fair, festival, or any other event open to the general public.

D. Nothing in this chapter prohibits any person, employer, or nonprofit entity with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

8.60.060 Reasonable Smoking Distance Required.

A. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited.

B. Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under Sec. 8.60.050 of this chapter.

8.60.070 Nonsmoking Buffer Zones.

A. Smoking is prohibited in adjacent unenclosed property located within twenty (20) feet in any direction of any doorway, window, opening, or other vent into an enclosed area of a multiunit residence.

B. Subsection A above does not apply to a person who is smoking in the restricted buffer zone area while actively passing on the way to another destination.

8.60.080 Required and Implied Lease Terms for All Units in Multiunit Residences.

A. Every lease or other rental agreement for the occupancy of a unit in a multiunit residence, entered into, renewed, or continued month to month after the effective date of this

ordinance, shall include the provisions set forth in subsection B. below on the earliest possible date allowable by law.

B. Every lease or other rental agreement for the occupancy of a unit in a multiunit residence, entered into, renewed, or continued month to month after the effective date of this ordinance, shall be amended to include the following provisions:

1. A clause providing that as of the effective date of this ordinance, it is a material breach of the agreement to knowingly or intentionally allow, or engage in, smoking in the unit, including exclusive-use areas such as balconies, porches, or patios.

2. A clause providing that it is a material breach of the agreement for tenant to knowingly and intentionally allow, or engage in, smoking in any common area of the multiunit residence other than a designated smoking area.

3. A clause providing that it is a material breach of the agreement for tenants to violate any law regulating smoking while anywhere on the property, or to knowingly and intentionally allow any other person subject to the control of the tenant to engage in such behavior.

4. A clause expressly conveying third-party beneficiary status to all occupants of the multiunit residence as to the smoking provisions of the lease or other rental agreement.

C. Whether or not a landlord complies with subsections A and B above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsections A or B apply and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsections A or B.

D. A tenant who breaches, or knowingly and intentionally allows any other person subject to the control of the tenant to breach, a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multiunit residence shall be liable for the breach to:

1. the landlord; and
2. any occupant of the multiunit residence who is exposed to smoke or who suffers damages as a result of the breach.

3. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with subsections A and B of this section.

E. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

8.60.090 Notice and Signage Requirements.

A. Every landlord and homeowner association shall deliver the following, on or before the effective date of the ordinance, to each unit of a multiunit residence:

1. a written notice clearly stating:
a. all units are designated nonsmoking units and smoking is illegal in a unit, including any associated exclusive-use enclosed area or unenclosed area, such as a private balcony, porch, deck, or patio, as of effective date of the ordinance; and
b. Smoking in all common areas except for specifically designated smoking areas, is a violation of this chapter as of the effective date of this ordinance.

2. a copy of this chapter.

B. As of the effective date of the ordinance, every landlord and homeowner association shall provide prospective tenants with written notice clearly stating that:

1. Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio, as of effective date of ordinance; and

2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of effective date of ordinance.

C. As of the effective date of ordinance, every seller of a unit in a multiunit residence shall provide prospective buyers with written notice clearly stating that:

1. Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio, as of effective date of ordinance; and

2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of effective date of ordinance.

D. The person or persons with legal control over common areas shall post clear and unambiguous "No smoking" signs in sufficient numbers and locations in common areas where smoking is prohibited by this chapter or other law. In addition, the person or persons with legal control over the multiunit residence shall post signs in sufficient numbers and locations in the multiunit residence to indicate that smoking is prohibited in all units. The person or persons with legal control over the common areas shall maintain such signs. The absence of signs shall not be a defense to a violation of any provision of this chapter. "No smoking" signs are not required inside or on doorways of units, except for hotels or motels which meet the criteria listed in California Civil Code section 1940, subdivision (b)(2).

E. No Person with legal control over any nonsmoking area shall permit smoking in the nonsmoking area, except as provided in Section 8.60.050.A.6.

8.60.100 Nuisance; Other.

A. The provisions of this chapter are restrictive only and establish no new rights for a person who engages in smoking. Notwithstanding (i) any provision of chapter or of this code, (ii) any failure by any person to restrict smoking under this chapter or (iii) any explicit or implicit provision of this code that allows smoking in any place, nothing in this code shall be interpreted to limit any person's legal rights under other laws with regard to smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

B. For all purposes within the jurisdiction of the City, nonconsensual exposure to smoke occurring on or drifting into residential property is a nuisance, and the uninvited presence of smoke on residential property is a nuisance.

C. Pursuant to California state law, Health and Safety Code sections 11362.3 and 11362.79, as they may be amended from time to time, smoking cannabis is prohibited wherever smoking tobacco is prohibited.

D. Notwithstanding any provision to the contrary, nothing in this ordinance shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product

authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

8.60.110 Other Requirements and Prohibitions.

A. No person, employer, or nonprofit entity shall permit smoking in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law.

B. No person, employer, or nonprofit entity shall permit the presence or placement of ash receptacles, such as ashtrays or ash cans, within an area under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law, including, without limitation, within a reasonable distance required by this chapter from any area in which smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this chapter.

C. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous, and unambiguous "No smoking" or "Smokefree" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette and an electronic smoking device, enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in Sec 8.60.060. For purposes of this section, the City Administrator or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

D. No person, employer, or nonprofit entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

E. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

F. Pursuant to California state law, Health and Safety Code sections 11362.3 and 11362.79, cannabis smoking is prohibited wherever smoking is prohibited.

G. The Department of Public Safety or its designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this chapter as well as to provide guidance to persons, employers, and nonprofit entities about compliance. However, lack of receiving or participating in such education program shall not be a defense to a violation of this chapter.

8.60.120. Penalties and Enforcement.

A. The remedies provided by this chapter are cumulative and in addition to any other remedies available under this code, at law, and/or in equity.

B. Each incident of smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to this code. Enforcement of this chapter shall be the responsibility of the Department of Public Safety or its designee. In addition, any peace officer or code enforcement official also may enforce this chapter.

C. All other violations of this chapter are subject to a civil action brought by the City punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation, and each day of violation constitutes a separate offense.

D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

E. Any violation of this chapter is hereby declared to be a public nuisance.

F. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

G. Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two or more times. Upon proof of the violations, a court shall grant all appropriate relief.

H. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any person against the City or its agents to compel public enforcement of this chapter against private parties.

I. Notwithstanding other penalties in this chapter, code, or other law, persons under the age of 21 who smoke in violation of this chapter may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the City determines to be appropriate. The City Council will consult with court personnel, educators, parents, children, the Department of Public Safety, and other interested parties to determine an appropriate penalty for persons under the age of 21 in the City. The penalty may be established by ordinance and amended from time to time.

8.60.130 Other Laws.

A. It is not the intention of this chapter to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

B. Notwithstanding any provision to the contrary, nothing in this ordinance shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

8.60.140 Statutory Constructions and Severability.

It is the intent of the City 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. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

INTRODUCED at a regular meeting of the City Council on the 9th day of June 2020, by the following vote:

MOTION:

AYES:	0	Councilmembers:
NOES:	0	
ABSENT	0	
ABSTAINED	0	

ATTEST:

Joice Earleen Raguz, City Clerk

Ariston Julian, Mayor

APPROVED AS IS TO FORM:

Philip F. Sinco, City Attorney